

**FMC Corporation**

Executive Offices  
200 East Randolph Drive  
Chicago Illinois 60601  
(312) 861 6000

0-3041073

No. **OCT 31 1979**

Date \_\_\_\_\_

Fee \$ 50.00

ICC Washington, D. C.



October 30, 1979

Section of Dockets & Service  
Recordation Unit  
Interstate Commerce Commission  
Room 2227  
12th Street and Constitution Avenue NW  
Washington, D.C. 20423

10967  
RECORDATION NO. \_\_\_\_\_ Filed 1425

**OCT 31 1979 - 1 10 PM**

INTERSTATE COMMERCE COMMISSION

Gentlemen:

We enclose for filing an executed and acknowledged Lease of 100 one-hundred ton XM boxcars, as follows:

Lessor:	FMC Finance Corporation
Lessee:	Minnesota, Dakota and Western Railway Company
Car Numbers:	MDW 8100-8199

Our check for \$50 is enclosed. Please stamp and return two copies to the messenger delivering the above or to our Washington office, Suite 500, 1627 K Street NW, Washington, D.C. 20006.

Very truly yours,

By Alan R. Kidston  
Alan R. Kidston  
Secretary

ARK/jaz

Enclosures

*Don Ford*

*Don Ford*

*[Handwritten mark]*

LEASE AGREEMENT  
(MDW) OCT 31 1979 - 1 10 PM

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this 11th day of September, 1979, between FMC FINANCE CORPORATION, a Delaware corporation, 200 East Randolph Drive, Chicago, Illinois, 60601 ("Lessor"), and MINNESOTA, DAKOTA AND WESTERN RAILWAY COMPANY, One Jefferson Square, Boise, Idaho, 83728, a Minnesota corporation ("Lessee").

## I. Scope of Agreement

A. Lessee leases American Association of Railroad ("AAR") Class XP boxcars ("Itel Cars") from Itel Corporation, acting through its Rail Division (hereafter referred to as "Itel Rail") pursuant to a lease agreement ("Itel Lease") attached as Exhibit A. Lessee wishes to lease from Lessor, and Lessor agrees to lease to Lessee, one hundred 100-ton, 50' 6" XP boxcars with single 12' plug doors, end of car cushioning AAR Plate C, car numbers MDW 8100-8199 inclusive ("Cars") on the same terms and conditions as those in the Itel Lease, except as specifically provided otherwise in this Lease Agreement. The parties therefore incorporate the Itel Lease by reference. As so incorporated, for purposes of this Lease Agreement, unless otherwise required by the contest of the Itel Lease:

- (i) "Itel Rail" as used in the Itel Lease shall mean FMC Finance Corporation.
- (ii) "Lease Agreement" as used hereafter in this document shall mean the Itel Lease as amended by this document;
- (iii) "Cars" as used in this document and the Itel Lease shall mean only the Cars described above and shall not include any Itel Cars.
- (iv) "MDW 8100-8199" as used in the Itel Lease shall mean "Cars".

B. Lessee shall give preference to Lessor and shall load the Cars leased from Lessor prior to loading substantially similar freight cars leased from Itel or leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Neither party shall be obligated to lease additional freight cars to or from the other.

## 2. Car Management

A. Lessee consents to Lessor's appointment of Itel to manage the Cars for Lessor. Lessor reserves the right to terminate Itel as its manager on such terms as Lessor and Itel may establish. In such event, Lessor may perform such services itself or appoint a qualified third party acceptable to Lessee to perform such services. Lessee shall not unreasonably withhold such acceptance.

B. During the term of this Lease Agreement and while Itel is designated to do the car hire accounting for Lessee, unless otherwise agreed by the parties, Lessee will take such action and approve such commercially reasonable arrangements as Itel and Lessor may make relating to the receipt of car hire reports, car hire accounting and car hire payments from other railroads. Such arrangements shall be subject to reasonable approval by Lessee. Lessee consents to the use of a post office box rented by Lessor for use by Itel, subject to the immediate availability to Lessor at its request of car hire reports relating to the Cars. In lieu of the provisions of Paragraph 7B and 7C of the Itel Lease, Lessee also consents to: (i) the use of a San Francisco bank account to be opened by Lessor to receive and collect all car hire payments to Lessee from other railroads, and (ii) to retention by Lessor from such receipts of up to 95 percent of an amount equal to 100 percent utilization of the Cars, as Itel and Lessor may agree, all other such receipts to be remitted at least weekly to Itel or as provided in Paragraph 7C of the Itel Lease, at Lessee's option. Lessee agrees to provide all approvals and authorizations required by the bank to negotiate and collect the drafts, checks or other instruments remitted as car hire payments by other railroads.

