



8904

RECORDATION NO. .... Filed & Recorded

JUL 26 1977-9 15 AM

INTERSTATE COMMERCE COMMISSION

July 18, 1977

Hon. H. G. Homme  
Acting Secretary,  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. .... Filed & Recorded

JUL 26 1977-9 15 AM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are an original and seven counterparts each of a Lease Agreement dated as of June 17, 1977, between SSI Rail Corp., Two Embarcadero Center, San Francisco, California, 94111, Lessor, and New Orleans Public Belt Railroad, 1247 International Trade Mart Building Two, Canal Street, New Orleans, Louisiana, 70151, Lessee, and of Rider No. 1 thereto covering the following railroad equipment:

400 70-ton, 50'6" Boxcars (AAR Mechanical Designation XM), bearing identifying numbers NOPB 3000 to 3399, both inclusive.

Identifying marks on the foregoing equipment: "Owned by a Bank or Trust Company under a Security Agreement filed under the Interstate Commerce Act, Section 20c."

Also enclosed is this Company's check in the sum of \$50.00, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing document.

Please return all additional copies of the enclosed counterparts not required by the Interstate Commerce Commission to David Schwartz, Esq., of Sullivan and Worcester, who will be delivering this letter on our behalf.

Very truly yours

*[Signature]*  
Martin S. Goodman  
Secretary

MDG:md  
Enc.

7-206-10  
M 26  
Fee \$...  
ICC Washington, D. C.

JUL 20  
FEE OPERATIONS  
INTERSTATE COMMERCE COMMISSION

8904-A

*[Handwritten signature: David M. Schwartz]*  
*[Handwritten signature: Martin S. Goodman]*

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

July 26, 1977

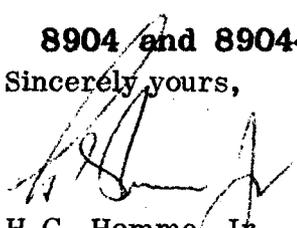
**Matin Goodman**  
Two Embarcadero Center  
San Francisco, CA 94111

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **7/26/77** at **9:15 AM**, and assigned recordation number(s)

**8904 and 8904-A.**

Sincerely yours,

  
H.G. Homme, Jr.  
Acting Secretary

Enclosure(s)



RECORDATION NO. 8904 Filed & Recorded

JUL 26 1977-9 15 AM

INTERSTATE COMMERCE COMMISSION

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 17th day of JUNE, 1977, between SSI RAIL CORP., a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("SSI"), as Lessor, and The City of New Orleans appearing herein through the Public Belt Railroad Commission for the City of New Orleans, Doing Business As New Orleans Public Belt Railroad ("Lessee"), as Lessee.

### 1. Scope of Agreement

A. SSI agrees to lease to Lessee, and Lessee agrees to lease from SSI, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that SSI 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.

### 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, that SSI 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. SSI 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 SSI that the sample Car which will be 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 SSI's determination that the Car conforms to the specifications ordered by SSI and to all applicable governmental regulatory specifications, and this Agreement has not been terminated, SSI 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 SSI. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by SSI

as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, SSI can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay to SSI the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "initial loading"), SSI agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and SSI, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

For Purposes of this Agreement, "initial loading" shall mean the first loading of freight on the railroad line of Lessee, provided, however, if the initial loading has not occurred within ninety days of the date such Cars have been delivered to SSI at the manufacturer's facility, initial loading shall be deemed to have occurred effective on the ninety-first day following such delivery to SSI.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. Once Cars have been delivered to Lessee, it shall then not lease freight cars similar to the type leased hereunder from any other party until it shall have given SSI at least three (3) months' prior written notice of its desire to lease such freight cars and SSI shall then have the opportunity to procure and lease such freight cars to Lessee subject to the terms and conditions of this Agreement, manufacturers' delivery schedules and at terms not less favorable to Lessee than those offered by such other parties. The foregoing, however, shall not be deemed to prohibit Lessee from leasing from other parties if SSI does not offer lease terms equal to or better than those offered by such other parties. Lessee shall give preference to SSI and shall load the Cars leased from SSI prior to loading substantially similar freight 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 therefor to shippers on its railroad tracks.

