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RECORDATION NO 16689 FILED 1425
DEC 28 1989 -12 05 PM
INTERSTATE COMMERCE COMMISSION

ICC TRANSMITTAL LETTER

RECORDATION NO 16689-C FILED 1425
DEC 28 1989 -12 05 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO 16689 FILED 1425
DEC 28 1989 -12 05 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO 16689 FILED 1425
DEC 28 1989 -12 05 PM
INTERSTATE COMMERCE COMMISSION

December 27, 1989

3-2C2A065

Honorable Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

$60.00 filing fees

Re: 1) Equipment Lease Agreement – New #
2) Lease Supplement No. 1 – A
3) Security Agreement and Trust Indenture – B
4) Security Agreement and Trust Indenture – C
Supplement No. 1

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instruments, in four (4) counterparts each, are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the $60 recordation fee.

Please record the Equipment Lease Agreement (the "Equipment Lease Agreement") dated as of December 14, 1989, relating to Itel Rail Trust No. 89-7, not previously recorded, under a new recordation number.

The parties to the Equipment Lease Agreement are listed below:

First Security Bank of Utah, N.A.,
as Owner Trustee under
Itel Rail Trust No. 89-7
(Lessor)
79 South Main Street
Salt Lake City, Utah 84111

Itel Rail Corporation (Lessee)
55 Francisco Street
San Francisco, California 94133

The Equipment Lease Agreement sets forth the terms upon which the Lessor will lease to Lessee certain railroad rolling stock to be identified in lease supplements thereto, and Lease Supplement No. 1 (as defined below) recorded herewith covers such railroad rolling stock now leased.

The Equipment Lease Agreement Supplement No. 1 ("Lease Supplement No. 1") dated as of December 14, 1989 should be recorded as -A of the same recordation number as the Equipment Lease Agreement.

The parties to the Lease Supplement No. 1 are the same as in the Equipment Lease Agreement, and the Lease Supplement No. 1, among other things, identifies the railroad rolling stock covered by the Equipment Lease Agreement.

The Security Agreement and Trust Indenture (the "Security Agreement and Trust Indenture") dated as of December 14, 1989 should be recorded as -B of the same recordation number as the Equipment Lease Agreement.

The parties to the Security Agreement and Trust Indenture are as follows:

First Security Bank of Utah, N.A.,
as Owner Trustee under
Itel Rail Trust No. 89-7 (Owner Trustee)
/"Assignor"
79 South Main Street
Salt Lake City, Utah 84111

Continental Bank, National Association,
as Indenture Trustee (Indenture Trustee)
/"Assignee"
231 South LaSalle Street, 7th Floor
Chicago, Illinois 60697

The Security Agreement and Trust Indenture provides for a grant by the Owner Trustee to the Inden-

ture Trustee of a security interest in the railroad rolling stock described in any Indenture Supplement thereto, and for an assignment by the Owner Trustee to the Indenture Trustee of the rights of the Owner Trustee under the Equipment Lease Agreement.

The Security Agreement and Trust Indenture Supplement No. 1 ("Indenture Supplement No. 1") dated as of December 28, 1989 should be recorded as -C of the same recordation number as the Equipment Lease Agreement.

The parties to the Indenture Supplement No. 1 are the same as in the Security Agreement and Trust Indenture.

The Indenture Supplement No. 1 lists and describes the railroad rolling stock subject to Lease Supplement No. 1, which Lease Supplement No. 1 has been assigned by the Owner Trustee/Assignor to the Indenture Trustee/Assignee pursuant to the Security Agreement and Trust Indenture.

The railroad rolling stock covered by the documents, as listed above, is identified in the schedules to the Lease Supplement No. 1, a copy of which schedule is attached to this letter.

A short summary of the documents to appear in the ICC Index is as follows:

"Covers Railcars."

Once the filings have been made, please return to the undersigned the stamped counterparts of the Equipment Lease Agreement, Lease Supplement No. 1, the Security Agreement and Trust Indenture and the Indenture Supplement No. 1 not required for filing purposes, together with the ICC fee receipt and the letter from the ICC acknowledging the filings.

Very truly yours,

Will L W

Used Railcars

Number of Units	Size of Equipment	Manufacturer	Reporting Marks
3	70 TON, 50 FOOT, PLATE C BOXCAR		CSXT 135785, 135787, 135794
31	70 TON, 50 FOOT, PLATE C BOXCAR		CSXT 135791, 135798-799, 135810, 135829, 135847, CSXT 135896, 135958-959, 135961-965, 135967, CSXT 135869-971, 135973-974, 135979-981, 135983, 135985, CSXT 135987-989, 135991-993
13	70 TON, 50 FOOT, PLATE C BOXCAR		ETRY 000102-114
6	70 TON, 50 FOOT, PLATE C BOXCAR		SBD 135821, 135824, 135832, 135834, 135845, 135863
5	4780 CUBIC FOOT COVERED HOPPER		FRDN 003017, 026820-821, 026826-026827

Number of Units	Size of Equipment	Manufacturer	Reporting Marks
12	4780 CUBIC FOOT COVERED HOPPER		USLX 020400-020411
1	4780 CUBIC FOOT COVERED HOPPER		FRDN 026822
1	4780 CUBIC FOOT COVERED HOPPER		CAGY 000659
2	5750 CUBIC FOOT COVERED HOPPER		ERLX 006196, 006198
37	100 TON GONDOLAS		CSS 041052-053, 041061, 041066, 041072, 041075, CSS 041078-079, 041082-084, 041086, 041089, 041093, CSS 041095-096, 041098, 041195, 041197-200, NSR 130360-371, 130373-375

Interstate Commerce Commission
Washington, D.C. 20423

12/28/89

OFFICE OF THE SECRETARY

William L. Winson
Skadden Arps,Slate Meagher & Flom
333 West Wacker Drive
Chicago,Illinois 60606-1285

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/28/89at 12:05pm and assigned recordation number(s). 16687, 16687-A,16687-B,16687-C 16688 A-C & 16689 & a---C

Sincerely yours,

Noreta R. McGee

Noreta R. McGee
Secretary

Enclosure(s)

Exhibit B to
Participation Agreement

EQUIPMENT LEASE AGREEMENT

16689
RECORDATION NO _____ FILED 1425
DEC 28 1989 -12 05 PM
INTERSTATE COMMERCE COMMISSION

Dated as of December 14, 1989

between

FIRST SECURITY BANK OF UTAH, N.A.,
in its individual capacity
as expressly provided herein and
otherwise solely as Owner Trustee under
Itel Rail Trust No. 89-7

Lessor

and

ITEL RAIL CORPORATION

Lessee

The right, title and interest of the Lessor under this Lease and certain of the Rent due and to become due hereunder have been assigned as collateral security to and are subject to a security interest in favor of Continental Bank, National Association, as Indenture Trustee under a Security Agreement and Trust Indenture dated as of December 14, 1989 between said Indenture Trustee, as secured party, and the Lessor, as debtor. Information concerning such security interest may be obtained from the Indenture Trustee at its address set forth in Section 22.1 of this Lease.

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Attachments to Equipment Lease:

Schedule 1	Schedule of Interim Rent and Basic Rent
Schedule 2	Schedule of Stipulated Loss Value
Schedule 3	Schedule of Termination Value
Schedule 4	Definitions
Exhibit A	Form of Lease Supplement

EQUIPMENT LEASE AGREEMENT

EQUIPMENT LEASE AGREEMENT dated as of December 14, 1989 (this "Lease") between FIRST SECURITY BANK OF UTAH, N.A., a national banking association, in its individual capacity as expressly provided herein and otherwise solely as Owner Trustee (the "Lessor") under Itel Rail Trust No. 89-6, and ITEL RAIL CORPORATION, a Delaware corporation (the "Lessee").

R E C I T A L S:

A. The Lessee has agreed to sell all of the Units to the Lessor and to lease such Units back from the Lessor pursuant to this Lease. The Lessor has agreed to purchase all of the Units from the Lessee and lease them to the Lessee pursuant to this Lease.

B. The capitalized terms used in this Lease shall have the respective meanings indicated in Schedule 4 hereto unless elsewhere defined herein. Where any provision in this Lease refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

SECTION 1. PURCHASE OF EQUIPMENT AND ACCEPTANCE UNDER LEASE.

1.1 Purchase and Lease of Equipment. The Lessor hereby agrees (subject to the satisfaction of the conditions set forth herein and in the Participation Agreement) to purchase the Equipment from the Lessee under the Bill of Sale and simultaneously lease the Equipment to the Lessee hereunder, and the Lessee hereby agrees to sell the Equipment to the Lessor pursuant to the Bill of Sale and to lease the Equipment from the Lessor hereunder, as evidenced by the execution and delivery by the Lessor and the Lessee of a Lease Supplement covering the Units leased hereunder. The Lessee shall be deemed for all purposes to have accepted the Equipment upon the delivery by the Lessee of a Lease Supplement covering the Units leased hereunder to the Lessor. The Lessee agrees that such delivery of a Lease Supplement by the Lessee shall, without further act, irrevocably con-

stitute acceptance by the Lessee of the Equipment for all purposes of this Lease.

