REX LEASING

12324

RECORDATION NO. ..... Filed 1425

OCT 20 1980 -10 25 AM

INTERSTATE COMMERCE COMMISSION

October 13, 1980

No. G-294A012

Date OCT 20 1980

Fee $ 50.00

ICC Washington, D. C.

Mrs. Mildred Lee
Interstate Commerce Commission
Recordation Department
Room 2220
12th and Constitution Ave., N.W.
Washington, D.C. 20423

Dear Mrs. Lee:

Enclosed please find a Lease Agreement dated September 17th, 1980 between Rex Leasing, Inc., Lessor and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Lessee.

The Lease is for a period of six (6) months for 28 cars bearing car numbers MILW 102100 to MILW 102127 inclusive.

We are filing this Lease in triplicate, with a filing fee of $50.00, and would appreciate your recording same and returning two copies to our office showing the Recordation number and date filed.

Thanking you for your cooperation and prompt attention I am,

Very truly yours,

Doris Wilson

Doris Wilson

DW:st
encl.

RECEIVED OCT 20 10 20 AM '80 FEE OPERATION BR. I.C.C.

REX LEASING INC. A REX NORECO Company 616 Palisade Avenue Englewood Cliffs, New Jersey 07632 (201) 567-8300

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INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 17th day of Sept., 1980, between Rex Leasing, Inc., a New Jersey corporation, 616 Palisade Ave., Englewood Cliffs, New Jersey 07632, as principal and/or agent for the parties to be named by amendment to the schedule attached hereto in accordance with the procedure referred to in paragraph 1(b) hereof (Rex Leasing, Inc. and such parties are herein collectively referred to as "Rex," except that, as to any particular Car referred to in any such amendment, only Rex Leasing, Inc. and the party identified in such amendment as the owner/lessor of such Car are referred to as "Rex"), as lessor, and Richard B. Ogilvie, Trustee of the property ("Lessee"), as lessee. of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, 874 Union Station Building, 516 W. Jackson Blvd., Chicago, Illinois 60606.

RECITALS

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

AGREEMENT

It is agreed:

1. *Lease of Cars.* (a) Rex hereby leases to Lessee and Lessee hereby leases from Rex railroad cars of the number of units, model, type, construction and such other description (hereinafter referred to as the "Cars") set forth in the schedule (the "Schedule") attached hereto and by this reference made a part hereof.

Any party named in an amendment to the Schedule as a principal for whom Rex Leasing, Inc. is acting as agent, and only such party, shall have the rights of lessor hereunder and be obligated hereunder for obligations and liabilities of lessor hereunder arising, from and after the effective date of the amendment to the Schedule so identifying such party, in respect of the particular Car(s) identified in such amendment as being owned by such party, and no party named on an amendment to the Schedule shall be obligated hereunder to lease to Lessee any Cars other than the particular Cars identified in such amendment as being owned by such party. The word "Schedule" as used herein includes the Schedule, as executed concurrently herewith, and all amendments thereto, each of which, when signed by Rex Leasing, Inc. and Lessee, shall be a part of this lease.

(b) Rex Leasing, Inc. may, from time to time and without notice to or consent of Lessee, assign all rights and privileges, subject to all duties appurtenant thereto, in and to any one, some or all of the Cars to any party or parties for whom Rex Leasing, Inc. is acting as agent. Notwithstanding the above, the Schedule may be amended by Rex Leasing, Inc. alone from time to time, upon which such amendment shall be a part of this lease, in order to identify or, as and when appropriate, reidentify (i) a principal for whom Rex Leasing, Inc. is so acting as agent and who owns any Cars and (ii) the particular Cars owned by such principal. Any amendment to the Schedule that may so be made by Rex Leasing, Inc. alone shall be deemed to have been so made and to have become effective when a copy of such amendment shall have been attached to an original counterpart of this lease in the possession of Rex Leasing, Inc. Rex Leasing, Inc. shall deliver a copy of each such amendment to Lessee, but such delivery shall not be a condition precedent to the effectiveness of such amendment. If Rex Leasing, Inc. determines in its sole discretion that any purchaser, foreclosing mortgagee, donee or other transferee of any Car owned by an owner/lessor hereunder is not capable of performing the duties and obligations of a lessor hereunder in

accordance with the terms hereof, then Rex Leasing, Inc. may require the transfer to it of all right, title and interest under this lease of such purchaser, foreclosing mortgagee, donee or transferree; without recourse, withdraw the Cars of such person from this lease; and substitute hereunder Replacement Cars.