C. Additional Cars may be leased from SSI 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 SSI and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturer's delivery schedules, financing satisfactory to SSI and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce utilization of all Cars on lease to Lessee to less than 87.5 per cent 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 term of the lease 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. SSI and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee\* and may also be marked with the name and/or other insignia used by Lessee. Such name and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessee, SSI 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 ICC and/or 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. SSI 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 SSI shall select.

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

\*, at SSI's cost,

#### 5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, SSI 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. 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 SSI for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to SSI for and during the lease term of each Car all of its right, title and interest in any warranty in respect to the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by SSI at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to SSI.

B. Except as provided above, SSI\* shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of SSI,\*\* Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by SSI. SSI 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 SSI's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without SSI's prior written consent, Lessee shall be liable to SSI for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with SSI.

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 Car Service Rules-Freight for freight cars not owned by Lessee on Lessee's railroad tracks.

\* at its cost

\*\* , and at SSI's expense,

D. SSI agrees to pay or reimburse within five (5) working days following written notification that such payment has been made by Lessee and to indemnify and hold Lessee harmless of and from all taxes, assessments or other governmental charges of whatever kind or character assessed or relating to each Car (including all sales and use taxes imposed on the mileage charges and/or car hire revenues), this Agreement or the delivery and operation of such Cars which are unpaid as of the date of delivery of each Car to Lessee, and which may be accrued, levied, assessed or imposed during the term of this Agreement (except taxes on income imposed on Lessee). Lessee agrees to cooperate with and assist SSI in all reasonable ways to enable the Lessee and SSI to comply with all state and local laws requiring filing or payment of ad valorem taxes on Cars. SSI shall review all applicable returns prior to filing.

## 6. Lease Rental

A. Lessee agrees to pay the following rent to SSI for the use of the Cars:

(i) SSI shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments") if the utilization of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 91 per cent. 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 calendar year that the Cars are on lease to Lessee, commencing from the initial loading (such term referred to as "utilization"). In addition, SSI will receive, as additional rental, all monies earned by the Cars prior to their initial loading.

(ii) In the event utilization exceeds 91 per cent in any calendar year, SSI shall receive an amount equal to the SSI Base Rental plus an amount equal to one-half of the Payments earned in excess of the SSI Base Rental. For the purpose hereof, SSI Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is 91 percent and the denominator of which is the utilization for such calendar year. (The above determination of SSI Base Rental insures that Lessee will, if utilization is greater than 91 per cent in any calendar year, receive one-half of all the Payments made by other railroads for use or handling of the Cars in excess of the SSI Base Rental.)

(iii) If SSI pays other railroads to move Cars in accordance with the last sentence of the first paragraph of Section 3A hereof, except for any expenses incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse SSI for such expenses only from and out of the monies received by Lessee pursuant to Subsection 6A(ii).

(iv) The rental charges payable to SSI by Lessee shall be paid from the Payments received by Lessee in the following order until SSI receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) any other ICC approved charges.

Notwithstanding any of the provisions contained in this Agreement, it is understood and agreed that all rental charges payable to SSI by Lessee hereunder, shall be paid only from the Payments received by Lessee, or by SSI for the benefit of Lessee, from other railroad companies or any other source for use or handling of the Cars.

B. The calculations of lease rentals provided for in Section A of this Paragraph 6 shall be made within five months after the end of each calendar year. However, to enable SSI to meet its financial commitments, SSI may, prior to such calculations, retain the Payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due SSI, SSI 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 due SSI pursuant to the preceding sentence shall be retained by SSI from the Payments and SSI shall remit to Lessee any sums due it promptly following such calculations; 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. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the utilization in such calendar quarter cannot be equal to or greater than 87.5 per cent, SSI may, at its option and upon not less than 10 days prior written notice to Lessee, terminate this Agreement as to such Cars as SSI shall determine.