1.2 Lease Supplement. On the Delivery Date, simultaneously with the delivery of the Bill of Sale, the Lessee agrees that it will enter into a Lease Supplement with the Lessor substantially in the form attached as Exhibit A hereto, which Lease Supplement shall describe the Units covered thereby, shall set forth the Equipment Cost thereof, and shall state that the Lessee has unconditionally accepted the same for purposes of this Lease. The Lessee's execution and delivery of a Lease Supplement pursuant to this Section 1.2 shall constitute the Lessee's acknowledgment, but solely as between the Lessee and the Lessor, that (a) each Unit covered by such Lease Supplement is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture or condition or in any other respect, and (b) as of the Delivery Date for such Unit, such Unit is in good order and condition and conforms to the specifications applicable thereto and is suitable for use in interchange service in accordance with the Interchange Rules and suitable for use by Class 1 line-haul railroads. Notwithstanding the foregoing, the execution and delivery of such Lease Supplement by the Lessee shall not constitute a waiver, decrease or other release of any of the warranties, liabilities or other obligations of the manufacturers or prior owners thereof with respect to the Units covered by such Lease Supplement.

SECTION 2. RENT AND RENT PAYMENT DATES.

2.1 Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Unit:

(a) Interim Rent. Rent ("Interim Rent") for each Unit leased hereunder shall be payable for the Interim Term in one installment payable on the Basic Term Commencement Date in the amount set forth on Schedule 1 hereto.

(b) Basic Rent. Rent (the "Basic Rent") for each Unit leased hereunder shall be payable for the Basic Term commencing on the date which occurs six months after the Basic Term Commencement Date and on each Rent Payment Date thereafter, in an amount or amounts (or an amount or amounts equal to that percentage or percentages

of the Equipment Cost of such Unit) as set forth on Schedule 1 hereto.

(c) Supplemental Rent. In addition to the foregoing Rent, the Lessee agrees to pay to the Lessor, or to whomsoever shall be entitled thereto, any and all Supplemental Rent, promptly as the same shall become due and owing, or, where no due date is specified, promptly after demand by the Person entitled thereto, and in the event of any failure on the part of the Lessee to pay any Supplemental Rent, the Lessor, or whosoever shall be entitled to such payment, shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of Interim Rent or Basic Rent.

2.2 Business Days. If any of the Rent Payment Dates is not a Business Day, the Rent payment otherwise payable on such date shall be payable on the immediately succeeding Business Day.

2.3 Adjustment of Rent. The Lessee and the Lessor agree that the Basic Rent, Stipulated Loss Values and Termination Values will be adjusted (a) on or prior to the Basic Term Commencement Date, but in any event not later than the earlier to occur of a Mandatory Reset Date, a Conditional Reset Date and an Alternative Reset Date, in the event that the Pricing Assumptions set forth in Section 2.7 of the Participation Agreement prove to be inaccurate or incorrect and an Optional Reset Date, a Mandatory Reset Date, a Conditional Reset Date or an Alternative Reset Date shall occur; provided, however, that any such adjustments shall be made in accordance with Section 2.7 of the Participation Agreement, (b) in connection with Section 3(b)(iii) of the Tax Indemnity Agreement, and (c) in connection with a refinancing, if any, of the Loan Certificates pursuant to Section 9.2 of the Participation Agreement. Any such adjustment, upwards or downwards, as the case may be, shall be made by the Owner Participant on the basis of the same methodology and assumptions used by the Owner Participant in the determination of Basic Rent, Stipulated Loss Value and Termination Value in connection with the Commitment Letter and in such manner as (i) will result, in the Owner Participant's reasonable judgment, in maintaining for the Owner Participant the same Economic Return that would have been realized by the Owner Participant over the entire Interim Term and Basic Term had no changes in

Basic Rent, Stipulated Loss Values and Termination Values been made pursuant to this Section 2.3 (assuming that such Basic Rent, Stipulated Loss Values and Termination Values were calculated using the same methodology and assumptions (other than the Coupon Rate) used by the Owner Participant in connection with the Commitment Letter), and, to the extent consistent therewith, minimizing the net present value (computed utilizing a discount rate equal to the interest rate specified in the Loan Certificates and compounded semi-annually) of the Basic Rent, with appropriate adjustments to Stipulated Loss Values and Termination Values based upon the adjusted schedule of Basic Rent, (ii) will not cause the application of the "constant rental accrual" method under Section 467 of the Code and any temporary or final regulations promulgated thereunder, if and to the extent that such section or such regulations have been changed or newly promulgated after the Delivery Date, (iii) will comply with each other applicable provision of the Code or any successor thereto and any temporary or final regulations thereunder, (iv) will not reduce the amounts payable as installments of Interim Rent and Basic Rent, or as payments of Termination Value or Stipulated Loss Value hereunder, with respect to any Units below (A) the amounts, if any, required by Section 2.7 of the Participation Agreement, or (B) an amount which would cause the Owner Participant to lose the ability to account for this Lease and its investment in the Equipment using leveraged lease accounting in accordance with Financial Accounting Standards Board Statement No. 13, and (v) will be consistent with the Guidelines and any other published or announced position of the Internal Revenue Service concerning true leases.

2.4 Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The installments of Interim Rent and Basic Rent, the entire amount of any payments of Stipulated Loss Value, Termination Value or other payment pursuant to Section 11 or Section 12, any payment of the purchase price of the Equipment pursuant to Sections 20.1 or 20.2, and any payment pursuant to Section 15, shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 22.1 hereof; provided that until the Lessee shall have received notice from the Indenture

Trustee that all Secured Indebtedness has been fully paid and satisfied, the Lessee shall make such payment by wire transfer to the office of the Indenture Trustee designated in Section 22.1 hereof or as otherwise designated from time to time in writing by the Indenture Trustee;

(b) The amount of any payment owing to the Lessor or the Owner Participant pursuant to Section 8 of the Participation Agreement and 10.1 hereof, shall be made directly to the party to receive the same by wire transfer as specified in the Operative Agreements or as instructed in writing by such party without regard to the collateral assignment of this Lease pursuant to Section 18 hereof;

(c) The amount of any interest due in respect of the late payment of any Rent pursuant to Section 21 hereof shall be paid to the party and in the manner herein provided to receive said Rent by wire transfer as specified in the Operative Agreements or as instructed in writing by such party; and

(d) All other payments due hereunder to any party shall be made by the Lessee as instructed in writing by such party.

The Lessee agrees that it will make payments due hereunder by wire transfer, at the opening of business of the office of the transferring bank on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made.

2.5 Net Lease. This Lease is a net lease and (except as provided in Section 2.2(d) of the Participation Agreement) the Lessee's obligation to pay all Interim Rent, Supplemental Rent and Basic Rent payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled (except as provided in Section 2.2(d) of the Participation Agreement) to any abatement of Rent or reduction thereof or setoff against Rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 18 hereof; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be

otherwise affected, by reason of any defect in or damage to or loss or destruction of or requisitioning of the Equipment by condemnation or otherwise, the prohibition of the Lessee's use of the Equipment (other than by the Lessor's breach of the Lessee's or any sublessee's right of quiet enjoyment), the interference with such use by any Person, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or the lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated in accordance with the terms of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease of any of the Units, except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, the Lessee nonetheless agrees, to the maximum extent permitted by law, to pay to the Lessor or any other Person entitled thereto an amount equal to each installment of Interim Rent and Basic Rent and all Supplemental Rent due and owing, at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Each Rent payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 18 hereof for any reason whatsoever. Except as provided in Section 2.2(d) of the Participation Agreement, the Lessee hereby waives any and all existing or future claims of any right to assert any offset against the Rent payments due hereunder, and agrees to make the Rent payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with this Lease of the Equipment.

SECTION 3. LEASE TERM.

The interim term of this Lease (the "Interim Term") as to each Unit shall commence on the Delivery Date of such Unit and shall expire upon the Basic Term Commencement Date. The basic term of this Lease (the "Basic Term") as to each Unit shall commence on the Basic Term Commencement Date and shall expire on the Basic Term Expiration Date, subject to earlier termination pursuant to Sections 11, 12, 15 and 20.1 hereof. Subject and pursuant to the terms of Section 20.3 hereof, the Lessee may elect one or more Renewal Terms.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1 Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to the Lessee.

