

5-288A080

ITEL

October 14, 1985

No. _____
Date OCT 15 1985

Fee \$ 20.00

ICC Washington, D.C.

Istel Rail Corporation

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

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

OCT 15 1985 - 2 05 PM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Bayne:

On behalf of Istel 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 member

Lease Agreement made as of October 1, 1985 between Istel Rail Corporation and Canadian Pacific Limited.

This Lease should be cross-indexed to the Consolidated, Amended and Restated Equipment Trust Agreement dated as of January 1, 1982 among Istel Corporation, Istel Rail Corporation and First Security Bank of Utah, N.A., which was record with the I.C.C. on September 20, 1983 under I.C.C. Recordation No. 14165.

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

1. Istel Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133
2. Canadian Pacific Limited (Lessee)
P.O. Box 5042
Windsor Station, Montreal
Quebec, Canada H3C 3E4

The equipment covered by this Lease is three hundred (300) 50', 70-ton, XM boxcars bearing QC reporting marks.

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

Once the filing has been made, please return to the bearer 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

/vdv/31
encl.

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

Clumby
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REC'D
OCT 15 1 54 PM '85
MOTOR OPERATING UNIT
ICC OFFICE OF THE SECRETARY

New Member

09/20/85

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LEASE AGREEMENT

IN STAT. COMMERCE COMMISSION

THIS LEASE AGREEMENT (the "Agreement") is made as of this 1st day of October, 1985, between ITEL RAIL CORPORATION, a Delaware corporation, 55 Francisco Street, San Francisco, California, 94133, as the lessor ("Lessor") and CANADIAN PACIFIC LIMITED, a Quebec corporation, P.O. Box 5042, Windsor Station, Montreal, Quebec, Canada, H3C 3E4 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, certain items of equipment of the reporting marks, number, type, construction and other description set forth in any lease schedules attached hereto and executed by the parties concurrently herewith or 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 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 12:01 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 Schedule, ten (10) years from the date of Delivery (as defined in Subsection 3.A.) of the first Car on such Schedule (the "Initial Term").
- B. If this Agreement has not been terminated early and no unremedied default has occurred pursuant to Section 9, the Agreement shall automatically be extended for one (1) year (the "Extended Term") with respect to all of the Cars described on each Schedule,

provided, however, that Lessor or Lessee may terminate this Agreement at the end of the Initial Term as to all, but not fewer than all, of the Cars on any Schedule by written notice delivered to the other not less than six (6) months prior to the end of the Initial Term.

3. Supply Provisions

- A. Lessee hereby approves the specifications of the Cars delivered to it by Lessor. Lessor shall, at Lessor's expense, remark the Cars with the railroad markings of Lessee in compliance with all applicable regulations. After the Cars have been remarked, the Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon as is consistent with mutual convenience and economy. Lessor warrants that, upon delivery, each Car shall meet or exceed specifications for interchange service as defined in the Association of American Railroads ("AAR") Field Manual and shall be in acceptable condition for Class A boxcar loading. Lessor shall use its best efforts to deliver the Cars on Equipment Schedule No. 1 within ninety (90) days after this Agreement is fully executed by both parties. Each Car shall be delivered to Lessee's lines at a mutually agreeable interchange point(s) with all freight or other transportation charges to be for the account of Lessor. Each Car so delivered shall be in good operating condition, ordinary wear and tear excepted. Lessee shall have the right to preinspect a sampling of such Cars at a mutually agreeable time and place prior to the delivery of the Cars to Lessee's lines. Lessee shall have the right to inspect each Car upon such Car's delivery to Lessee's lines and, if not acceptable to Lessee, Lessee shall notify Lessor in writing within ten (10) days of such delivery as to the reason why such Car is not in acceptable condition for Class A boxcar loading and shall hold such Car for inspection and disposition by Lessor. Lessor shall have the opportunity to 1) perform repairs to correct the condition(s) that made such car unacceptable to Lessee or 2) replace such Car with another similar boxcar. All costs, including transportation costs, associated with making any Car acceptable to Lessee shall be for Lessor's account. Acceptance by Lessee of any Car onto its lines after inspection thereof shall constitute delivery ("Delivery"). Lessee shall immediately notify Lessor in writing of the date each Car is accepted by Lessee. Lessor and Lessee shall cooperate with each other to facilitate the delivery and acceptance of each Car. For the purposes of delivering the Cars only, Lessee's lines shall be deemed to include all railway lines which are owned, leased or controlled either directly or indirectly by Lessee.
- B. Lessee shall not discriminate against the Cars in the provision of off-line loads, operation, use and maintenance vis-a-vis any comparable boxcars owned, leased or managed by Lessee or assigned or interchanged to Lessee. This Subsection 3.B. is of the essence to this Agreement.