(c) It is the intent of the parties hereto that Rex Leasing, Inc., or its principal or principals or their assignees, shall at all times be and remain the lessor of their respective Cars. Lessee shall not take any action or file any document which is inconsistent with this intent, and Lessee will take such action and execute such documents as may be necessary to accomplish this intent.

2. *Delivery of Cars.* Rex shall deliver the Cars as promptly as is reasonably possible. Rex's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and Rex shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays, defaults and/or other failure to perform, whether or not legally excused, by carriers, material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond Rex's control. Initial delivery shall be at the point specified in the Schedule. From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse Rex for the payment of all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car, including specifically, but not exclusively, freight and switching charges for movement at any time and from time to time to and from repair shops, storage or terminal facilities.

3. *Condition of Cars—Approval.* All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and specifications contained in the Schedule; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Prior to and not after the time of delivery to Rex by the manufacturer thereof (of which event Rex will give Lessee at least five days' notice) of any new Car not previously leased to a lessee, Lessee may have its authorized representative inspect such Car at the manufacturing plant and approve or reject it as to condition. Prior to the time of delivery to Lessee of any other Car (of which event Rex will give Lessee at least five days' notice), Lessee may have its authorized representative inspect such Car at the point specified in the notice and approve or reject it as to condition. From and after the date of such inspection and approval, any Car so inspected and approved and, from and after the time of delivery to Rex by the manufacturer in the case of any new Car and from and after the time of delivery to Lessee in the case of any other Car, any Car which Lessee does not inspect by the applicable time specified above shall be conclusively deemed to be approved for all purposes and to meet all requirements of this lease. At Rex's request, Lessee shall, to evidence such approval, deliver to Rex an executed Certificate of Approval in the form of exhibit A with respect to all approved Cars.

4. *Use and Possession.* Throughout the continuance of this lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the lease becomes effective as to such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that each Car shall at all times be used (a) in conformity with Interchange Rules; (b) in compliance with the terms and provisions of this lease; (c) in a careful and prudent manner, solely in the use, service and manner for which it was designed; and (d) only within the continental limits of the United States of America or in temporary or incidental use in Canada and, in any event, only in a manner which will not cause the owner/lessor of such Car to lose the Federal investment tax credit to be claimed by such owner/lessor in respect of such Car. Lessee shall not alter the physical structure of any Car.

5. *Term.* This lease shall be effective as to any Car accepted by Lessee on the date of delivery to Lessee of such Car pursuant to Paragraph 2 hereof and the lease term for all Cars leased hereunder shall end a number of ~~years~~ months after the Last Date of Delivery equal to the lease term specified in the Schedule, unless sooner terminated in accordance with the provisions of this lease or unless extended pursuant to the terms of Paragraph 11; provided, however, that in no event shall the period during which any Car is

Notwithstanding anything else in this Lease, all Cars shall be delivered within 30 days after the first Car is delivered, and no Car will be delivered after December 31, 1980.

subject to this lease equal or exceed six years. A Car shall be conclusively deemed to have been delivered upon tender of delivery of such Car, at the initial F.O.T. delivery point specified in the Schedule, to Lessee or the freight agent at such delivery point.

6. *Rental.* (a) Per Car. During the term of this lease, Lessee shall pay to Rex for each Car, commencing on the date of delivery and acceptance thereof, the monthly rental specified in the Schedule.

(b) Adjustment. Within a reasonable period of time after the end of each calendar year during the term hereof, and upon termination of the lease, Rex shall, to the extent such information is available to it, determine the total number of miles that each Car traveled during such calender year or portion thereof, whether loaded or empty. If it is determined that any Car traveled over ~~30,000~~ miles during such calendar year or pro rata portion thereof for a period of less than 12 full calendar months, Lessee, upon written notice by Rex, shall pay to Rex within fifteen (15) days of such notice as additional rental for such Car for such calendar year or portion thereof an amount equal to $0.02 per mile multiplied by the number of miles, whether loaded or empty, in excess of ~~30,000~~ 40,000 or a pro rata portion thereof for a period of less than 12 full calendar months.