4.2 Duty to Number and Mark Equipment. On or prior to the Delivery Date of each Unit, the Lessee will cause each Unit to be numbered with the reporting mark shown on the Lease Supplement covering such Unit. As soon as practicable but in any event not later than the first anniversary of the Delivery Date, the Lessee will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each side of each Unit, in letters not less than one inch in height, substantially as follows:

> "Owned by or subject to a security interest in favor of a bank or trustee under an agreement recorded with the Interstate Commerce Commission."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit, its rights under this Lease and the rights of any assignee under Section 18 hereof. Except as provided hereinabove, the Lessee will not place any such Units in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof, and will replace promptly any such names and word or words which may be removed, defaced, obliterated

or destroyed. The Lessee will not change the reporting mark of any Unit except in accordance with a statement of new reporting marks to be substituted therefor, which statement shall be delivered to the Lessor by the Lessee and a supplement to this Lease with respect to such new reporting marks shall be filed or recorded in all public offices where this Lease shall have been filed or recorded.

4.3 Prohibition against Certain Designations. Except as above provided, the Lessee will not allow the name of any Person to be placed on the Equipment as a designation that might reasonably be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee, its sublessees or any of their respective Affiliates on railroad equipment used by it or its sublessees of the same or a similar type.

SECTION 5. DISCLAIMER OF WARRANTIES; LESSEE'S RIGHT OF QUIET ENJOYMENT.

THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 5 AND IN SECTION 3.1 (e) OF THE PARTICIPATION AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES OF THE LESSOR, WHETHER WRITTEN, ORAL OR IMPLIED, WITH RESPECT TO THIS LEASE OR THE EQUIPMENT. THE LESSEE ACKNOWLEDGES AND AGREES THAT, SOLELY AS BETWEEN THE LESSOR AND THE LESSEE, (i) THE EQUIPMENT AND EACH UNIT THEREOF IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO THE LESSEE, (ii) THE LESSEE IS SATISFIED THAT THE EQUIPMENT AND EACH UNIT THEREOF IS SUITABLE FOR ITS PURPOSES, (iii) THE LESSOR IS NOT A MANUFACTURER NOR A DEALER IN PROPERTY OF SUCH KIND, (iv) THE EQUIPMENT AND EACH UNIT THEREOF IS LEASED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS AND GOVERNMENTAL REGULATIONS NOW IN EFFECT OR HEREAFTER ADOPTED AND IN THE STATE AND CONDITION OF EVERY PART THEREOF WHEN THE SAME FIRST BECAME SUBJECT TO THIS LEASE, WITHOUT REPRESENTATION OR WARRANTY BY THE LESSOR, (v) THE LESSOR LEASES THE EQUIPMENT AND EACH UNIT THEREOF "AS-IS," "WHERE-IS," "WITH ALL FAULTS," AND (EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5 AND IN SECTION 3.1(e) OF THE PARTICIPATION AGREEMENT), TOGETHER WITH EACH PARTICIPANT AND THE INDENTURE TRUSTEE, HEREBY DISCLAIMS ANY OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION, FITNESS FOR ANY PAR-

TICULAR PURPOSE, DESIGN, OPERATION OR MERCHANTABILITY THEREOF, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT OR THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, AND (vi) NEITHER THE LESSOR, ANY PARTICIPANT NOR THE INDENTURE TRUSTEE SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LIABILITY IN TORT, STRICT OR OTHERWISE), it being agreed that all such risks, as among the Lessor, each Participant, the Indenture Trustee and the Lessee, are to be borne by the Lessee, except that the Lessor as Owner Trustee, (A) represents and warrants that on the Delivery Date for each Unit, the Lessor shall have received whatever title to such Unit was conveyed to the Lessor by the Lessee, and (B) covenants and agrees that it shall not, through its own actions or inactions, interfere with the Lessee's or any sublessee's (pursuant to a sublease permitted by Section 19.4 hereof) quiet enjoyment of and right of possession and use of any Unit during the Lease Term therefor, so long as no Lease Event of Default shall have occurred and be continuing. The provisions of this Section 5 have been negotiated and, except to the extent otherwise provided in this Section 5, the foregoing provisions are intended to be a complete exclusion and negation of any representations and warranties by the Lessor, each Participant and the Indenture Trustee, express or implied, with respect to the Equipment that may arise pursuant to any law now or hereafter in effect, or otherwise. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the Lease Term to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the manufacturers or any prior owner thereof; provided, however, that if at any time a Lease Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights.

SECTION 6. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the Federal Railroad Administration, the Interstate Commerce Commission and the Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same may be in effect from time to time) (the "Interchange Rules") with respect to the use and maintenance of each Unit subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor; provided, however, that, so long as no Lease Event of Default has occurred and is continuing, the Lessee may, in good faith and by appropriate legal proceedings, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not adversely affect the rights or interests of the Lessor and the Indenture Trustee in the Equipment or hereunder, so long as any such legal proceedings shall be concluded prior to the date on which the Lessee is required to return to the Lessor any Unit involved in such proceedings.

SECTION 7. USE AND MAINTENANCE OF EQUIPMENT.

(a) The Lessee shall, at its own cost and expense, maintain and keep the Equipment, each Unit thereof, and the component Parts thereof in good order and repair, ordinary wear excepted, to a standard at least equal to the standard of maintenance performed on other similar equipment owned or leased by the Lessee (provided that such standard shall be at least equal to the standard of maintenance performed on similar equipment owned or leased by Class I line-haul railroads), and in as good condition as when purchased by the Lessor from the Lessee, ordinary wear excepted, and suitable for use in interchange service in accordance with the Interchange Rules and suitable for use by Class I line-haul railroads. Title to any Part which is a replacement of or substitution for a Part existing on the Delivery Date (and any successive replacements for or substitutions of such Part) and which is installed pursuant to this Sec-

tion 7(a) shall be immediately vested in the Lessor. The Lessee shall maintain all records, logs and other materials required by the American Association of Railroads, the Federal Railroad Administration or any other governmental authority having jurisdiction over the Equipment or the Lessee, to be maintained in respect of the Equipment, and shall permit the Lessor, the Indenture Trustee and any Participant to inspect the same in accordance with Section 13.2 hereof and Section 5.2 of the Participation Agreement.

(b) Except as otherwise required by the provisions of Section 6 hereof, the Lessee may modify any Unit or make additions or improvements thereto; provided that all modifications, additions or improvements to any Unit (the "Modifications") (i) shall comply with all of the requirements set forth in Rev. Proc. 79-48 (and any rule, regulation or pronouncement of the Internal Revenue Service amending, supplementing, modifying or replacing Rev. Proc. 79-48) for advance ruling purposes, and (ii) shall not change the nature or diminish the value, utility or economic life of such Unit. Title to any Non-Severable Modifications shall be immediately vested in the Lessor, and the Lessee shall take such actions as may be reasonably necessary to ensure that such title is vested in the Lessor. Except as provided in Sections 6 and 7(a), title to any Severable Modifications shall remain with the Lessee. If the Lessee shall at its cost cause such Severable Modifications to be made to any Unit, the Lessor shall have the right, prior to the return of such Unit to the Lessor hereunder, to purchase such Severable Modifications, at their then Fair Market Sales Value. If the Lessor does not elect to purchase such Severable Modifications, the Lessee may remove such Severable Modifications.

SECTION 8. LIENS ON THE EQUIPMENT.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to any Units or the Lessee's leasehold interest therein under this Lease, except Permitted Liens. The Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such Lien not excepted above if the same shall arise at any time.

SECTION 9. FILING.

Prior to the Delivery Date for each Unit or, in the case of filings referred to in clause (b) below, within twenty (20) days after the Delivery Date, the Lessee will (a) cause this Lease, the Lease Supplement relating to such Units, the Indenture and the Indenture Supplement relating to such Units to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, (b) cause (1) this Lease, the Lease Supplement, the Indenture and the Indenture Supplement to be deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada and with the appropriate authorities in the Province of British Columbia and (2) this Lease and the Lease Supplement to be deposited with the appropriate authorities in the Provinces of Alberta, Manitoba, Ontario and Saskatchewan, and (c) file, register or record this Lease, the Lease Supplement relating to such Units, the Indenture and the Indenture Supplement relating to such Units, and all financing and continuation statements and similar instruments, in such other places within the United States and (solely with respect to initial filings unless the Lessee shall have given a written notice to Lessor pursuant to Section 19.1 hereof) Canada, as the Lessor or the Indenture Trustee may reasonably request, and will furnish the Lessor and the Indenture Trustee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register or re-record whenever required) any and all amendments or supplements to this Lease or to the Indenture, any financing statements or similar instruments, and any and all further instruments required by law or reasonably requested by the Lessor or the Indenture Trustee, for the purpose of protecting the Lessor's title to, or the Indenture Trustee's security interest in, any Unit. Except as provided in Section 2.6 of the Participation Agreement, the Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, recording and re-recording or depositing and re-depositing of any such instruments or incident to the taking of such action required by this Section 9; provided, however, that the Lessee will not pay costs in excess of an aggregate amount of $7,000 with respect to Itel Rail Trusts Nos. 89-1 - 89-7, taken as a whole, incurred in connection with any filings, re-filings, recordings,

re-recordings, deposits or re-deposits in Canada other than costs of the Indenture Trustee incurred in connection with the deposit with the Registrar General of Canada and the filing with the appropriate authorities of the province of British Columbia required by clause (b)(1) hereof.

