

EQUIPMENT LEASE

RE: CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY

THIS LEASE OF RAILROAD EQUIPMENT dated as of January 2, 1973,
between BIRMINGHAM TRUST NATIONAL BANK, a United States banking corporation,
("Lessor"), and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COM-
PANY, a Wisconsin corporation (the "Lessee");

6880

RECORDATION NO. _____ Filed & Recorded

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WITNESSETH:

INTERSTATE COMMERCE COMMISSION

SECTION 1. PURCHASE, RECONSTRUCTION AND DELIVERY OF EQUIPMENT.

1.1 Reconstruction Agreement. The Lessor and the Lessee have entered into a Railroad Equipment Reconstruction Agreement dated as of January 2, 1973 (the "Reconstruction Agreement") providing for the reconstruction by the Rebuilder of the railroad cars (the "Cars") described in Schedule A hereto in accordance with the specifications (the "Specifications") referred to in Section 1 of the Reconstruction Agreement; and

1.2 Intent to Lease and Hire: The Lessee desires to lease the Cars (hereinafter referred to collectively as the "Equipment" and individually as "Item of Equipment") or such lesser number as are delivered to and accepted under the Reconstruction Agreement on or prior to December 31, 1973, at the rentals and for the terms and upon the conditions hereinafter provided;

1.3 Certificate of Acceptance. The Lessor will cause each Item of Equipment to be tendered to the Lessee on the line of railroad of the Lessee at the plant of the Rebuilder. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor a certificate of acceptance in the form attached hereto as Exhibit I (hereinafter called the "Certificate of Acceptance"); whereupon such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all of the terms and conditions of the Lease.

SECTION 2. RENTS AND PAYMENT DATES

2.1 Rent for Equipment. The Lessee agrees to pay the Lessor the following Rent for each Item of Equipment leased hereunder:

(a) Periodic Rent . For each Item of Equipment forty (40) quarter annual installments of Periodic Rent each payable in arrears in the amount provided for each Item of Equipment in Schedule A hereto.

(b) Daily Interim Rent . For each Item of Equipment, the amount per day provided for each Item of Equipment in Schedule A hereto for the period, if any, from the date of payment of the invoice for the reconstruction of such Item of Equipment to and including the three months prior to the due date of the first installment of Periodic Rent as set forth in Section 2.2 hereof, payable on June 30, 1973, September 30, 1973 and on the last closing referred to in said Section 2.2.

2.2 Rent Payment Dates . The first installment of Periodic Rent for all Items of Equipment delivered to the Lessee hereunder shall be due and payable three months following the earlier of (i) the 10th business day after delivery of all such Items of Equipment to the Lessee hereunder has been completed as evidenced by the Certificates of Acceptance or (ii) December 31, 1973. The second through fortieth installments of Periodic Rent for each Item of Equipment shall be due and payable quarter annually commencing 3 calendar months after the First Periodic Rent payment date for such Item.

2.3 Place of Rent Payment . All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor at 112 North 20th Street, Birmingham, Alabama 35290 or at such other place as the Lessor, or its assigns pursuant to Section 16 hereof shall specify in writing.

2.4 Net Lease . This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise, nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to the Equipment or any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is placed and ready for delivery to Lessor on the Lessee's lines, or is stored for the Lessor on the Lessee's lines, or leaves the Lessee's

lines for off-line delivery to the Lessor.

SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of delivery to and acceptance by the Lessee of such Item of Equipment and subject to the provisions of Sections 11 and 23 hereof, shall terminate 9 3/4 years after the date for payment of the first installment of Periodic Rent provided for in Section 2.2 hereof.

SECTION 4. OWNERSHIP AND MARKING OF THE EQUIPMENT.

4.1 Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and the possession and use thereof by the Lessee.

4.2 Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Birmingham Trust National Bank, Owner-Lessor; The First Pennsylvania Banking and Trust Company, Trustee-Mortgagee."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3 Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification or the right of the Lessee to use the Equipment under this Lease.

4.4 Indemnification for Improper Marking . The Lessee shall indemnify the Lessor, and the Trustee, and any assignee under Section 16 hereof against any liability, loss or expense incurred by any of them as a result of the aforesaid marking of the Equipment with such name, initials or insignia.

