

No. 5-246A035

14782

Date ... SEP 3 1985

RECORDATION NO. 9924-E

Fee \$ 20.00

SEP 3 1985 1 25 PM

ITEL

ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION
IteI Rail Corporation

August 19, 1985

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

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

Dear Mr. Bayne:

On behalf of IteI Rail Corporation, I submit for filing and recording, under 49 U.S.C. §11303(a) and the regulations promulgated thereunder, the enclosed four executed counterparts of the following document:

New Number

Sublease Agreement dated July 17, 1985 between IteI Rail Corporation and the Kansas City Southern Railway Company.

This sublease should be cross-indexed to the lease between Providence and Worcester Co. and Warwick Railway Corp., dated April 24, 1980 and filed with the I.C.C. under Recordation No. 9924-E on October 17, 1980.

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

1. IteI Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133
2. Kansas City Southern Railway Company (Lessee)
114 West 11th Street
Kansas City, Missouri 64105

The equipment covered by this sublease is two hundred (200) general purpose XM boxcars bearing reporting marks ^{among the series} KCS 756008 through and including 757993 (N.S.).

Enclosed is a check for \$20.00 to cover the required filing fees and cross-indexing fees for the Lease.

Once the filing has been made, please return to the bearer of this document the stamped counterpart of the documents not required for filing purposes, together with the receipt, and the letter from the I.C.C. acknowledging the filings.

Very truly yours,

Denise M. Bottarini

Denise M. Bottarini
Senior Legal Assistant

MOTOR OPERATING UNIT
SEP 3 1 24 PM '85
ICC OFFICE OF THE SECRETARY

DMB/csh
Enclosures

cc: Howard Chabner
Robert Clark
Virginia Hanger
J. Michael Kelly

Counterpart - John Hunsicker

Interstate Commerce Commission
Washington, D.C. 20423

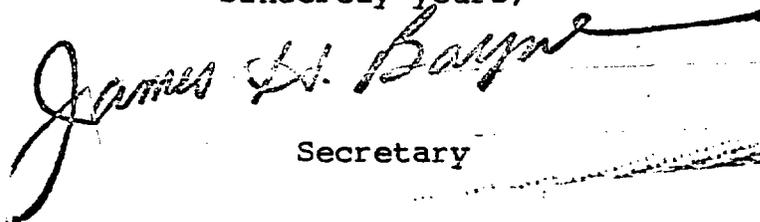
OFFICE OF THE SECRETARY

Denise M. Bottarini
IteI Rail Corporation
55 Francisco, CA. 94133

Dear Ms. Bottarini

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9-3-85 at 1:25 PM and assigned re-
recording number (s). 14782

Sincerely yours,


Secretary

Enclosure(s)

06/25/85

14782

RECORDED & INDEXED FILE 148

SEP 3 1985 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the "Sublease") is made as of this 17th day of July, 1985, between ITEL RAIL CORPORATION, a Delaware corporation, 550 Francisco Street, San Francisco, California 94133, as the Sublessor ("Sublessor") and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Delaware corporation, 114 West 11th Street, Kansas City, Missouri 64105, as the Sublessee ("Sublessee").

1. Scope of Sublease

- A. Sublessor agrees to lease to Sublessee, and Sublessee agrees to lease from Sublessor upon the terms and conditions set forth herein, a number of items of equipment of the number, type, construction and other description set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Sublease. 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 Sublease. 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 Sublease that Sublessor shall at all times be and remain the sublessor of all Cars. Sublessee 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 Sublease shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Sublease with respect to each Car described on each Schedule shall commence at 12:01 a.m. on the date and at the location that such Car is remarked pursuant to Subsection 3.A., and shall expire as to all of the Cars described on any given Schedule, three (3) years from the date on which the first Car on such Schedule was remarked (the "Initial Term").
- B. If this Sublease has not been terminated early and no unremedied default has occurred pursuant to Section 8, the Sublease shall automatically be extended for not more than three (3) consecutive periods of twelve (12) months each (each such twelve month period

constituting an "Extended Term") with respect to all of the Cars described on each Schedule, provided, however, that Sublessor or Sublessee may terminate this Sublease at the end of the Initial Term or any Extended Term as to all, but not fewer than all, of the Cars on the Schedules by written notice delivered to the other not less than six (6) months prior to the end of the Initial Term or any Extended Term.

