

REX RAILWAYS

RECORDATION NO. 14280 FORM 1425

MAR 13 1984 - 3 12 PM

INTERSTATE COMMERCE COMMISSION

March 9, 1984

3/13/84
50.00
Washington, D.C.

Mrs. Mildred Lee
Interstate Commerce Commission
Recordation Department
Room 2227
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

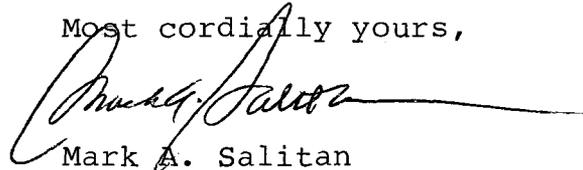
Dear Mrs. Lee:

Enclosed please find an original and two copies of a lease agreement for 20 covered hopper cars between Rex Leasing, Inc., Lessor and Northern Missouri Railroad Co., Lessee.

The lease agreement is signed and notarized and we enclose a \$50.00 filing fee, payable to the ICC. Please record, stamp and return.

Thank you for your cooperation.

Most cordially yours,



Mark A. Salitan
President

MAS/jd

Enclosures

Cert./RRR

RECORDATION NO. 14289
FEB 1984

LEASE AGREEMENT

MAR 13 1984 3 12 PM
STATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this 23rd day of February, 1984 between REX RAILWAYS, INC., and/or Rex Leasing, Inc., New Jersey corporations, 616 Palisade Avenue, Englewood Cliffs, NJ as Agent for Car Owners (hereinafter referred to as "Lessor" or "Rex"), and The Northern Missouri Railroad, Inc. a Delaware corporation in Maryville, MS (the "Lessee"), as Lessee.

RECITALS

Lessee desires to lease from REX as Lessor certain railroad cars hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this Lease.

AGREEMENT

It is Agreed:

1. Lease of Cars. REX agrees to lease to Lessee and Lessee agrees to and does hereby lease from REX railroad cars of the number of units, model, type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 attached hereto and by this reference made a part hereof and as set forth in Schedules which may from time to time be added to this Lease and thereby made a part hereof.
2. Delivery of Cars. Delivery shall occur for each car immediately upon change from current to new markings, and interchange to the "Lessee's" trackage.
3. Use and Possession. Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with Interchange Rules; (ii) in compliance with the terms and provisions of this Lease; (iii) in a careful and prudent manner, solely in the use, service and manner for which they were designed.

4. Term. This Lease shall be effective upon the date provided in Paragraph 2 hereof. The lease term shall commence on said date and shall terminate upon expiration of the lease term specified in the applicable Schedule unless sooner terminated in accordance with the provisions of this Lease. Actual termination date will be established as per date of remarking of the last car delivered.

5. Rental Per Car. See Schedule 1.

6. Payment. Lessee shall make payment of all sums due hereunder to REX in immediately available funds at the address provided in Paragraph 18 hereof, or such other place as REX may direct.

7. Title. Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars.

8. Repairs. All Repair work, maintenance, etc. will be for the account of REX.

9. Abatement of Rent. As all lease payments are based on a sharing of off-line per diem and mileage, there will be no rental abatement during lease term.

10. Liens. Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect REX's title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

11. Indemnities -- Patent Covenants. Lessee agrees to indemnify REX and hold it harmless from any loss, expenses or liability which REX may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use,

accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If any of the Cars require new reporting marks..... and numbers, Lessee shall place such reporting marks and numbers on any or all of the Cars as REX shall designate in writing to Lessee prior to the end of the lease term, at sole cost to Lessee.

If Lessee is a railroad, Lessee agrees to provide storage at its expense, upon the request of REX for any or all of the Cars for a period of sixty (60) days from the date of expiration or termination of this Lease. Nothing in this Paragraph 14 shall give Lessee the right to retain possession of any Car after expiration or termination of this Lease with respect to such Car except as provided herein.