D. SSI may, at its option, terminate this Agreement if the ICC shall, at any time, (1) issue an order reducing incentive car hire for Cars on an annual basis to three months or less without a corresponding increase in straight car hire or other monies available to both SSI and Lessee at least equal in amount to such reduction, or (2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this section; and SSI or Lessee may, at their option, terminate this Agreement if the ICC shall, at any time, require that Lessee spend funds in an amount in excess of those earned by Cars in order for Lessee to continue to meet its obligations set forth in this Agreement.

E. Subsequent to the initial loading, if any Car remains empty on Lessee's railroad tracks for more than seven consecutive days, SSI 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 empty on Lessee's railroad tracks for 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 SSI 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.

If any such Car remains loaded on Lessee's railroad tracks for more than seven consecutive days, Lessee shall be liable for and remit to SSI an amount equal to the lesser of (i) the car hire revenues Lessee would have earned or (ii) the demurrage paid to Lessee by any source for use of the Cars for the entire period, provided, however, that such amount shall not exceed the amount Lessee receives for the Car while loaded on its railroad track.

F. In the event damage beyond repair 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, 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.

## 7. 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, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by SSI 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 and/or that the Cars be returned to such party, and Lessee is hereby authorized to pay any such rent and/or to deliver the Cars to such party at no cost to Lessee.

Lessee agrees that to the extent it has 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 SSI 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. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

## 8. Default

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

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within thirty (30) days after the date any such payment is due SSI.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days thereafter.

(iii) Any act of insolvency by Lessee, or the filing by Lessee 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 that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy or seizure that is not released within sixty (60) days thereafter or the assignment, application or sale for or by any creditor or governmental agency which is not set aside or withdrawn or ceases to be in effect within sixty (60) days from any such assignment or application.

(vi) 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, SSI may, at its option, terminate this Agreement (which termination shall not release Lessee from any obligation to pay any and all rent or other sums that may then be due or accrued to such date to SSI or from the obligation to perform any duty or discharge any other liability occurring prior thereto) and may

(i) Proceed by any lawful means to enforce performance by Lessee of such obligations or to recover damages for a breach thereof (and Lessee agrees to bear SSI's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon SSI may take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. SSI shall nevertheless have the right to recover from Lessee any and all Payments received by Lessee that may then be due or shall have accrued to that date.

C. The occurrence of any of the following events shall be an event of default by SSI:

(i) The breach by SSI of any material warranty or of any material obligation undertaken by or imposed on SSI pursuant to this Agreement, or the default by SSI under the provisions of any financing agreement referred to in Paragraph 7, which is not cured within thirty (30) days following written notification of such breach.

(ii) The subjection of any of the Cars leased hereunder to any mortgage, levy, seizure, assignment that is not released within sixty (60) days thereafter or the assignment, application or sale for or by any creditor of SSI or any governmental agency (except mortgage or other security rights granted by SSI in connection with any financing entered into by SSI in connection with the acquisition of the Cars.)

(iii) Any act of insolvency by SSI, or the filing by SSI 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 SSI that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of SSI, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

D. Upon the occurrence of any event of default by SSI, Lessee, at its option, may:

(i) Proceed by any lawful means to enforce performance by SSI of this Agreement, or to recover damages for a breach hereof, (and SSI agrees to bear Lessee's costs and expenses, including reasonable attorney's fees, in securing enforcement), or

(ii) By notice in writing to SSI, terminate this Agreement, in which event Lessee will surrender possession of the Cars and the provision of Paragraph 9 shall become immediately effective and Lessee shall have the right to collect and retain all payments until Lessee has been reimbursed for all sums due to it by SSI under the terms of this Agreement.

## 9. Termination

Upon termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to SSI by delivering same to SSI at Lessee's railroad line or at such location that is mutually agreeable to both parties.

A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Car and the placing, at SSI's expense, thereon of such markings as may be designated by SSI, either, at the option of SSI, (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 assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by SSI. 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 SSI's expense, promptly remove Lessee's railroad markings from the Cars and place thereon such markings as may be designated by SSI. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to sixty (60) days free storage on its railroad tracks for SSI or the subsequent lessee of any terminated Car.

## 10. Indemnities

SSI will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Cars 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, 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 SSI or Lessee).