C. If Itel ceases to do the car hire accounting and collection for Lessee, Lessee covenants that unless otherwise agreed it will co-operate with Lessor: (i) to make all reports of use of the Cars by other railroads available to Lessor or its representative at their request, at cost, and (ii) to promptly remit to Lessor or its representative an amount equal to all payments to Lessee received from other railroads for use of the Cars. Failure of Lessee to do so shall constitute a default, as provided in Itel Lease Paragraph 8.

3. This Lease Agreement shall be governed by and construed according to the laws of the State of Illinois.

4. In referencing paragraphs of this Lease Agreement, "Itel Lease Paragraph \_\_\_" shall mean the corresponding paragraph in the Itel Lease as incorporated by reference. All other references to paragraphs in this Lease Agreement shall mean to this document.

5. All notices shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party, as follows:

Lessor: FMC Finance Corporation  
200 East Randolph Drive  
Chicago, Illinois 60601  
Attention: President

Lessee: Minnesota, Dakota and Western  
Railway Company  
One Jefferson Square  
Boise, Idaho 83728

Either party may change its address for notice purposes by notice to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

FMC FINANCE CORPORATION

MINNESOTA, DAKOTA AND WESTERN RAILWAY COMPANY

LESSOR

LESSEE

BY: [Signature]

BY: [Signature]

TITLE: ~~President~~ Chairman

TITLE: Vice President

DATE: October 11, 1979

DATE: Sept 13, 1979

**Itel Waiver and Consent**

In consideration of Lessor's agreement to supply Cars to Lessee as provided in the foregoing Lease Agreement and Itel Corporation's ("Itel") appointment by Lessor to manage the Cars, Itel consents to Lessee's agreement to give priority loading to the Cars over Itel cars, waives Itel's right to such priority loadings and the other restrictions of that Lease Agreement dated September 11, 1979 between Itel Corporation, acting through its Rail Division (as Lessor) and Lessee to the extent they are inconsistent with this Lease Agreement, and consents to the provisions of Paragraph 2 of this Lease Agreement.

(Seal)

ATTEST:

ITEL CORPORATION, RAIL DIVISION

[Signature]  
Assistant Secretary

BY: [Signature]

TITLE: President

DATE: October 9, 1979

STATE OF IDAHO )  
COUNTY OF ADA )

On this 13<sup>th</sup> day of SEPT., 1979, before me personally appeared ROBERT W. WALTERS, to me personally known, who being by me duly sworn says that such person is VICE-PRES of M. D. + W RAILWAY, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robb Lewis

Notary Public

STATE OF California )  
COUNTY OF San Francisco )

On this 9<sup>th</sup> day of October, 1979, before me personally appeared Carl W. Taylor, to me personally known, who being by me duly sworn says that such person is President of Stel Corporation, Rail Division, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Randi C. Smith

Notary Public



STATE OF Illinois )  
COUNTY OF Cook )

On this 11<sup>th</sup> day of October, 1979, before me personally appeared Bart van Eck, to me personally known, who being by me duly sworn says that such person is Chairman of FMC Finance Corporation, that the foregoing lease was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judith A. Zeman  
Notary Public



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LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 11th day of September, 1979, between ITEL CORPORATION, a Delaware corporation, acting through its Rail Division, Two Embarcadero Center, San Francisco, California, 94111 ("Itel Rail"), as Lessor, and MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY, a Minnesota corporation, One Jefferson Square, Boise, Idaho, 83728 ("Lessee"), as Lessee.

