



7-1311054

Date JUN 30 1977

Fee \$ 50

Washington, D. C.

June 28, 1977

RECORDATION NO. 8870

JUN 30 1977 - 2 30 PM

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

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are the following documents:

Five (5) executed copies of a Railroad Equipment Lease Agreement dated as of June 28, 1977, between SSI Rail Corp., Two Embarcadero Center, San Francisco, California, 94111, and Manufacturers Hanover Leasing Corporation, 30 Rockefeller Plaza, New York, New York, 10020.

This document covers the following equipment:

250 70-ton, 50'6", general purpose boxcars with 10" end-of-car cushioning (AAR Mechanical Designation XM), bearing the identifying numbers MTW 4200 to MTW 4299, inclusive, VSO 6250 to 6299, inclusive, and SRN 5200 to SRN 5299, inclusive.

Identifying marks on all of the foregoing equipment: The words, "PROPERTY OF AND LEASED FROM MANUFACTURERS HANOVER LEASING CORPORATION SUBJECT TO AN AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20C," printed on each side of each unit.

Also enclosed is our check in the sum of \$50.00, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing documents.

The Railroad Equipment Lease Agreement is guaranteed by the parent of SSI, ITEL Corporation, One Embarcadero Center, San Francisco, California, 94111.

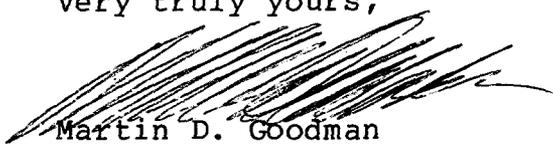
*David M. McHenry*  
*C. ...*

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OPERATION BR.

Mr. Homme  
June 28, 1977  
Page 2

Please return all additional copies of the enclosed counter-  
parts not required by the Interstate Commerce Commission  
to the party delivering this letter on our behalf.

Very truly yours,



Martin D. Goodman  
Secretary

MDG:md

**JUN 30 1977 - 2 20 PM**RAILROAD EQUIPMENT LEASE AGREEMENT**INTERSTATE COMMERCE COMMISSION**

RAILROAD EQUIPMENT LEASE AGREEMENT dated June 28, 1977, between MANUFACTURERS HANOVER LEASING CORPORATION, a New York Corporation (hereinafter called the "Lessor"), and SSI RAIL CORP., a Delaware corporation (hereinafter called the "Lessee").

WHEREAS, the Lessee desires to lease from the Lessor 250 standard general purpose boxcars having a total cost of not more than \$8,000,000 (hereinafter called the "Units"), as said Units are more specifically described in Exhibit A annexed hereto and made a part hereof, at the rentals and for the terms and upon the conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor and Lessee agree as follows:

1. Agency, Delivery and Acceptance of Units.

Lessor hereby appoints Lessee agent for Lessee to inspect and accept the Units from the manufacturer thereof. Upon the delivery of each Unit to the Lessee, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a Certificate of Acceptance and Delivery substantially in the form of Exhibit B annexed hereto and made a part hereof (hereinafter called the

"Certificate of Delivery").

2. Lease, Rentals. Lessor hereby agrees to lease to Lessee and Lessee agrees to lease from Lessor the Units specifically described in each Acceptance Supplement (a "Supplement"), which is executed pursuant to the terms of this Lease. Each Supplement shall be in the form of Exhibit C hereto, and upon the execution and delivery thereof shall constitute a part of this Lease to the same extent as if the provisions thereof were set forth in full in this Lease. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 60 consecutive quarterly payments in arrears equal to \$25.3934 for each \$1,000 of cost of the Units to Lessor, with the first payment due three months after the Commencement Date set forth in the Supplement applicable thereto and each subsequent payment due every three months thereafter. Lessee shall pay to Lessor, on demand, interest at the rate of 18% per annum or the highest rate permitted by law, whichever is less, on any installment of rent and on any other amount owing hereunder which is not paid when due for any period when the same shall be overdue.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available New York or Federal funds to or for the account of the Lessor at 30 Rockefeller Plaza, New

York, New York 10020 on or before 11 o'clock a.m. New York time on the date on which payments are due and payable.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due, or by reason of any past, present or future claims of the Lessee against the Lessor under this Lease; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have

or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the Certificate of Delivery applicable thereto and, subject to the provisions of Sections 6 and 8 hereof, shall terminate on the date on which the final quarterly payment of rent in respect thereof is due pursuant to Section 2.

4. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit the following legend in letters not less than one inch in height.

Property of and Leased from Manufacturers  
Hanover Leasing Corporation, subject to  
an Agreement filed under the Interstate  
Commerce Act, Section 20c.

Lessee shall make such appropriate changes thereof and additions as from time to time may be required by law in order to protect the Lessor's title to and property in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any

such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or a Permitted Sublessee (as defined in Section 11 hereof) on railroad equipment used by them of the same or similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than those measured by Lessor's net income) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions") hereafter

levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event any reports with respect to Impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor in such Units or notify the Lessor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Imposition, pursuant to this Section 5, such liability shall continue notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

6. Payment for Casualty Occurrences; Insurance.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called a "Loss") during the term of this Lease, the Lessee shall promptly and fully notify the Lessor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the rental payment that would have been payable for such Unit on the date of such payment but for such Loss plus a sum equal to the Stipulated Loss Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the Schedule I referred to below. Upon the making of such payment, the term of this Lease as to such Unit shall terminate and in the event of the Unit becoming worn out the Lessor shall be entitled to recover possession of such Unit.

The Stipulated Loss Value of each Unit as of any rental payment date shall be that percentage of the cost of such Unit as is set forth in the Supplement applicable thereto.

Except as hereinabove in this Section 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Loss to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while the Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by railroad companies on similar equipment owned by it. Such insurance shall include the Lessor as additional named insured as its interest may appear and shall contain a clause requiring the insurer to give Lessor at least 10 days prior written notice of any alteration in or cancellation of the terms of such policy. Any net insurance proceeds as the result of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Loss shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Losses pursuant to this Section 6. If the Lessor shall receive any such net insurance proceeds after the Lessee shall have made payments pursuant to this Section 6 without deduction for such net insurance proceeds or any condemnation payments, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Stipulated Loss Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

7. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP, IN THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the manufacturer of the Units. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the

Department of Transportation, the Interstate Commerce Commission and any other legislative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; provided, however that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor under this Lease.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit, and any and all parts installed on and additions and replacements made to any Unit which are not readily removable (and in fact not removed at the end of the lease term therefor) shall constitute accessions to such Unit and the full ownership thereof free from any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless the Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the

entering into or the performance of this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 13 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the leasing thereof of the Lessee.

8. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in Section 2 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any assignment or transfer of this Lease or of the possession of any Units (except as provided in Section 11 hereof) or shall fail to perform or observe any other covenant, agreement or condition hereunder and such failure shall continue for twenty days thereafter.

C. any representation or warranty made by Lessee herein or in any document or certificate furnished Lessor in connection herewith shall prove to be incorrect in a material respect at any time;

D. an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or a trustee or receiver shall be appointed for Lessee or for a substantial part of its property or for the Units, or bankruptcy, reorganization, arrangement, insolvency, dissolution or liquidation proceedings shall be instituted by or against Lessee; then Lessor may declare this Agreement to be in default and may do one or more of the following with respect to any or all of the Units as Lessor in its sole discretion may elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect.

(a) demand that Lessee, and Lessee shall at its expense upon such demand, return the Units promptly to Lessor in the manner and condition required by and otherwise in accordance with the provisions of Section 10 hereof, or Lessor, at its option, may enter upon the premises where the Units are located and take possession of and remove the same by summary proceedings or otherwise, all without liability to Lessor for damage to property or otherwise; or

(b) sell the Units at public or private sale, with or without notice to Lessee or advertisement, or otherwise dispose, use, operate, lease to others or keep idle the Units as Lessor may determine, all

free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto; or

(c) by written notice to Lessee, demand that Lessee pay to Lessor, as liquidated damages for loss of a bargain and not as a penalty, on the payment date specified in such notice, an amount (together with interest thereon as provided in Section 2 hereof from said date to the actual payment) equal to the amount by which the Stipulated Loss Value of the Units computed as of the rent payment date occurring on or immediately preceding the payment date specified in such notice exceeds the Fair Market Sales Value of such Units and

(d) Lessor may exercise any other right to remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Agreement.

