

ITEL

Itel Rail Corporation

55 Francisco
San Francisco, California 94133
(415) 984-4000
Telex 34234

14615

RECORDATION NO. Filed 1425

APR 3 1985 - 1 55 PM

INTERSTATE COMMERCE COMMISSION

March 14, 1985

No. 5-093A059
Date APR 3 1985
Fee \$... 20.00

FILED
APR 3 1985
HOLLYWOOD, CALIF.

Mr. James H. Bayne, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

ICC Washington, D. C.

Dear Mr. Bayne:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Rail Corporation for filing and recordation with the I.C.C., four counterparts of the following document:

Need this one

Lease Agreement dated as of January 1, 1985 between Itel Rail Corporation and Grand Trunk Western Railroad Company.

Please cross-index this lease to the Consolidated, Amended and Restated Equipment Trust Agreement dated as of January 1, 1982 among Itel Corporation, Itel Rail Corporation and First Security Bank of Utah, N.A., which was filed with the I.C.C. on September 20, 1983 and given Recordation No. 14165.

*9/24/83
C. Cantelero*

The names and addresses of the parties to the aforementioned are:

1. Itel Rail Corporation (Lessor)
55 Francisco, 5th Floor
San Francisco, California 94133
2. Grand Trunk Western Railroad (Lessee)
131 West Lafayette Blvd.
Detroit, Michigan 48226

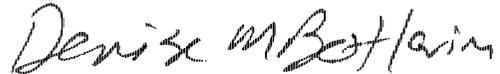
The equipment covered by this Lease is 235 70-ton Flush Deck FC flatcars bearing reporting marks DTI 90000-90234.

Also enclosed is a check in the amount of \$20.00 for the required recording fee.

Mr. James H. Bayne, Secretary
March 14, 1985
Page Two

Please stamp all counterparts of the enclosed lease with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be returned to the bearer of this document.

Sincerely,



Denise M. Bottarini
Legal Assistant

DMB/vdv/133

cc: Robert S. Clark
J. Michael Kelly, Esq.
Sam Kemp.

Interstate Commerce Commission
Washington, D.C. 20423

4/3/85

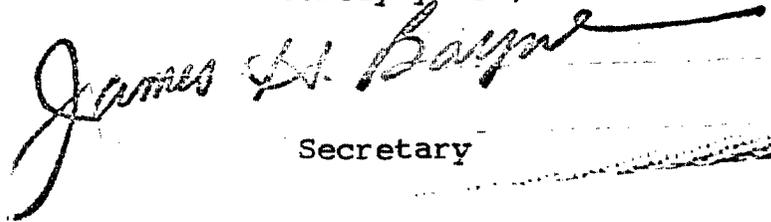
OFFICE OF THE SECRETARY

Denise M. Bottarini
Legal Assistant
Itel Rail Corporation
55 Francisco
San Francisco, Calif. 94133

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/3/85 at 1:55pm and assigned re-
recording number(s). 14615

Sincerely yours,


Secretary

Enclosure(s)

02/07/85

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LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT (the "Agreement") is made as of the 1st day of January, 1985, between ITEL RAIL CORPORATION, a Delaware corporation, 55 Francisco Street, San Francisco, California 94133, as the lessor ("Lessor") and GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation, 131 West Lafayette Blvd., Detroit, Michigan, 48226, as the lessee ("Lessee").

1. Scope of Agreement

- A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor upon the terms and conditions set forth herein a number of items of equipment of the number, type, construction and other description set forth on Equipment Schedule No. 1 attached hereto and executed by the parties concurrently herewith and any lease schedules set forth hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Equipment Schedule or Equipment Schedules executed herewith and any additional Equipment 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" and individually a "Car."
- B. It is the intent of the parties to this Agreement that Lessor 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 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 and effect until it is terminated as to all of the Cars as provided herein.
- B. The term of the Agreement with respect to each Standard Flatcar (as defined in Subsection 7.A.(iv) hereinbelow) shall commence on January 1, 1985, and shall expire as to all of the Standard Flatcars on December 31, 1986.
- C. The term of the Agreement with respect to each Modified Flatcar (as defined in Subsection 7.A.(v) hereinbelow) shall commence upon the date each Standard Flatcar is modified pursuant to Section 3.B. and shall expire as to all of the Modified Flatcars on December 31, 1990.