WITNESSETH:

WHEREAS, Itel Rail is in the business of leasing railroad equipment and Lessee operates a railroad in the State of Minnesota;

WHEREAS, Lessee requires the use of certain railroad equipment as herein set forth to furnish transportation services to its customers;

WHEREAS, Itel Rail proposes to lease railroad equipment to Lessee for a period of years as herein provided for; and

WHEREAS, Lessee and Itel Rail desire to lease certain railroad equipment set forth in Schedule A.

NOW THEREFORE, Itel Rail and Lessee do hereby agree as follows:

I. Scope of Agreement

A. Itel Rail agrees to lease to Lessee, and Lessee agrees to lease from Itel Rail, freight cars of the type and description as set forth in any equipment schedule (hereafter "Schedule") executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The scheduled items of equipment are hereinafter referred to as the "Car" or "Cars".

B. It is the intent of the parties to this Agreement that Itel Rail shall at all times be and remain the lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent

and that it will take such action and execute such documents as may be necessary to accomplish this intent.

C. Itel Rail and Lessee agree that, as between themselves, Lessee shall be entitled to claim the benefits on any available Investment Tax Credit for Federal income tax purposes in connection with the acquisition of the Cars bearing the reporting marks MDW 8100-8199 set forth on Schedule A to the Agreement. Such Cars shall be new equipment when delivered to Lessee hereunder and Itel Rail agrees to execute such documents as may be required to permit Lessee to claim any Investment Tax Credits relating to such Cars.

## 2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to all of the Cars described on each Schedule shall be for fifteen (15) years (the "Initial Lease Term") commencing upon the date when all Cars on such Schedule have been delivered as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "Extended Lease Term") with respect to all of the Cars described on each Schedule, provided, however, Itel Rail or Lessee may terminate this Agreement as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to the other not less than twelve months prior to the end of the Initial Lease Term or any Extended Lease Term.

## 3. Supply Provisions

A. Itel Rail will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to Itel Rail that the sample Car (one for each different type of Car on each Schedule) made available for Lessee's inspection prior to the commencement of deliveries conforms

to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and Itel Rail's determination that the Car conforms to the specifications ordered by Itel Rail and to all applicable governmental regulatory specifications, and provided this Agreement has not been terminated, Itel Rail will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by Itel Rail at the manufacturer's facility. The Cars shall be moved to Lessee's railroad line or to a Boise Cascade manufacturing facility at Lessee's direction at no cost to Lessee as soon after acceptance of delivery by Itel Rail as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, Itel Rail can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. To move the Cars to Lessee's railroad line or to a Boise Cascade manufacturing facility at Lessee's direction and insure optimal use of the Cars after the first loading of freight for each Car whether on the railroad line of Lessee or on any other railroad line selected by Lessee (the "Initial Loading"), Itel Rail agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Itel Rail, to issue movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission and AAR interchange agreements and rules; provided Lessee shall be primarily responsible for insuring all Cars arrive at Lessee's railroad tracks or to a Boise Cascade manufacturing facility at Lessee's direction as soon as reasonably possible and Itel Rail shall bear all costs and expenses incurred in connection with such movement including costs or expenses required to move the Cars for Initial Loading on a railroad line selected by Lessee and agreed to by Itel Rail.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars substantially similar to Cars as herein described that are used in interchange service from any other party (except from Boise Cascade Corporation

or a subsidiary thereof) without using its best efforts to give 20 days written notice to ITEL Rail of Lessee's desire to lease such Cars. Lessee shall give preference to ITEL Rail and shall load the Cars leased from ITEL Rail prior to loading Cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request thereto to shippers on its railroad tracks, and provided further, Lessee shall not have to provide ITEL Rail Cars priority at the expense of unreasonably disrupting Lessee's normal operations.

C. Except as hereinafter provided, additional Cars may be leased from ITEL Rail by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by ITEL Rail and Lessee. Notwithstanding the execution on any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturers' delivery schedules, financing satisfactory to ITEL Rail and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce Utilization (as defined in Section 7) of Cars bearing reporting marks MDW 8100-8199 on lease to Lessee to less than 93 percent (in any calendar quarter). If, due to the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the Lease term shall be deemed to have commenced on the date the final Car of the most recent group of Cars was delivered to Lessee.