(c) Mileage Credits. ~~If the Cars bear Rex's reporting marks and numbers, any time and mileage payments paid or allowed by~~ railroads on the Cars shall be the property of Rex but, insofar as applicable ~~laws and regulations~~ permit, Rex shall credit time and mileage payments actually received by it during an ~~Accounting Period~~ (less taxes, other than income taxes, due or to become due on account thereof) against rental then or thereafter due under this lease during such Accounting Period; provided, however, that in no event shall the aggregate time and mileage payments credited exceed the total ~~rental payable by Lessee during such Accounting Period, any such excess to be the sole property of Rex.~~ Lessee agrees to monitor and record and to maintain complete and accurate records with respect to ~~and to report to Rex all transactions relating to~~ the Cars and all movements of the Cars, giving the date, destination, routing of and, to the extent such information is available to it, mileage traveled by the Cars together with all information relating thereto which Lessee may receive from railroads or from other sources; ~~to deliver to Rex not later than the tenth day of each month copies of all bills of lading, covering shipment in the Cars, for the preceding month~~; and to allow Rex to inspect Lessee's records (including copies of relevant bills of lading) in respect thereto. ~~Upon notice from any railroad, whether received prior to or after termination of this lease, Lessee agrees~~ to pay Rex all sums due on account of all excess empty mileage ~~incurred on Cars during the term of this lease at the rate established by the applicable railroad tariff.~~

7. *Payment.* Lessee shall make payment of all sums due hereunder to Rex in immediately available funds at the address provided in Paragraph 21 hereof, or such other place as Rex may direct. Rental payments shall be made monthly in advance on or before the 1st day of each calendar month for which such rental is due, except that the first full calendar month's payment shall, in addition, include rental in arrears on a prorated basis covering any prior period of less than one calendar month.

8. *Title.* Lessee shall not by reason of this lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. *Repairs.* (a) Rex. Except as may otherwise be provided in this Paragraph 9(a) and (b), Rex shall be responsible for all Repair Work. Lessee shall promptly notify Rex of the need for any Repair Work of which it has knowledge. Rex shall have no responsibility hereunder until and unless informed of the need for Repair Work, except for routine running repairs. Rex may require Lessee to deliver Cars to such place or places as Rex designates for all Repair Work, and Rex may terminate this lease with respect to any Car as to which it deems Repair Work to be unsuitable or uneconomical.

(b) Lessee. Except where a railroad or railroads have timely discharged full responsibility therefor, Lessee shall be responsible for and shall pay all costs and expenses of all Repair Work or other work or materials (i) required by reason of damage ~~or other condition~~ caused by Lessee or anyone other than Rex, whether by negligence or otherwise; (ii) required by reason of damage ~~or other condition~~ caused by loading, unloading or use other than as permitted herein; (iii) necessary in order to repair, replace or

Lessee is not responsible under this paragraph 9(b) for normal maintenance expenses related to the operation of the Cars.

maintain interior lading equipment, special interiors and linings and removable parts in good, safe operating condition; (iv) required by reason of loss or damage resulting from any commodity or other material loaded in or on any Car; or (v) required by Interchange Rules adopted or promulgated after the date hereof. Equipment installed on any Car by Lessee shall be the property of the owner/lessor of such Car and any such equipment shall not constitute the payment of rental by the Lessee to the owner/lessor of such Car and shall not reduce the obligations of Lessee to pay rentals required hereunder to be paid.

10. *Substitution of Cars.* Rex may, at any time and from time to time, replace any Withdrawn Cars or Casualty Cars with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to this lease and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this lease with respect to Withdrawn or Casualty Cars, or to include any Replacement Cars within the terms and provisions of this lease and of any other document under which Rex has assigned its rights hereunder, as permitted in Paragraph 19 hereof.

notification of the need for Repair Work is given to Rex

11. *Abatement of Rent.* Rental payments on any Car out of service for Repair Work or other work which is Rex's responsibility under Paragraph 9 hereof shall abate from the ~~fifth~~ seventh day after ~~such Car has arrived at any repair shop for service~~ until such Car or a Replacement Car is delivered to Lessee, to a railroad for the account of Lessee, or is otherwise ready to be returned to service. ~~If rental is abated, then, if Rex so elects and notwithstanding anything contained in Paragraph 5 to the contrary,~~ the original term of this lease shall be extended for a period of time determined by dividing the sum of the number of days per Car with respect to which rental was so abated by the number of Cars subject to the Schedule by what would otherwise have been the last day of the original term hereof; provided, however, ~~that in no event shall the period during which any Car is subject to this lease equal or exceed six years~~. Lessee's obligation to pay rent hereunder shall remain in effect irrespective of whether all necessary consents to the use of the Cars by carriers or other approvals now or hereafter required by tariff, Interchange Rules or other applicable laws or regulations are obtained or are cancelled or revoked.