3. Supply Provisions

- A. Lessee hereby approves the specifications of the Cars delivered to it by Lessor. The Cars are marked with the railroad markings of Lessee in compliance with all applicable regulations. Each Car

ASSIGNED TO FIRST SECURITY BANK OF UTAH, N.A., TRUSTEE, UNDER A LEASE ASSIGNMENT DATED AS OF March 1985

LESSOR'S INTEREST ASSIGNED TO FIRST SECURITY BANK OF UTAH, N.A., WITH RESPECT TO CARS NUMBERED DTI 90000-90234

shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:01 p.m. on January 1, 1985 ("Delivery"). Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay the rent set forth in this Agreement.

- B. During the Term, Lessor shall, at its expense, modify up to one hundred forty-six (146) of the Cars to handle two (2) forty-five foot (45') intermodal trailers.- Concurrent with the modification of the Cars, Lessee shall execute a Certificate of Modification in the form of Exhibit A attached hereto. Such Certificate of Modification shall become attached to and incorporated into the Agreement. Each Car which is being modified shall be removed from the rental calculations set forth in Section 7 of the Agreement for the period such Car is en route to shop for modification through and including the earlier of either: 1) the date such Car is loaded when released from shop; or 2) the date such Car is received on-line by Lessee.
- C. Additional Cars shall be leased from Lessor by Lessee only upon the mutual agreement of the parties. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Cars with similar flatcars upon prior written notice from Lessor to Lessee; provided, however, that any such replacement shall not prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

4. Record Keeping

- A. Lessee shall, at its expense, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such duties shall include, but are not limited to: (i) preparation of appropriate Association of American Railroads ("AAR") interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the Interstate Commerce Commisison ("ICC") and any other regulatory agencies with respect to the Cars.
- B. Lessee shall perform all record keeping functions relating to the use of the Cars by Lessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of Revenues (as defined in Section 7 hereinbelow) from other railroad companies, records pertaining to maintenance and repair, and billing in accordance with the Interchange Rules adopted by the AAR Mechanical Division, Operation and Maintenance Department ("Interchange Rules"). All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by

Lessee in a form suitable for reasonable inspection by Lessor from time to time during Lessee's regular business hours.

- C. Upon Lessor's reasonable request, Lessee shall supply Lessor with telephone reports of the number of Cars in Lessee's possession or control. Lessee shall, within ten (10) days after the close of each calendar month, supply Lessor with copies of Lessee's interchange records with respect to the Cars interchanged to and from Lessee's railroad line. Upon Lessor's reasonable request, Lessee shall promptly provide Lessor with records of Lessee's car hire payables. In the event Lessee fails to provide Lessor with records of car hire payables, and as a result, a user or handling railroad refuses to pay any Revenues owed, Lessee shall, within ten (10) days after Lessor's request, pay to Lessor such unpaid Revenues. Lessor has the right to offset against Lessee's revenue sharing portion set forth in Subsection 7.C., any sums arising out of this Agreement which are owed by Lessee to Lessor but which remain unpaid.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed inspections other, than interchange inspections of, maintenance and repairs to, and servicing of, the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned by the fault of Lessee, or arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper on Lessee's railroad line. With respect to the Cars, any repairs performed by Lessee at Lessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties hereto.
- B. Lessor 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 as specified in the Interchange Rules. Lessee may make only running repairs to those parts specified in Exhibit B attached hereto to facilitate continued immediate use of each Car, but shall not otherwise make or cause to have made, any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Lessor. Lessor shall have the right to perform

certain Repairs, as hereinafter defined, to the Cars at a location on Lessee's property, or at a contract shop, which is mutually agreeable to Lessor and Lessee. Repairs ("Repairs") shall be of the type that Lessor determines Lessee would not normally perform or of the type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Repairs.