#### 4. Railroad Markings and Record Keeping

A. ITEL Rail and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the reporting marks of Lessee and may also be marked with the name and other insignia used by Lessee. Such name and insignia shall comply with all applicable regulations.

B. At no cost to Lessee, Itel Rail shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the Interstate Commerce Commission and other regulatory agencies.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Itel Rail shall, on behalf of Lessee, perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as Itel shall select and to which Lessee shall consent in writing.

D. All record keeping performed by Itel Rail hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Itel Rail in a form suitable for reasonable inspection by Lessee from time to time during regular Itel Rail business hours. Lessee shall supply Itel Rail with such reports, including daily reports of the number of Cars on Lessee's tracks and use of the Cars by Lessee on its railroad line as Itel Rail may reasonably request.

E. The Lessee shall have the right as provided for in Section 5 upon two months' notice to Itel Rail to perform all of the record keeping functions mentioned in this Section.

5. Lessee's Assumption of Record Keeping and Receipt of Payments

A. At any time during the term of this Agreement at its sole discretion, Lessee may, if it shall reasonably determine that Itel Rail has not performed its record

keeping in an accurate and prompt manner upon prior written notice to Itel Rail, take over and assume from Itel Rail as soon as is practicable but in no event later than two months after receipt of notice to Itel Rail, all record keeping functions, record of payments, charges and correspondence related to the use of the Cars. In addition, upon the giving of the notice provided for above, the parties will, as soon as practicable but in no event later than two months, make arrangements for the receipt of Payments (as defined in Section 7) by Lessee rather than Itel Rail, it being understood that upon receipt of such Payments by Lessee, Section 7B of the Agreement will automatically be deemed to be revised to read as follows:

"B. The calculations required above shall be made within five months after the end of each calendar year. However, since the parties desire that rental payments be made currently so that Itel Rail may meet its financial commitments, Lessee shall remit to Itel Rail on the first business day of each month, the full amount of all Payments received by Lessee (less any deduction authorized to be made by Lessee under the terms of this Agreement) during the next preceding calendar month from any car hire settlement with respect to any Car leased hereunder. Following the yearly calculation, one-half of any amount paid to Itel Rail in excess of the Itel Rail Base Rental shall be deducted by Lessee from subsequent Rental Charges."

6. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, Itel Rail will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee while such Car is in the physical possession of Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to Itel Rail for any repairs required for damage not noted.

at the time of interchange. Lessee hereby transfers and assigns to Itel Rail for and during the lease term of each Car all of its right, title and interest in any warranty in respect to the Cars except for Lessee's right to recover any damages from the manufacturer of the Cars that arise directly or indirectly as a result of a loss to cargo being transported in the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by Itel Rail at its sole expense and Lessee shall have no obligation to make any claim on such warranty; provided Lessee retains the right to prosecute any claim against a manufacturer for product defect if Lessee claims damages arising from loss to cargo transported in the Cars. Any recovery under such warranty shall be payable solely to Itel Rail except as to any action brought by Lessee to recover for claims arising from damages to cargo carried in the Cars. Only for purposes of Section 6A, the railroad car manufacturer shall include both the original maker of the Car and any person who repairs or rebuilds a Car during the term of this Agreement or any extension thereof.

B. Except as otherwise provided, Itel Rail shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of Itel Rail, Lessee shall, to the extent it is capable of repairing Cars, perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may reasonably be requested by Itel Rail. Itel Rail shall also make, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Itel Rail's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Itel Rail's prior written consent, Lessee shall be liable to Itel Rail for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with Itel Rail.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of the Car Service Rules—Freight for Cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by either obtaining insurance or maintaining a self insurance program which conforms to sound actuarial principles and Lessee shall provide Itel Rail with a certificate of insurance with respect to such insurance carried on the Cars 30 days prior to the delivery of any Car and thereafter at intervals of not more than twelve calendar months at Itel Rail's request. If Lessee elects to replace Itel Rail's insurance on any Cars while not on Lessee's tracks, Lessee shall furnish Itel Rail concurrently with the execution of any Schedule or upon Lessee's election to replace such insurance, an insurance certificate acceptable to Itel Rail for Cars listed on such Schedule or for the Cars upon which the Lessee elects to replace Itel Rail's insurance. In the event Lessee provides its own insurance for Cars off Lessee's tracks acceptable to Itel Rail, the Utilization rate shall be reduced by a mutually agreed upon percentage in recognition of Lessee absorbing the insurance expense borne by Itel Rail. All insurance shall be taken out in the name of Lessee and Itel Rail (or its assignee) as their interests may appear. Lessee shall also maintain bodily injury and property damage liability insurance while the Cars are on Lessee's railroad.