12. *Taxes.* Rex shall be liable for and pay all Federal, State or other governmental property taxes assessed or levied against the Cars except that Lessee shall be liable for and pay such taxes when the Cars bear reporting marks and numbers other than Rex's. Lessee shall be liable at all times for and shall pay or reimburse Rex for payment of (i) all Federal, State, local and foreign sales or use taxes imposed upon or in connection with the Cars, this lease, ~~or the manufacture, acquisition~~, or use of the Cars for or under this lease, (ii) all taxes, duties or imposts assessed or levied on the Cars or this lease by a foreign country and/or any governmental subdivision thereof and (iii) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars.

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

14. *Indemnities — Patent Covenants.* Lessee agrees to indemnify Rex and hold it harmless from any loss, expense or liability which Rex may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this lease, excepting only any such loss, expense or liability which arises solely from Rex's negligence. Rex agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the incorporation at the special request of Rex, upon delivery of a Car or upon the making of repairs thereto, of any invention so as to infringe any patent, except if such invention was incorporated by reason of Lessee's specifications. The indemnities and assumptions of liability herein contained shall survive the termination of this lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against, except all Federal, State, local and foreign sales or use taxes, if ar imposed on or for the account of Rex in connection with the manufacture of the Cars or Rex's acquisition or purchase of the Cars and any such sales or use taxes imposed on or for the account of Rex by reason of any transfer of any interest of Rex in the Cars while the Lessee is not in default hereunder.

or (ii) after reporting marks have been changed in accordance with Rex's request, procure for such Cars an original load.

15. *Lettering — Inventory.* At Rex's election all Cars may be marked to indicate the rights of Rex or an assignee, mortgagee, trustee, pledgee or security holder of Rex's or a lessor to Rex and may bear the following inscription: "Rex Leasing, Inc. as manager for owner/lessor. Title to this Car subject to documents recorded with the Interstate Commerce Commission." Except for renewal and maintenance of the aforesaid lettering or lettering indicating that the Car is leased to the Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the Schedule except upon the written direction or consent of Rex. Rex may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of Rex but not more than once every year, furnish to Rex its certified inventory of all Cars then covered by this lease.

16. *Loss, Theft or Destruction of Cars.* If any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise Rex of such occurrence. Except where Rex shall ~~have received~~ be entitled to payment in full for such Casualty Car from a handling railroad or other party under and pursuant to Interchange Rules, Lessee shall, within 15 days after demand by Rex, promptly make payment to Rex in the same amount as is prescribed in the Interchange Rules for the loss of such Car. This lease shall terminate with respect to a Casualty Car on the date Rex shall receive notice of a casualty occurrence with respect thereto, and thereafter Lessee shall have no further liability to Rex hereunder with respect thereto excepting accrued rent and liabilities arising or existing under Paragraphs 6, 12, 13, and 14 hereof and this Paragraph 16. Rex shall not be liable to Lessee for any consequential damages, costs or losses which result from the loss of the use of a Car for any reason, or for loss of or damage to any commodities loaded or shipped in the Cars regardless of the cause of such loss or damage.

17. *Return of Cars.* Upon the expiration or termination of this lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense forthwith surrender possession of such Car to Rex by, at Lessee's option (i) delivering same to Rex at such repair shop, storage or terminal facility as Rex may designate by notice to Lessee, or (ii) on Lessee's lines of railroad. Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, shall be in need of no repairs for which Lessee is liable under Paragraph 9, and shall be free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If any of the Cars does not bear Rex's reporting marks and numbers, Lessee shall at its expense place on any or all of the Cars such reporting marks and numbers as Rex shall designate in writing to Lessee prior to the end of the lease term. Until the delivery of possession to Rex or of notice to Rex that the Cars bear Rex's reporting marks and numbers pursuant to this Paragraph 17, Lessee shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this lease as though such termination or expiration had not occurred. If Lessee is a railroad, Lessee agrees to provide storage, upon the request of Rex, without charge for any or all of the Cars for a period of 90 days from the date of expiration or termination of this lease. Nothing in this Paragraph 17 shall give Lessee the right to retain possession of any Car after expiration or termination of this lease with respect to such Car.