SECTION 10. INSURANCE.

10.1 Insurance Requirement. (a) The Lessee agrees that it will at all times during the Lease Term, at its own cost and expense: (i) keep each Unit insured against loss or damage by fire, collision, derailment, explosion and such other risks of loss and damage as are regularly and customarily insured against by Persons similar to the Lessee with respect to similar equipment owned, leased or operated by such Persons, in an amount not less than the Stipulated Loss Value of such Unit as of the earlier of the next succeeding Rent Payment Date or the Basic Term Expiration Date; and (ii) maintain third party public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, in an amount not less than the greater of (A) the amount of similar insurance maintained by the Lessee with respect to similar equipment which it owns, leases or operates, or (B) the amount of similar insurance regularly and customarily maintained by Persons similar to the Lessee with respect to similar equipment owned, leased or operated by such Persons; provided, however, that the Lessee may self-insure with respect to loss or damage to the Equipment as required by clause (i) above, and against third party public liability with respect to the Equipment as required by clause (ii) above, and insurance policies may contain deductible provisions, in each such case, in amounts that do not exceed the lower of (x) the amount customarily maintained by the Lessee with respect to similar equipment which it owns or leases, or (y) the amount maintained by Persons similar to the Lessee with respect to similar equipment owned or leased by such Persons; and provided further that (1) any such insurance coverage may be provided under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section 10.1, and (2) the aggregate of any deductible provision in any such blanket policy and any such self-insurance shall not exceed two percent (2%) of the Lessee's Tangible Net Worth (as shown in the financial statements for the most

recently completed fiscal year of the Lessee for which such financial statements are available). All such insurance shall cover the interests of the Lessor, in both its individual and fiduciary capacities, each Participant, the Indenture Trustee and the Lessee, as their interests may appear, in the Equipment; provided that the Lessor, the Indenture Trustee and the Participants shall not be responsible for the payment of the premiums on such insurance. The Lessee warrants and affirms that it will satisfy all obligations under such policy necessary to keep such insurance in full force and effect. The Lessee shall cause the property insurance on the Equipment required by clause (i) above to provide that, so long as the lien of the Indenture shall remain in effect, the proceeds, if any, shall be payable to the Indenture Trustee under a standard mortgage loss payable clause reasonably satisfactory to the Indenture Trustee, and thereafter to the Lessor. To the extent permitted by the terms of applicable insurance coverage, any loss under the property insurance policy referred to in clause (i) above shall be adjusted with the Lessee, subject to the reasonable approval of the Lessor and the Indenture Trustee; provided that no such adjustment shall constitute a waiver of the respective rights of the named insureds under such insurance policy.

(b) All insurance policies required to be maintained by the Lessee pursuant to this Section 10.1 shall contain, so long as any Rent shall be payable hereunder, (i) an agreement by the insurer not to exercise any rights of subrogation of the insurer against the Lessor, any Participant or the Indenture Trustee, and (ii) a waiver of any rights of the insurer to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of liability of the Lessor, any Participant or the Indenture Trustee.

(c) The Lessee shall, prior to the Delivery Date and annually thereafter within thirty (30) days following the anniversary of the Delivery Date, furnish the Lessor and the Indenture Trustee with a certificate signed by the insurer or an independent insurance broker showing the insurance then maintained by the Lessee pursuant to this Section 10.1 and that all premiums thereon have been paid or with other evidence of maintenance of the insurance required hereunder, and, with respect to any renewal policy or policies, shall furnish certificates or binders evidencing such renewal

as soon as practicable, but in no event later than thirty (30) days after such renewal is effected or the expiration date of the original policy or policies. The Lessee shall provide or cause its insurance carrier(s) or broker to provide to the Lessor and the Indenture Trustee at least thirty (30) days' prior written notice of the date on which any insurance maintained hereunder will be cancelled or materially reduced in coverage, or of the date of expiration of any insurance maintained pursuant hereto which the Lessee has been unable to renew. All insurance required to be maintained by the Lessee pursuant to this Section 10 shall be carried with insurance companies or insurers having all necessary power and authority to furnish the required coverage, and, in the case of insurance carriers or insurers organized in the United States, rated "A-/VI" or higher by A.M. Best Company, Inc., and in the case of insurance carriers or insurers not organized in the United States, such carriers or insurers shall be underwriters that are members or syndicates of Lloyds of London.

10.2 Proceeds of Insurance. The proceeds of any property or casualty insurance received by the Lessor or the Indenture Trustee shall be held by such party until the repairs referred to in clause (a) below are made as specified therein or payment of the Stipulated Loss Value is made, but in no case longer than one hundred eighty (180) days, and will be paid either: (a), to the Lessee promptly following receipt by the Indenture Trustee or the Lessor, as the case may be, of a written application signed by the Lessee for payment of, or to reimburse the Lessee for payment of, the costs of repairing or restoring the Units which have been damaged, so long as (i) the Lessee shall have complied with the applicable provisions of the Lease, (ii) no Lease Default or Lease Event of Default shall have occurred and be continuing, (iii) any damage to such Units shall have been fully repaired or restored, and (iv) the Lessee shall have delivered with such application a certificate executed by an engineering or financial officer of the Lessee to such effect accompanied by reasonably satisfactory evidence of such cost; provided, however, that if the Lessee has not taken the actions specified in Section 10.2(a) above within one hundred eighty (180) days of the receipt of such proceeds, (1) so long as the Indenture is in effect, such proceeds shall be applied by the Indenture Trustee (or, in the event such proceeds are then held by the Lessor, paid to the Indenture Trustee to

be applied by it) in accordance with Section 5.1(f) of the Indenture, or (2) if the Indenture is no longer in effect, such proceeds shall be applied in the manner provided for the disposition of insurance proceeds pursuant to Section 11.4 hereof; or (b) if this Lease is terminated with respect to such Unit because of an Event of Loss and the Lessee has paid the Stipulated Loss Value due as a result thereof, such proceeds shall be promptly applied in the manner provided for the disposition of insurance proceeds in Section 11.4 hereof.

SECTION 11. EVENT OF LOSS.

11.1 Duty of Lessee to Notify Lessor. In the event that any Unit (a) shall suffer an actual or constructive total loss, (b) shall suffer destruction or damage which, in the Lessee's good faith opinion, makes repair uneconomic or renders such Unit unfit for commercial use, (c) shall have title thereto taken or appropriated by any governmental authority under the power of eminent domain or otherwise, or (d) shall be taken or requisitioned for use by any governmental authority under the power of eminent domain or otherwise for a period extending beyond the earlier of (i) twelve (12) months after the date of such taking or requisition, or (ii) the last day of the Basic Term or any Renewal Term then in effect (any such occurrence being hereinafter called an "Event of Loss"), the Lessee, in accordance with the terms of Section 11.2 hereof, shall promptly and fully inform the Lessor and the Indenture Trustee of such Event of Loss, and shall pay the Stipulated Loss Value of such Unit. The date of occurrence of such Event of Loss shall be the date of such loss, destruction, damage, taking or requisition; provided that in the case of an Event of Loss specified in clause (d) above, the date of occurrence of such Event of Loss shall be deemed to be the earlier of (A) twelve (12) months after the date of such taking or requisition, or (B) the last day of the Basic Term or any Renewal Term then in effect.

11.2 Sum Payable for Event of Loss. The Lessee shall pay to the Lessor an amount equal to (i) the Stipulated Loss Value of each such Unit (calculated as provided in Section 11.5 below) as of the date of payment of the Stipulated Loss Value, and (ii) all other unpaid Rent attributable or accrued with respect to each such Unit as of the date of payment of the Stipulated Loss Value. Such payment shall be made by the Lessee on the

date which is the earliest to occur of the Basic Term Commencement Date (in the case of Events of Loss occurring during the Interim Term), the Rent Payment Date next succeeding the date of such occurrence by not less than 30 days, or the Basic Term Expiration Date, as the case may be.

11.3 Rent Termination. Upon the payment of all sums required to be paid pursuant to Section 11.2 hereof in respect of any Unit or Units, the obligation to pay Interim Rent and Basic Rent for such Unit or Units attributable to the period (or accrued) subsequent to the Stipulated Loss Value payment date shall cease and the Lease Term for such Unit or Units shall end.

11.4 Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of any Unit or Units having suffered an Event of Loss as soon as practicable in a commercially reasonable manner in its then existing condition and location. Any such disposition shall be on an "as-is", "where-is", "with all faults" basis without representation or warranty, express or implied (except as to the absence of any Lessor's Lien). As to each separate Unit so disposed of, so long as no Lease Event of Default hereunder shall have occurred and be continuing, the Lessee may retain any amounts arising from such disposition, plus any awards, insurance or other proceeds and damages received by the Lessee, the Lessor or the Indenture Trustee by reason of such Event of Loss after having paid the Stipulated Loss Value attributable thereto; provided, however, that, with respect to any Event of Loss referred to in clauses (c) and (d) of Section 11.1 hereof, any excess of such condemnation awards over the amount of the Stipulated Loss Value of such Unit shall be divided between the Lessee and the Lessor in proportion to their respective interests in such Unit.