In addition, Lessee shall be liable for all unpaid rent and other amounts due hereunder before or during the exercise of any of the foregoing remedies and for all legal fees, taxes, governmental charges and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including placing any Unit in the condition required by Section 7 hereof.

For the purpose of the preceding paragraph, the "Fair Market Sales Value" of any Unit shall mean such value to Lessor net of all expenses and costs whatsoever which would be incidental to the reclamation of the Units and the sale thereof as determined (at Lessee's expense) by an independent appraiser selected by Lessor; provided, however that (i) the "Fair Market Sales Value" of any Unit shall be zero if Lessor is unable to recover possession thereof in accordance with the terms of clause (a) of the immediately preceding paragraph, and (ii) if Lessor shall have sold any Unit prior to the giving of the notice referred to in clause (c) of the immediately preceding paragraph, the "Fair Market Sales Value" thereof shall be the net proceeds of such sale after deducting all costs and expenses incurred by Lessor in connection therewith. Except as expressly provided above, no remedy referred to in this Section is exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to Lessor at law or equity; and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any other remedies. No express or implied waiver by Lessor of an Event of Default shall constitute a waiver of any other or subsequent Event of Default. To the extent permitted by law, Lessee waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise limit or modify any of Lessor's rights or remedies hereunder.

9. Investment Tax Credit and Depreciation Indemnity.

(A) Lessor, as the owner of the Units shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (hereinafter called the "Code"), to an owner of property, including the Investment Tax Credit which will be made available for use by the Lessor.

(B) Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate the accomplishment of the intent thereof. Lessee agrees to copy and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the benefit of any amortization or depreciation deduction or tax credit which may be available from time to time with respect to the Units.

(C) If Lessor, under any circumstances or for any reason whatsoever other than as set forth in subsection (D) or (E) below, (a) shall lose or shall not have or shall lose the right to claim or there shall be disallowed or recaptured all or any portion of the full ten percent of Investment Tax Credit provided for in Section 38 with respect to the full Lessor's cost of any Unit or (b) shall lose, or shall not have

the right to claim or there shall be disallowed or recaptured all or any portion of the Federal tax depreciation deductions with respect of any Unit based on depreciation of the full Lessor's cost of such Unit computed on the basis of a method of depreciation provided by Section 167 (b) (2), (3), or (4) of the Code or successor provisions of the Code as Lessor in its complete discretion (and in compliance with applicable laws) may select, then Lessee agrees to pay Lessor upon demand an amount which, after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of any federal, state or local government or taxing authority of the United States or of any taxing authority or government subsidiary of any foreign country, shall be equal to (w) the amount of Investment Tax Credit lost or not utilized, (x) the increase in Lessor's tax on account of any recomputation of Investment Tax Credit pursuant to the Code, (y) an amount equal to the additional income taxes paid or payable by Lessor in consequence of the failure to obtain the benefit of a depreciation deduction and any interest or penalty which may be assessed in connection with any of the foregoing, and (z) any taxes required to be paid by Lessor with respect of the receipt thereof.

(D) Lessee shall not be required to pay Lessor the amount provided in (C) above, if the loss, disallowance, or recapture of depreciation deduction and Investment Tax Credit or the right to claim the same shall result solely because of the occurrence of any of the following events:

(i) Lessee is required by the terms hereof to pay and shall have paid the Stipulated Loss Value for said Unit.

(ii) Lessor shall fail to claim such depreciation deduction in its income tax returns for the appropriate year or shall fail to follow the proper procedure in claiming such depreciation deduction and such failure to claim or to follow such procedure, as the case may be, shall preclude Lessor from claiming such depreciation deduction;

(iii) Lessor shall, at any time where no Event of Default has occurred and is continuing, without the written consent of Lessee, voluntarily transfer legal title to such Unit to anyone, and such transfer by Lessor shall be the direct cause of such loss.