- C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's property or in Lessee's possession or control in the same manner that Lessee is responsible under the Interchange Rules for equipment not owned by Lessee on Lessee's property. Lessee shall protect against the consequences of an event of loss involving the Cars while on the Lessee's property, and against the consequences of an event of loss involving bodily injury or property damage, by obtaining insurance satisfactory to Lessor or by providing self insurance satisfactory to Lessor. Lessor understands that Lessee participates in Canadian National Railway insurance pool and agrees that such participation is satisfactory.
- D. Lessee shall be responsible for and shall pay, when due and payable, all taxes, assessments and other governmental charges levied or assessed against: i) the Cars, other than sales or use taxes, if any, on Lessor's purchase of the Cars or any transfer of Lessor's ownership interest therein; (ii) this Agreement; and (iii) Lessee's interest in the Cars, or the ownership, operation, use or leasing thereof (together with any fines, interest, penalty or late charges imposed with respect thereto), and shall comply with all federal, state and local laws requiring the filing of tax returns relating thereto, provided, however, the Lessee shall have no obligation to pay any net income taxes of Lessor or any tax, assessment or charge upon Lessor's right to engage in business.

6. Storage

As long as there is sufficient room on Lessee's railroad tracks, Lessee shall, at its expense and if deemed necessary by Lessor, store the Cars on its railroad tracks. In the event that Lessee's capacity to store any or all of the Cars on Lessee's railroad tracks is impaired at any time, then Lessee shall be responsible for the following with respect to each Car stored: (i) all reasonable transportation costs incurred to move the Cars to a storage location; (ii) all reasonable transportation costs incurred in removing the Cars from the storage location; and (iii) the actual costs incurred for the storage. If Lessor pays for any costs referred to in this Section, Lessee shall reimburse Lessor for such cost within ten (10) days from Lessee's receipt of Lessor's invoice. Lessor shall assist Lessee so as to minimize Lessee's exposure under this Section.

7. Rent

A. Definitions

- (i) "Per Diem Revenues" is defined as the total per diem revenues earned and due from other railroad companies, excluding the Grand Trunk System Railroads, for the use or handling of the Cars, including per diem, whether or not collected and received by Lessee and undiminished by any claimed abatement, reduction or offset caused by any action of Lessee. Upon any such abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (ii) "Mileage Revenues" is defined as the total mileage revenues earned and due from other railroad companies, excluding the Grand Trunk System Railroads, for the use or handling of the Cars, including mileage, whether or not collected and received by Lessee and undiminished by any claimed abatement, reduction or offset caused by any action of Lessee. Upon any such abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (iii) The "Utilization Rate" of the Standard Flatcars and the Modified Flatcars (both as defined hereinbelow) shall respectively be a fraction, the numerator of which is the aggregate number of days in each calendar quarter that Per Diem Revenues were earned on the appropriate group of Cars commencing from the Delivery, and the denominator of which is the aggregate number of days in each calendar quarter that the appropriate group of Cars is on lease to Lessee, commencing from the Delivery.
- (iv) The "Base Rental - Standard", for the Cars which are not modified pursuant to Subsection 3.B. ("Standard Flatcar(s)"), is defined as the sum equal to the Per Diem Revenues which the Standard Flatcars would have earned, in the aggregate, at a Utilization Rate of seventy percent (70%).
- (v) The "Base Rental - Modified" for the Cars which are modified pursuant to Subsection 3.B. ("Modified Flatcar(s)"), is defined as the sum equal to the Per Diem Revenues which the Modified Flatcars would have earned, in the aggregate, at a Utilization Rate of seventy-five percent (75)%.
- (vi) The terms "Standard Flatcar" and "Modified Flatcar" are used in this Section 7 in order to distinguish between those two (2) types of Cars only for the purposes of rental calculations. Whenever used herein, the term "Car" shall refer to both the Standard Flatcars and the Modified Flatcars.