11.5 Stipulated Loss Value. The Stipulated Loss Value of each Unit shall be an amount determined as of the earliest to occur of the Basic Term Commencement Date (in the case of Events of Loss occurring during the Interim Term), the Rent Payment Date or the Basic Term Expiration Date, as the case may be, upon which the Stipulated Loss Value is to be paid. The Stipulated Loss Value for each Unit shall be equal to that percentage of the Equipment Cost thereof set forth in Schedule 2 hereto.

11.6 Eminent Domain. In the event that during the Lease Term the use of any Unit is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not constitute an Event of Loss, the Lessee's obligation to pay all installments of Interim Rent and Basic Rent shall continue for the duration of such requisitioning or taking. So long as no Lease Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

SECTION 12. EARLY TERMINATION.

12.1 Obsolescence. (a) So long as no Lease Event of Default shall have occurred and be continuing, the Lessee shall have the right at its option, on at least ten (10) Business Days irrevocable prior notice to the Lessor and the Indenture Trustee, to terminate this Lease on any Rent Payment Date or the Basic Term Expiration Date, as the case may be, occurring on or after the fifth anniversary of the Delivery Date with respect to any Unit or Units (collectively the "Terminated Units") by providing to the Lessor a certificate executed by an engineering or financial officer of the Lessee having the title of Vice President or higher stating that such Units (i) have become obsolete, uneconomic or surplus to the Lessee's needs, and (ii) aggregate at least US$2,000,000 in Equipment Cost, as of the Rent Payment Date or the Basic Term Expiration Date, as the case may be, specified in such certificate (the "Termination Date"). There will be no conditions to the Lessee's right to terminate this Lease with respect to the Terminated Units pursuant to this Section 12.1 other than the provisions of the preceding sentence. During the period from the date of such certificate to the Termination Date, the Lessee, as agent for the Lessor and at the Lessee's sole cost and expense, shall use its best efforts to obtain bids for the cash purchase of the Terminated Units, and the Lessee shall promptly prior to the proposed date of sale, certify to the Lessor in writing the amount and terms of such bid, the proposed date of such sale and the name and address of the party submitting such bid. In the event that the Lessor receives any bid, it shall promptly, prior to the proposed date of sale, certify to the Lessee in writing the amount and terms of such bid, the proposed date of such sale and the name and address of the party submit-

ting such bid. On the Termination Date: (A) the Lessee shall deliver the Terminated Units to the bidder, if any, which shall have submitted the highest cash bid prior to such date, in the same manner as if delivery were made to the Lessor pursuant to Section 14 hereof and in full compliance with the terms thereof; and (B) the Lessor shall, without recourse or warranty (except as to the absence of any Lessor's Lien) and subject to the disclaimer set forth in Section 5 hereof, simultaneously therewith sell the Terminated Units to such bidder for cash paid in the manner and in funds of the type specified in Section 2.4 hereof.

(b) As between the Lessor and the Lessee, the total selling price realized at such sale shall be paid to and retained by the Lessor and, in addition, on the Termination Date, and as a condition precedent to such sale and the delivery of the Terminated Units to such purchaser, the Lessee shall pay to the Lessor, in the manner and in funds of the type specified in Section 2.4 hereof, (i) the excess, if any, of (A) the Termination Value for the Terminated Units computed as of the Termination Date in accordance with Section 12.2 hereof, over (B) the sales proceeds of the Terminated Units, after deducting the reasonable expenses incurred by the Lessor in connection with such sale, and (ii) all other Rent due and unpaid with respect to such Terminated Units to and including the Termination Date. If no sale shall have occurred on or as of the Termination Date because no bids have been received, this Lease shall continue in full force and effect as to such Units. The Lessor may, at its option, but shall be under no duty to, solicit bids.

(c) If the Lessee elects to terminate this Lease with respect to any or all of the Units pursuant to Section 12.1(a) hereof, then the Lessee shall pay, on such Termination Date, in addition to any amount required to be paid by the Lessee under Section 12.1(b) hereof, the Make-Whole Amount, if any, then required to be paid under Section 6.2(b) of the Indenture in connection with the related prepayment of the Loan Certificates.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this Section 12.1, the Lessor may elect, no later than five (5) Business Days prior to the Termination Date, not to sell the Terminated Units to

the highest bidder, if any, on the Termination Date, whereupon the Lessee shall deliver the Terminated Units to the Lessor as provided in this Section 12, treating the Termination Date as the termination date of the Lease Term with respect to the Terminated Units; provided that the Lessor's right to possession of such Terminated Units is subject to the condition precedent that the Lessor has paid the entire principal, accrued interest and the Make-Whole Amount, if any, on the Loan Certificates outstanding with respect to such Units; and provided further that upon such election by the Lessor, such delivery of the Terminated Units and payment by the Lessee of all Rent due and unpaid with respect to such Terminated Units to and including the Termination Date, the Lessee shall have no obligation to pay any Termination Value with respect to such Terminated Units or any Make-Whole Amount then due on the Loan Certificates.

(e) In the event of any such sale and receipt by the Lessor of all of the amounts provided herein, and upon compliance by the Lessee with the other provisions of this Section 12.1, the obligation of the Lessee to pay Rent attributable to the period (or accrued) subsequent to the Termination Value payment date (as determined in Section 12.2) for such Terminated Units shall cease, and the Lease Term for the Terminated Units shall end.

12.2 Termination Value. The Termination Value of each Unit shall be determined as of the Rent Payment Date, or the Basic Term Expiration Date, upon which the Termination Value is to be paid. The Termination Value for each Unit shall be equal to that percentage of the Equipment Cost thereof set forth in Schedule 3 hereto.

SECTION 13. ANNUAL REPORTS; INSPECTION.

13.1 Duty of Lessee to Furnish. On or before June 30, 1991, and on each June 30 thereafter, the Lessee will furnish to the Lessor and the Indenture Trustee an accurate statement, as of the preceding December 31, (a) showing the amount, description and reporting marks of the Units then leased hereunder, the amount, description and reporting marks of all Units that may have suffered an Event of Loss during the twelve (12) months ending on such December 31 (or since the Delivery Date, in the case of the first such statement), and such other information regarding the condition or repair of the

Equipment as the Lessor or the Indenture Trustee may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

13.2 Inspection Rights. Without limiting the inspection rights permitted in Section 5.2 of the Participation Agreement, the Lessor, the Owner Participant, the Indenture Trustee and any Loan Participant each shall have the right, but not the obligation, at their respective sole cost, expense and risk, except as provided below, by their respective authorized representatives, to the extent within the Lessee's control, to inspect the Equipment and the Lessee's records with respect thereto, during the Lessee's normal business hours and upon reasonable prior notice to the Lessee, to confirm the existence and proper maintenance of the Equipment during the Lease Term; provided, however, that upon the occurrence and during the continuance of a Lease Event of Default, such inspection shall be at the Lessee's cost and expense for out-of-pocket expenses; and provided, further, that the Lessee shall not be liable, except in the case of negligence or willful misconduct of the Lessee or of its employees or agents, for any injury to, or the death of, any Person exercising, either on behalf of the Lessor, the Owner Participant, the Indenture Trustee, any Loan Participant or any prospective purchaser, the rights of inspection granted under this Section 13.2.

SECTION 14. RETURN OF EQUIPMENT UPON EXPIRATION OF LEASE TERM.

Upon the expiration of the Basic Term or any Renewal Term then in effect, the Lessee will, at its own risk and expense, at such storage locations for which arrangements upon commercially reasonable terms can then be concluded to the mutual satisfaction of the Lessor and the Lessee, deliver possession to the Lessor of those Units which have not been purchased by the Lessee and as to which this Lease has not been renewed, and will permit the Lessor, at the Lessor's risk, to store such Units at such locations for a period not exceeding ninety (90) days, as directed by the Lessor upon not less than sixty (60) days' notice delivered to the Lessee prior to the commencement of such ninety (90) day period. All movement and storage of each such Unit during such ninety (90) day period is to be at the expense of the Lessee.

During any such storage period, the Lessee, to the extent within the Lessee's control, will permit the Lessor or any Person designated by it, to inspect the same, subject to the provisions of Section 13.2 hereof. Upon the return of the Equipment, the Lessee shall, at its own cost and expense, have taken all necessary action to assure that each Unit shall be in the condition required by Sections 6 and 7 hereof. During any such ninety (90) day storage period hereunder, the Lessee will, at its expense, effect and maintain insurance on the Equipment pursuant to Section 10 hereof. The Lessor shall pay all costs and expenses, including the cost of insurance, for any period of storage in excess of ninety (90) days. Upon expiration of the Lease Term and tender of such Unit or Units at such storage locations by the Lessee, this Lease and the obligation to pay Basic Rent and all other Rent for such Unit or Units due and payable subsequent to the expiration of the Lease Term and the tender of such Unit or Units at such storage locations by the Lessee, shall terminate.