3. Supply Provisions

- A. Sublessor shall, at its expense, remark the Cars with the railroad markings of Sublessee in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Sublease at 12:01 a.m. on the date and at the location such Car is remarked ("Delivery"). After the Cars have been remarked, the Cars shall be moved to Sublessee's railroad line at no cost to Sublessee. Sublessor will use its best efforts to deliver each Car to Sublessee within ninety (90) days after the final execution of the Sublease. Sublessor warrants that, upon Delivery, each Car shall meet or exceed specifications for interchange service as defined in the Field Manual of the Association of American Railroads ("AAR") Interchange Rules and shall be in acceptable condition for Class A boxcar loading. Notwithstanding that Sublessee may not have immediate physical possession of the Cars leased hereunder, Sublessee agrees to pay the rent set forth in Section 6 of this Sublease. For the purposes hereof and of Section 6, the term "Initial Loading" as to each Car, shall be the earlier of (1) the date such Car first earns revenue after the Delivery of such Car, provided, however, in the event that Sublessee has not properly registered the Cars in the Universal Machine Language Equipment Register ("UMLER"), the date of Initial Loading shall be the date the Car is first loaded with freight after Delivery, or (2) the thirty-first (31st) day after such Car is interchanged to Sublessee. During the Initial Term and any Extended Terms, Sublessee shall not remove its railroad reporting marks from the Cars without the prior written consent of Sublessor.
- B. Additional Cars shall be leased from Sublessor by Sublessee only upon the mutual agreement of the Sublessor and Sublessee. During the term of this Sublease, Sublessor may, at its expense and only with Sublessee's written approval, replace any or all of the Cars with boxcars of equivalent type, dimension, length, height, door type and quality upon prior written notice from Sublessor to Sublessee; provided, however, Sublessee shall not unreasonably withhold its approval with respect to the replacement of any Car; and provided further, that any such replacement shall not prevent or prohibit Sublessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

4. Record Keeping

- A. Sublessee shall, at its expense and with Sublessor's assistance, 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 Sublease. Such duties shall include, but are not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and UMLER"; and (iii) preparation of any reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and any other regulatory agencies with respect to the Cars. Sublessee shall register each Car in UMLER in such a manner that Sublessor, or its agent, is allowed access to any required information with regard to each Car.
- B. Sublessee shall perform all record keeping functions relating to the use of the Cars by Sublessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of revenues from other railroad companies, record keeping associated with maintenance and repair, and billing in accordance with the Interchange Rules. All record keeping performed by Sublessee hereunder and all records of payments, charges and correspondence related to the Cars shall be maintained by Sublessee in a form suitable for reasonable inspection by Sublessor from time to time during Sublessee's regular business hours. Upon Sublessor's reasonable request, Sublessee shall supply Sublessor with telephone reports of the number of Cars in Sublessee's possession or control.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Sublessor shall, at its expense, perform or have performed all 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 AAR Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Sublessee's expense in the event it was occasioned by the fault of Sublessee, or arises in those instances in which the Interchange Rules would assign responsibility to Sublessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Sublessee shall, at its expense, inspect all Cars interchanged to Sublessee to insure that such Cars are in good working order and condition and Sublessee shall be liable to Sublessor for any repairs required for damage not noted at the time of interchange which should have been noted at the time of interchange as provided in the applicable AAR Interchange Rules. Sublessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper on Sublessee's railroad line. Sublessor recognizes that the Cars will undergo normal wear and tear during the Initial Term and any Extended Terms.