15. Default. If Lessee shall fail to make any payment required hereunder within 30 days after same shall have become due or shall default or fail for a period of 30 days after notice thereof in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events REX may at its election:

(a) terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover as liquidated damages for loss of a bargain and not as a penalty, any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date; or

(b) without terminating the Lease repossess the Cars, and may relet the same or any part thereof to others upon such rental and other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. REX shall not be obligated to accept any lessee offered by Lessee, or to do any act or exercise any diligence whatsoever in the procuring of another lessee to mitigate the damages of Lessee or otherwise. The election by REX to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

The remedies provided in this Paragraph 15 in favor of REX shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in REX favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

16. Sublease and Assignment. The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of REX, which consent shall not be unreasonably withheld, provided, however, that Lessee shall have the right to sublease any of the Cars to its wholly owned affiliates, or may sublease, for a term not exceeding one year to a responsible company as determined by the Lessee (without being released from the obligations hereunder). Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease.

(b) all rights of REX hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to or consent of Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any lease to REX chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by REX provided only that so long as Lessee is not in default under the Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars. If REX shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable to Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment by REX shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

17. Opinion of Counsel. Upon the request of REX or its assignee, Lessee will deliver to REX an opinion of counsel for Lessee, addressed to REX or its assignee in form and substance satisfactory to counsel for REX or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;

(b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms subject to limitations as to enforceability imposed by the laws of bankruptcy, insolvency, moratorium and similar laws affecting creditor's rights;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and

(c) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder.

18. Notice. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

REX at:
P. O. Box 968
Englewood Cliffs, N.J. 07632

Lessee at: P.O. Box 304
Maryville, Missouri 64468

Rex
MP

or at such other addresses as REX may from time to time designate by such notice in writing and to Lessee at the address above or any such other address as Lessee may from time to time designate by notice in writing.

19. Governing Law -- Writing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New Jersey. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

20. Counterparts. This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

21. Severability -- Waiver. If any term or provision of this Lease or the application thereof to any persons or circumstances shall to

any extent be invalid or unenforceable; the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of REX to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

22. Terminology. In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

23. Past Due Payments. Any nonpayment of rentals or other sums due hereunder; whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to twelve per cent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time from one week after the due date until such overdue sum is paid.

24. Definitions. For all purposes of this Lease the following terms shall have the following meaning:

(a) "Interchange Rules" -- all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

(b) "Delivery Date" -- that date which is when the car has been interchanged, and markings changed.

(c) "Repair Work" -- all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with and on the effective date of the requirements of all Interchange Rules and preventive maintenance necessary to keep and maintain the Cars in good working order and repair.

(d) "Casualty Cars" -- Cars which are lost, stolen, destroyed or damaged beyond economic repair.

25. Benefit. Except as otherwise provided herein the covenants conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties their heirs, successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 11 hereof shall apply to and inure to the benefit of any assignee of REX, and if

such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

26. Taxes. All property taxes which, from time to time, during the Lease term, shall be assessed against the Cars, shall be paid by Lessee for the account of REX. REX shall reimburse Lessee for such tax payments within thirty days of receipt of Lessee's billing for such tax payments.

27. See Schs. 1 & 1(a) which is are integral part of this Lease Agreement.

28. The Lessee agrees to give REX the right of first refusal for any additional railcar equipment needed.

IN WITNESS WHEREOF the parties hereto have executed this Lease Agreement the day, month and year first above written.

REX RAILWAYS, INC.

By *Frank J. Juleta*
President

(Corporate Seal)

ATTEST:
Don A. Redlock
Assistant Secretary

THE NORTHERN MISSOURI RAILROAD, INC.