- C. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Cars with boxcars of similar design, age and quality upon not less than sixty (60) days' 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 with respect to railroad equipment of the type subject to this Agreement. Such matters 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 the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars. Lessee shall register each Car in UMLER in such a manner that Lessor, or its agent, is allowed access to any required information with regard to each Car. In addition, Lessee shall be responsible for any expenses incurred and rent lost as the result of any improper UMLER registration.
- B. (i) Lessee shall perform all record keeping functions relating to the use of the Cars, including but not limited to, car hire reconciliation, collection and receipt of revenues from other railroad companies, records pertaining to maintenance and repair, and billing in accordance with the 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. Lessee shall, on a monthly basis and within thirty (30) days after the end of each month in which activity occurred, supply Lessor with copies of Lessee's interchange records relating to the Cars. Lessee shall supply Lessor with copies of such other records as Lessor may reasonably request. Lessee hereby authorizes Lessor to subscribe to the Train 71, 80 and 86 Advices for the Cars.
- (ii) Lessee shall, at its expense, prepare and file all reports and documents with the appropriate Canadian customs authority that are related to, or necessary for, the use of the Cars.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Lessor 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 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 Rule 95 B or any other the Interchange Rule 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 or a foreign road at Lessor's expense shall be at RAC rates, Canadian funds, for all repairs performed in Canada and at a labor rate not to exceed the prevailing AAR Labor Rate for all repairs performed in the United States; unless a different labor rate is mutually agreed upon in writing by the parties hereto.

- B. (i) 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 or required by Federal Railroad Administration and/or Canadian Transport Commission Regulations. Lessor will be notified before, or as soon as practical thereafter, that a repair beyond the scope of Exhibit A attached hereto, but does not exceed the repairs allowed by the applicable AAR Interchange Rules to facilitate continued immediate use of the Cars, is necessary or has been performed by Lessee; but Lessee shall not otherwise make 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 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 (1) an independent repair facility, or (2) a location on Lessee's property 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.
- (ii) Lessee shall submit to Lessor a monthly report in complete AAR format for all repairs reported with respect to the Cars during the previous month. Lessee shall guarantee that, upon termination or expiration of the Agreement, each Car shall meet or exceed specifications for interchange service as defined in the AAR Field Manual and shall be in acceptable condition for Class A boxcar loading.

- 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 the 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: (i) all-risk, physical loss and damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control; and (ii) 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 satisfactory to the Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as named insured and shall also list Lessor and any assignee of Lessor as loss-payees on the insurance policies. 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. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and Lessee shall pay the cost thereof. With respect to the insured, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by the Lessee.
- D. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to the Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a Certified Copy of each insurance policy upon written request. Lessee may maintain a self-insurance program to insure the Cars in the same manner as Lessee insures the boxcars that Lessee owns, in lieu of the above insurance and warrants to place Lessor in the same position as if the above insurance had been effected.
- E. Lessee assumes responsibility for and agrees to pay, protect, defend, hold harmless and indemnify Lessor and its successors against taxes, 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 sale, lease, sublease or delivery of the Cars, (3) revenues earned by the Cars, including but not limited to mileage charges and/or car hire revenue, during the term of this Agreement, including all taxes imposed by any local, provincial, state or national government, except taxes on paid-up capital or income earned by Lessor.

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6. Storage

During the Initial Term and any Extended Terms, 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 that Lessor directs to be 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 and Subsection 8.E. hereof.