SECTION 5. DISCLAIMER OF WARRANTIES.

AS BETWEEN LESSOR AND LESSEE, LESSOR LEASES THE EQUIPMENT AS-IS WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED AS TO (A) THE FITNESS OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERE TO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against any manufacturers or contractors in respect thereof.

SECTION 6. LESSEE'S INDEMNITY.

6.1 Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and its successors and assigns from and against:

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including without limitation, the construction, purchase, rebuilding, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder or (iii) as a result of claims for patent infringements.

6.2 Federal Income Taxes. The Lessor, as the owner of the Equipment, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, the Investment Credit (as allowed by section 38 of the Code of 1954, as now in effect), with respect to the Equipment.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in §17.2 hereof, the Lessee represents and warrants that (i) all of the Items of Equipment constitute property the entire Cost (defined as 88.36% of the Total Price per Item set forth in Schedule A hereto, including rebuilding costs) of which qualifies for the Investment Credit under Section 50 of the Code; (ii) at the time the Lessor becomes the owner of the Items, the Items will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Items, the Items will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c) (2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Item will constitute "Section 38 property" within the meaning of Section 48(a) of the Code, will not be used predominately outside the United States within the meaning of said Section 48(a) (or any exception thereto) and will be used by railroad companies; and (iv) the Lessee will maintain sufficient records to verify such use.

If the Lessor shall lose or shall, in the opinion of independent tax counsel for the Lessor, not have the right to claim, or if there shall be disallowed with respect to the Lessor the Investment Credit with respect to any of the Items and such loss or inability to claim or disallowance is based on the inaccuracy in law or in fact of the representations and warranties set forth in the next preceding paragraph, the rental rate for the Items set forth in § 2 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount as shall, by the end of the lease term, in the reasonable opinion of the Lessor, result in an aggregate net return equivalent to that which would have been realized by the Lessor if the Lessor had been entitled to utilize such Investment Credit, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of any portion of such Investment Credit.

The Lessee understands that the rental rate provided in § 2 hereof has been calculated on the basis of depreciation deductions with respect to the cost of the Items being available on the basis of an 11-year life on one of the accelerated methods of depreciation provided in Section 167(b) of the Code. If in the opinion of independent tax counsel for the Lessor such deductions may only be taken on the basis of a 12-year life, or if such deductions are disallowed because an 11-year life, as distinguished from a 12-year life, must be utilized, the rental rate for the Items set forth in §2 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount as shall, by the end of the

lease term, in the reasonable opinion of the Lessor, result in an aggregate net return equivalent to that which would have been realized by the Lessor if the Lessor had been entitled to utilize such 11-year life as distinguished from a 12-year life and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest that may be assessed by the United States against the Lessor attributable to the utilization of such 11-year life as distinguished from a 12-year life.

6.3 Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumption of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i) or (ii) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Sections 13 or as the case may be, 15, hereof. The foregoing does not guaranty a residual value. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

SECTION 7. RULES, LAW AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements.

SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

From and after the date hereof until the termination of this Lease, the possession, use, operation and maintenance of the Equipment shall be at the sole risk and expense of the Lessee. The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain

and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Lessee shall not modify any Item of Equipment without the written authority and approval of the Lessor which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through, or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in a reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination of the Lease.

SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.1 Filing. Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease and any Security Agreement executed by the Lessor with respect to the Equipment or the Lease to be duly filed, registered or recorded in conformity with Section 20c of the Interstate Commerce Act and in such other places within or without the United States as the Lessor may reasonably request for the protection of its title or the security interest of the Secured Party and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or such Secured Party's security interest in, the Equipment to the satisfaction of the Lessor's or such Secured Party's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of such action.