- B. Sublessor 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. Sublessee may only make running repairs to those parts of the Cars specified in Exhibit A, attached hereto, to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Sublessor's prior written consent. Sublessee shall be liable to Sublessor 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 Sublessor. Sublessor shall have the right to perform certain Repairs, as hereinafter defined, to the Cars at an independent repair facility. Repairs ("Repairs") shall be of the type that Sublessor determines Sublessee would not normally perform or of the type that Sublessor determines would normally precipitate movement of such Cars to a repair facility. Sublessor shall notify Sublessee at least twenty-four (24) hours in advance of performing such Repairs.
- C. As long as this Sublease shall remain in effect, Sublessee shall be responsible for the Cars: (i) while in Sublessee's possession or control; and (ii) in the same manner that Sublessee is responsible under the Interchange Rules for similar equipment not owned by Sublessee. Sublessee shall, at all times while this Sublease is in effect, self-insure the Cars against property damage and public liability in the manner and to the extent such risks are prudently and customarily insured against by railroad companies on or in respect of similar equipment, and in any event affording no less protection than Sublessee provides with respect to similar equipment owned by it.
- E. Sublessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify Sublessor and its successors against taxes, fees, levies, impost, duties or withholdings of any nature together with penalties, fines or interest thereon imposed on, incurred by or asserted against: (1) the Cars (2) the lease, sublease or delivery of the Cars (3) revenues earned by the Cars, including but not limited to mileage charges and/or car hire revenues, during the Initial Term or any Extended Term of this Sublease, except taxes on income imposed on Sublessor while Cars are on Sublessee's lines. Sublessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars. Sublessee's obligations under this Section are limited to amounts directly related to possession and use of the Cars.
- E. SUBLESSOR SHALL INDEMNIFY AND HOLD SUBLESSEE HARMLESS AGAINST ANY AND ALL EXPENSE WHICH IS DUE SOLELY TO MANUFACTURING DEFECTS.

6. Rent

- A. Sublessor shall receive all revenues earned by each Car prior to its Initial Loading. Sublessee shall pay Fixed Rent for each Car under Subsection 6.B. beginning upon the Initial Loading of such Car.
- B. For the Cars listed on Equipment Schedule No. 1, the fixed rent ("Fixed Rent") shall be as set forth in Section No. 1 of Exhibit B, attached hereto.
- C. Within ten (10) days following each calendar month during the Initial Term and each Extended Term Sublessee shall submit to Sublessor written verification of the total Fixed Rent for the Cars Sublessee owes Sublessor for such Month ("Monthly Report"). Upon Sublessor's receipt of each Monthly Report, such Fixed Rent shall be due and payable and Sublessor shall be hereby authorized by Sublessee to initiate a draft against Sublessee's account for such Fixed Rent.
- D. Any Car which remains in a repair facility for repairs in excess of thirty (30) days shall be removed from the rental calculations of this Sublease retroactive to the first (1st) day after such Car enters such repair facility through and including the date such Car is released from the repair facility, provided, however, that (1) any Car which is damaged by Sublessee, and (2) any Car which is repaired by Sublessee shall not be removed from the rental calculation of this Sublease while repairs are being made to such Car.
- E. Sublessee shall submit to Sublessor a monthly report in complete AAR format for all sums due to Sublessee from Sublessor for such Month with respect to the maintenance of the Cars. Such report shall include all repair charges received by Sublessee during the previous month. Sublessor shall pay to Sublessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly report and maintenance bill.
- F. 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 Sublease on the date car hire for such Car ceased as set forth in the aforementioned

Rules 7 and 8. Sublessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Sublessor to Sublessee. Sublessor shall instruct Sublessee as to the disposition of damaged Cars within a reasonable time and in no event more than five (5) working days from Sublessee's request.