18. *Default.* If Lessee shall fail to make any payment required hereunder within 20 days after same shall have become due or shall default or fail for a period of 20 days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, ~~or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors,~~ then and in any of said events Rex may at its election:

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

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

The remedies provided in this Paragraph 18 in favor of Rex shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in Rex's favor existing at law or in equity. The Lessee hereby waives the benefit of any 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.

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

Notwithstanding any provision of any Federal bankruptcy statute to the contrary,

(a) Lessee shall have no right to assign or sublease or lend any of the Cars without the prior written consent of Rex, which consent Rex shall not unreasonably withhold; provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where (i) the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars and (ii) such sublease does not cause the owner/lessor of such Car to lose the Federal investment tax credit on such Car. Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and in compliance with and expressly subject to all terms and conditions of this lease;

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

The making of an assignment or sublease by Lessee or an assignment by Rex, other than an assignment pursuant to Paragraph 1 hereof, shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

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

(a) Lessee ~~is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and~~ has ~~corporate~~ all power and authority and has taken all ~~corporate~~ action necessary to

enter into this lease and carry out its obligations hereunder; ~~or, if Lessee is not a corporation, such analogous opinion as to Lessee's legal existence, power and authority and other matters as Rex may request;~~

(b) this lease has been duly authorized, executed and delivered on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms;

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

not heretofore obtained

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

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

Rex at: P.O. Box 968
Englewood Cliffs, New Jersey 07632

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

22. *Warranty.* REX MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING SPECIFICALLY BUT NOT EXCLUSIVELY MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE DESIGN, WORKMANSHIP, CONDITION OR QUALITY OF CARS (OR PARTS THEREOF) WHICH HAVE BEEN APPROVED BY LESSEE HEREUNDER; and Rex shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages, on account of any matter which might otherwise constitute a breach of warranty or representation. Lessee represents that all of the matters set forth in Paragraphs 20(a), (b), (c) and (d) shall be ~~and are~~ true and correct at all times that any Car is subject to this lease.

are and

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

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

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

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

, subject however to the agreed jurisdiction of Lessee's reorganization court which has approved execution of this lease in order number 398 dated September 15, 1980.

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

28. *Definitions.* For all purposes of this lease the following terms shall have the following meaning:

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

(b) "Last Date of Delivery"—the date of delivery of the last Car delivered hereunder.

(c) "Accounting Period"—each consecutive period of 12 months commencing with the date hereof and any period of less than 12 months beginning on an anniversary date of the date hereof and ending on the date this lease expires or terminates.

(d) "Repair Work"—all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with all Interchange Rules applicable to the Cars, and all preventive maintenance required in Rex's judgment to keep and maintain the Cars in good working order and repair.

(e) "Withdrawn Cars"—Cars (i) as to which this lease has been terminated by Rex because deemed by Rex to be unsuitable or uneconomical for Repair Work or (ii) which have been withdrawn from this lease pursuant to Paragraph 1(b) hereof.

(f) "Casualty Cars"—Cars which are lost, stolen, destroyed and damaged beyond economic repair.

(g) "Replacement Cars"—Cars of substantially similar description and specification to that set forth in the schedule which are substituted for Withdrawn or Casualty Cars.

29. *Benefit.* Except as otherwise provided herein, the covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 19 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 14 hereof shall apply to and inure to the benefit of any assignee of Rex and, if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

30. *Recording.* Upon request by Rex, Lessee shall join in the execution of a memorandum or short form of this lease for use in recordation with the Interstate Commerce Commission or such other recordation as Rex deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this lease including any options to extend and shall incorporate the lease by reference.

31. *Entire Agreement.* This lease constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior understandings and agreements of such parties.

32. *Arbitration.* Any dispute arising hereunder shall be settled by arbitration in New York City before a single arbitrator according to the then-obtaining rules of the American Arbitration Association and a judgment on the arbitrator's award may be entered in any court having jurisdiction thereof.