(E) Lessee shall not be required to pay to Lessor the amount provided for in (C) above if the loss, disallowance or recapture of the depreciation deduction and/or investment tax credit or the right to claim the same should result solely from the failure of the Lessor to have sufficient income or tax liability to benefit from such credit or depreciation deduction. For the purposes hereof the Lessor shall be deemed "to have sufficient income or tax liability" notwithstanding that it may not actually have the same in the taxable year directly affected by the loss, dis-

allowance or recapture of the credit or depreciation deduction to the extent that in a prior or subsequent year it may have had income or tax liability which could have been offset by carrying back or carrying forward the credit or the increased operating loss which would have resulted from the item which was lost, disallowed or recaptured.

(F) The indemnity contained in this Section shall be subject to the condition that (i) Lessor shall give Lessee notice of any action by the Internal Revenue Service of which Lessor has knowledge and which Lessor believes relates to an issue which could cause Lessee to be liable under such indemnity (hereinafter called an "indemnity issue", all other issues involved in Lessor's tax returns being referred to as "non-indemnity issues") and (ii) Lessor shall, after it has completed its discussions with the revenue agent with respect to the non-indemnity issues, but prior to the preparation by the revenue agent of his report, arranged with the Internal Revenue Service to provide Lessee with an opportunity to negotiate with the Internal Revenue Service with respect to the indemnity issue. If the determination made by the revenue agent in his report with respect to the indemnity issue is not satisfactory to Lessee, Lessor will take appropriate steps to file a protest with the appellate division of the Internal Revenue Service and will arrange with the Internal Revenue Service to provide Lessee, after Lessor has completed its negotiations at the appellate level with respect to the non-indemnity issues, an opportunity to

negotiate its position in opposition to the action of the agent relating to the indemnity issue. In the event that the Internal Revenue Service, either at the agent level or the appellate level, after hearing Lessee's presentation of its position, shall refuse to negotiate further, Lessee shall not be released from the indemnity contained in this Section. Lessee's negotiations with the Internal Revenue Service concerning the indemnity issue shall be at Lessee's expense. Lessor agrees to afford Lessee full cooperation. Such cooperation shall include, but shall not be limited to, granting Lessee any necessary powers of attorney, becoming a party to appeals through all administrative levels of the Internal Revenue Service, and taking all necessary steps to effectuate a settlement agreed to between Lessee and the Internal Revenue Service. Lessee shall reimburse Lessor for all of the out-of-pocket expenses incurred by Lessor in affording such cooperation.

If the Lessor shall obtain a refund of all or any part of the amounts paid by the Lessee pursuant to this Section, the Lessor shall pay the Lessee the amount of such refund. If in addition to such refund the Lessor receives an amount representing interest on the amount of such refund, the Lessor shall pay the Lessee that proportion of such interest which is attributable to the amounts paid by the Lessee.

(G) For the purposes of this Section 9 only, the term "Lessor" shall include the "common parent" and all other corporations included in the affiliated group, within the meaning of Section 1504 of the Code, (or any other successor section thereto), of which Lessor is or becomes a member.

(H) The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. Return of Units Upon Default. If this lease shall terminate pursuant to Section 8 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk forthwith place and store such Units upon such storage tracks as the Lessor reasonably may designate and if directed by Lessor transport the same to any connecting carrier for shipment to any point directed by Lessor.

The assembling, delivery, storage and transporting of the Units provided for herein shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so as to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of

any Unit to the Lessor under this Section 10, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

11. Use and Possession, Subleasing, Encumbrances.

(a) So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to and shall have the exclusive use and possession of the Units. The Lessee agrees that the Units will be used exclusively within the continental United States and Alaska, and incidentally in Canada and Mexico; provided, however, Lessee further agrees that at no time shall more than 5% of the Units be located within Mexico and Canada and the Lessee shall at all times remain in compliance with the terms and provisions of this Lease in respect of all Units wherever located.

(b) Except as permitted by paragraph (c) of this Section 11, Lessee will not, without the prior written consent of Lessor, assign this Lease or any interest herein or sublease or otherwise transfer its interest in any Unit (and any attempted assignment, sublease or other transfer in violation of these provisions shall be void) or create or suffer to exist any lien, mortgage, security interest, or encumbrance upon, the Unit.