- H. If any Car, while in the possession of Sublessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Sublessee shall notify Sublessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Sublessee fails to so notify Sublessor within sixty (60) days of the Damage Date, Sublessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Sublessee has notified Sublessor of the damage pursuant to this Subsection, Sublessee shall remit to Sublessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Sublessor.
- I. Sublessor and Sublessee 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 6.

7. Possession and Use

- A. So long as Sublessee shall not be in default under this Sublease, Sublessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Sublease and in the manner and to the extent the Cars are customarily used in the railroad freight business as set forth in Subsection 7.C. However, Sublessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Sublessor in connection with the acquisition of the Cars which are the subject of this Sublease. Accordingly, following notice to Sublessee 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 Sublease), 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, provided, however, that such secured party or owner shall not be entitled to repossess such Cars if such repossession is primarily for the purpose of subleasing the Cars to any other entity at a higher rent than the total Fixed Rent.
- B. Sublessee agrees that to the extent it has physical possession and can control the 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 Sublessor or Sublessee 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 and the Cars shall always bear the reporting marks of a rail common carrier. During the term of this Sublease, the Cars shall at all times be registered in the Official Railway Equipment Register and UMLER.
- D. Sublessee will not directly or indirectly create, incur, assume 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 Sublease or Schedule thereto, except those created for the benefit of Sublessor or any owner or secured party referred to in Subsection 7.A. hereinabove. Sublessee 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.

8. Default

- A. The occurrence of any of the following events shall be an event of default:
 - (i) The nonpayment by either party of any sum required herein to be paid by such party within ten (10) days after the date on which such party receives notification from the other party that such payment is due;
 - (ii) The breach by Sublessee/Sublessor of any other term, covenant, or condition of this Sublease, which is not cured within ten (10) days after receipt of notice or awareness of such breach;
 - (iii) The filing by or against the Sublessee of any petition or the initiation by or against the Sublessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of the Sublessee 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 Sublessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which would materially affect Sublessee's ability to use the Cars;

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

(i) Proceed by any lawful means to enforce performance by Sublessee of this Sublease or to recover damages for a breach thereof, and/or

(ii) By notice in writing to Sublessee, terminate Sublessee's right of possession and use of the Cars, whereupon all right and interest of Sublessee in the Cars shall terminate; and thereupon Sublessee shall, if directed by Sublessor, unload the Cars within a reasonable time from such direction and deliver the Cars within thirty (30) days thereafter at an interchange point or points on Sublessee's lines designated by Sublessor and Sublessor shall henceforth hold, possess and enjoy the same free from any right of Sublessee. Sublessor shall, in addition, have the right to recover from Sublessee any and all rental amounts which under the terms of this Sublease may then be due or which may have accrued to that date, together with Sublessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

C. Upon the occurrence of any event of default hereunder by Sublessor, without limiting Sublessee's rights and remedies otherwise provided by law which shall be available to Sublessee in addition to the following rights and remedies and Sublessee in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Sublessee in enforcing its rights and remedies hereunder, Sublessee may, at its option, terminate this Sublease and/or may proceed by any lawful means to enforce performance by Sublessor of this Sublease or to recover damages for a breach thereof.

9. Expiration or Early Termination

A. Expiration

Upon the expiration of this Sublease with respect to any Car, Sublessee shall promptly return such Car to Sublessor as follows:

(i) If some or all of the Cars are to be delivered to Sublessor at a location or locations on Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs

incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of expiration. Sublessee shall, at Sublessor's option, provide, with respect to any Car described on each Schedule which is either on the Sublessee's railroad tracks at the time of expiration or is subsequently returned to Sublessee's railroad tracks, up to sixty (60) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of expiration, whichever date is later.

- (ii) Sublessee shall, at its expense and to Sublessor's specifications, remark the Cars as set forth in Subsection 9.C. of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor, provided, however, Sublessor shall notify Sublessee as to the new reporting marks to be placed on the Cars before the end of the sixty (60) day storage period provided for in Subsection 9.A.(i). After remarking, Sublessee shall, at Sublessor's option, use its best efforts to load the Cars with freight on Sublessee's lines and deliver them to a connecting carrier for shipment.
- (iii) If some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Sublessor. Sublessee shall bear the expense of remarking such Cars.