D. Itel Rail agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues; provided, Itel

Rail shall pay a portion of all income, sales, use, gross receipts, or other tax levied against the gross amount of Payments equal to the amount of the tax times a fraction, the numerator of which is the total Payments received in a calendar year by Itel Rail and the denominator of which is the total Payments received in each calendar year by the Lessee. Itel Rail shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee and such sales or use tax payments shall not be deemed Payments. Itel Rail and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. The Lessee shall provide Itel Rail, not later than ten days prior to filing any sales, use or other tax return, with relevant information from the Lessee's proposed sales, use or other tax returns and obtain Itel Rail's consent prior to the payment of any taxes on account of the Cars and further Itel Rail shall pay all penalties plus interest resulting from its failure to consent on a timely basis. Notwithstanding the foregoing, Lessee shall pay and Itel Rail need not reimburse Lessee for any customs' duties imposed by the government of Canada or withholding taxes imposed as a result of the use of the Cars bearing the reporting marks MDW 8100-8199 in Canada; Lessee shall indemnify Itel Rail and hold Itel Rail harmless from any claim, loss or expense of any kind as a result of any such customs' duties and/or withholding taxes being imposed or asserted against either Itel Rail or such Cars by reason of their use in Canada.

## 7. Lease Rental

A. Lessee agrees to pay the following as rent to Itel Rail for the use of the Cars and Itel Rail agrees to accept the following as rent on the Cars:

(i) Subject to adjustments for Lessee providing insurance for the Cars, Itel Rail shall receive on Lessee's behalf all payments including but not limited to mileage charges and straight car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments") made to Lessee by other railroad companies for their use or handling of the Cars bearing reporting

marks MDW 8100-8199 if the Utilization of all of such Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 93 percent. For the purpose of this Agreement, Utilization of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Cars, commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each year that the Cars are on lease to Lessee, commencing from the Initial Loading.

(ii) In the event Utilization exceeds 93 percent in any calendar year for the Cars described in Section 7A(i), Itel Rail shall receive an amount equal to the Itel Rail Base Rental. For purposes hereof Itel Rail Base Rental shall be an amount equal to the total Payments for the Cars described in Section 7A(i) for the calendar year multiplied by a fraction, the numerator of which is 93 percent and the denominator of which is the Utilization of such Cars for such calendar year. (The above determination of Itel Rail Base Rental insures that Lessee will, if Utilization is greater than 93 percent in any calendar year, receive all the Payments for such Cars made by other railroads for use or handling of such Cars in excess of the Itel Rail Base Rental.)

(iii) The rental charges payable to Itel Rail by Lessee shall be paid from the Payments received by Lessee in the following order until Itel Rail receives the amounts due it pursuant to this section: (1) straight car hire payments including any payments under 7D; (2) mileage charges; and (3) other (excluding Demurrage Payments paid to Lessee on the Cars). Such rental charges shall not be cumulative from year to year.

(iv) In the event damage or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules—Freight and the appropriate amount due as a result thereof.

is received by Itel Rail, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of Car hire payments ceased.

(v) If Itel Rail pays other railroads to move Cars except for any expenses incurred to deliver such Cars to Lessee's railroad line or a railroad line selected by the Lessee and agreed to by Itel Rail for the Initial Loading, Lessee shall reimburse Itel Rail for such expenses only from and out of the monies received by Lessee pursuant to Section 7.