- B. (i) Each Standard Flatcar delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 7.C. on January 1, 1985.
- (ii) Each Modified Flatcar modified pursuant to Subsection 3.B. shall become subject to the rental calculation under Subsection 7.C. as a Modified Flatcar upon the date such Modified Flatcar is released from shop as evidenced on the Certificate of Modification attached hereto as Exhibit A.
- C. Lessee agrees to pay the following rent to Lessor for the use of the Standard Flatcars and the Modified Flatcars:
- (i) Lessor shall receive an amount equal to one hundred percent (100%) of the Mileage Revenues earned by the Cars.
- (ii) In the event Per Diem Revenues earned by the Standard Flatcars in any calendar quarter, or applicable portion thereof, are equal to or less than the Base Rental - Standard, Lessor shall receive a sum equal to one hundred percent (100%) of the total Per Diem Revenues.
- (iii) In the event Per Diem Revenues earned by the Modified Flatcars in any calendar quarter, or applicable portion thereof, are equal to or less than the Base Rental-Modified, Lessor shall receive a sum equal to one hundred percent (100%) of the total Per Diem Revenues.
- (iv) In the event Per Diem Revenues earned by the Standard Flatcars in any calendar quarter, or applicable portion thereof, exceed the Base Rental-Standard, Lessor shall receive an amount equal to the Base Rental-Standard plus fifty percent (50%) of that portion of the Per Diem Revenues earned by the Standard Flatcars, which exceeds the Base Rental-Standard.
- (v) In the event Per Diem Revenues earned by the Modified Flatcars in any calendar quarter, or applicable portion thereof, exceed the Base Rental-Modified, Lessor shall receive an amount equal to the Base Rental-Modified plus fifty percent (50%) of that portion of the Per Diem Revenues earned by the Modified Flatcars, which exceeds the Base Rental-Modified.
- D. The calculations required in Subsection 7.C shall be made within five (5) months after the end of each calendar year ("Final Calculations"). However, to enable Lessor to meet its financial commitments, Lessee shall pay Lessor, within thirty (30) days after the end of each calendar quarter, an amount equal to one hundred percent (100%) of the Per Diem Revenues and Mileage Revenues received by Lessee during such calendar quarter. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under Subsection 7.C., Lessor shall within three (3) months after the end of each

calendar quarter, calculate on a quarterly year-to-date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

- E. If, with respect to any calendar quarter, Per Diem Revenues for either the Standard Flatcars or Modified Flatcars respectively are less than the Base Rental for such group of Cars, Lessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Cars within the appropriate group as Lessor shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by paying to Lessor an amount equal to the difference between actual Per Diem Revenues for such calendar quarter and the applicable Base Rental for such calendar quarter.
- F. (i) Lessee shall not enter into any agreement that favors loading of similar flatcars of any other party and shall provide equal off-line loading opportunities at any then existing ramp with respect to all the Cars as it does with respect to any other similar flatcars delivered to Lessee; 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.
- (ii) If Lessee violates the provisions of this Subsection 7.F. and the Utilization Rate of the Cars falls below the respective Base Rentals, as defined in Section 7., Lessee, at Lessor's option, shall: a) be liable for and remit to Lessor an amount equal to the Per Diem Revenues and Mileage Revenues which would have been generated if the Cars had been in the physical possession and use of another railroad and had travelled an average of one hundred fifty (150) miles per day for the entire period during which such Cars are on Lessee's railroad line, and Lessor may terminate as to such Cars as Lessor shall designate and the provisions of Subsection 10.B. and 10.C. shall apply; or b) at Lessor's sole option, this Agreement shall be terminated as to such Cars as Lessor shall designate and Lessee shall bear all expenses of assembling, delivering, storing, and transporting each Car to such location as designated by Lessor and the provisions of Subsection 10.B. and 10.C. shall apply.
- G. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date

car hire ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Lessee shall notify Lessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Lessee fails to notify Lessor within sixty (60) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.

- H. Any agreement between Lessee and other parties with respect to the Cars ("Third Party Agreement(s)") shall be void without Lessor's prior written approval if such Third Party Agreement affects the Per Diem Revenues and Mileage Revenues earned by the Cars, 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.
- I. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 7.

8. Possession and Use

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business as set forth in Subsection 8.C. 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 Lessor in connection with the acquisition of the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
- B. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and 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 Lessor or Lessee may in good faith and by

appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.

- C. The use of the Cars shall be limited to use by a rail common carrier or contract carrier and the Cars shall always bear the reporting marks of a rail common carrier. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. During the term of this Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.
- D. 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 arising through it, on, or with respect to the Cars, or any interest therein or in this Agreement or Schedule thereto, except as otherwise provided herein. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

9. 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 ten (10) days after the date any such payment is due;
 - (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days after notice from Lessor and demand for cure;
 - (iii) The filing by or against the Lessee of any petition or the initiation by or against the Lessee of any filing or proceeding which is not dismissed within sixty (60) days:
 - a) for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder; or
 - b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness;
 - (iv) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;
 - (v) Any action by Lessee to discontinue rail service on all or a substantial portion of its track or to abandon a substantial portion of its rail properties which would materially affect

the Lessee's ability to use the Cars or to pay rental to Lessor.