B. Early Termination

- (i) Upon the early termination of this Sublease with respect to any Car due to the occurrence of any event of default by Sublessee, Sublessee shall promptly return such Car to Sublessor as follows:
 - (a) If some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of early termination. Sublessee shall, at Sublessor's option, provide, with respect to any Car described on any Schedule which is either on the Sublessee's railroad tracks at the time of early termination or is subsequently returned to Sublessee's railroad tracks, up to one hundred twenty (120) 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 Sublessee's railroad line subsequent to the time of early termination, whichever date is later.

- (b) Sublessee shall, at its expense and to Sublessor's specifications, remark the Cars as set forth in Subsection 9.C. of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor, provided, however, Sublessor shall notify Sublessee as to the new reporting marks to be placed on the Cars before the end of the one hundred twenty (120) day storage period provided for in Subsection 9.B.(i)(a). After remarking, Sublessee shall, at Sublessor's option, use its best efforts to load the Cars with freight on Sublessee's lines and deliver them to a connecting carrier for shipment.
 - (c) If some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Sublessee. Sublessee shall bear the expense of remarking such Cars.
- (ii) Upon the early termination of this Sublease with respect to any Car due to the occurrence of any event of default by Sublessor, Sublessee shall promptly return such Car to Sublessor as follows:
- (a) If some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessor shall be responsible for any transportation costs incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of early termination. Sublessee shall, at Sublessor's option, provide, with respect to any Car described on each Schedule which is either on the Sublessee's railroad tracks at the time of early termination or is subsequently returned to Sublessee's railroad tracks, up to sixty (60) 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 Sublessee's railroad line subsequent to the time of early termination, whichever date is later.
 - (b) At the option of Sublessor, either Sublessee or a contractor chosen by Sublessor shall, at Sublessor's expense, remark the Cars as set forth in Subsection 9.C. of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor, provided, however, Sublessor shall notify Sublessee as to the new reporting marks to be placed on the Cars before the end of the sixty (60) day storage period provided for in Subsection 9.B.(ii)(a). After remarking, Sublessee shall, at its option, use its best efforts to load the

Cars with freight on its lines and deliver them to a connecting carrier for shipment. For each Car which is not loaded by Sublessee, Sublessee shall, at Sublessee's expense and immediately after such Car is remarked as set forth in this Subsection, deliver such Car to any interchange point designated by Sublessor.

(c) If some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Sublessor. Sublessor shall bear the expense of remarking such Cars.

C. Remarking, with respect to each Car, shall include the following: a) removal of existing mandatory markings and all company logos of Sublessee; b) complete cleaning of the area where new marks are to be placed subsequent to the removal of markings and company logos as designated by Sublessor; c) application of new mandatory markings and company logos; 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.

10. Indemnities

A. SUBLESSEE SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF SUBLESSEE, OR ARISING OUT OF SUBLESSEE'S POSSESSION OR CONTROL OF THE CARS, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO SUBLESSEE.

B. SUBJECT TO SUBSECTION 10.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH SUBLESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS SUBLEASE, SUBLESSOR SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST SUBLESSEE 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 SUBLESSOR OR SUBLESSEE).

11. Representations, Warranties, and Covenants

Sublessee and Sublessor represent, warrant and covenant, each with respect to itself that:

- A. Each 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 Sublessor's rights under this Sublease, 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 Sublease.
- B. The entering into and performance of this Sublease will not violate any judgment, order, law or regulation applicable to Sublessee, 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 Sublessee or on the Cars pursuant to any instrument.
- C. There is no action or proceeding pending or threatened against it 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 Sublessee such that Sublessee's ability to perform its obligations hereunder would be materially and adversely affected.
- D. There is no fact which it has not disclosed to the other party in writing, nor is it a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as it can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of its properties or the ability of it to perform its obligation under this Sublease.