SECTION 15. LEASE EVENTS OF DEFAULT.

15.1 Lease Events of Default. Any of the following events shall constitute a Lease Event of Default hereunder:

(a) The Lessee shall default in the payment when due of any installment of Basic Rent or any amount of Stipulated Loss Value or Termination Value, and such default shall continue for five (5) Business Days;

(b) The Lessee shall default in the payment of any other amount of Rent due, and such default shall continue for five (5) Business Days after notice of such default from the Lessor to the Lessee;

(c) The Lessee shall default in the maintenance of the insurance coverage required by Section 10 hereof; provided that no Lease Event of Default shall occur hereunder with respect to any insurance policy until the coverage provided by such policy shall have lapsed;

(d) Any representation or warranty made by the Lessee in this Lease or in any other Lessee Agreement (other than the Tax Indemnity Agreement), or in any statement or certificate furnished to the Lessor, the

Owner Participant, the Indenture Trustee or any Loan Participant pursuant to or in connection with this Lease or any other Lessee Agreement (other than any such statement or certificate delivered in connection with the Tax Indemnity Agreement) is untrue or incorrect in any material respect as of the date of issuance or making thereof;

(e) The Lessee shall default in the observance or performance of any other of the covenants and agreements on the part of the Lessee contained herein or in the other Lessee Agreements (other than the Tax Indemnity Agreement), and such default (with the exception of a default by the Lessee under Section 5.3 of the Participation Agreement, for which there shall be no grace period) shall continue for thirty (30) days after notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; provided, however, that if such default is not capable of cure during such thirty (30) day period, no Lease Event of Default shall occur under this paragraph (e) so long as the Lessee is diligently attempting to cure such default, but in no event longer than ninety (90) days;

(f) A final judgment entered against the Lessee for the payment of money in excess of US $1,000,000 has not been vacated, satisfied or stayed more than thirty (30) days after the date of its entry;

(g) The Lessee (i) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) shall make a general assignment for the benefit of creditors, or (iv) shall fail generally to pay its debts as they become due, or (v) shall take any corporate action to authorize any of the foregoing;

(h) An involuntary case or other proceeding shall be commenced against the Lessee seeking liquidation, reorganization or other relief with respect

to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or

(i) any guaranty of the obligations of any Affiliate of the Lessee which has been executed and delivered by the Lessee in favor of the Lessor pursuant to the terms of Section 19.2 hereof shall at any time, while the obligations of such Affiliate under this Lease remain outstanding, cease to be valid and binding or in full force and effect, or the Lessee shall so assert in writing; or the Lessee shall default in the payment or performance of any of its obligations under any such guaranty; or any such guaranty shall be declared to be null and void or shall be terminated; or the Lessee shall take any action to contest the validity or enforceability of any such guaranty; or the Lessee shall deny that it has any or further liability or obligation under any such guaranty.

15.2 Remedies. Upon the occurrence of any Lease Event of Default and at any time thereafter so long as the same shall be continuing, the Lessor may, at its option, declare this Lease to be in default, and at any time thereafter, so long as the Lessee shall not have remedied all outstanding Lease Events of Default, the Lessor may do one or more of the following as the Lessor in its sole discretion shall elect, to the extent permitted by and subject to compliance with any mandatory requirements of applicable law then in effect:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof;

(b) By notice in writing to the Lessee, cancel this Lease, whereupon all right of the Lessee to the possession and use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take pos-

session of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successor or assigns, to use such Units for any purpose whatever;

(c) Sell any Unit at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such sale or for the proceeds thereof (except to the extent required by paragraph (f) below if the Lessor elects to exercise its rights under said paragraph), in which event the Lessee's obligation to pay Basic Rent and other Rent with respect to such Unit hereunder attributable to or accrued over any periods subsequent to the date of such sale shall terminate (except to the extent that Basic Rent and other Rent are to be included in computations under paragraph (e) or (f) below if the Lessor elects to exercise its rights under either of said paragraphs);

(d) Hold, keep idle or lease to others any Unit as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect thereto, except that the Lessee's obligation to pay Basic Rent and other Rent with respect to such Unit attributable to or accrued over any periods subsequent to the date upon which the Lessee shall have been deprived of possession and use of such Unit pursuant to this Section 15.2 shall be reduced by the net proceeds, if any, received by the Lessor from leasing such Unit to any Person other than the Lessee;

(e) Whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a), (b), (c) or (d) above with respect to any Unit, the Lessor, by notice to the Lessee specifying a payment date which shall be not earlier than five (5) Business Days after the date of such notice, may demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent and other Rent for such Unit due after the payment date specified in such notice), any unpaid Rent for such Unit attributable to or accrued over prior to the payment date specified in such notice, plus whichever of the

following amounts the Lessor, in its sole discretion, shall specify in such notice: (i) an amount equal to the difference between (A) the present value of all future Basic Rent for such Unit, and (B) the present value of the Fair Market Rental Value (determined as hereafter in Section 15.4 provided) of such Unit or, if the Lessor has leased such Unit to others pursuant to paragraph (d) above, for the period of such lease the periodic rent payable thereunder, in each case for the remainder of the Basic Term or any Renewal Term then in effect, as the case may be, as of the payment date specified in such notice, such present values to be computed on the basis of a rate of discount equal to the Lease Rate, compounded semi-annually, from the respective dates upon which such rents would be paid; or (ii) an amount equal to the excess, if any, of the Stipulated Loss Value for such Unit as of the Rent Payment Date next preceding the payment date specified in such notice or, if such payment occurs on a Rent Payment Date, then computed as of such Rent Payment Date, over the Fair Market Sales Value of such Unit (determined as hereafter in Section 15.4 provided) as of the payment date specified in such notice;

(f) If the Lessor shall have sold any Unit pursuant to paragraph (c) above, the Lessor, in lieu of exercising its rights under paragraph (e) above with respect to such Unit may, if it shall so elect, demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent and any other Rent for such Unit due subsequent to the Rent Payment Date next preceding such sale), any unpaid Rent for such Unit accrued or attributable for periods up to and including the Rent Payment Date next preceding the date of such sale and, if that date is a Rent Payment Date, the Basic Rent due on that date, plus the amount, if any, by which the Stipulated Loss Value of such Unit computed as of the Rent Payment Date next preceding the date of such sale or, if such sale occurs on a Rent Payment Date, then computed as of such Rent Payment Date, exceeds the net proceeds of such sale; and

(g) The Lessor may, in lieu of exercising its rights under paragraph (e) above: (i) retain all Rent theretofore paid by the Lessee or received by the Lessor in respect of any Unit, including any such Rent then in the Lessor's possession which, had this Lease not been declared in default, would otherwise be payable to

the Lessee hereunder; (ii) recover from the Lessee all unpaid Rent accrued or attributable under any of the terms hereof as of the date of the transfer of title referred to below; and (iii) transfer title to and the ownership interest in such Unit to the Lessee by quit-claim bill of sale (except as to the absence of any Lessor's Liens), and recover from the Lessee as liquidated damages for loss of a bargain, but not as a penalty (in lieu of the Basic Rent and any other Rent for such Unit accrued or attributable subsequent to the Rent Payment Date next preceding such transfer date, or, if such transfer date occurs on a Rent Payment Date, such Rent Payment Date or the Basic Term Expiration Date, as the case may be), in the Lessor's sole discretion, an aggregate sum equal to either (A) the present value of all Basic Rent for such Unit which would otherwise have accrued hereunder from the date of the declaration of default to the end of the Basic Term or any Renewal Term then in effect, as the case may be, such present value to be computed on the basis of a rate of discount equal to the Lease Rate, compounded semi-annually, from the respective dates upon which such Basic Rent would have been payable hereunder had this Lease not been terminated, or (B) the Stipulated Loss Value of such Unit, calculated as of the Rent Payment Date next preceding such transfer date, or if such transfer occurs on a Rent Payment Date, as of such Rent Payment Date, or the Basic Term Expiration Date, as the case may be.

15.3 Other Liabilities. In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing remedies, and for legal fees and other costs and expenses incurred by reason of the occurrence of any Lease Event of Default or the exercise of the Lessor's remedies with respect thereto, including without limitation the repayment in full of any costs and expenses necessary to be expended in repairing or modifying any Unit in order to cause it to be in compliance with all maintenance and regulatory standards imposed by this Lease.

15.4 Valuation. For purposes of Section 15.2, the Fair Market Rental Value and Fair Market Sales Value for any Unit shall be determined on the basis of an appraisal of an independent expert appraiser selected by the Lessor, based upon the criteria for establishing Fair Market Sales Value and Fair Market Rental Value set forth

in Section 20.5, and the cost of any such appraisal shall be borne by the Lessee.