11. Representations, Warranties and Covenants

A. Lessee represents, warrants and covenants that:

(i) Lessee is a Commission existing pursuant to ordinances of the City of New Orleans and statutes of the State of Louisiana, and has the power and authority 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 SSI 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.

(v) Lessee has not during the years 1964-1968 built, leased, purchased or nonequity leased new boxcars or rebuilt any boxcars.

B. SSI represents, warrants and covenants that:

(i) SSI 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 perform its obligations under this Agreement; and it has full power and authority to lease the Cars as herein contemplated.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to SSI, or result in the breach of any agreement, contract or other instrument to which SSI is a party.

## 12. Inspection

SSI 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 advise SSI of any information received by Lessee of any accident connected with the malfunctioning or operation of the Cars, including damage caused, the names and addresses of any persons injured and of witnesses, if known to Lessee. Lessee shall also notify SSI in writing within five (5) days after it has knowledge that any attachment, tax lien or other judicial process has attached to any Car. Lessee shall furnish to SSI promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

## 13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that neither party, without the prior written consent of the other, may assign this Agreement or any of its rights hereunder, provided, however, that SSI may assign this Agreement or any of its rights hereunder to any subsidiary or affiliate of SSI or to a financing party. Lessee may not sublease the Cars to any party. 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 any financing agreement entered into by SSI in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 and 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 as a lessee only.

D. No failure or delay by SSI shall constitute a waiver or otherwise affect or impair any right, power or remedy available to SSI nor shall any waiver or indulgence by SSI 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 California, provided the laws of California do not conflict with the laws of Louisiana, and if they do conflict, the laws of Louisiana shall prevail.

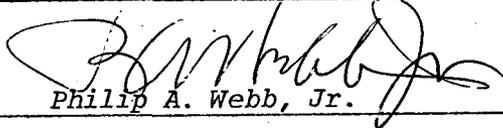
F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the other party at the address set forth above, or at such other address as the party may from time to time designate in writing.

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

SSI RAIL CORP.

NEW ORLEANS PUBLIC BELT RAILROAD

BY:   
\_\_\_\_\_  
William J. Texido

BY:   
\_\_\_\_\_  
Philip A. Webb, Jr.

TITLE: President

TITLE: General Manager

DATE: June 30, 1977

DATE: June 17, 1977

EQUIPMENT SCHEDULE No. ...1.....

SSI Rail Corp. hereby leases the following Cars to New Orleans Public Belt Railroad....  
pursuant to that certain Lease Agreement dated as of June 17..., 1977.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	70 ton, 50'6" inside length, Plate B with nailable steel floors, 10' wide door opening, sliding type doors, with end of car cushioning, single sheath boxcar.	NOPB 3000- NOPB 3099	50'6"	9'6"	10'7"	10'	100

SSI RAIL CORP.

BY: William J. Texido

TITLE: President

DATE: June 30, 1977

BC-5/77

New Orleans Public Belt Railroad

BY: P.A. Webb, Jr.

TITLE: General Manager

DATE: June 17, 1977

EQUIPMENT SCHEDULE No. ...2.....

SSI Rail Corp. hereby leases the following Cars to *New Orleans Public Belt Railroad*.... pursuant to that certain Lease Agreement dated as of ...*June 17*..., 1977.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	70 ton, 50'6" inside length, Plate B with nailable steel floors, 10' wide door opening, sliding type doors, with end of car cushioning, single sheath boxcar.	NOPB 3100- NOPB 3199	50'6"	9'6"	10'7"	10'	100

SSI RAIL CORP.

BY: William J. Texido

TITLE: President

DATE: June 30, 1977

BG-5/77

New Orleans Public Belt Railroad

BY: P.A. Webb, Jr.

TITLE: General Manager

DATE: June 17, 1977

EQUIPMENT SCHEDULE No. ...3.....

SSI Rail Corp. hereby leases the following Cars to *New Orleans Public Belt Railroad*... pursuant to that certain Lease Agreement dated as of *June 17...*, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	70 ton, 50'6" inside length, Plate B with nailable steel floors, 10' wide door opening, sliding type doors, with end of car cushioning, single sheath boxcar.	NOPB 3200- NOPB 3299	50'6"	9'6"	10'7"	10'	100

SSI RAIL CORP.