B. The calculations required above shall be made within five months after the end of each calendar year. To enable Itel Rail to meet its monthly financial commitments, Itel Rail may obtain, prior to such calculations 95 percent of the Payments received by it on behalf of Lessee; provided all Payments received by Itel Rail on Lessee's behalf shall be deposited in the bank account established by Lessee for the purpose of receiving Payments; and provided further, Itel Rail shall render to Lessee a monthly statement of all funds withdrawn from Lessee's bank account. Since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due Itel Rail, Itel Rail shall within three months after the end of each calendar quarter, calculate on a quarterly basis rather than a yearly basis the amount due it pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

C. Lessee may at its option open a bank account with Bank of America National Trust and Savings Association, Bank of America Center, San Francisco, California, 94104 for accumulating and disbursing lease payments under this Agreement. Lessee agrees to give the sole power to withdraw money from the foregoing bank account to Itel Rail. Itel Rail agrees that the entire balance of the bank account shall be used exclusively by Lessee or Boise Cascade Corporation and any subsidiary

thereof as compensatory balances to the extent the rental payments accumulate in the bank account, provided this section shall not limit ITEL Rail's right to withdraw up to 95 percent of the rentals pursuant to Section 7B. In the event Lessee exercises its option under Section 5A, Lessee may select any bank in the United States and shall have the sole power in accordance with this Agreement to withdraw money from any bank account created or existing for accumulating and disbursing lease payments under this Agreement.

D. In the event Utilization in any calendar quarter is less than 93 percent, for Cars bearing reporting marks MDW 8100-8199, ITEL Rail may, at its option and upon not less than 30 days prior written notice to Lessee, terminate this Agreement as to such Cars as ITEL Rail shall determine, provided, however, Lessee shall have the option at Lessee's sole discretion to pay ITEL Rail within ten days of receipt of the Utilization for the calendar quarter, a sum of money equal to the rent lost by ITEL Rail as a result of the Cars failing to maintain a Utilization of 93 percent on Cars bearing MDW 8100-8199 and ITEL Rail shall after such payment not terminate this Agreement until such time as the Utilization at the end of a subsequent quarter is less than 93 percent on Cars bearing MDW 8100-8199.

E. ITEL Rail or Lessee may, at its option, terminate this Agreement if the Interstate Commerce Commission shall either determine that Lessee may not apply its car hire receipts in payment of the rental charges set forth in this Section or require that Lessee spend funds not earned by the Cars in order for Lessee to continue to meet its obligations set forth in this Section. Lessee may, in any event, terminate this Agreement if for any reason governmental regulation orders prohibit the Lessee from making the payments described in Section 7. ITEL Rail may also terminate this Agreement at its option if the exemption from Canadian customs' duty currently applicable to railway rolling stock placed in international services (which is set forth in Railway Rolling Stock International Service remission order Number Four of the Deputy Minister of National Revenue, Customs and Excise, established by Order in Council P.C. 1975-1975) shall be adversely affected by the passage of, change in, or

amendment of, any law, statute, rule, regulation, order or action of the Canadian government or any agency thereof.

F. Subsequent to the Initial Loading, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, Itel Rail may, at its option and upon not less than 24 hours prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B, Lessee shall be liable for and remit to Itel Rail an amount equal to the car hire revenues Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period.

G. If Lessee gives Itel Rail notice of a strike at such location at which the Cars may be assigned, this Agreement shall not be terminated unless the Utilization for such Cars computed for a three month period commencing one month after the strike occurs shall be less than 93 percent on Cars bearing reporting marks MDW 8100-8199, and Lessee does not choose to exercise its options as provided in Section 7D; provided Lessee will use its best efforts to obtain maximum Utilization for such Cars during the period of any such strike. In computing such Utilization, Itel Rail may terminate this Agreement after giving the Lessee the right to exercise its option under Section 7D, if at any time following the strike date until the strike terminates the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the Utilization for such Cars cannot be equal to or greater than 93 percent.