15.5 Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity.

15.6 No Waiver. No delay or omission to exercise any right, power or remedy accruing to the Lessor upon any breach or default by the Lessee under this Lease shall impair any such right, power or remedy of the Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default hereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default.

SECTION 16. RETURN OF EQUIPMENT UPON LEASE EVENT OF DEFAULT.

16.1 Lessee's Duty to Return. (a) If the Lessor shall cancel this Lease pursuant to Section 15.2 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Unit to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(i) Forthwith place such Unit upon such storage locations as directed by the Lessor;

(ii) Permit the Lessor to store such Unit at such location without charge for insurance, rent or storage until such Unit has been sold, leased or otherwise disposed of by the Lessor, and during such period of storage by Lessee shall continue to maintain all insurance required by Section 10.1 hereof; and

(iii) Transport such Unit one time to any railroad interchange point in the continental United States as the Lessor may direct.

(b) Each such Unit will be in the condition required by Sections 6 and 7 hereof.

16.2 Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

16.3 Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 16, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Units to the Lessor pursuant to this Section 16, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

SECTION 17. LESSOR'S RIGHT TO PERFORM.

If the Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein, the Lessor may, after giving not less than five (5) Business Days' prior notice thereof to the Lessee, itself make such payment or perform or comply with such agreement in a reasonable manner, but shall not be obligated hereunder to do so, and the amount of such payment and of the reasonable expenses of the Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Rate, to the extent permitted by applicable law, shall be deemed to be Supplemental Rent, payable by the Lessee to the Lessor on demand; provided that if a Lease Event of Default shall have occurred and be continuing, the Lessor shall have no obligation to give notice to the Lessee pursuant to this Section 17.

SECTION 18. ASSIGNMENTS BY LESSOR.

18.1 Right to Assign. The Lessee and the Lessor hereby confirm that concurrently with the execution and delivery of this Lease, the Lessor has executed and delivered to the Indenture Trustee the Indenture, which assigns as collateral security and grants a security interest to the Indenture Trustee in, to and under the right, title and interest of the Lessor under this Lease and certain of the Rent payable hereunder, all as more explicitly set forth in Section 1 of the Indenture. The Lessor agrees that it shall not otherwise assign or convey its right, title and interest in and to the right, title and interest of the Lessor under this Lease, the Equipment or any Unit, except as expressly permitted by and subject to the provisions of the Participation Agreement, the Trust Agreement and the Indenture.

18.2 Obligations and Rights of Assignee. Any assignee pursuant to this Section 18 shall not be obligated to perform any duty, covenant or condition required to be performed by the Lessor under any of the terms hereof, but on the contrary, the Lessee and the Lessor each acknowledge and agree that, notwithstanding any such assignment, each and all of such duties, covenants or conditions required to be performed by the Lessor shall survive any such assignment and shall be and remain the sole liability of the Lessor. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the Rent payable by the Lessee under any provision of this Lease shall not (except as provided in Section 2.2(d) of the Participation Agreement) be subject to any defense, setoff, counterclaim or recoupment whatsoever, whether by reason or failure of or defect in the Lessor's title, or any interruption from whatsoever cause (except due to a breach of the Lessor's covenant of quiet enjoyment) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other Person, or for any other cause whatsoever, it being the intent hereof that (except as provided in Section 2.2(d) of the Participation Agreement) the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the Rents which are the subject matter of the assignment, and (ii) all obligations of the Lessor to

the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor. Notwithstanding any provision of this Lease, the Lessee shall have the right to proceed against any assignee for any wrongful acts of such assignee.

18.3 Right, Title and Interest of Indenture Trustee Under Lease. It is understood and agreed that the right, title and interest of the Indenture Trustee in, to and under this Lease and certain of the Rent due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

18.4 Amendments Which Affect Lessee's Rights or Obligations. The Lessor and the Lessee will not amend, supplement, waive or modify this Lease without the prior written consent of the Indenture Trustee, except as otherwise provided in the Indenture.

SECTION 19. USE AND POSSESSION; ASSIGNMENTS BY LESSEE; MERGER AND CONSOLIDATION; AND SUBLEASES.

19.1 Lessee's Rights to the Equipment. So long as no Lease Event of Default shall have occurred and be continuing, the Lessee and its sublessees pursuant to subleases in accordance with Section 19.4 hereof shall be entitled to the possession, use and quiet enjoyment of the Equipment in accordance with the terms of this Lease. The Lessee may use the Equipment in any lawful manner whatsoever in the United States and Canada and shall not permit more than de minimis use of the Equipment in Mexico. The Lessee shall at no time throughout the Lease Term sublease, assign or permit the assignment of, or permit any sublessee to assign or permit the assignment of, any Unit for use in service other than within the United States and Canada and shall promptly provide notice to the Lessor and the Indenture Trustee of any sublease or assignment to a Canadian entity.

19.2 Assignments by Lessee. (a) The Lessee shall not, without the prior consent of the Lessor, assign, sell, transfer, pledge or encumber its leasehold interest under this Lease in any of the Equipment; provided, however, that, so long as, immediately before and immediately after such assignment, no Lease Event of Default shall have occurred and be continuing, the Lessee may assign all of its rights and obligations under this

Lease to an Affiliate of the Lessee; and provided, further, that (i) such Affiliate is a corporation incorporated in any State of the United States or the District of Columbia which shall have all necessary authorizations and approvals to own and operate such assets, (ii) the obligations of such Affiliate are guaranteed by the Lessee pursuant to a guaranty agreement, in form and substance reasonably acceptable to the Lessor, which shall include an agreement by the Lessee to remain bound by the covenants set forth in Section 5.3 of the Participation Agreement, and (iii) the Lessee shall deliver to the Lessor (A) an opinion of legal counsel, in form and substance reasonably acceptable to Lessor, regarding the taking of all corporate and other actions necessary in connection with such assignment and the compliance with the conditions set forth in this Section 19.2, and (B) an Officer's Certificate to the effect that such assignment by the Lessee under the Operative Agreements will not render the Lessee insolvent nor is such assignment being made in contemplation of the Lessee's insolvency; the property remaining in the hands of the Lessee after such assignment is not unreasonably small capital for the operation of its business as it is then conducted or proposed to be conducted; the Lessee does not intend to or believe that, immediately after such assignment, it will incur debts beyond its ability to pay as they mature; and the Lessee has no actual intent to hinder, delay or defraud either present or future creditors.

19.3 Merger, Consolidation or Sale of Assets. So long as no Lease Event of Default shall have occurred and be continuing, nothing in this Section 19 shall be deemed to restrict the right of the Lessee, without the consent of the Lessor, to assign, sell or transfer its leasehold interest under this Lease in the Equipment and its right to the possession and use of the Equipment to any corporation into or with which the Lessee shall have merged or consolidated or which shall have acquired all or substantially all of the assets of the Lessee; provided that (a) such corporation shall be, effective upon such transfer, a corporation incorporated in any state of the United States or the District of Columbia which shall have all necessary authorizations and approvals to own and operate such assets, (b) such corporation shall have duly assumed in writing (or shall be deemed to have assumed by operation of law) the obligations of the Lessee hereunder and under the other Lessee Agreements, (c) after giving effect to such transaction, such corpo-

ration shall have a Tangible Net Worth at least equal to that of the Lessee immediately prior to such transaction, and (d) after giving effect to such transaction, such corporation shall be in compliance with the financial covenants set forth in Section 5.3 of the Participation Agreement.

19.4 Subleases. The Lessee shall not, without the prior consent of the Lessor, enter into any sublease with respect to any Unit, except pursuant to a sublease which (a) shall be for a term not extending beyond the expiration of the Basic Term, or any Renewal Term then in effect, unless such sublease shall expressly provide for the Lessee's right to substitute other similar units for the Units subleased thereunder (which substitution the Lessee hereby agrees to do with respect to any Units subleased thereunder upon or prior to the end of the Lease Term, unless the Lessee exercises its option hereunder to purchase such Units or to renew this Lease), or that such sublease shall terminate with respect to such Unit upon the termination of this Lease, unless such Unit is purchased by the Lessee upon such termination, and (b) shall be made subject and subordinate to this Lease. No sublease shall in any way discharge or diminish any of the Lessee's obligations hereunder, and the Lessee shall remain primarily liable hereunder for the performance of all the terms, conditions and provisions of this Lease and the other Lessee Agreements to the same extent as if such sublease had not been entered into.

SECTION 20. OPTIONS TO PURCHASE AND RENEW.

20.1 Early Purchase Option. So long as no Lease Event of Default has occurred and is continuing, the Lessee shall have the right, upon no less than one-hundred eighty (180) days prior notice to the Lessor and the Indenture Trustee, to purchase all, but not less than all, of the Units on the eleventh anniversary of the Basic Term Commencement Date at a price equal to the sum of (i) % of the aggregate Equipment Cost of such Units, plus (ii) the Make-Whole Amount, if any, then required to be paid under Section 6.2(c) of the Indenture in connection with the related prepayment of the Loan Certificates.