7. Rent

A. Definitions

- (i) "Per Diem Revenues" is defined as the total per diem revenues earned and due from other railroad companies 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 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 Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year, or applicable portion thereof, that Per Diem Revenues or Mileage Revenues were earned on the Cars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year, or applicable portion thereof, that the Cars were on lease to Lessee, commencing from the Initial Loading.

(iv) The "Base Rent" is defined as the sum equal to

(v) The "Initial Loading" as to each Car, shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after such Car is delivered pursuant to Section 3.A.

B. Lessor shall receive all Per Diem Revenues and Mileage Revenues earned by each Car prior to its Delivery. Each Car delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 7.C. upon the Delivery of such Car.

C. Lessee agrees to pay the following rent to Lessor for the use of the Cars:

(i)

(ii) In the event Per Diem Revenues earned in any calendar year, or applicable portion thereof, are equal to or less than the Base Rent,

(iii) In the event Per Diem Revenues earned in any calendar year, or applicable portion thereof, exceed the Base Rent,

(iv) All payments, revenues and other amounts paid, received or due to either Lessor or Lessee shall be in United States dollars, calculated pursuant to the exchange rate in effect on the last day of the calendar month in which such revenues were earned and other amounts are incurred.

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 sixty (60) days after the end of each calendar month, an amount equal to one hundred percent (100%) of the Per Diem Revenues and Mileage Revenues received by Lessee during such calendar month. 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 year or applicable portion thereof ("Year"), Per Diem Revenues are less than the Base Rent, 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 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 Year and the Base Rent for such calendar Year.
- 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 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.
- G. 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. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice therefor from Lessor.
- H. Any agreement between Lessee and any other party 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 or Mileage Revenues earned by the Cars.
- I. If, at any time during the Initial Term or the Extended Term, the ICC abandons or lowers the current per diem and mileage revenues as set forth in the Hourly and Mileage Car Hire Rate Table in the January 1985 edition of the ICC Official Railway Equipment Register ("Current Car Hire Rates"), Lessor and Lessee agree to negotiate a new lease agreement placing the parties in substantially the same relative position as existed prior to such abandonment or decrease of Current Car Hire Rates, provided, however, that if a new lease agreement cannot be mutually agreed upon, Lessor may, at its option and upon not less than thirty (30) days prior written notice to Lessee, terminate this Agreement.

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- J. 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 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 warrants that the Cars shall be utilized primarily for loading to destinations outside Canada and shall use its best efforts to minimize the use of the Cars within Canada whether on Lessee's railroad line or on the lines of other railroad companies located in Canada, provided, however, that this obligation shall not diminish Lessee's obligations under Subsection 3.B. Lessee shall also use its best efforts to ensure that each Car remains outside Canada in excess of one hundred eighty (180) days per year.

E. 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 those created for the benefit of Lessor or any owner or secured party referred to in Subsection 8.A. hereinabove. 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 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, 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 a substantial portion of its track or to abandon any of its rail properties that affect the revenues earned by the Cars.

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:

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- (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 Lessee shall, if directed by Lessor, unload the Cars within a reasonable time from such direction and deliver the Cars within thirty (30) days thereafter to Lessor at an interchange point or points designated by Lessor and Lessor shall 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. Upon the expiration of the Agreement pursuant to Section 2 hereof, or upon the early termination 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, further provide Lessor, with up to ninety (90) days free storage on its railroad tracks for any expired or terminated Car in order for Lessor to arrange for the disposal thereof, after which any storage shall be provided at Lessee's customary rate.
- (ii) Lessee shall, at Lessee's expense, remark the Cars as set forth in Subsection 10.B. 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.
- (iii) Except as provided in Subsection 10.A.(iv), 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 to such location shall be borne by Lessor. Lessee shall bear the expense of remarking such Cars.

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(iv) 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 to such location shall be borne by Lessee if this Agreement is terminated early due to the provisions of Section 9., 7.E., 7.F., or 7.J. hereof. Lessee shall bear the expense of remarking such Cars.

B. 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 reasonably designated new mandatory markings which are acceptable to Lessee; 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, 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).

