

MAIL

5828



EQUIPMENT LEASE

Jan. 14, 1966, 19____
(Date)

LESSEE: Hightower Box & Tank Company

Address: No. 906 No. 40th St.

City and Postal Zone Birmingham County of Jefferson State of Alabama

(For corporation, show location of principal place of business in state as shown in charter if equipment is in same state; otherwise insert actual business address. For individual, show residence. For partnership, show place of business and also name and residence of each partner.)

LESSOR: Brungart Equipment Co., Inc.

Address: No. 4600-1st Ave., No.

City and Postal Zone Birmingham County of Jefferson State of Alabama

Lessor hereby leases to Lessee, and Lessee hereby hires and takes from Lessor the following described personal property (hereinafter with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto, referred to as "equipment" or "units of equipment"):

- 1 Reconditioned Hyster Model RC-150 Fork Lift Ser. # 104535
15' upright
Std. carriage
96" Forks
Hercules Engine
Overhead guard
Farr 2-stage air cleaner

Lessor agrees within _____ from the date hereof to cause the equipment to be delivered to Lessee, f.o.b. Shelby
Alabama. Lessee agrees to pay all transportation charges from the f.o.b. point of delivery.

1. TERM, RENTAL AND PAYMENT:

A. The rent for the equipment shall commence on January 15, 1966, 19____ and shall terminate on December 15, 1969, 19____, which period is herein called the "term" of this agreement.

B. The rental due hereunder shall be the total sum of \$ 8624.88, which shall be due and payable as follows:

\$ 239.58 upon the signing of this agreement by Lessee, being the rental for the first month of the term of this agreement.

\$ 239.58 per month for 35 consecutive months commencing one month after date of commencement of the term of this agreement, and thereafter on the same day of each month.

\$ _____ per month for _____ consecutive months commencing _____ months after date of commencement of the term of this agreement, and thereafter on the same day of each month.

\$ _____ per month for _____ consecutive months commencing _____ months after date of commencement of the term of this agreement, and thereafter on the same day of each month.

\$ _____ per month for _____ consecutive months commencing _____ months after date of commencement of the term of this agreement, and thereafter on the same day of each month.

\$ _____ per month for _____ consecutive months commencing _____ months after date of commencement of the term of this agreement, and thereafter on the same day of each month.

C. Delinquent payment of any sums due under the terms of this agreement shall bear interest at the highest lawful contract rate.

2. PLACE OF USE:

The equipment shall be used solely for lawful purposes in the conduct of Lessee's business and shall be kept at Shelby

County of Shelby State of Alabama, until Lessor in writing permits its removal.

3. OPERATION, REPAIR AND MAINTENANCE:

Lessee shall cause the equipment to be operated by competent employees only, shall bear all expenses of operation and shall properly care for the equipment. Lessee shall use and operate the equipment within its rated capacity and shall at all times maintain oil and antifreeze in the equipment at the level required for the proper operation of the equipment. Lessor shall not be obligated to make any repairs or replacements; Lessee shall not incur for Lessor's account or liability any expense therefor without Lessor's written consent. Lessee shall inspect the equipment within 48 hours after its receipt; unless within said time Lessee notifies Lessor, stating the details of any defects, Lessee shall be conclusively presumed to have accepted the equipment in its then condition. Thereafter Lessee shall effect and bear the expense of all necessary repairs, maintenance and replacements, and shall maintain the equipment in good working condition at all times.

Form HY 100—Hyster Leasing Division (March, 1961)

This instrument mailed by Faye Johnson
Central Bank and Trust Co.
2015 1st Ave. N.
Birmingham, Alabama

See Assignment in Book 242 p 497

BOOK 242 PAGE 497

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4. **WARRANTY:**

Products and parts manufactured by Hyster Company, a Nevada corporation, and all services performed by Hyster Company are subject to the following warranty: Hyster Company warrants all products manufactured by it and all services performed by Hyster Company for three (3) months after the date of delivery for initial use or completion of the work or for five hundred (500) hours of operation, whichever occurs first, this warranty being limited to the replacement at point of manufacture, of such parts as shall appear to Hyster Company upon inspection at and F.O.B. such point of manufacture, or in the case of services performed at Hyster Company's service depot at and F.O.B. such service depot, to have been defective in material or workmanship, but not including the cost of labor to replace such defective parts, and providing further that Hyster Company's servicing and operating instructions have been followed carefully and no parts other than those furnished by Hyster Company have been installed on the equipment. Hyster Company makes no warranty in respect to trade accessories and purchased sub-assemblies or attachments, such being subject to the warranty, if any, of their respective manufacturers. Except as shown in Hyster Company's published specifications, the products sold by Hyster Company are not warranted to perform any particular task and Hyster Company shall not be responsible for loss, damage, or injury either direct or consequential resulting from or occasioned by possession or use of any products or for loss of use for any reason. Used or second hand products are sold or leased without any warranty whatsoever, expressed or implied, except that the Hyster Company warrants title. No warranty is made or authorized to be made by Hyster Company other than that herein set forth.