B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate this Agreement and/or may:

(i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, and/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 Lessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall, in addition, have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

10. Expiration or Early Termination

A. Expiration

Upon the expiration of this Agreement with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:

(i) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of expiration. Lessee shall, at Lessor's option, provide, with respect to any Car described on any Schedule which is either on the Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad, up to one hundred eighty (180) days free storage on its railroad tracks from the date of expiration.

At the option of Lessor, either Lessee or a contractor chosen by Lessee and approved by Lessor, such approval not to be unreasonably withheld, shall, at Lessee's expense, remark the Cars as set forth in Subsection 10.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor.

After remarking, Lessee shall, at Lessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

- (ii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car from Lessee's track to such location shall be borne by Lessor. Lessee shall bear all reasonable expenses of remarking such Cars.

B. Early Termination

Upon the early termination of this Agreement with respect to any Car, whether pursuant to Section 9 or Subsection 7.E., Subsection 7.F. hereof, Lessee shall promptly return such Car to Lessor as follows:

- (i) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of early termination. Lessee shall, at Lessor's option, provide, with respect to any Car described on any Schedule which is either on the Lessee's railroad tracks at the time of early termination or is subsequently returned to Lessee's railroad tracks, up to one hundred eighty (180) days free storage on its railroad tracks from either the date of early termination or the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of early termination, whichever date is later.

At the option of Lessor, either Lessee or a contractor chosen by Lessee and approved by Lessor, such approval not to be unreasonably withheld, shall, at Lessee's expense, remark the Cars as set forth in Subsection 10.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. After remarking, Lessee shall, at Lessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

- (ii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car from Lessee's track to such location shall be borne by Lessee for all operations on Lessee's line. Lessee shall bear all reasonable expenses of remarking such Cars.

- C.** Remarking, with respect to each Car, shall include the following:
- a) removal of existing mandatory markings of Lessee; b) complete cleaning subsequent to the removal of markings as designated by Lessor; c) application of new mandatory markings and d) any

transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

11. Indemnities

- A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN LESSEE'S POSSESSION OR CONTROL, EXCEPT WHEN THE CARS ARE BEING REPAIRED BY LESSOR OR LESSOR'S CONTRACTOR PURSUANT TO SUBSECTION 5.B. HEREOF (UNLESS SUCH REPAIR IS OCCASIONED BY THE FAULT OF LESSEE), OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO LESSEE.
- B. SUBJECT TO SUBSECTION 11.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS AGREEMENT, LESSOR SHALL DEFEND, INDEMNIFY AND HOLD LESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST LESSEE WITH RESPECT TO THE CARS, INCLUDING WITHOUT LIMITATION, THE LEASING OR RETURN OF THE CARS, USE, MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE CARS OR THE CONDITION OF THE CARS (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY LESSOR OR LESSEE).

*p. 5. A.
and
PET JPH*

12. Representations, Warranties, and Covenants

Lessee represents, warrants and covenants that:

- A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and, insofar as is material to Lessor's rights under this Agreement, has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.
- B. 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, except as provided in Section 8 hereinabove.
- C. 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 such that Lessee's ability to

perform its obligations hereunder would be materially and adversely affected.

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

13. Inspection

Lessor shall at any time during normal business hours have the right to enter any premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder.

14. 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, provided, however, that Lessee may not without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.
- B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 8 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 sale or 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 Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor 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.
- F. Lessee shall notify Lessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- G. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car.
- H. 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, or when transmitted and received by telex addressed to the president of the other party at the address set forth herein or at such other address as to which any party shall notify the other party.
- I. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.
- J. This Agreement represents the entire Agreement. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

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

ITEL RAIL CORPORATION

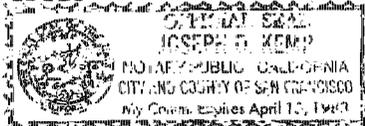
GRAND TRUNK WESTERN
RAILROAD COMPANY

By: *[Signature]*
 Title: President
 Date: March 13, 1985

By: *[Signature]*
 Title: SVP Finance
 Date: 2-18-85

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

On this 13th day of March, 1985, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of IteL Rail Corporation, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joseph D. Kemp
Notary Public


STATE OF Michigan)
) ss:
COUNTY OF Wayne)

On this 18th day of Feb, 1985, before me personally appeared P.E. Tatro, to me personally known, who being by me duly sworn says that such person is St. V. P. Finance of Grand Trunk Western Railroad Company, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. A. Brewer
Notary Public
J. A. BREWER
Notary Public, Wayne County, MI
My Commission Expires Nov. 9, 1985