10.2 Payment of Taxes. The Lessee, or the Lessor at the Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, use and property taxes, gross receipt taxes arising out of receipts from use or operation of Equipment, and other taxes,

fees and governmental charges similar or dissimilar to the foregoing including any such tax incurred or payable in connection with the reconstruction of the Equipment (excluding any net income tax, provided that the Lessee agrees to pay that portion of any such net income tax which is in direct substitution for, or which relieves the Lessee from, a tax which the Lessee would otherwise be obligated to pay under the terms of this Section), together with any penalties or interest thereon, imposed by any state, federal or local government upon any Item of Equipment and whether or not the same shall be assessed against or in the name of the Lessor, or the Lessee; provided, however, that the Lessee shall not be required to pay or discharge any such tax or assessment (i) so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment; however, the Lessee shall reimburse the Lessor for any damages or expenses resulting from such failure to pay or discharge, or (ii) as to assessments against or in the name of anyone other than the Lessee, until 20 days after written notice thereof shall have been given to the Lessee.

SECTION 11. PAYMENT FOR CASUALTY OCCURRENCE OR EQUIPMENT UNSERVICEABLE FOR USE.

11.1 Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, or in the opinion of both the Lessor and the Lessee, obsolete or economically unserviceable for use from any cause whatsoever, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease (any such occurrence, except for any requisition which by its terms does not exceed the remaining term of this Lease, being hereinafter called a Casualty Occurrence), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor in regard thereto.

11.2 Sum Payable for Casualty Loss. When the aggregate Casualty Value (as herein defined) of Items of Equipment described in any given Schedule having suffered a Casualty Occurrence (exclusive of Items of Equipment described in such Schedule having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Lessor pursuant to this Section 11) shall exceed \$25,000, the Lessee, on the next succeeding Rent Payment date (and on the final Rent Payment Date regardless of amount), shall pay to the Lessor a sum equal to the Casualty Value of such Item or Items of Equipment as of the date of such payment.

11.3 Rent Termination. Upon (and not until) payment of the Casualty Value in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment (including the Periodic Rent installment due on the Casualty Value payment date) shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment. The Lessee shall pay when due all rent payments as to an Item or Items due prior to the date on which the Casualty Value thereof is payable.

11.4 Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of the Lessee may retain all amounts of such price plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item or Items of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item or Items of Equipment.

11.5 Casualty Prior to Commencement of Accrual of Periodic Rent. In the event the Lessee shall have notified the Lessor that an Item or Items of Equipment have suffered a Casualty Occurrence 15 days or more prior to the commencement of accrual of Periodic Rent hereunder with respect thereto, the Casualty Value for such Item or Items shall be an amount equal to its cost plus the Interim Rent therefor to the date of payment of such Casualty Value, which date shall be not more than 15 days after the date of notice to the Lessor of such Casualty Occurrence. If the Lessee shall have notified the Lessor that an Item or Items of Equipment have suffered a Casualty Occurrence less than 15 days prior to the commencement of accrual of Periodic Rent hereunder with respect thereto, the date of such Casualty Occurrence for such Item or Items shall be deemed to be one day before the due date of the first installment of Periodic Rent.

11.6 Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the acquisition and reconstruction cost to the Lessor of such Item of Equipment as set forth in the Schedule of Casualty Value attached hereto as Schedule B.

11.7 Lessee's Liability. The Lessee, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment after the date hereof.

11.8 Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease, the Lessee's duty to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

SECTION 12. ANNUAL REPORTS.

12.1 Duty of Lessee to Furnish. On or before May 1 in each year, commencing with the year 1974, the Lessee will furnish to the Lessor or its assigns an accurate statement, as of the preceding calendar year (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lessor may reasonably request, and (b) stating that, in the case of all Equipment repaired during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2 Lessor's Inspection Rights. The Lessor or its assigns shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or its assigns the existence and proper maintenance thereof during the continuance of this Lease.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Duty of Lessee to Return Equipment. Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 180 Days and transport the same at any time within such 180 Days period to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to Lessee. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

SECTION 14. DEFAULT.

14.1 Events of Default. If, during the continuance of this Lease, one or more of the following events ("Events of Default") shall occur:

(a) Default shall be made in the payment of any part of the rental provided in Section 2 hereof and such default shall continue for ten days;

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Equipment within 30 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

(c) Default shall be made in the observance of performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee, and, if instituted against the Lessee, is consented to or is not dismissed within 60 days after such petition shall have been filed; or

(e) Any other proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and, if instituted against the Lessee, are consented to or are not dismissed within 60 days after such proceedings shall have been commenced;

Then, in any such case, the Lessor at its option, may:

(1) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(2) by notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any

of the Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by a fraction of which the numerator is such accrued number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then fair rental value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the Item during such period, such present worth to be computed in each case on a basis of a 5.125% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease, other than for the payment of rent; and (iii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, without limitation, an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the investment credit allowed by Section 38 of the Internal Revenue Code of 1954, as amended, lost by the Lessor as a result of the sale or other disposition of any Units by the Lessor after repossession or return thereof to the Lessor upon the occurrence of an Event of Default.

