

ITEL

RECORDATION NO. 13073

APR 30 1981-10 50 AM

INTERSTATE COMMERCE COMMISSION

Rail Division

Two Embarcadero Center
San Francisco, California 94111
(415) 955-9090
Telex 34234

1-120A052

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APR 30 10 43 AM '81
I.C.C.
FEE OPERATION BR.

RECORDATION NO. Filed 1425

APR 30 1981-10 50 AM
April 28, 1981
INTERSTATE COMMERCE COMMISSION

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
Washington, DC 20423

No. APR 30 1981
Date.....
Fee \$ 60.00
2.41
ICC Washington, D. C.

Dear Ms. Mergenovich:

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 Corporation, Rail Division, for filing and recordation, four (4) counterparts of the following document:

New Member

Car Lease Agreement, dated as of April 22, 1981, between ITEL Corporation, Rail Division, and Green Bay and Western Railroad Company (the "Lease").

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

1. ITEL Corporation
Rail Division
Two Embarcadero Center
San Francisco, CA 94111
2. Green Bay and Western Railroad Company
2155 Hutson Road
Green Bay, WI 54306

NOTE cross indexing
→

Please cross-index the above Lease with the following document, which was filed under Recordation No. 9932 on December 22, 1978 at 10:00 A.M.

Equipment Trust Agreement, dated November 1, 1978 between Citibank, N.A. as Trustee, and ITEL Corporation

The Equipment covered by the Lease is one hundred ninety eight (198) General Purpose Boxcars (A.A.R. mechanical designation XM, 50'6" in length) bearing the reporting marks GBW 8000 through and including GBW 8197.

Car Lease Agreement - James Batley

Ms. Agatha Megenovich
April 28, 1981
Page Two

Enclosed also is a check for \$60.00 for the required recordation fee (\$50.00) and cross-indexing (\$10.00) fee.

Please stamp all counterparts of the enclosed document 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 delivered to the bearer of this letter.

Sincerely,


Patricia Salas Pineda
Counsel

PSP:sc

enclosures

cc: Michael Walsh, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10020

Jim Shea
Senior Trust Officer
Citibank, N.A., Trustee
7 Hanover Square
New York, New York 10004

Phillip Jackson, Esq.
Shearman & Sterling
53 Wall Street
New York, New York 10005

Margaret MacKenzie
Itel Corporation

Interstate Commerce Commission
Washington, D.C. 20423

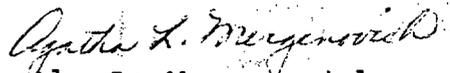
OFFICE OF THE SECRETARY

Patricia Salas Pineda
Itel Corporation-Rail Div.
Two Embarcadero Center
San Francisco, California 94111

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/30/81 at 10:50AM, and assigned re-
recording number(s). 10373

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

APR 30 1981-10 20 AM

INTERSTATE COMMERCE COMMISSION

L-0153
4/24/81**LEASE AGREEMENT**

This Lease Agreement (the "Agreement") made as of this 22nd day of April, 1981, between ITEL CORPORATION, RAIL DIVISION, a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111, as the lessor ("Lessor"), and GREEN BAY AND WESTERN RAILROAD COMPANY, a Wisconsin corporation, 2155 Hutson Road, Green Bay, Wisconsin 54306, as the lessee ("Lessee").

I. Scope of Agreement

- A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from the Lessor upon the terms and conditions set forth herein, a number of items of equipment of the number, type, construction and other description as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars" and each individual scheduled item of equipment is hereinafter called 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 it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Agreement with respect to each Car described on each Schedule shall commence at 12:00 P.M. on the date and at the location that such Car is remarked, pursuant to Section 3.A., and shall expire as to all the Cars described on each Schedule, thirteen (13) years after the day on which the first Car described on such Schedule was so remarked (the "Initial Term").
- B. If this Agreement has not been earlier terminated and no default has occurred, which is continuing, the Agreement shall automatically be extended for not more than five consecutive periods of twelve (12) months each (the "Extended Term") with respect to all of the Cars described on each Schedule, provided however, that Lessor or Lessee may terminate this Agreement on or after the Initial Term as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to the other not less than twelve (12) months prior to the end of the Initial Term or any Extended Terms.