(c) Lessee may, upon notice to Lessor, sublease (a, "Permitted Sublease") any Unit to a railroad company duly incorporated under the laws of the United States or any state thereof and that said railroad company or the owner of a majority of the issued and outstanding capital stock thereof having rights to elect the members of the Board of Directors thereof

or the principal shipper then utilizing the railroad services of such railroad company shall at the time of the sublease maintain a rating by Moody's Investment Services, Inc. of "A" or better ("Permitted Sublessee"); that (i) such Permitted Sublease shall be in compliance with all applicable laws and governmental regulations, (ii) such Permitted Sublease shall not affect or reduce any of the obligations of Lessee hereunder and this Lease and all obligations of Lessee hereunder shall continue in full force and effect as the obligations of a principal and not the obligations of a surety, (iii) the rights of the Permitted Sublessee thereunder shall be subject and subordinate to all the terms of, and all the rights of Lessor under, this Lease, (iv) the term of any Permitted Sublease shall expire prior to the last day of the initial term of such Unit under this Lease, and (v) the insurance required to be maintained by Lessee pursuant to Section 6 hereof shall continue in full force and effect irrespective of such sublease.

(d) Lessee does hereby assign and grant a security interest to Lessor in all of the right, title and interest of Lessee in, to, and under any and all Permitted Subleases for any Unit in effect from time to time including, without limitation, all right, title and interest of Lessee in and to all rents, issues, profits, revenues, and other income of the Units and other moneys due and to become due to Lessee under, all proceeds of, and all claims for damages arising out of,

the breach of any such Permitted Sublease, the right of Lessee to terminate the same, to perform thereunder, and to compel performance of the terms thereof. Lessee covenants (i) that any and all Permitted Subleases described above shall contain a provision permitting the Lessee to assign the Permitted Sublease and a provision obligating the Lessee, upon notice from the Lessor, to immediately make payment of all monies due and to become due under or arising out of said Permitted Sublease to Lessor; (ii) that Lessee shall stamp Lessee's record copy and each and every other copy, which Lessee directly or indirectly has in its control or possession, of the Permitted Sublease, for which the rental period equals or exceeds six (6) months to show that such Permitted Subleases have been assigned to Lessor; (iii) that upon the demand of Lessor, Lessee will provide Lessor with a complete list of all Permitted Subleases then in existence setting forth in reasonable detail the terms thereof, in a manner satisfactory to Lessor; and (iv) that upon the demand of Lessor, such demand to be made only upon an Event of Default, as defined in Section 8 hereof, Lessee will specifically authorize and direct each person liable therefore to make payments of all monies due and to become due under or arising out of the Permitted Subleases directly to Lessor and upon such demand irrevocably authorizes and empowers Lessor to ask, demand, receive, receipt, and give acquittance for any and all such amounts which are to become due or payable

or remain unpaid at any time or times to Lessor by each such person under or arising out of any Permitted Sublease, to endorse any checks, drafts, or other orders for the payment of money payable to Lessee in payment therefor; and in its discretion to file any claims or take any action or proceeding either in its own name or in the name of Lessee or otherwise which Lessee may deem to be necessary or advisable in the premises.

Lessee hereby irrevocably authorizes Lessor after any such demand has been made, in its own name and in the name and on behalf of Lessee, to give notification to persons obligated under a Permitted Sublease of this Lease that payment is to be made to Lessor and hereby agrees to use its best efforts to cause to be delivered to Lessor consents of the Permitted Sublessees to this Lease.

(e) Whenever a Permitted Sublease covers other railroad cars not included as part of the Lease and the amount of any payment as rental payments (including both straight and incentive per diem), mileage charges or other rental revenues is calculated on an aggregate basis for any Unit leased thereunder, for the purposes of this Section 11 an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to the Units leased under such Sublease. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be

the number of Units leased under such Sublease and the denominator of which shall be the aggregate number of railroad cars (including the Units) at the time leased under such Sublease.