5. **LIABILITY:**

Lessee shall indemnify and save Lessor harmless from any and all injury to or loss of the equipment from whatever cause but shall be credited with any amounts received by Lessor from insurance. Lessee shall further indemnify and save Lessor harmless from all liability arising out of the use, maintenance, repair and/or delivery of the equipment, including all costs and expenses attributable to claims for loss, damage, bodily injury or death, whether or not proven, arising out of such use, maintenance, repair and/or delivery, but shall be credited with any amounts received by Lessor from insurance procured by Lessee. The amount of damage for injury to or loss of any unit of equipment shall be based on the reasonable market value of such unit immediately prior to such loss or injury and shall not be reduced because of rentals theretofore paid or accrued.

6. **INSURANCE:**

Lessee, at its expense, shall take out and maintain during the term of this agreement public liability insurance with bodily injury limits of not less than \$100,000/\$300,000 and with property damage limits of not less than \$100,000 per occurrence. Said policies of insurance shall be carried with companies approved by Lessor, shall name Lessor as additional insured and shall contain a cross-liability endorsement. Lessee shall furnish Lessor with certificates of insurance giving evidence of the coverage required herein which certificates shall provide that cancellation of the insurance may be effected only after 10 days' prior notice has been given to Lessor.

7. **COMPLIANCE WITH LAWS AND TAXES:**

Lessee shall comply with and conform to all laws and regulations relating to the ownership, possession, use or maintenance of the equipment, and save Lessor harmless against actual or asserted violations thereof, and pay all costs and expenses of every character occasioned by or arising out of any use or loss of use of any of the equipment, and pay promptly when due all taxes and other public charges against or upon any of the equipment other than ad valorem taxes which shall be the obligation of Lessor.

8. **TITLE:**

This agreement is not to be construed as a contract of sale or a conditional sales contract. Lessee is only renting the equipment, and title to all the equipment shall remain in Lessor exclusively. Lessee, by virtue of this agreement, shall acquire no right, title or interest in or to any unit of equipment rented hereunder except as a lessee. All of the equipment shall remain personal property. Lessee shall keep the equipment free from any and all liens and claims and shall do or permit no act or thing whereby Lessor's title or rights may be encumbered or impaired.

9. **RETURN OF EQUIPMENT:**

Upon termination of this agreement the equipment shall be returned unencumbered to Lessor, at _____, by Lessee at Lessee's sole expense and in the same condition as when received by Lessee, reasonable wear and tear resulting from proper use thereof alone excepted. Lessee shall pay rent at the highest monthly rate provided in Section 1, until all said equipment arrives at _____.

10. **INSPECTION:**

Lessee, whenever requested, shall advise Lessor of the exact location of the equipment, shall give Lessor immediate notice of any attachment or other judicial process affecting the equipment and shall indemnify and save Lessor harmless from any loss or damage caused by such attachment or other judicial process. Lessor, for the purpose of inspection and at all reasonable times, may enter upon any job, building or place where the equipment is located, and may remove the equipment forthwith, without notice to Lessee, if the equipment, in the opinion of Lessor, is being used beyond its capacity or in any manner is being improperly cared for or abused.

11. **NON-WAIVER:**

Time is of the essence. Lessor's failure at any time to require strict performance by Lessee of any of the provisions of this agreement shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provisions. Waiver of any default shall not waive any other default. Lessor's rights hereunder are cumulative and not alternative.

12. **POSSESSION:**

Lessor covenants to and with Lessee that Lessor is the lawful owner of the equipment free from all encumbrances and that, conditioned upon Lessee's performing the conditions of this agreement, Lessee may peaceably and quietly hold, possess and use the equipment during the term hereof without let or hindrance, subject to the provisions of Section 16 of this lease.

13. **DEFAULT:**

In the event the Lessee fails to pay any rental payment when it becomes due or to pay any other sum or sums payable hereunder when the same become due; or if a trustee shall be appointed for Lessee or its property; or, if Lessee shall make an assignment for the benefit of creditors; or should Lessee be the subject of any proceeding under the Bankruptcy Act or become insolvent or attempt to remove, sell, transfer, encumber, sublet or part with the possession of any of the units of equipment rented hereunder or do any act or thing tending to impair the title of Lessor; or should Lessee default in or fail to perform any other term or condition hereof and fail to fully remedy such default within ten (10) days after receipt of written notice from Lessor so to do; each such event being termed an event of default by Lessee under this agreement, Lessor may:

A. Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants and terms of this agreement or to recover damages for the breach of such covenants and terms hereof; or