By *Richard H. Overman*

(Corporate Seal)

ATTEST:
J. D. Hoff

By _____

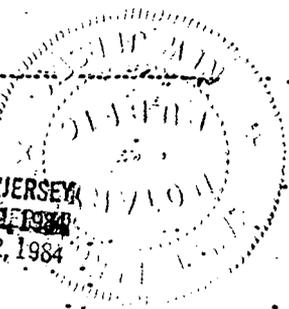
By _____

STATE OF New Jersey }
COUNTY OF Bergen } ss

On this 9th day of February, 1984, before me personally appeared Mark A. Salitan to me personally known, who being by me duly sworn, says that he is President of REX LEASING INC. & REX RAILWAYS, INC. and Dawn Maddock, to me personally known to be Asst. Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Janet Denman
Notary Public

NOTARY PUBLIC, NEW JERSEY
My Commission Expires Oct. 22, 1984



District of Columbia
STATE OF
COUNTY OF

On this 29th day of FEBRUARY, 1984, before me personally appeared Richard H. Wiersema to me personally known, who being by me duly sworn, says that he is President of NORTHERN MISSOURI RAILROAD to me personally known to be the Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara S. Slayback
Notary Public

My Commission Expires July 31, 1988

Schedule I

Description of cars: 4650 cubic ft. jumbo covered hopper cars.

Quantity: (20) twenty

Term: (5) five years from the "Delivery" of the (20th) ^{20th} ~~twentieth~~ car

Rental: Will be based on a per car basis until delivery of all (20) ²⁰ ~~twentieth~~ cars has been completed, or as stated in the "Lease Agreement".

Rental Rate:

- (a) The first 35% of both per diem and mileage money to Rex, this being based on a possible 100% as per diem and (50) fifty miles per day as to mileage.
- (b) The next 15%, that is, 36% through 50% as described above to the "Lessee".
- (c) The next 15%, that is, 51% through 65% as described above to Rex.
- (d) The next 15%, that is, 66% through 80% as described above to the "Lessee".
- (e) If utilization for a given month falls at 35% or below, as described in (a) above, the "Lessee" will receive 10% of Rex's portion. As an example, if utilization were to be 33%, Rex would net 29.7% and the "Lessee", 3.3%.

Take Back Provision: If utilization on a (6) six month average were to be below 55%, the first (6) six month period beginning with the first day of the month following the first full month of the Lessee's possession of all the equipment, Rex reserves the right to take back all, or any part of the cars on lease. Each (6) six month period will begin with the following month, dropping the first month. For example: the 25th car is delivered March 19, 1984. The (6) six month period would begin May 1, 1984. The second (6) six month period would begin June 1, 1984, the third July 1, 1984 and so on.

Delivery of Equipment: All expenses for the account of Rex.

Remarking of Equipment: If the equipment should be delivered to the Lessee and require remarking to Lessee's marks, this will be performed by the Lessee, the cost of which to be borne by Rex, and not to exceed AAR rates.

Schedule I (a)

NMOR 1001
NMOR 1006
NMOR 1007
NMOR 1009
NMOR 1012
NMOR 1018
NMOR 1020

NMOR 1033
NMOR 1035
NMOR 1036
NMOR 1049
NMOR 1050
NMOR 1060
NMOR 1064

NMOR 1069
NMOR 1077
NMOR 1083
NMOR 1086
NMOR 1091
NMOR 1095

Logos: No logos, advertising, or any markings other than required AAR markings may be added to the cars, without written consent of Rex, and if the consent is given, it will be at the expense of the "Lessee".

Bad Order Cars: In the case of cars "Bad Ordered" on the Lessee's line, these cars will be treated as if the "Lessee" were an "off line" carrier, thus the "Lessee" being responsible for payment under the same criteria as if a "foreign car" were damaged on its line" under Rule 107.

Change of Car Hire Rules: Should the ICC or/and the AAR change its rules pertaining to "Car Hire" a new agreement must be negotiated and agreed upon by both Rex and the "Lessee". Should this be unattainable, the Lease rate will be determined by the equivalent in money, to the percentage factors listed under "Rental Rate", the day prior to the effectual date of the change.

REX RAILWAYS, INC. and/or REX
LEASING, INC.

By James S. Galton
President

(Corporate Seal)

ATTEST:

Alan G. Mellock
Assistant Secretary

THE NORTHERN MISSOURI RAILROAD, INC.

By Richard H. Williams

(Corporate Seal)

ATTEST:

J. D. [Signature] ✓

By _____

By _____