12. Purchase Option; Renewal Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than one hundred and twenty (120) days prior to the end of the term of Lease for any Unit (hereinafter referred to for the purpose of this paragraph as the "Initial Lease Term") elect to either (a) purchase any such Unit for a purchase price equal to the "Fair Market Value" of such Unit as of the end of such term, or (b) extend such term for a period of twelve (12) months (a "Renewal Term"). Any such Renewal Term will commence immediately upon the expiration of the prior Initial Term or Renewal Term and rental therefore shall be payable quarterly in arrears in an amount equal to the then Fair Market Rental Value for any such Unit. Notwithstanding any language to the contrary contained herein, Lessee will be permitted a maximum of three (3) Renewal Terms.

If Lessor and Lessee shall not agree upon a determination of the Fair Market Value or the Fair Market Rental Value for any Unit within a period of thirty (30) days after receipt of notice from Lessee as provided above, such value shall be determined by an independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a

panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 15 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

In the event the Lessee elects to purchase the Units, upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

13. Representations and Warranties as to Residual Economic Value. Lessee represents and warrants that: (i) as of the commencement of the lease term of any Unit, a reasonable estimate of the residual economic value of said Unit at the end of the total lease term thereof will be at least twenty (20%) percent of the Lessor's cost thereof (without including

in such value any increase or decrease for inflation or deflation, and after subtracting from such value any cost for removal and delivery of possession of the Unit to Lessor at the end of the lease term thereof); and (ii) as of the commencement of the lease term of any Unit, a reasonable estimate of the useful life of such Unit, will be at least twenty (20%) percent beyond the total lease term thereof.

14. Return Upon Expiration of Term. As soon as practicable after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor to one of the two Gateway Cities chosen by Lessor. For purposes of this Section 14, the "Gateway Cities" shall be: Chicago, Illinois, Memphis, Tennessee, New Orleans, Louisiana and St. Louis, Missouri.

If Lessor shall elect to abandon any Unit which has suffered a Loss or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Loss, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or its assignee, the Lessor's title in and to any such Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; provided however, that the foregoing clause shall not

in any way relieve the Lessee of its obligations pursuant to Section 9 hereof to make payments equal to the Stipulated Loss Value of any Unit experiencing a Loss while this Lease is in effect.

15. Opinion of Counsel. Prior to the Commencement Date of this Lease for any Unit, the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor, in scope and substance satisfactory to the Lessor, and its counsel, to the effect that:

(A) The Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into this Lease;

(B) This Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its respective terms; (subject to bankruptcy and other similar laws affecting creditors generally);

(C) This Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interest of the Lessor in and to the Units;

(D) No approval is required from any public regulatory body with respect to the entering into or performance of this Lease by Lessee;

(E) The entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

(F) No mortgage, deed of trust, or other lien of any nature whatsoever which so covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title, and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

15. Recording; Expenses. The Lessee will cause this Lease, and any Permitted Sublease relating thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and/or such other Federal, state or local authority with whom such Lease and/or Permitted Sublease are required to be filed. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit, and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction of the Lessor's interest in the Units, or for the purpose of carrying out the intention of this Lease; and the Lessee will promptly furnish to the Lessor



Lessee's fiscal year end, the annual audited financial statements of Lessee certified by an independent certified public accountant of recognized standing, and within sixty (60) days of Lessee's first three fiscal quarters, the unaudited quarterly financial statements of Lessee certified by the chief financial officer of Lessee.

(b) Lessee shall not directly or indirectly, without the prior written consent of Lessor (i) declare or make or incur any liability or make any distribution by way of redemption or otherwise, with respect of Lessee's capital stock; or (ii) make any distribution to ITEL Corporation by way of a management fee or otherwise; provided, however, Lessee may make the distributions contemplated (i) and (ii) above, if the aggregate sum of said distributions does not exceed 48% of the cumulative consolidated pre-tax income of Lessee, commencing as of July 1, 1977 and determined in accordance with generally accepted accounting principles consistently applied.

(c) Lessee shall not directly or indirectly without the prior written consent of Lessor guarantee or otherwise become liable contingently or otherwise, with respect of the indebtedness, dividends or other obligations of ITEL Corporation or of any subsidiary or affiliated company of ITEL Corporation, except for a subsidiary of Lessee.