BY: William J. Texido

TITLE: President

DATE: June 30, 1977

New Orleans Public Belt Railroad

BY: P.A. Webb, Jr.

TITLE: General Manager

DATE: June 17, 1977

EQUIPMENT SCHEDULE No. ... 4 .....

SSI Rail Corp. hereby leases the following Cars to New Orleans Public Belt Railroad....  
pursuant to that certain Lease Agreement dated as of ... June 17..., 1977.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	70 ton, 50'6" inside length, Plate B with nailable steel floors, 10' wide door opening, sliding type doors, with end of car cushioning, single sheath boxcar.	NOPB 3300- NOPB 3399	50'6"	9'6"	10'7"	10'	100

SSI RAIL CORP.

BY: William J. Texido

TITLE: President

DATE: June 30, 1977

BC-5/77

New Orleans Public Belt Railroad

BY: P.A. Webb, Jr.

TITLE: General Manager

DATE: June 17, 1977

STATE OF Louisiana  
PARISH OF Orleans

On this 17th day of June, 1977, before me personally appeared Philip A. Webb, Jr., to me personally known, who being by me duly sworn says that such person is General Manager of New Orleans Public Belt Railroad, that the foregoing Lease Agreement and Equipment Schedule No. 1,2,3,4 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.



[Handwritten Signature]  
Notary Public

STATE OF California  
COUNTY OF San Francisco }

On this 30<sup>th</sup> day of June, before me personally appeared William J. Tepich to me personally known, who being by me duly sworn says that such person is President of SSI Rail Corp., that the foregoing Lease Agreement and Equipment Schedule No. 1-4 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 such corporation.



Terry L. Russell  
Notary Public

# ITEL RAIL

55 Francisco  
San Francisco, California 94133  
(415) 955-9090  
Telex 34234

November 17, 1983

Ms. Agatha Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

RECORDATION NO. 8904 Filed 1426  
DEC 7 1983 - 9 05 AM  
INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

This is to request that you cross-index the Consolidated, Amended, and Restated Equipment Trust Agreement, dated as of January 1, 1982, which was filed under I.C.C. Recordation No. 14165, on September 20, 1983 at 3:00 p.m., with the following documents:

1. Lease between Itel Corporation, Rail Division and Apalachicola Northern Railroad, dated January 25, 1977 and filed under I.C.C. Recordation No. 8796, on April 27, 1977 at 12:45 p.m.
2. Lease between Itel Corporation, Rail Division and Arcata and Mad River Railroad, dated July 10, 1978, and filed under I.C.C. Recordation No. 10034, on January 19, 1979 at 2:10 p.m.
3. Lease between Itel Corporation, Rail Division and Atchison, Topeka and Santa Fe Railway Co., dated May 14, 1982, and filed under I.C.C. Recordation No. 13706, on July 26, 1982 at 1:45 p.m.
4. Lease between Itel Corporation, Rail Division and New Orleans Public Belt Railway, dated October 26, 1978, and filed under I.C.C. Recordation No. 10033, on January 19, 1979 at 2:10 p.m.
5. Lease between Itel Corporation, Rail Division and Atchison, Topeka and Santa Fe Railway Co., dated July 30, 1982, and filed under I.C.C. Recordation No. 13818, on October 26, 1982 at 12:40 p.m.