12. Inspection

Sublessor shall have the right, upon forty-eight (48) hours prior notice to Sublessee, to enter the premises where the Cars may be located at any time during normal business hours for the purpose of inspecting and examining the Cars to ensure Sublessee's compliance with its obligations hereunder. Sublessor agrees to follow appropriate procedure when inspecting and examining the Cars.

13. Miscellaneous

- A. This Sublease 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 Sublessee may not without the prior written consent of Sublessor, assign this Sublease 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. Sublessor's consent to a sublease of the Cars shall not be unreasonably withheld, provided that Sublessee shall remain primarily liable for all of its obligations under this Sublease and any such sublease shall be in substantially the same form as this Sublease.

- B. Both parties agree to execute the documents appropriate to this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Sublessor 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 Sublease and Schedules hereto and to confirm the subordination provisions contained in Section 7 of this Sublease.
- C. It is expressly understood and agreed by the parties hereto that this Sublease 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 Sublessee any right, title or interest in the Cars, except as a Sublessee only.
- D. No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power or remedy available to such party nor shall any waiver or indulgence by such party 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. Sublessee shall notify Sublessor 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.
- F. Each party shall also notify the other in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car.
- G. All notices hereunder shall be in writing and shall be deemed given 1) when delivered personally or 2) when received in the United States mail, postage prepaid, certified or registered, or 3) when transmitted and received by telex, addressed to the president of the other party or addressed to the individual designated in writing by the other party at the address set forth herein or at such other address as to which any party shall notify the other party.
- H. The obligations and liabilities of Sublessor and Sublessee hereunder shall survive the expiration or early termination of this Sublease.

- I. This Sublease represents the entire Sublease. This Sublease 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 Sublease as of the date first above written.

ITEL RAIL CORPORATION

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY

By: *D. Hayes*

By: *W. N. Deane, Jr.* *J.P.N.*

Title: *President*

Title: *VPO*

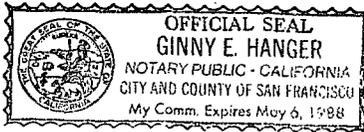
Date: *July 24, 1985*

Date: *7/16/85*

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

On this 24th day of July, 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 Sublease 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.

GINNY E. HANGER
Notary Public



STATE OF Missouri)
) ss:
COUNTY OF Jackson)

On this 17th day of July, 1985, before me personally appeared W. N. DeKamper IV, to me personally known, who being by me duly sworn says that such person is Vice Pres - Operations of The Kansas City Southern Railway Company that the foregoing Sublease 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.

G. B. NIEDERMEYER
Notary Public - State of Missouri
Commissioned in Jackson County
My Commission Expires May 29, 1987

G. B. Niedermeier
Notary Public

EQUIPMENT SCHEDULE NO. 1
(Continued)

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
.XM	General Purpose Boxcar, 100-ton Plate C, Nailable Steel Floors	KCS 757675, 757683, 757691, 757705, 757713, 757721, 757730, 757748, 757756, 757764, 757772, 757781, 757799, 757802, 757811, 757829, 757837, 757845, 757853, 757861, 757870, 757888, 757896, 757900, 757918, 757926, 757934, 757942, 757951, 757969, 757977, 757985, 757993	60' 10"	9' 6"	11' 0"	12' Sliding	

ITEL RAIL CORPORATION

By: AD Hayes

Title: President

Date: July 24, 1985

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By: N. N. Deamus, JR *G.R.V.*