18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition

or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supercedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

19. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York, provided, however, that the parties shall be entitled to all rights conferred by Section 20C of the Interstate Commerce Act.

21. Condition Precedent; Commitment Fee. Lessor shall not be required to lease any Unit hereunder after October 30, 1977 or if on the Commencement Date pertaining thereto Lessee shall have experienced, in the opinion of Lessor, a material adverse change in the prospects of Lessee.

Lessee hereby deposits with Lessor a commitment fee in the amount of \$40,000. Lessor hereby agrees to refund to

Lessee all or a portion of such commitment fee on October 30, 1977 according to the following formula:

$$\begin{array}{r} \text{Amount of Refund} = \$40,000 \times \frac{\text{Aggregate cost of all Units actually under Lease on October 30, 1977}}{\$8,000,000} \end{array}$$

IN WITNESS WHEREOF, the parties hereto have executed and caused this instrument to be executed as of the date first above written.

MANUFACTURERS HANOVER LEASING CORPORATION

By: [Signature]  
TITLE: [Title]

(CORPORATE SEAL)

Attest: [Signature]

SSI RAIL CORP.

By: [Signature]  
TITLE: VICE PRESIDENT

Exhibit A

Exhibit A to that certain Railroad Equipment Lease Agreement by and between Manufacturers Hanover Leasing Corporation and SSI Rail Corp. dated June 28, 1977.

<u>Number of Items</u>	<u>Description</u>	<u>Identifying Numbers (Both Inclusive)</u>
250	70-ton 50'6" single sheath Boxcars (AAR Mechanical Designation XM) Manufactured by FMC Corporation	MTW 4200-4299 VSO 6250-6299 SRN 5200-5299

EXHIBIT B

Exhibit B to that certain Railroad Equipment Lease Agreement by and between SSI Rail Corp. and Manufacturers Hanover Leasing Corporation dated June 28, 1977.

FMC JOB NO. \_\_\_\_\_

ORDER NUMBER                      CUSTOMER                      DATE

SSI RAIL CORP. as  
agent for Manufac-  
turers Hanover  
Leasing Corporation

\_\_\_\_\_

\_\_\_\_\_

The following 50'6" 70-ton box cars have been accepted at \_\_\_\_\_

The cars are numbered as follows:

CAR NUMBERS

CAR NUMBERS

MAKING A TOTAL OF \_\_\_\_\_ CARS (    )  
PREVIOUSLY ACCEPTED \_\_\_\_\_ CARS (    )  
TOTAL TO DATE \_\_\_\_\_ CARS (    )

I DO FURTHER CERTIFY that said cars are marked:

"PROPERTY OF AND LEASED FROM MANUFACTURERS HANOVER  
LEASING CORPORATION, SUBJECT TO AN AGREEMENT FILED  
UNDER THE INTERSTATE COMMERCE ACT, SECTION 20C."

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
SSI RAIL CORP.

EXHIBIT C

Exhibit C to that certain Railroad Equipment Lease Agreement by and between SSI Rail Corp. and Manufacturers Hanover Leasing Corporation, dated June 28, 1977.

ACCEPTANCE SUPPLEMENT

THIS ACCEPTANCE SUPPLEMENT is executed and delivered to Manufacturers Hanover Leasing Corporation by SSI Rail Corp. pursuant to and in accordance with the Railroad Equipment Lease Agreement dated June 28, 1977 between them (the, "Lease"). Terms defined in the lease shall have their defined meaning when used herein.

Supplement Date \_\_\_\_\_  
Expiration Date \_\_\_\_\_

A. The units covered by this Supplement consist of the following items:

<u>Quantity</u>	<u>Manufacturer/Model</u>	<u>Description</u>	<u>Serial #</u>	<u>Cost</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

B. As rent for said Units throughout the term of Lease, Lessee shall pay to Lessor in accordance with the terms of the Lease the sum of \$ \_\_\_\_\_, payable in 60 consecutive quarterly installments of \$ \_\_\_\_\_ each, commencing \_\_\_\_\_, 197\_\_\_\_ and payable on the same date every three months thereafter to and including \_\_\_\_\_, 19\_\_\_\_.