6. Lease between Itel Corporation, Rail Division and Cadiz Railroad, dated November 10, 1976, and filed under I.C.C. Recordation No. 8654, on January 10, 1977 at 2:05 p.m.
7. Lease between Itel Corporation, Rail Division and Camino, Placerville and Lake Tahoe Railroad Co., dated February 9, 1977, and filed under I.C.C. Recordation No. 8798 on April 27, 1977
8. Lease between Itel Corporation, Rail Division and Crab Orchard and Egyptian Railroad, dated June 21, 1978, and filed under I.C.C. Recordation No. 9936, on December 22, 1978 at 3:55 p.m.
9. Lease between Itel Corporation, Rail Division and Detroit, Toledo and Ironton Railway Co., dated March 10, 1981, and filed under I.C.C. Recordation No. 13077, on April 30, 1981 at 2:25 p.m.
10. Lease between Itel Corporation, Rail Division and East Camden and Highland, dated April 26, 1978, and filed under I.C.C. Recordation No. 9756, on October 11, 1978 at 2:45 p.m.
11. Lease between Itel Corporation, Rail Division and Green Bay and Western Railroad Company, dated October 21, 1981, and filed under I.C.C. Recordation No. 13554, on February 18, 1982 at 2:40 p.m.
12. Lease between Itel Corporation, Rail Division and Green Bay and Western Railroad Company, dated March 8, 1979, and filed under I.C.C. Recordation No. 10362, on May 10, 1979 at 2:00 p.m.
13. Lease between Itel Corporation, Rail Division and Maine Central Railroad Company, dated March 22, 1982, and filed under I.C.C. Recordation No. 13664, on June 16, 1982 at 10:10 a. m.
14. Lease between Itel Corporation, Rail Division and Maine Central Railroad Company, dated April 11, 1980, and filed under I.C.C. Recordation No. 11899, on June 11, 1980 at 11:25 a.m.
15. Lease between Itel Corporation, Rail Division and New Orleans Public Belt Railway, dated June 17, 1977, and filed under I.C.C. Recordation No. 8904, on July 26, 1977 at 9:15 a.m.

Ms. Agatha Mergenovich  
November 17, 1983  
Page Three

16. Lease between Itel Corporation, Rail Division and Port Huron and Detroit Railroad Co., dated February 22, 1977, and filed under I.C.C. Recordation No. 8799 on April 27, 1977 at 12:45 p.m.

17. Lease between Itel Corporation, Rail Division and Rahway Valley Railroad, dated September 19, 1978, and filed under I.C.C. Recordation No. 10111, on February 14, 1979 at 12:30 p.m.

18. Sublease between Texas Mexican Railroad Co. and Soo Line Railroad, dated April 11, 1983, and filed under I.C.C. Recordation No. 14066, on June 21, 1983 at 3:00 p.m.

19. Lease between Itel Corporation, Rail Division, and Soo Line Railroad Co., dated February 17, 1983, and filed under I.C.C. Recordation No. 14002 on April 11, 1983 at 1:05 p.m.

20. Lease between Itel Corporation, Rail Division and Texas Mexican Railroad Co., dated March 15, 1978, and filed under I.C.C. Recordation No. 9778, on October 17, 1978 at 3:30 p.m.

21. Lease between Itel Corporation, Rail Division and Toledo, Peoria and Western Railroad Co., dated September 10, 1980, and filed under I.C.C. Recordation No. 12314 on October 16, 1980 at 2:40 p.m.

22. Lease between Itel Corporation, Rail Division and Valley and Siletz Railroad, dated July 26, 1978, and filed under I.C.C. Recordation No. 10032 on January 19, 1979 at 2:10 p.m.

23. Lease between Itel Corporation, Rail Division and Providence and Worcester Co., dated March 13, 1978, and filed under I.C.C. Recordation No. 9924, on December 19, 1978 at 2:45 p.m.

24. Assignment between Providence and Worcester Company and Warwick Railway Corp., dated April 24, 1980, and filed under I.C.C. Recordation No. 9924-E, on October 17, 1980 at 12:45 p.m.

25. Lease between Itel Corporation, Rail Division and Arkansas and Louisiana Missouri Railroad, dated June 14, 1977, and filed under I.C.C. Recordation No. 9049, on October 21, 1977 at 1:05 p.m.

26. Lease between Itel Corporation, Rail Division and Atlanta and St. Andrews Bay Railway Co., dated May 5, 1978, and filed under I.C.C. Recordation No. 9703, on September 22, 1978 at 2:15 p.m.

27. Lease between Itel Corporation, Rail Division and Greenville and Northern Railroad Co., dated August 6, 1976, and filed under I.C.C. Recordation No. 9102, on November 25, 1977 at 1:15 p.m.