B. By notice in writing to Lessee, terminate this agreement as to all or any of the units of equipment rented hereunder, whereupon all rights and interest of Lessee to or in the use of said units of equipment shall absolutely cease and determine as though this agreement had never been made. Lessee shall deliver the said units of equipment to Lessor at _____ and, without relieving Lessee of such obligation, Lessor may, directly or by its agents, enter upon the premises of Lessee or other premises where any of the said units of equipment may be or be supposed to be and take possession thereof and thenceforth hold, possess and enjoy the same free from any right of Lessee or its successors or assigns, including any receiver, trustee in bankruptcy or creditor of Lessee, to hold or use said units of equipment for any purposes whatever; but Lessor shall nevertheless have the right to retain all prior rental payments and any security deposit made hereunder, and to recover from Lessee any and all amounts including rents which, under the terms of this agreement, may be then due and be unpaid hereunder as compensation for the use of said units of equipment, plus a reasonable sum for attorney's fees, such expenses as shall be expended or incurred in the seizure of said units of equipment or in the enforcement of any right or breach hereunder or in any consultation or action in such connection, plus Lessor's damages resulting from such event of default.

In the event this agreement is terminated under paragraph B of this section, in view of the specialized nature of the equipment covered hereby, the planning and forecasting by Lessor of its facilities, investment and interest costs over the term of the agreement, and the computation of rental charges hereunder being based upon Lessee's business and type of operations, among other factors, it is agreed that the actual amount of damages resulting from an event of default under this agreement by Lessee would be difficult, if not impossible, to ascertain. Therefore, Lessee agrees to pay Lessor, at Lessor's option, an amount equal to _____ per cent (%) of the aggregate rental charges for the unexpired portion of the term of this agreement, not as a penalty, but as and for liquidated damages.

C. The remedies provided by this agreement in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in Lessor's favor existing at law or in equity.

14. ASSIGNMENTS:

Neither this agreement nor Lessee's rights hereunder shall be assignable except with Lessor's written consent; the conditions hereof shall bind any permitted successors and assigns of Lessee. If Lessor assigns its right to the rents reserved herein or all or any of Lessor's rights hereunder, Lessee, upon receiving notice thereof, shall abide thereby and make payments of rent to Lessor's assignee in accordance with such notice, and Lessee will make no attempt to offset against such payments any claim arising either under this agreement or apart therefrom that Lessee may have against Lessor. This obligation to pay rent to Lessor's assignee shall exist and continue notwithstanding any total or partial invalidity of this agreement, any right of rescission Lessee may have, or for any other reason, to the end that Lessee's promise to pay rent to Lessor's assignee will have the same effect as if such promise was contained in a negotiable promissory note executed by Lessee and payable to the order of such assignee. Assignment by the named Lessor of any of its rights hereunder shall not relieve the named Lessor of its obligations under this agreement and Lessee agrees to look solely to said named Lessor for enforcement of such obligations. Following any such assignment the term "Lessor" shall be deemed to include or refer to Lessor's assignee insofar as this is compatible with the provisions of this paragraph.

15. SECURITY:

As security for the full and faithful performance by the Lessee of the obligations under this agreement by it to be performed, Lessee has deposited with Lessor the sum of \$ None. Said security deposit shall not bear interest and shall be returned to Lessee at the termination of this agreement provided that Lessee shall have fully and faithfully performed the obligations by it to be performed hereunder.

16. SUBORDINATION:

Lessee hereby agrees that its rights hereunder, in or to the equipment, are and shall be subordinate to any chattel mortgage or other security interest in the equipment that has been or may hereafter be granted by Lessor to any person, firm or corporation.

17. NOTICE AND MISCELLANEOUS:

All payments of rent and notices relating to this agreement shall be mailed by certified mail to Lessor or Lessee at its respective address shown above or at such other address as shall be given for this purpose in writing by one party to the other.

Lessee will not change or remove any insignia or lettering on the equipment.

Lessee acknowledges the receipt of a true copy of this equipment lease.

18. GOVERNING LAW:

This agreement shall be construed in accordance with the laws of the State of Alabama and contains all the agreements and entire understandings between the parties relative to the rental of the equipment. No modifications hereof shall be binding unless in writing, signed by the Lessor.

IN WITNESS WHEREOF, each party hereto has signed this agreement or, if a corporation, has caused the agreement to be signed by its duly authorized officers as of the day and year first above written.

STATE OF ALA. SHELBY CO.
I CERTIFY THIS INSTRUMENT
WAS FILED ON 8/30 1966
RECORDED & \$8.00 TAX
PD.

BOOK 242 PAGE 496

Witness or attest:

Jessie L. Baucher

Witness or attest:

LESSOR Brungart Equipment Co., Inc.

JUDGE OF RECORD

Newton R. Brungart President

LESSEE Hightower Box & Tank Co.

By B. H. Hightower

Title _____

Payment under this Lease to be made to:

Brungart Equipment Co., Inc.
4600-1st Ave. No.
Birmingham, Ala.