3. Supply Provisions

- A.** Lessee hereby approves the specifications for the Cars delivered to it by Lessor. Lessor shall, at its own expense, remark the Cars with the railroad markings of Lessee in compliance with all applicable regulations. The Cars shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:00 P.M. on the date each Car is remarked. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after remarking as is consistent with mutual convenience and economy. 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. To move the Cars to Lessee's railroad line and to ensure optimal use of the Cars after the Initial Loading as hereinafter defined, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to issue movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules. If Lessor incurs expenses in having other railroads move Cars in accordance with this Section, except for any expenses incurred in the initial delivery of such Cars to Lessee's railroad line pursuant to this Section, Lessee shall reimburse Lessor for such expenses out of revenues earned by Lessee pursuant to Subsections 6E(iii) and 6E(iv). For the purposes hereof, the term "Initial Loading" shall be the earlier to occur of either the first loading of freight for each Car on Lessee's railroad line or the thirty-first (31st) day after each Car is delivered pursuant to this Section.
- B.** Lessee shall give preference to Lessor by loading the Cars leased from Lessor prior to loading substantially similar cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.
- C.** Lessee agrees that so long as it shall have on lease any Cars from Lessor, it shall not lease freight cars from any other party until it has received all of the Cars on the Schedule or Schedules. Additional Cars shall be leased from Lessor by Lessee only upon the mutual agreement of the parties. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to manufacturers' delivery schedules, financing satisfactory to Lessor and the mutual acknowledgement of the parties that the addition of such Cars is not likely to reduce the Utilization Rate (as defined in Section 6) of all Cars on lease to Lessee to less than the Base Rental (as defined in Section 6) in any calendar quarter.

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 matters shall include, but are not limited to, the preparation of the following documents: (i) appropriate 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) such reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or 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, maintenance and repair, and billing in accordance with AAR railroad interchange agreements and rules. All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence relating 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 regular business hours. Lessee shall supply Lessor with copies of such reports, including daily telephone reports, regarding the number of Cars on Lessee's tracks and the use of the Cars by Lessee on its railroad line as Lessor may reasonably request.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all 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, unless such repair, maintenance or servicing was occasioned by the fault of Lessee, or arises in those instances in which the AAR Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessee shall inspect all Cars interchanged to it 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.
- B. Upon request of Lessor, Lessee shall, at Lessor's expense, perform any necessary maintenance, service or repairs to Cars on Lessee's railroad tracks. Lessor shall make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Lessor's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be with and remain with Lessor.
- C. As long as this Agreement shall remain in effect, Lessee shall be responsible for the Cars (i) while in Lessee's possession or control, and (ii) in the same manner that Lessee is responsible under AAR Interchange Rules

for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained (a) property insurance in respect of the Cars at the time subject hereto, provided, however, that the Lessee may self-insure such Cars to the extent it self-insures equipment similar to the Cars and to the extent such self-insurance is consistent with prudent industry practice, and (b) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice, provided, however, that Lessee may self-insure against such liability to the extent such self-insurance is consistent with prudent industry practice, but in any event at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it. Lessee shall furnish Lessor concurrently with the execution hereof, and thereafter at intervals of not more than twelve (12) calendar months, with certificates of insurance with respect to the insurance required as aforesaid. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional named insured on the public liability insurance with respect to third party personal injury and property damage, and shall also list Lessor and any assignee of Lessor as loss-payees on the property insurance. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. Upon receipt of such notification, Lessor and/or its assignee may, at its option, re-evaluate the insurance coverage provided by Lessee, and request additional coverage as deemed necessary.

- D. Lessor agrees to reimburse Lessee for all taxes paid by Lessee resulting from ad valorem tax assessments on the Cars and on the lease or delivery thereof which may be levied or assessed during the Initial Term or any Extended Terms of this Agreement, except taxes on Lessee's income or gross receipts, lease rental taxes or sales/use tax imposed on per diem or mileage payments. Lessor shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. Lessor and Lessee will comply with all state and local laws, rules or regulations requiring filing of ad valorem tax returns on the Cars. Lessor shall review all applicable tax returns prior to filing.
- E. After January 1, 1983 and provided that this Agreement has not been earlier terminated, Lessor will repaint or cause to be repainted, at no cost to Lessee, the Cars with such railroad markings and/or other insignia, as may be reasonably requested by Lessee. Such painting and remarking shall comply with all applicable regulations.

6. Lease Rental

- A. Lessee shall be responsible for collecting and receiving all payments due from other railroad companies for the use or handling of the Cars, including but not limited to, mileage payments and per diem payments (such payments due from other railroad companies, whether or not collected and received by Lessee and without regard to any claimed abatement, reduction or offset, are hereinafter collectively referred to as "Payments").