#### 8. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business. However, Lessee's rights shall be subject to the rights of any owner or secured party under any financing agreement

entered into by Itel Rail in connection with the acquisition of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party or that the Cars be returned to such party pursuant to the terms and conditions of this Agreement. Itel Rail shall provide the Lessee at the date of execution of this Agreement or at such date as financing is arranged conformed copies of all financing agreements and Exhibits thereto. Itel Rail and Lessee agree that to the extent they have physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Itel Rail or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or Schedule thereto. If any creditor of the Lessee or Boise Cascade Corporation or a subsidiary thereof files a mortgage, pledge, lien, charge encumbrance, security interest, or any claim against the Cars, Lessee will promptly, at its expense, take such action as may be necessary to duly discharge such encumbrance.

## 9. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee or Itel Rail of any payment ten days after notice from one party to the other that a payment pursuant to this Agreement is delinquent;

(ii) The breach by Lessee or Itel of any other term, covenant, or condition of this Agreement, which is not cured within ten days after notice has been given Lessee or Itel;

(iii) Any act of insolvency by Lessee or Itel, or the filing by Lessee or Itel of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors;

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee or Itel that is not dismissed within 60 days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee or Itel, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within 60 days from the date of said filing or appointment;

(v) The subjection of substantially all of Lessee's or Itel Rail's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency; or

(vi) Except as a result of a strike or other act or acts beyond Lessee's control, any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

B. Upon the occurrence of any event of default, Itel Rail or the Lessee may, at its option, terminate this Agreement and may,

(i) Proceed by any lawful means to enforce performance by the other party to this Agreement or to recover damages for a breach thereof (and the defaulting party agrees to bear the other party's costs and expenses, including reasonable attorneys' fees, in securing such enforcement); or

(ii) By notice in writing to the defaulting party, terminate the Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate and thereupon the Lessee shall render such reasonable cooperation as shall be reasonably requested by Itel Rail to give Itel Rail possession and enjoyment of the Cars. Itel Rail shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

#### 10. Termination

At the expiration or termination of this Agreement as to any Cars, Lessee will surrender control of such Cars to Itel Rail. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad reporting marks from the Car and the placing thereon of such marks as may be designated by Itel Rail, either, at the option of Itel Rail (1) by Lessee upon return of such Cars to Lessee's railroad line, or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Cars are not on the railroad line of Lessee upon termination, any cost of removing Lessee's railroad reporting marks, assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Itel Rail. If such Cars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad reporting marks from the Cars and place thereon such reporting marks as may be designated by Itel Rail. After the removal and replacement of reporting marks, Lessee shall use its best efforts to load such Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide to the extent Lessee has available storage space up to 30 days free storage on its railroad tracks for Itel Rail or the subsequent lessee of any terminated Car.

## 11. Indemnities

A. Except for risks assumed by Lessee if it obtains insurance on any Car while not on Lessee's tracks as set forth in Section 6C, ITEL Rail will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while Lessee has physical possession of Cars, and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars (other than loss or physical damage to the cars as provided in (1) above) unless occurring through the fault of Lessee; and except as provided in Section 6D including without limitation the construction, purchase and delivery of the Cars to Lessee's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by ITEL Rail or Lessee). Lessee will further indemnify and hold ITEL Rail harmless from withholding taxes and Canadian customs' duties as set forth in Section 6D of this Agreement.

B. Any expense of any kind whatsoever incurred by Lessee, which is required under the terms of this Agreement to be borne by ITEL Rail, shall be paid promptly by ITEL Rail to Lessee upon written request therefore by Lessee, including but not limited to, costs, expenses, fees and charges relating to maintenance, repair or inspection performed on any railroad rolling stock which Lessee is required to perform or caused to have performed pursuant to governmental or AAR regulations as a result of this Agreement.

## 12. Representations, Warranties and Covenants

A. Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly qualified and authorized to do business.

wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement;

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound;

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee;

(iv) There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement; and

B. Itel Rail represents, warrants and covenants that:

(i) Itel Corporation is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and had corporate power, authority and is duly qualified and authorized to do business wherever necessary and is qualified to do business in the state of Minnesota;

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Itel Rail, or result

in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Itel Rail or on the Cars to be acquired pursuant to this Agreement;

(iii) There is no action or proceeding threatened against Itel Rail before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Itel Rail; and

(iv) There is no fact which Itel Rail has not disclosed to the Lessee in writing, nor is Itel Rail a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Itel Rail can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Itel Rail or the ability of Itel Rail to perform its obligations under this Agreement.