Title: VPO

Date: 7/16/85

EQUIPMENT SCHEDULE NO. 1

Itel Rail Corporation hereby subleases the following Cars to The Kansas City Southern Railway Company subject to the terms and conditions of that certain Sublease Agreement dated as of July 17, 1985, 1985.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	General Purpose Boxcar, 100-ton Plate C, Nailable Steel Floors	KCS 756008, 756016, 756024, 756032, 756041, 756059, 756067, 756075, 756083, 756091, 756105, 756113, 756121, 756130, 756148, 756156, 756164, 756172, 756181, 756199, 756202, 756211, 756229, 756237, 756245, 756253, 756261, 756270, 756288, 756296, 756300, 756318, 756326, 756334, 756342, 756351, 756369, 756377,	60' 10"	9' 6"	11' 0"	12' Sliding	200

EQUIPMENT SCHEDULE NO. 1

(Continued)

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	General Purpose Boxcar, 100-ton Plate C, Nailable Steel Floors	KCS 756385, 756393, 756407, 756415, 756423, 756431, 756440, 756458, 756466, 756474, 756482, 756491, 756504, 756512, 756521, 756539, 756547, 756555, 756563, 756571, 756580, 756598, 756601, 756610, 756628, 756636, 756644, 756652, 756661, 756679, 756687, 756695, 756709, 756717, 756725, 756733, 756741, 756750, 756768, 756776, 756784, 756792, 756806,	60' 10"	9' 6"	11' 0"	12' Sliding	

EQUIPMENT SCHEDULE NO. 1

(Continued)

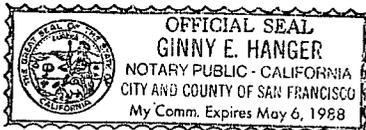
A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	General Purpose Boxcar, 100-ton Plate C, Nailable Steel Floors	KCS 756814, 756822, 756831, 756849, 756857, 756865, 756873, 756881, 756890, 756903, 756911, 756920, 756938, 756946, 756954, 756962, 756971, 756989, 756997, 757004, 757012, 757021, 757039, 757047, 757055, 757063, 757071, 757080, 757098, 757101, 757110, 757128, 757136, 757144, 757152, 757161, 757179, 757187, 757195, 757209, 757217, 757225, 757233,	60' 10"	9' 6"	11' 0"	12' Sliding	

EQUIPMENT SCHEDULE NO. 1
(Continued)

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	General Purpose Boxcar, 100-ton Plate C, Nailable Steel Floors	KCS 757241, 757250, 757268, 757276, 757284, 757292, 757306, 757314, 757322, 757331, 757349, 757357, 757365, 757373, 757381, 757390, 757403, 757411, 757420, 757438, 757446, 757454, 757462, 757471, 757489, 757497, 757501, 757519, 757527, 757535, 757543, 757551, 757560, 757578, 757586, 757594, 757608, 757616, 757624, 757632, 757641, 757659, 757667,	60' 10"	9' 6"	11' 0"	12' Sliding	

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

On this 24th day of July, 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 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.



Ginny E. Hanger
Notary Public

STATE OF Missouri)
) ss:
COUNTY OF Jackson)

On this 17th day of July, 1985, before me personally appeared W. H. Derameck II, to me personally known, who being by me duly sworn says that such person is Vice Pres - Operations of The Kansas City Southern Railway 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.

G. B. NIEDERMEYER
Notary Public - State of Missouri
Commissioned In Jackson County
My Commission Expires May 29, 1987

G. B. Niedermeyer
Notary Public

EXHIBIT A

<u>Running Repairs</u>	<u>Running Repairs Continued</u>
Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers in Brackets	Slack Adjuster
Sill Steps	Pedestal Locks
Grab Irons	Couplers
Brake Shoes	Draft Gears
Brake Shoe Keys	Coupler Carriers
Brake Connecting Pin	Center Plates
Brake Head Wear Plates	Lube of Hitches
In-Date-Test	Cotter Keys
Air Brakes	Roller Bearing Adapters
Hand Brakes	Air Hose Supports
Brake Beams and Levers	
Truck Springs	
Door Hardware	