- B.** For the purposes of this Agreement, Base Rental shall be defined as (i) commencing from the Initial Loading, through and including December 31, 1982, an amount equal to the Payments which the Cars would have earned in the aggregate at a Utilization Rate (as defined in Subsection 6.C.) of .55, and (ii) commencing on January 1, 1983, through and including the expiration or earlier termination of this Agreement, an amount equal to the Payments which the Cars would have earned in the aggregate at a Utilization Rate of .85.
- C.** For the purposes of this Agreement, Utilization Rate shall be the quotient reached by dividing the aggregate number of days in each calendar year, or applicable portion thereof, commencing from the Initial Loading in which Payments were earned on the Cars by the aggregate number of days in each calendar year or applicable portion thereof, commencing from the Initial Loading, in which the Cars were leased to Lessee hereunder.
- D.** Lessor shall receive all Payments earned prior to the Initial Loading.
- E.** Except as otherwise provided herein, Lessee agrees to pay to Lessor, at such times as specified in Subsection 6.F. below, rent (hereinafter "Rent") for the Cars as follows:
- (i)** In the event that the Payments earned in any calendar year or applicable portion thereof are equal to Base Rental, Lessee shall pay to Lessor an amount equal to Base Rental;
 - (ii)** In the event Payments earned in any calendar year or applicable portion thereof are less than Base Rental, Lessee shall pay to Lessor a sum equal to one hundred percent (100%) of the total Payments;
 - (iii)** In the event Payments earned in any calendar year or applicable portion thereof, commencing from the Initial Loading through and including December 31, 1982, exceed the Base Rental, Lessee shall pay to Lessor an amount equal to Base Rental and Lessee shall be entitled to all Payments received in excess of Base Rental;
 - (iv)** In the event Payments earned in any calendar year or applicable portion thereof, commencing on January 1, 1983, through and including the expiration or earlier termination of this Agreement, exceed the Base Rental, Lessee shall pay to Lessor an amount equal to Base Rental plus an amount equal to one-half ($\frac{1}{2}$) of any Payments earned in excess of Base Rental. Lessee shall be entitled to the remaining one-half ($\frac{1}{2}$) of any Payments received in excess of Base Rental.
- F.** **(i)** The calculations required by Section 6.E. shall be made within five (5) months after the end of each calendar year ("Yearly Calculation(s)"). In order that Lessor may meet its financial commitments, Lessee shall pay to Lessor by the fifty-fifth (55th) day after the end of each Service Month (as hereinafter defined), ninety-two percent (92%) of the total Payments for that Service Month. For the purposes hereof, Service Month shall be defined as the calendar month in which Payments were actually

earned. At the time payment of ninety-two percent (92%) of the total Payments is made to Lessor, Lessee shall report to Lessor for the same month, the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the Payments. Four percent (4%) of the total Payments shall be remitted to Lessor within eighty-five (85) days after the end of each Service Month and the remaining four percent (4%) of the total Payments shall be remitted to Lessor within one hundred fifteen (115) days after the end of each Service Month. Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due Lessee under Section 6.E. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that following each Yearly Calculation, any amount paid to either party in excess of the amounts required by such Yearly Calculation shall be promptly refunded to the appropriate party.

(ii) Upon Lessor's request, Lessee shall provide Lessor with any records of Lessee, including car hire summaries and detailed reports, as Lessor deems necessary to substantiate Payments earned and received by Lessee for the use and handling of the Cars. Further, Lessor shall be entitled to visit Lessee at any time during normal business hours to review any and all records required to complete the calculations outlined in Section 6.F.(i).

- G. If for any calendar quarter, Payments are less than Base Rental, 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 as Lessor shall determine; provided, however, that prior to such termination, Lessee may, at its option within ten (10) days of receipt of such notice from Lessor, pay Lessor an amount equal to the difference between the Payments for such calendar quarter and Base Rental for such calendar quarter.
- H. If, subsequent to the Initial Loading, any Car remains on Lessee's railroad tracks for more than seven (7) consecutive days, excluding those days such Car is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Lessee, Lessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car has remained on Lessee's railroad tracks for more than seven (7) consecutive days because Lessee has not given preference to the Cars as specified in Section 3.B., Lessee shall be liable for and remit to Lessor an amount equal to the per diem payments the Car would have earned if such Car had been in the physical possession and use of another railroad for the entire period.
- I. Lessee hereby agrees that no act or omission of Lessee or of another railroad company, including any claimed reduction or offset, with respect to Payments, shall result in any defense by Lessee to the payment to

Lessor of the Rent as set forth above. Lessee shall pay to Lessor upon demand an amount equal to any Payments due but not received by Lessee because of any claimed reduction, offset or defense of another railroad company.