C. Lessee hereby: (a) confirms that said Units are of the size, design, capacity and manufacture selected by it and meet the provisions of any purchase order pursuant to which Lessor has acquired title thereto; and (b) irrevocably accepts said Units as-is, where-is for all purposes of the Lease as of the date hereof; and (c) the Units have been marked in accordance with Section 4 of the Lease.

D. The term of lease of said Units under the Lease shall commence as of the date of the Certificate of Delivery applicable to such Units and, unless earlier terminated pursuant to the provisions of the Lease shall expire as set forth in the Lease.

E. All of the provisions of the Lease are hereby incorporated by reference in this Supplement to the same extent as if fully set forth herein.

APPROVED AND AGREED to by the parties hereto as of the Commencement Date set forth above.

\_\_\_\_\_  
Witness

LESSEE: SSI RAIL CORP.

The undersigned affirms that he is duly authorized to execute and deliver this Supplement on behalf of Lessee

By: \_\_\_\_\_  
Title:

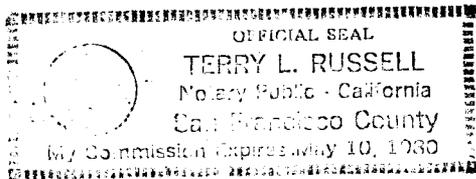
LESSOR: MANUFACTURERS HANOVER LEASING CORPORATION

By: \_\_\_\_\_  
Title:

State of California

County of San Francisco (SS)

On this 28th day of June before me personally appeared Patrick B. McManus to me known, who, being by me duly sworn, did depose and say that he resides at 10 Toyon Court, Sausalito, California that he is a Vice President of SSI Rail Corp., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

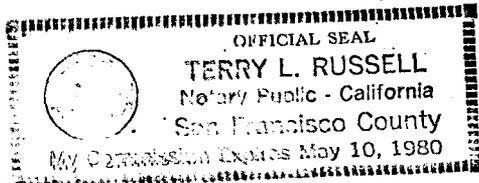


Terry L. Russell  
Notary Public

State of California

County of San Francisco (SS)

On this 28th day of June before me personally appeared Thomas G. Palmer to me known, who, being by me duly sworn, did depose and say that he resides at 1628 Chelsea Road, Palos Verdes Estates, California that he is a Vice President of Manufacturers Hanover Leasing Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.



*Terry L. Russell*  
Notary Public

SCHEDULE I

Schedule I to that certain Railroad Equipment Lease Agreement by and between Manufacturers Hanover Leasing Corporation and SSI Rail Corp. dated June 28, 1977.

<u>RENT PAYMENT DATE</u>	<u>STIPULATED LOSS VALUE (PERCENTAGE OF LESSOR'S COST)</u>
1	101.0861
2	101.7762
3	102.3939
4	102.9381
5	103.4078
6	103.8149
7	104.1584
8	104.4375
9	104.6511
10	104.8070
11	104.9043
12	104.9422
13	97.2533
14	97.1751
15	97.0402
16	96.8479
17	96.5973
18	96.2930
19	95.9342
20	95.5201
21	87.3836
22	86.8618
23	86.2878
24	85.6608
25	84.9799
26	84.2498
27	83.4698
28	82.6392
29	74.0908
30	73.1621

SCHEDULE I

<u>RENT PAYMENT DATE</u>	<u>STIPULATED LOSS VALUE (PERCENTAGE OF LESSOR'S COST)</u>
31	72.1859
32	71.1615
33	70.0884
34	68.9749
35	67.8205
36	66.6246
37	65.3865
38	64.1260
39	62.8427
40	61.5362
41	60.2062
42	58.0524
43	57.4745
44	56.0721
45	54.6448
46	53.1923
47	51.7143
48	50.2104
49	48.6801
50	47.1232
51	45.5392
52	43.9278
53	42.2885
54	40.6210
55	38.9248
56	37.1997
57	35.4450
58	33.6604
59	31.8456
60	20.0000