33. Notwithstanding anything to the contrary contained herein, this lease is binding on Richard B. Ogilvie, trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, not individually but solely as such Trustee appointed in the Debtor's reorganization proceedings presently pending in the United States District Court for the Northern District of Illinois, Eastern Division (No. 77 B 8999), and if, before the end of the stated term of the lease, Lessee or its Reorganization Court notifies Rex that said court has ordered the termination of the lease with respect to the lease of all Cars hereunder in connection with the discontinuance of substantially all service and/or the liquidation of substantially all assets of Lessee (the Early Termination Order), the lease shall be automatically terminated. In such event, lessee shall be obligated to return the Cars to Rex and to pay rentals in respect of the Cars accrued to the date possession of the Cars is offered to Rex pursuant to said Early Termination Order; any further obligations of Lessee, for rental or otherwise, shall terminate and Rex shall have no claim against Lessee or the estate of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company for any rentals or other damage claims accruing after that date or, except pursuant to the next following proviso, for other obligations of Lessee under said lease; provided, however, that Lessee shall thereafter continue to be liable in respect to any obligations which accrued under the lease prior to such termination and offer of possession until payment or performance of such obligation in full; and provided further, that no company or corporation which is an assignee or successor to Lessee hereunder may exercise any right to terminate the Lease pursuant to this provision. In the event of an Early Termination Order, the rights afforded Rex under this paragraph shall be deemed to be exclusive of all rights and remedies provided by law; provided, however, in that event the obligations of Lessee hereunder shall be treated as a cost of administration entitled to priority with other such expenses as provided in said Reorganization Court's order number 398 dated September 15, 1980.

IN WITNESS WHEREOF, Rex and Lessee have duly executed this lease as of the day and year first above written.

REX LEASING, INC.

By .....
President

[CORPORATE SEAL]

Attest:

.....
Asst. Secretary

LESSEE

.....

Richard B. Ogilvie, Trustee of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor

Attest:

.....
Secretary

EXHIBIT A

Exhibit A to lease dated Sept. 17, 19 80 by and between Rex Leasing, Inc., as agent and/or principal, and Richard B. Ogilvie, Trustee of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor ("Lessee")

CERTIFICATE OF APPROVAL

_____, 19____

Rex Leasing, Inc.
P.O. Box 968
Englewood Cliffs, New Jersey 07632

Gentlemen:

The undersigned, being a duly authorized representative of Lessee, hereby approves Twenty Eight (28) Cars bearing numbers as follows:

MILW 102100 to MILW 102127 inclusive

for the Lessee pursuant to the lease and certifies that each of said Cars conforms to, and fully complies with, the terms of said lease and is in condition satisfactory to Lessee. If Lessee is a railroad, Lessee hereby certifies that it is an interstate carrier by rail and that the Cars are intended for actual use and movement in interstate commerce.

LESSEE

.....

.....
RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

SCHEDULE

Schedule, consisting of one page, dated Sept. 17, 1980 to lease dated Sept. 17, 1980 by and between Rex Leasing, Inc., as agent and/or principal, an Richard B. Ogilvie, Trus- ("Lessee"). tee of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.

TYPE AND DESCRIPTION OF CAR: New 100 ton 4650 cubic foot steel covered hopper cars equipped with trough type hatch and gravity outlets.

NUMBER OF CARS: Twenty eight

INTERIOR EQUIPMENT: None.

SPECIAL LININGS: None.

PERMITTED LADING USE: Non-corrosive commodities.

REPORTING MARKS AND NUMBERS: MILW 102100 to MILW 102127 inclusive.

SPECIFICATIONS DESIGNATED BY LESSEE: None.

INITIAL F.O.T. DELIVERY POINT: Massena, New York.

LEASE TERM: Six (6) months.

MONTHLY RENTAL: ~~Xxxxxxxxx~~ $550.00 per car per month.

SPECIAL TERMS: None.

LESSEE

Richard B. Ogilvie, trustee of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor

REX LEASING, INC.

By ..... President

STATE OF NEW JERSEY
COUNTY OF BERGEN ss

On this 13th day of October, 19 80, before me personally appeared Mark A. Saltan, ~~to me~~ personally known, who being by me duly sworn, says that he is President of Rex Leasing, Inc., and Doris Carlson, to me personally known to be the Asst. Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rubin Schertz
Notary Public
RUBIN SCHERTZ
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 4, 1982

STATE OF ILLINOIS
COUNTY OF COOK ss

On this 19th day of September, 19 80, before me personally appeared Richard B. Ogilvie, to me personally known, who, being by me duly sworn, says that he is trustee of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and that the foregoing instrument was signed by him not individually but solely as trustee of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and who acknowledged that the execution of the foregoing instrument was his free act and deed.

Joanne H. Easton
Notary Public