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 province 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 have reasonable access to the physical inspection and examination of any Car located on Lessee's lines to ensure Lessee's compliance with its obligations hereunder upon Lessor's prior written, or telex notice to Lessee's Chief Mechanical Officer or Chief of Transportation, depending upon the nature of the inspection, and Lessor shall not unreasonably interfere with the movement of any Car as a result of such inspection. Lessor shall, however, have the right to inspect any Car which is not located on Lessee's lines without providing prior written notice to ~~Lessor~~. Lessee.

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.

PB

- 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. Lessee shall furnish to Lessor promptly upon its becoming available, a copy of its annual report and, when requested, copies of any other income or balance sheet statements required to be submitted to any governmental authority.
- I. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States or Canadian 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.
- J. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.

PB

K. 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

CANADIAN PACIFIC LIMITED

By: *A. Hayes*

By: *J. Kilpatrick*

Title: President

Title: V.-P. Operation and Maintenance

Date: 9/20/85

Date: October 1, 1985

CHIEF OF ENGINEERING

Bernard D.
ASSISTANT SECRETARY

SEP 30 1985

APPROVED
AS TO FORM
JLBK
JLBK

JB

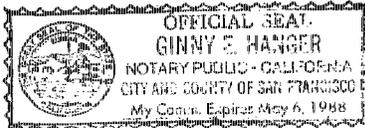
EXHIBIT A

<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	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plates
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	
Truck Springs	
Door Hardware	

PB

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

On this 20th day of September, 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 this 20th day of September, 1985 on behalf of said corporation by authority of its board of directors, and such person acknowledged on this day that the execution of the foregoing instrument was the free act and deed of said corporation.



Benny E. Hanger
Notary Public

PROVINCE OF Quebec)
) ss:
COUNTY OF Hochelaga)

On this 30th day of September, 1985, before me personally appeared P. Bernadet, to me personally known, who being by me duly sworn says that such person is Assistant Secretary of Canadian Pacific Limited, that the foregoing Lease Agreement was signed on this 30th day of September, 1985 on behalf of said corporation by authority of its board of directors, and such person acknowledged on this day that the execution of the foregoing instrument was the free act and deed of said corporation.

P. Bernadet
Notary Public, in and for the Province
of Quebec, Canada.
My commission is for life.

EQUIPMENT SCHEDULE NO. 1

Itel Rail Corporation hereby leases the following Cars to Canadian Pacific Limited subject to the terms and conditions of that certain Lease Agreement dated as of October 1, 1985.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	50' Cushioned Underframe, Plate B	CP	50'6"	9'6"	10'7"	10' Sliding	160
XM	50' Cushioned Underframe, Plate C	CP	50'7"	9'6"	11'0"	10' Sliding	58
XM	50' Cushioned Underframe, Plate C	CP	50'6"	9'6"	11'1"	10' Sliding	82
							<u>300</u>

ITEL RAIL CORPORATION

CANADIAN PACIFIC LIMITED

By: [Signature]

By: [Signature]

Title: President

Title: V.-P. Operation and Maintenance

Date: 9/20/85

Date: October 1, 1985

[Signature]
ASSISTANT SECRETARY

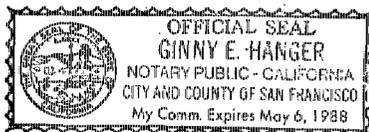
SEP 30 1985

APPROVED AS TO FORM

JLB/4
Gen'l. Solicitor.

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

On this 20th day of September, 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 this 20th day of September, 1985 on behalf of said corporation by authority of its board of directors, and such person acknowledged on this day that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger
Notary Public

PROVINCE OF Quebec)
) ss:
COUNTY OF Hochelaga)

On this 30th day of September, 1985, before me personally appeared P. Bernadet, to me personally known, who being by me duly sworn says that such person is Assistant Secretary of Canadian Pacific Limited, that the foregoing Equipment Schedule No. 1 was signed on this 30th day of September, 1985 on behalf of said corporation by authority of its board of directors, and such person acknowledged on this day that the execution of the foregoing instrument was the free act and deed of said corporation.

André Gauthier
Notary Public, in and for the Province
of Quebec, Canada.
My commission is for life.