### 13. Conditions Precedent

The obligations of Itel Rail and Lessee under this Agreement are subject to the delivery of the following opinions:

A. Lessee will give Itel Rail an opinion of its counsel in a form satisfactory to Itel Rail; and

B. Itel Rail will give Lessee an opinion of its counsel in a form satisfactory to Lessee and the opinion of its outside counsel for Itel Rail, stating that this Agreement does not violate any rule or regulation of the Interstate Commerce Commission.

C. Itel Rail will give Lessee a certified resolution and such other documentation as Lessee shall reasonably request of the Board of Directors of Itel Corporation permitting officers of Itel Corporation, Rail Division to sign lease agreements on behalf of Itel Corporation.

### 14. Inspection

After giving the Lessee reasonable notice, Itel Rail shall at any time during normal business hours have the right to enter the premises of Lessee where the Cars

may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Itel Rail of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify Itel Rail in writing within 15 days after any attachment, tax, lien or other judicial process shall attach to any Car. Lessee shall furnish to Itel Rail promptly upon its becoming available, a copy of its annual report submitted to the Interstate Commerce Commission and, when requested, copies of any other income or balance sheet statements required to be submitted to the Interstate Commerce Commission.

15. Miscellaneous

A. This Agreement and the Schedule contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of Itel Rail assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except only as a lessee.

D. No failure or delay by Itel Rail shall constitute a waiver or otherwise affect or impair any right, power or remedy, available to Itel Rail nor shall any waiver or indulgence by Itel Rail or any partial or single exercise of any right, power or

remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the state of Delaware.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above or as mutually agreed to by the parties of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ATTEST:

Cheryl E. Lee

ITEL CORPORATION, RAIL DIVISION

BY: Carl N. Layle

TITLE: President

DATE: September 14, 1979

ATTEST:

A. W. Berg

MINNESOTA, DAKOTA AND WESTERN RAILWAY COMPANY

OKS  
BY: Robert A. Schwarz

TITLE: VICE President

DATE: Sept. 13, 1979

**EQUIPMENT SCHEDULE A**

Itel Corporation, acting through its Rail Division, hereby leases the following Cars to Minnesota, Dakota and Western Railway Company, subject to the terms and conditions of that certain Lease Agreement dated as of September 11, 1979.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions Inside			Doors Width	No. of Cars
			Length	Width	Height		
XP	Box Steel Cushion Underframe Nailable Steel Floor, Plate C, 100 Ton	MDW 8100-8199	50' 6"	9' 6"	11' 0"	Single Plug 12' 0"	100

ITEL CORPORATION, RAIL DIVISION

BY: Carl N. Layl

TITLE: President

DATE: September 14, 1979

MINNESOTA, DAKOTA AND WESTERN RAILWAY COMPANY

CKUTS BY: Robert W. Walters  
Robert H. Schwarz

TITLE: Vice President

DATE: Sept 13, 1979

RIDER NO. I

RIDER NO. I to the Lease Agreement made as of the 11th day of September, 1979, between Itel Corporation, acting through its Rail Division, ("Itel Rail") and Minnesota, Dakota and Western Railway Company ("Lessee"), as Lessee.

A New Section 7H is added as follows:

"7.H. The Payments are based on mileage charges, straight car hire charges as provided by the Interstate Commerce Commission in a decision served April 6, 1979, 361 I.C.C. 189 (1979) (Ex Parte No. 334). Any order or stay reducing the Payments shall permit Itel Rail, on 90 days written notice to Lessee, to make a monetary equivalent increase in Itel Rail Base Rental, or if such additional Payments are not adequate, terminate, or negotiate the Agreement."

ITEL CORPORATION, RAIL DIVISION

MINNESOTA, DAKOTA AND WESTERN  
RAILWAY COMPANY

BY: Carl M. Saylor

BY: Robert W. Walton

TITLE: President

TITLE: Vice President

DATE: September 14, 1979

DATE: Sept 13, 1979