14.2 Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its 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. The Lessee hereby waives any and all existing or future claims of any right to assert any off-set against the rent payments due hereunder, and agrees to make the rent payments regardless of any off-set or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.3 Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1 Lessee's Duty to Return. If the Lessor shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad for a period not exceeding 180 days at the risk of the Lessee; and

(c) Transport the Equipment, at any time within such 180 Days' period, to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may reasonably direct upon not less than 30 days' written notice to the Lessee.

15.2 Intention of Parties. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so as to assemble, deliver, store and transport the Equipment.

15.3 Lessor Appointed Lessee's Agent. Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to Lessor, to demand and take possession of such Item in the name and on behalf of Lessee from whosoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. In the event that separate assignments are executed by the Lessor in respect of this Lease and the rental and other sums due and to become due hereunder, insofar as the same relate to Items of Equipment described in separate Schedules hereto the Lessor and the Lessee agree that so long as such separate assignments remain in force and effect this Lease shall be deemed to be and shall be construed as a divisible and severable contract between the Lessor and the Lessee for the

leasing of Equipment covered by each such separate assignment, all to the same extent and with the same force and effect as though a separate lease had been entered into by the Lessor and the Lessee in respect of such Equipment. Upon notice to the Lessee of any such assignment the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of or defect in Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the assignee, the Lessee shall be unconditionally and absolutely obligated to pay the assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) the assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the assignee) which by the terms of this lease are permitted or provided to be exercised by the Lessor.

SECTION 17. ASSIGNMENTS BY LESSEE: USE AND POSSESSION.

17.1 Lessee's Rights to the Equipment. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment (except to the extent that the provisions of any Mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject such leasehold interest to the lien thereof). The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2 Use and Possession on Lines Other Than Lessee's Own.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i. e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage or other operating rights or over which equipment of the Lessee is regularly operated pursuant to contract; and also to permit the use of the equipment upon connecting and other railroads in the usual interchange of traffic but only upon and subject to all the terms and conditions of this Lease. Lessee may receive and retain compensation for such use from such other railroads. No assignment, sublease or

interchange entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

17.3 Rolling Stock. The Lessee shall always use the Equipment in a manner so that it will at all times qualify as "rolling stock, of a domestic railroad corporation subject to part I of the Interstate Commerce Act, which is used within and without the United States," within the meaning of section 48(a) (2) (B) (ii) of the Internal Revenue Code of 1954 as amended or any successor section thereto.

17.4 Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation (which shall have duly assumed the obligations hereunder of Lessee into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety).

SECTION 18. OPINION OF LESSEE'S COUNSEL.

Concurrently with the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will deliver to the Lessor five counterparts of the written opinion of counsel for the Lessee addressed to the Lessor, and to any assignee under Section 16 of which the Lessee has notice, in scope and substance satisfactory to the Lessor, to the effect that:

(a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Wisconsin.

(b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease.

(c) This Lease and the Railroad-Equipment Purchase Agreement of even date herewith, between the Lessor and the Lessee have been duly authorized, executed and delivered by the Lessee and constitute the valid, legal and binding agreements of the Lessee enforceable in accordance with their respective terms;

(d) This Lease has been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no other filing, recording or depositing is necessary to protect the Lessor's title to the Equipment;

(e) No approval, consent or withholding of objection is required from any public regulatory body with respect to the entering into or performance of the Railroad Equipment Purchase Agreement of this Lease;

(f) The execution and delivery by Lessee of the Railroad Purchase Agreement and this Lease do not violate any provision of any law, any order of any court or any other governmental

agency, the Charter or By-laws of the Lessee, or any indenture, agreement, or other instrument to which Lessee is a party or by which it, or any of its property is bound; and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Lessee, except as contemplated and permitted hereby; and

(g) As to any other matters which Lessor shall reasonable request.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any non-payment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the obligation on the part of the Lessee to pay also an amount equal to 9 1/4% (or the lawful rate, whichever is less) of the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. NOTICES.