28. Lease between Itel Corporation, Rail Division and Marinette, Tomahawk and Western Railroad Co., dated December 23, 1977, and filed under I.C.C. Recordation No. 9406, on May 26, 1978 at 2:30 p.m.

29. Lease between Itel Corporation, Rail Division and North Louisiana and Gulf Railroad Co., dated July 21, 1977, and filed under I.C.C. Recordation No. 9073, on November 10, 1977 at 2:20 p.m.

30. Lease between Itel Corporation, Rail Division and Escanaba and Lake Superior Railroad Company, dated December 22, 1976, and filed under I.C.C. Recordation No. 8653, on January 10, 1977 at 2:20 p.m.

31. Lease between SSI Rail Corp. and Lake Erie, Franklin and Clarion Railroad, dated January 3, 1977, and filed under I.C.C. Recordation No. 8668, on January 21, 1977 at 2:30 p.m.

32. Lease between SSI Rail Corp. and Minnesota, Dakota and Western Railroad, dated July 26, 1978, and filed under I.C.C. Recordation No. 10129, on February 22, 1979 at 11:40 a.m.

33. Lease between SSI Rail Corp. and Pearl River Valley Railroad Co., dated March 24, 1976, and filed under I.C.C. Recordation No. 8487-A, on August 27, 1976 at 1:30 p.m.

34. Lease between SSI Rail Corp. and Sierra Railroad Co., dated September 27, 1978, and filed under I.C.C. Recordation No. 10152, on February 26, 1979 at 2:30 p.m.

35. Sublease between McCloud River Railroad Co. and Camino, Placerville and Lake Tahoe Railroad Co., dated January 24, 1980 and filed under I.C.C. Recordation No. 8819-G, on May 5, 1980 at 3:15 p.m.

Ms. Agatha Mergenovich  
November 17, 1983  
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36. Lease between SSI Rail Corp., and McCloud River Railroad Co., dated April 20, 1977, and filed under I.C.C. Recordation No. 8819, on May 11, 1977 at 1:15 p.m.
37. Lease between SSI Rail Corp., and City of Prineville Railway Co., dated April 26, 1977, and filed under I.C.C. Recordation No. 8896 on July 20, 1977.
38. Lease between Itel Corporation, Rail Division and Kyle Railways, Inc., dated February 17, 1982, and filed under I.C.C. Recordation No. 13666, on June 17, 1982 at 10:50 a.m.
39. Sublease between Kyle Railways, Inc. and Natchez Trace Railroad, dated February 18, 1982, and filed under I.C.C. Recordation No. 13666-B, on June 17, 1982 at 10:50 a.m.
40. Sublease between McCloud River Railroad Co. and Sierra Railroad Co., dated August 29, 1980, and filed under I.C.C. Recordation No. 8819-N, on September 16, 1980 at 1:35 p.m.
41. Lease between SSI Rail Corp. and Terminal Railway of Alabama, dated April 4, 1977, and filed under I.C.C. Recordation No. 8797, on April 27, 1977 at 12:45 p.m.
42. Lease between SSI Rail Corp. and Toledo, Peoria and Western Railroad Co., dated January 12, 1977, and filed under I.C.C. Recordation No. 8676, on January 24, 1977 at 2:45 p.m.
43. Lease between Itel Corp. and Ashley, Drew and Northern Railway Co., dated March 29, 1977, and filed under I.C.C. Recordation No. 8837 on May 27, 1977.
44. Lease between SSI Rail Corp. and Corinth and Counce Railroad Company, dated April 29, 1977, and filed under I.C.C. Recordation No. 8838, on May 27, 1977 at 1:45 p.m.
45. Lease between Itel Corporation, Rail Division and Green Bay and Western Railroad Co., dated April 22, 1981, and filed under I.C.C. Recordation No. 13073, on April 30, 1981 at 10:50 a.m.
46. Lease between Itel and Meridian and Bigbee Railroad Company, dated June 1, 1977, and filed under I.C.C. Recordation No. 9072, on November 10, 1977 at 2:20 p.m.