EQUIPMENT SCHEDULE NO. 1

Itel Rail Corporation hereby leases the following Cars to Grand Trunk Western Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of January 1, 1985.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
FC	70-Ton Flush Deck Flatcar	DTI 90000- 90234	89'4"	N/A	N/A	N/A	235

ITEL RAIL CORPORATION

By: AP Hanger

Title: President

Date: March 13, 1985

GRAND TRUNK WESTERN
RAILROAD COMPANY

By: P. S. Intro

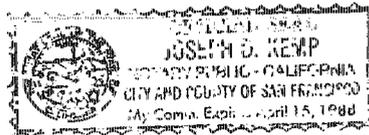
Title: Supervisor

Date: 2-18-85

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

On this 13th day of March, 1985, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of IteI Rail Corporation, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joseph D Kemp
Notary Public



STATE OF Michigan)
) ss:
COUNTY OF Wayne)

On this 18th day of Feb, 1985, before me personally appeared P.E. Tatro, to me personally known, who being by me duly sworn says that such person is St. V. P. Finance of Grand Trunk Western Railroad Company that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. A. Brewer
Notary Public

J. A. BREWER
Notary Public, Wayne County, MI
My Commission Expires Nov. 9, 1985

EXHIBIT A
CERTIFICATION OF MODIFICATION

<u>Car Number</u>	Date/Hour Shop <u>Arrival</u>	Date/Hour Shop <u>Departure</u>	<u>Car Number</u>	Date/Hour Shop <u>Arrival</u>	Date/Hour Shop <u>Departure</u>
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**GRAND TRUNK WESTERN
RAILROAD COMPANY
Authorized Representative**

EXHIBIT B

Running Repairs

Angle Cocks
Air Hose
Train Line
Operating Levers in Brackets
Sill Steps
Grab Irons
Brake Shoes
Brake Shoe Keys
Brake Connecting Pin
Brake Head Wear Plates
In-Date-Test
Air Brakes
Hand Brakes
Truck Springs

Running Repairs

Wheels
Yokes
Knuckles/pins
Slack Adjuster
Pedestal Locks
Couplers
Draft Gears
Coupler Carriers
Center Plates
Lube of Hitches
Cotter Keys
Roller Bearing Adapters
Air Hose Supports

2/21/85

EXHIBIT B

Running Repairs

Angle Cocks
Air Hose and Support
Train Line
Operating Levers in Brackets
Sill Steps
Grab Irons
Brake Shoes
Brake Beams
Brake Shoe Keys
Brake Connecting Pins
Brake Head Wear Plates
Air Brakes
Hand Brakes
Truck Springs

Running Repairs

Wheels
Knuckles/pins
Slack Adjuster
Container Pedestal Locks
Couplers
Cushion Unit*
Coupler Carriers
Center Plates
Lube of Hitches
Cotter Keys
Roller Bearing Adapters
Truck and Body Side Bearing

* Change-out of Cushion Unit only; replacement unit to be supplied by Lessor.

ITEL

Itel Rail Corporation

19 South LaSalle Street - Suite 302
Chicago, Illinois 60603
(312) 781-1880

February 22, 1985

Mr. George L. Stern
Assistant Vice President Operations
Grand Trunk Western Railroad Co.
131 West Lafayette Blvd.
Detroit, Michigan 48226

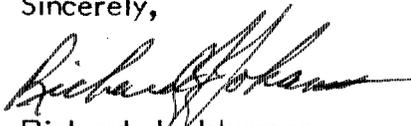
Dear Mr. Stern:

Attached to the January 1, 1985, Flatcar Lease Agreement between Itel Rail Corporation and Grand Trunk Western Railroad is a new copy of Exhibit B. Please note that the former Exhibit B is also attached. The changes made to the new Exhibit were made as a matter of practicality and allow GTW more latitude in performing running repairs without prior authorization.

I have informed Mary Sclawy of these changes and she indicated that this cover letter plus the new Exhibit B attached behind the old Exhibit B would suffice from a documentation standpoint.

If you have any questions concerning this change or if it presents a problem, please feel free to contact me directly.

Sincerely,



Richard J. Johannes
Marketing Manager

RJJ/lw
Attachment