ITEL
Pullman

Itel Rail Corporation
55 Francisco Street
San Francisco, CA 94133
(415) 984-4000
(415) 781-1035 Fax

November 27, 1989

16634-A

NOV 30 1989 -11 50 AM

INTERSTATE COMMERCE COMMISSION

9-334A011

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

Re: Schedule No. 1 to Master Lease Agreement dated as of October 23, 1989, between Rex Leasing, Inc. and Sisseton Milbank Railroad, Inc.

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the $15 recordation fee.

Please record this Schedule under the Master Lease Agreement dated October 23, 1989, between Rex Leasing, Inc. and Sisseton Milbank Railroad, Inc., which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

Rex Leasing, Inc. (Lessor)
55 Francisco Street
San Francisco, California 94133

Sisseton Milbank Railroad, Inc. (Lessee)
101 West Oak
Sisseton, South Dakota 57262

This Schedule adds to the Master Lease Agreement two (2) 4650 cubic foot, 100-ton, LO covered hoppers bearing reporting marks SMRR 4024 and 4030.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Assistant

16634-A

SCHEDULE NO. 1

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INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE No. 1 ("Schedule") to that certain Lease Agreement (the "Agreement") made as of (October) 23, 1989 between **REX LEASING, INC.** as lessor and **SISSETON MILBANK RAILROAD, INC.** as lessee ("Lessee") is made this 23rd day of (October), 1989.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 1, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.

2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description of Equipment	Car Reporting Marks and Numbers	Number of Cars
LO	4650 cubic foot 100-ton, covered hoppers for domestic grain service	SMRR 4024 and 4030	2

3. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for three (3) years from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to Lessee's lines (the "Initial Term"). Upon the delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.

4. Each Car shall be moved to Lessee's railroad line at no initial cost to Lessee at the earliest time that is consistent with the mutual convenience and economy of the parties. Lessee shall remark the Cars to SMRR reporting marks at a cost to Lessor not to exceed $50.00 per Car provided Lessor

determines Lessee has the ability to perform the work associated with placing the Cars into service. To move the Cars to Lessee's railroad line and to ensure optimal use of the Cars, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders to facilitate the movement of the Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules.

5. A. Lessor shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee hereby authorizes Lessor to subscribe to the car hire data exchange tape, Train 62 Junction Advices, and the Train 65, 67 and 80 Advices with respect to the Cars and agrees to execute any documents necessary to implement such authorization. If, for any reason, Lessor does not subscribe to Train 65 and 67 Advices, Lessee shall, within ten (10) days after the close of each calendar month, supply Lessor with copies of Lessee's interchange records with respect to Cars interchanged to and from Lessee's railroad line.

B. If Lessee's reporting marks are on any Cars, then Lessee shall provide Lessor with the UMLER passkey necessary for registering such Cars and shall authorize Lessor to receive the UMLER Fleet Tape. Lessee shall, within thirty (30) days of notification that Lessor has paid a car repair bill for equipment bearing reporting marks not leased to Lessee by Lessor or for which Lessee is responsible for the cost of maintenance as set forth in the Agreement (or any other agreement between Lessor and Lessee), Lessee shall reimburse Lessor for any amount paid.

C. Lessor shall perform car hire accounting for any equipment acquired or leased by Lessee from a party other than Lessor, which equipment bears the same reporting marks as any Car for which Lessor performs car hire accounting ("Other Equipment"). Such car hire accounting shall be performed upon terms which are set forth in the Agreement and herein. Under such terms, Lessor shall, on behalf of Lessee, receive car hire rental and other payments relating to the use and handling of the Other Equipment by other railroads ("Funds") and shall deposit the Funds into an Agency Bank Account for the purpose of segregating the Funds from the Revenues (as defined in Section 8 hereinbelow) relating to the Cars so as to ensure that the interests of both Lessor and Lessee are protected. Such terms provide that Lessee shall pay Lessor on a monthly basis a fee which is mutually agreeable to Lessor and Lessee.

6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except as designated to Lessee in Section 5 of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement or substituted for Exhibit B thereto. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.

7. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

8. <u>Rent</u>

A. <u>Definitions</u>

(i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party, effective on the date of such sale, during the Initial Term or any Extended Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(iii) hereinbelow).

(ii) "Revenues Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the July 1989 edition of <u>The</u>

Official Railway Equipment Register, as may be updated from time to time.

(iii) "Revenues" is defined as the total revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to, per diem and mileage, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

B. Upon the Delivery of each Car Lessee agrees that Lessor shall receive
earned by such Cars as rent during the term of the Agreement.

C. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 8.A. (ii), Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.

(ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.

(iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

D. Any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the revenues earned by the Cars.

E. The calculations required in Section 8 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessor shall, prior to making such Final Calculations, retain the Revenues and other payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly

year-to-date basis the approximate amounts owed under this Section 8, Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amounts due both parties pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

F. If, with respect to any calendar quarter or quarters, Revenues received by Lessor for the Cars on this Schedule are

("Minimum Amount") Lessor may so notify Lessee. Within ten (10) days of receipt of such notice from Lessor, Lessee shall either:

(i) Pay Lessor the difference ("Difference") between the Minimum Amount and the actual Revenues for such calendar quarter and agree to pay the Difference for any subsequent calendar quarter for the duration of the term of the Agreement with respect to the Cars in this Schedule in which such Difference occurs. Lessee shall pay Lessor such Difference not later than sixty (60) days after receiving an invoice for such Difference.

(ii) Elect not to pay Lessor such Difference for such quarter. In such event, Lessor may terminate all or any of the Cars described in this Schedule from the Agreement upon not less than thirty (30) days' written notice to Lessee at any time during the duration of the Agreement.

G. If any Car has remained on Lessee's property because Lessee has not given preference to the Car as specified in Subsection 3.B. of the Agreement, Lessee shall be liable for and remit to Lessor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of a railroad for the entire period during which such Car is on Lessee's property due to such failure, with each Car travelling seventy (70) miles per day.

9. A. Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, losses, damages, liabilities, costs, and expenses (including attorney's fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession or control, or would be the "handling carrier's" responsibility under

the Interchange Rules, as if the Cars were not bearing Lessee's reporting marks.

B. Except as provided in Subsection 9.A. above, and except for those claims, losses, damages, liabilities and expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall indemnify and hold Lessee harmless from any and all loss, damage or destruction of or to the Cars, ordinary wear and tear excepted.

C. The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement.

10. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, if some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to said tracks subsequent to the time of expiration of this Agreement as to the Cars. Lessee shall, at Lessor's option, provide up to one hundred twenty (120) days' free storage on its railroad tracks for any Car which is either on Lessee's railroad tracks at expiration or is subsequently returned to Lessee's railroad tracks. Said one hundred twenty (120) days shall run either from expiration or from the date such Car is returned to Lessee's railroad line subsequent to expiration, whichever date is later. If requested to do so by Lessor, Lessee shall, at Lessor's option, either move a remarked Car to an interchange point on Lessee's lines selected by Lessor or use its best efforts to load the remarked Car with freight and deliver it to a connecting carrier for shipment.

11. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

12. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

REX LEASING, INC.	SISSETON MILBANK RAILROAD, INC.
BY:	BY:
TITLE: President	TITLE: Director
DATE: October 23, 1989	DATE: 10/12/89

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 1 dated as of _____ to Lease Agreement dated as of _____, by and between **REX LEASING, INC.** ("Lessor") and **SISSETON MILBANK RAILROAD, INC.** ("Lessee").

CAR REPORTING MARKS AND NUMBER	DELIVERY DATE

The last day of the Initial Term for the above referenced Cars shall be _____.

REX LEASING, INC.
Authorized Representative

BY: _____

TITLE: _____

DATE: _____

EXHIBIT B

Running Repairs: Covered Hoppers

Angle Cocks

Air Hose

Train Line

Operating Levers and Brackets

Sill Steps

Grab Irons

Brake Shoes

Brake Shoe Keys

Brake Connecting Pin

Brake Head Wear Plates

Air Brakes

Hand Brakes

Brake Beams and Levers

Truck Springs

Wheels

Yokes

Knuckles/Pins

Slack Adjuster

Couplers

Draft Gears

Coupler Carriers

Center Plate Repair (Not Replacement of Center Plate)

Cotter Keys

Roller Bearing Adapters

Outlet Gate Repair (Not Gate Replacement)

Hatch Cover Repair (Not Replacement of Hatch Cover)

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 23rd day of October, 1989, before me personally appeared Jeffrey C. Corbett, to me personally known, who being by me duly sworn says that such person is President of Rex Leasing, Inc., that the foregoing Schedule No. 1 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.

Sharon L. Van Fossan
Notary Public

OFFICIAL SEAL
SHARON L VAN FOSSAN
NOTARY PUBLIC - CALIFORNIA
SAN FRANCISCO COUNTY
My comm expires AUG 16, 1991

STATE OF South Dakota
) ss:
COUNTY OF Roberts)

On this 12 day of Oct, 1989, before me personally appeared John Hanschlag, to me personally known, who being by me duly sworn says that such person is director of Sisseton Milbank Railroad, Inc., that the foregoing Schedule No. 1 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.

Mary J. Hellwig
Notary Public

MARY J. HELLWIG
NOTARY SEAL PUBLIC
STATE OF SOUTH DAKOTA

My Commission Expires FEB. 9, 1992

My Commission Expires FEB. 9, 1992