Ms. Agatha Mergenovich  
November 17, 1983  
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47. Lease between Itel Rail and Apache Railway, dated June 1, 1976, and filed under I.C.C. Recordation No. 8709, on February 23, 1977 at 11:40 a.m.

48. Lease between Itel Corporation, Rail Division and Clarendon & Pittsford Railroad Co., dated October 18, 1976, and filed under I.C.C. Recordation No. 8658, on January 12, 1977 at 1:45 p.m.

49. Lease between Itel Corporation, Rail Division and FMC/Chemical Group, dated December 3, 1976, and filed under I.C.C. Recordation No. 8809-A, on May 11, 1977 at 1:15 p.m.

50. Lease between SSI Rail Inc., and Green Mountain Railroad Co., dated January 2, 1976, and filed under I.C.C. Recordation No. 9050, on October 21, 1977 at 1:05 p.m.

51. Lease between Itel Corporation, Rail Division and Hartford & Slocumb Railway Co., dated July 1, 1975, and filed under I.C.C. Recordation No. 9168, on January 9, 1978 at 2:05 p.m.

52. Lease between Itel Corporation, Rail Division and Lake Erie, Franklin and Clarion Railroad, dated January 3, 1977, and filed under I.C.C. Recordation No. 8853-A, on June 1, 1977 at 1:10 p.m.

53. Lease between Itel Corporation, Rail Division and McCloud River Railroad, dated April 20, 1983, and filed under I.C.C. Recordation No. 14029, on May 27, 1983 at 1:40 p.m.

54. Lease between Itel Corporation, Rail Division and Mississippi Export Railway Co., dated April 25, 1978 and filed under I.C.C. Recordation No. 9460, on June 27, 1978 at 8:50 a.m.

55. Lease between Itel Corporation, Rail Division and Sabine River and Northern Railroad Co., dated December 23, 1977, and filed under I.C.C. Recordation No. 9407, on May 26, 1978 at 2:30 p.m.

56. Lease between Itel Corporation, Rail Division and Valdosta Southern Railway Co., dated March 26, 1976, and filed under I.C.C. Recordation No. 8343-A on May 25, 1976 at 10:45 p.m.

Ms. Agatha Mergenovich  
November 17, 1983  
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57. Lease between Itel Corporation, Rail Division and Valdosta Southern Railway Co., dated December 23, 1977, and filed under I.C.C. Recordation No. 9409, on May 26, 1978 at 2:30 p.m.

58. Lease between Itel Corporation, Rail Division and Vermont Railway Co., dated December 4, 1975, and filed under I.C.C. Recordation No. 9279 on March 13, 1978 at 2:20 p.m.

Enclosed is a check in the amount of \$580.00 covering the appropriate cross-indexing fees. If you have any questions please feel free to contact me at (415) 955-0547.

Sincerely,



Patricia Salas Pineda  
Counsel

PSP:dmm  
Enclosures

ITEL RAIL CORPORATION  
INDEX TO CROSS-INDEXING  
REQUESTED  
IN LETTER OF NOVEMBER 17, 1983

Each ICC Recordation No. listed below to be cross-indexed to (1) Recordation No. 14165, and (2) all Recordation Nos. listed below to be cross-indexed under Recordation No. 14165.

<u>ICC RECORDATION NO.</u>	<u>PARAGRAPH NO. IN LETTER OF NOVEMBER 17, 1983</u>
8343-A	56
8487-A	33
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8654	6
8658	48
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8676	42
8709	47
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8797	41
8798	7
8799	16
8809-A	49
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<u>ICC RECORDATION NO.</u>	<u>PARAGRAPH NO. IN LETTER OF NOVEMBER 17, 1983</u>
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9072	46
9073	29
9102	27
9168	51
9279	58
9408	57
9406	28
9407	55
9460	54
9703	26
9756	10
9778	20
9924	23
9924-E	24
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10032	22
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10152	34

<u>ICC RECORDATION NO.</u>	<u>PARAGRAPH NO. IN LETTER OF NOVEMBER 17, 1983</u>
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13554	11
13664	13
13666	38
13666-B	39
13706	3
13818	5
14002	19
14029	53
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