- J. In the event it is determined that a Car is lost, destroyed or damaged beyond repair in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said Car shall be removed from the rental calculations of this Agreement on the date car hire ceases as set forth in the aforementioned Rule 7.

7. Possession and Use

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business. 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. 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.
- B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it on or with respect to the Cars, or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, 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 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 ten (10) days thereafter;

(iii) The filing by or against the Lessee of any petition or the initiation by or against the Lessee of any proceeding: (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, 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 portion of its track or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

B. Upon the occurrence of any event of default 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.

9. Termination

A. Upon the expiration or earlier termination of this Agreement with respect to a Car, Lessee shall promptly return such Car to Lessor by delivering such Car to such location as Lessor shall specify which shall be at either (1) the Lessee's railroad tracks, or (2) a location as designated by Lessor. Subsequent procedures shall depend on the location of delivery as follows:

(i) If, in the event of expiration or earlier termination, some or all of the Cars are to be delivered to Lessor on Lessee's railroad tracks, Lessor shall be responsible for any transportation costs incurred in moving

such Cars to the Lessee's railroad tracks subsequent to the time of expiration or earlier termination. Lessee shall, at Lessor's option, provide, with respect to any Car which is either on or is subsequently returned to Lessee's railroad tracks at the time of expiration or earlier termination, up to sixty (60) days free storage on its railroad tracks. At the option of Lessor, either Lessee or a contractor chosen by Lessor shall remove Lessee's railroad markings from such Car and shall place thereon such markings as may be designated by Lessor. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. After repainting and 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, in the event of expiration or earlier termination, some or all of the Cars are to be delivered to the Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Lessor.

- B. Upon the expiration of this Agreement, Lessor shall bear the expense of repainting and remarking the Cars; upon the earlier termination of this Agreement, whether pursuant to Section 8 or Subsection 6.G. or Subsection 6.H. hereof or otherwise, Lessee shall bear the expense of repainting and remarking the Cars.

10. Indemnities

- A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, WHICH OCCURS WHILE THE CARS ARE IN LESSEE'S POSSESSION OR CONTROL OR IN THOSE INSTANCES IN WHICH THE AAR INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO LESSEE.
- B. SUBJECT TO SECTION 10A, AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH HEREIN, LESSOR WILL 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).

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

- (i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate

power, authority and, insofar as is material to Lessor's rights under this Agreement, 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.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.

(iv) 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.

12. Inspection

Lessor shall at any time during normal business hours have the right to enter the 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.

13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Lessee may not without the prior written consent of Lessor, except as provided below, 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 7 of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental

payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars, except as a Lessee only.

- D. No failure or delay by 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. Lessee shall furnish to Lessor promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.
- 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, addressed to the president of the other party at the address set forth herein.
- 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 CORPORATION,
RAIL DIVISION

By: *Edward M. O'Dea*

Title: *Pres.*

Date: *4-24-81*

GREEN BAY AND WESTERN
RAILROAD COMPANY

By: *Joseph R. Galassi*

Title: *President*

Date: *4-27-81*

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

On this 24th day of April, 1981, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of ITEL Corporation, Rail Division, 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.



Randi C. Smith
Notary Public

STATE OF WISCONSIN)
)
COUNTY OF BROWN) ss:

On this 27th day of April, 1981, before me personally appeared Joseph R. Galassi, to me personally known, who being by me duly sworn says that such person is President of Green Bay and 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.

Robert L. Loeth
Notary Public

EQUIPMENT SCHEDULE NO. 1

Itel Corporation, Rail Division hereby leases the following Cars to _____
Green Bay and Western Railroad Company
 subject to the terms and conditions of that certain Lease Agreement dated as of
April 22, 1981.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	General Purpose Boxcars	GBW 8000- 8197	50'6"	9'6"	11'- 1-3/4"	10'	198

ITEL CORPORATION, RAIL DIVISION

BY: *Edward M. Dea*
 TITLE: *Pres.*
 DATE: *4-24-81*

GREEN BAY AND WESTERN
RAILROAD COMPANY

BY: *Joseph R. Galassi*
 TITLE: *President*
 DATE: *4-27-81*

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

On this 24th day of April, 1981, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of Itel Corporation, Rail Division, 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.



Randi C. Smith
Notary Public

STATE OF WISCONSIN)
) ss:
COUNTY OF BROWN)

On this 27th day of April, 1981, before me personally appeared Joseph R. Galassi, to me personally known, who being by me duly sworn says that such person is President of Green Bay and 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.

Robert L. Goeths
Notary Public