Any notice required or permitted to be given by either party hereof to the other shall be deemed to have been given when deposited in the United States mails, certified first class postage prepaid, addressed as follows:

If to the Lessor:

Birmingham Trust National Bank
112 North 20th Street
Birmingham, Alabama 35290
Attn: W. Ralph Cook
Executive Vice President

If to the Lessee:

Chicago, Milwaukee, St. Paul and
Pacific Railroad Company
Union Station Building
Chicago, Illinois 60606

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 21. EXECUTION IN COUNTERPARTS.

This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

SECTION 22. LAW GOVERNING.

This Lease shall be construed in accordance with the laws of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by an applicable federal statute, rule or regulation.

SECTION 23. OPTION TO PURCHASE

23.1 Terms. Provided that the Lessee is not in default, Lessee shall have the following option to purchase:

(a) The Lessee shall have the right to purchase all but not less than all of the Equipment then leased hereunder at the expiration of the original or any extended term at a price equal to the "fair market value" (as defined). The Lessee shall give the Lessor written notice 180 Days prior to the end of the original or any extended term of its election to exercise the purchase option provided for in this Section. Payment of the option price shall be made at the place of payment specified in Section 2 hereof in funds there current against delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest in the Lessor in and to the Equipment and containing a warranty against liens or claims of persons claiming by, through or under the Lessor except liens and claims which the Lessee assumed or is obligated to discharge under the terms of the Lease. The Lessor shall not be required to make any representation or warranty as to the condition of the Equipment or any other matters.

(b) The "fair market value" shall be an amount mutually agreed upon by the Lessor and the Lessee; provided that if the Lessor and the Lessee are unable to agree upon the fair market value of the Equipment within 30 days after receipt by the Lessor of the notice of the Lessee's election to exercise the purchase option, the fair market value shall be determined by an appraiser selected by mutual agreement of the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, or if the fair market value is not so determined within 90 days after receipt by the Lessor of the Lessee's election to purchase, the same shall be determined by American Appraisal Company. The fair market value as finally determined shall bear interest for the period, if any, from the date of expiration of this Lease to the date of payment at the rate of 9 1/4% per annum, except that Lessor may terminate Lessee's option to buy hereunder if such amount is not determined and paid as promptly as practicable.

(c) Unless the Lessee has given the Lessor 180 days' notice as required in connection with exercise of the foregoing option, all the Equipment then leased hereunder shall be returned to the Lessor in accordance with Section 13 hereof.

23.2 Election to Purchase. Notwithstanding any election of the Lessee to Purchase, the Provisions of Section 11 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Equipment purchased by the Lessee upon the date of purchase unless the purchase price has been agreed upon by the parties pursuant to this Section 23, in which event such purchase price shall govern.

SECTION 24. HEADINGS.

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and their corporate seals to be hereto affixed as of the day and year first above written.

(Corporate Seal)

Attest:



Assistant Secretary

(Corporate Seal)

Attest:



Assistant Secretary

BIRMINGHAM TRUST NATIONAL BANK

By



LESSOR

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY

By



Its

LESSEE

Vice President - Finance & Accounting

STATE OF *Alabama*)
) ss.
COUNTY OF *Jefferson*)

On this *19th* day of *January*, 197^{*3*}, before me personally appeared *R. Ralph Cook*, to me personally known, who being by me duly sworn, says that he is the *Executive Vice Pres.* of *Birmingham Trust National Bank*, that one of the seals 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sue Richards

(SEAL)

My Commission expires: *My Commission Expires August 21, 1973*

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this *25th* day of *JANUARY*, 1973, before me personally appeared *R. F. KRATOCHWIL*, to me personally known, who being by me duly sworn, says that he is the *Vice President - Finance & Accounting* of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, that one of the seals 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

F. A. Miller

(SEAL)

My commission expires: *April 23, 1975*

Exhibits to Lease

1 - Certificate of
Acceptance

Schedules to Lease

A - List of Equipment
B - Schedule of Casualty Value

SCHEDULE A

DESCRIPTION OF EQUIPMENT:

A. 300 Rebuilt 40' Box Cars bearing road or serial numbers 33070 through 33369;
B. 240 Rebuilt 70-ton Covered Hopper Cars bearing road or serial numbers 96760 through 96999; and
C. 100 Rebuilt 50' Stake Log Flat Cars bearing road or serial numbers 58800 through 58899. ✓

PURCHASE PRICE:

A - \$500.00; B - \$500.00 and C - \$500.00

REBUILDING COST:

A - \$4,320. per Unit: Total \$1,296,000
B - \$2,740. per Unit: Total 657,600
C - \$4,750. per Unit: Total 475,000
Total \$2,428,600

TOTAL PRICE:

A - \$4,820 per Unit: Total \$1,446,000
B - \$3,240 per Unit: Total 777,600
C - \$5,250 per Unit: Total 525,000
Grand Total \$2,748,600*

OUTSIDE DELIVERY DATE:

December 31, 1973

DELIVER TO:

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (as designated by the railroad).

RENT PERIOD:

Ten (10) years commencing three (3) months prior to the first rental payment.

PERIODIC RENT:

Forty (40) quarter annual payments, in arrears, at 3.21075% of total cost of the Equipment.

DAILY INTERIM RENT:

A - \$1.11 per unit per day
B - .74 per unit per day
C - 1.20 per unit per day

* In the event that the price of any Item covered by this Schedule is greater or less than the amount shown above, the rentals for such Item shall be ratably increased or reduced.

Lessee: Chicago, Milwaukee, St. Paul & Pacific Railroad Company (VIII)
Owner: Birmingham Trust National Bank
Lenders: Dollar Savings Bank and General American Life Insurance Company

SCHEDULE B

SCHEDULE OF CASUALTY VALUES

% of Acquisition and Reconstruction Costs

Prior to Periodic Rental Payment Date:

%

1	114.0305
2	113.1311
3	112.1599
4	111.1159
5	109.9983
6	108.8135
7	107.5606
8	106.239
9	104.8479
10	103.3936
11	101.8754
12	96.08522
13	94.43737
14	92.7307
15	90.96467
16	89.13876
17	87.25245
18	85.31188
19	83.31667
20	77.05882
21	74.95312
22	72.79782
23	70.59265
24	68.33735
25	66.03166
26	63.68157
27	61.28763
28	54.64354
29	52.16383
30	49.6441
31	47.08397
32	44.48447
33	41.84653
34	39.17646
35	36.47447
36	33.74079
37	30.97567
38	28.18563
39	25.37106
40	15.00000
Thereafter	15.00000

CERTIFICATE OF ACCEPTANCE
Under Equipment Lease dated as of January 2, 1973
1972 and Railroad Equipment Reconstruction
Agreement dated as of January 2, 1973

The undersigned, being the duly authorized representative of Birmingham Trust National Bank (the "Owner") and of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (the "Lessee"), hereby certifies that the following units of reconstructed railroad equipment, referred to in the Railroad Equipment Reconstruction Agreement (the "Reconstruction Agreement") between the Owner and the Lessee and in the Lease of Railroad Equipment (the "Lease") between the Owner and the Lessee, each dated as of January 2, 1973:

Description:

<u>Total No. of Items</u>	<u>Lessee's Identifying Nos.</u>	<u>Date</u>
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have been duly delivered in good order by the Rebuilder and duly inspected and accepted by the Undersigned on the respective dates shown above on behalf of the Owner and in turn have been duly delivered by the Owner to the Lessee and have been duly inspected and accepted by the undersigned on said dates on behalf of the Lessee as conforming in all respects to the requirements and provisions of the Reconstruction Agreement and the Lease:

The undersigned further certifies that at the time of its delivery to the Owner and the Lessee each unit of reconstructed railroad equipment covered by this Certificate was properly marked on each side thereof with the legend provided in Section 1 of the Reconstruction Agreement and Section 4.2 of the Lease.

Dated: 197 .

Duly authorized representative of
Birmingham Trust National Bank

and Chicago, Milwaukee, St. Paul and
Pacific Railroad Company