20.2 Purchase Option at Expiration of Basic Term or Renewal Term. (a) So long as no Lease Event of Default has occurred and is continuing, the Lessee shall

have the right, upon no less than one-hundred eighty (180) days prior notice to the Lessor, to purchase all, but not less than all, of the Units not previously purchased, on the Basic Term Expiration Date at a price equal to the then Fair Market Sales Value (without taking into account the Fair Market Sales Value of any Severable Modifications) of such Units.

(b) So long as no Lease Event of Default has occurred and is continuing, the Lessee shall have the right, upon no less than ninety (90) days prior notice to the Lessor, to purchase all, but not less than all of the Units not previously purchased, on the date of the expiration of any Renewal Term then in effect, at a price equal to the then Fair Market Sales Value (without taking into account the Fair Market Sales Value of any Severable Modifications) of such Units.

20.3 Renewal Option at Expiration of Basic Term or Renewal Term. (a) So long as no Lease Event of Default has occurred and is continuing, the Lessee shall have the right, upon no less than one-hundred eighty (180) days prior notice to the Lessor, on the Basic Term Expiration Date, to renew this Lease with respect to all, but not less than all, of the Units then subject to this Lease, for one one-year Renewal Term (the "Fixed Rate Renewal Term"), commencing at the expiration of the Basic Term, as the case may be. All of the provisions of this Lease, other than Section 12, shall be applicable during the Fixed Rate Renewal Term, except that the Stipulated Loss Values shall be determined in accordance with Section 20.6 hereof, and Basic Rent shall be equal to fifty percent (50%) of the average Basic Rent of such Units over the Basic Term (prior to any refinancing pursuant to Section 9.2 of the Participation Agreement) and shall be payable in arrears.

(b) So long as no Lease Event of Default has occurred and is continuing, the Lessee shall have the right, upon no less than ninety (90) days prior notice to the Lessor, at the expiration of the Fixed Rate Renewal Term then in effect, to renew this Lease with respect to all, but not less than all of the Units then subject to this Lease, for one or more one-year Renewal Terms, with Basic Rent for any such Renewal Term equal to the then Fair Market Rental Value of such Units and payable in arrears. All other provisions of this Lease, other than Section 12, shall be applicable during any such Renewal

Term, except that Stipulated Loss Values shall be determined in accordance with Section 20.6 hereof.

20.4 Lessee's Notice. The Lessee shall provide a single notice to the Lessor no less than one-hundred eighty (180) days prior to the expiration of the Basic Term, or no less than ninety (90) days prior to the expiration of any Renewal Term then in effect, as the case may be, indicating whether the Lessee will (i) purchase all of the Units pursuant to Section 20.2 hereof, (ii) renew this Lease with respect to such Units pursuant to Section 20.3 hereof, or (iii) return such Units to the Lessor pursuant to Section 14 hereof. In the event that notice is not timely provided by the Lessee in accordance with the terms of this Section 20.4, the Lessee will be deemed to have elected to return the Units to the Lessor at the end of the Basic Term or such Renewal Term, as the case may be.

20.5 Determination of Fair Market Sales Value and Fair Market Rental Value. Not more than one-hundred eighty (180) days prior to the expiration of the Basic Term or ninety (90) days prior to the expiration of any Renewal Term then in effect, the Lessee may notify the Lessor that the Lessee desires a determination of the Fair Market Rental Value of the Units then subject to this Lease for a Renewal Term commencing upon the expiration of the Basic Term or such Renewal Term, as the case may be, and of the Fair Market Sales Values of the Units then subject to this Lease as of the expiration of the Basic Term or such Renewal Term, as the case may be (without taking into account the Fair Market Rental Value or Fair Market Sales Value, as the case may be, of any Severable Modifications to such Units). Thereafter, the Lessor and the Lessee shall consult for the purpose of determining such Fair Market Sales Values and Fair Market Rental Value, and any values agreed upon in writing shall constitute such Fair Market Sales Values and Fair Market Rental Value. If the Lessor and the Lessee fail to agree upon such values within thirty (30) days after the Lessee's notice pursuant to the first sentence of this paragraph, the Lessee may request that such values be determined by the Appraisal Procedure. Such Fair Market Sales Values and Fair Market Rental Value shall be determined on the basis of the value which would obtain in an arm's-length transaction between an informed and willing buyer-user or lessee (other than a used equipment dealer or a lessee currently in possession) and an informed and will-

ing seller or lessor, in each case under no compulsion to sell, buy or lease. Any such determination shall be made (a) on the assumption that the Equipment is in the condition and state of repair required by this Lease, including the return conditions specified in Section 14, (b) as respects Fair Market Rental Value, on the basis of a type of lease similar to this type of Lease, and (c) giving effect to the removal of any Parts which remain the property of the Lessee under the provisions of Section 7 hereof. The Lessee's request for a determination of Fair Market Sales Values and Fair Market Rental Value shall not obligate the Lessee to exercise any of the options provided in this Section 20. All costs and expenses of any Appraisal Procedure pursuant to this Section 20 shall be shared equally by the Lessee and the Lessor.

20.6 Stipulated Loss Value During Renewal Term. The Stipulated Loss Value of any Unit during a Renewal Term shall be determined on the basis of the Fair Market Sales Value of such Unit as of the first day of such Renewal Term, increased or decreased, as the case may be, in equal semi-annual increments to the Fair Market Sales Value of such Unit as of the last day of such Renewal Term.

20.7 Re-delivery of Equipment. Unless the Lessee has elected to exercise its option to purchase the Units then leased hereunder or to renew this Lease in respect of such Units as provided in this Section 20, all such Units shall be returned to the Lessor at the end of the Basic Term, or any Renewal Term then in effect, as the case may be, in accordance with Section 14 hereof.

SECTION 21. INTEREST ON OVERDUE RENT.

Anything to the contrary herein contained notwithstanding, any nonpayment of Rent due hereunder shall result in the additional obligation on the part of the Lessee to pay as Supplemental Rent an amount equal to interest at the Late Rate on such overdue amounts for the period of time during which they were overdue and not paid.

SECTION 22. MISCELLANEOUS.

22.1 Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writ-

ing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail, certified or registered, postage prepaid, return receipt requested, or (c) in the case of notice by such a telecommunications device, when properly transmitted, in each case addressed to each party hereto at its address set forth below or, in the case of any such party hereto, at such other address as such party may from time to time designate by written notice to the other parties hereto:

If to the Lessor:

First Security Bank of Utah, N.A.
79 South Main Street
Salt Lake City, Utah 84111
Attention: Corporate Trust Department
Fax No.: (801) 350-5053
Confirmation No.: (801) 350-5630

If to the Indenture Trustee:

Continental Bank, National Association
231 South LaSalle Street
7th Floor
Chicago, Illinois 60697
Attention: Corporate Trust Division, Itel Rail Account Administrator
Fax No.: (312) 828-6052
Confirmation No.: (312) 828-2953

If to the Lessee:

Itel Rail Corporation
55 Francisco Street
San Francisco, California 94133
Attention: Robert C. Kiehnle
Vice President-Finance
Fax No.: (415) 781-1035
Confirmation No.: (415) 984-4000

with a copy to:

Skadden, Arps, Slate,
Meagher & Flom
919 Third Avenue
New York, New York 10022
Attention: Eduardo R. Vidal
Fax No.: (212) 735-2000
Confirmation No.: (212) 735-3000

22.2 Execution in Counterparts. This Lease, and any amendment or supplement hereto, may be executed in any number of counterparts, each executed counterpart constituting an original and in each case such counterparts shall constitute but one and the same instrument; provided, however, that to the extent that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code) no security interest in this Lease may be created through the transfer or possession of any counterpart hereof other than the counterpart bearing the receipt therefor executed by the Indenture Trustee on the signature page hereof, which counterpart shall constitute the only "original" hereof for purposes of the Uniform Commercial Code. The parties agree that on the Delivery Date one or more of the parties' execution hereof may be evidenced by a transmission to Skadden, Arps, Slate, Meagher & Flom, special counsel to the Lessee, by a telecommunications device capable of creating a written record, of a signature page hereof, executed by such party, with actual copies of executed signature pages to be sent by such party on such date to Skadden, Arps, Slate, Meagher & Flom by overnight mail or courier service, provided that the signature page transmitted by such telecommunications device shall be effective regardless of whether the actual copies of signature pages are so sent.

22.3 Governing Law; Severability. This Lease, as extended, amended, modified, renewed or supplemented, shall be governed by and construed in accordance with the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation. Whenever possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision

of this Lease shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease.

22.4 Headings and Table of Contents. The headings of the sections of this Lease and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

22.5 Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and permitted assigns.

22.6 True Lease. It is the intent of the parties to this Lease that it will be a true lease and not a "conditional sale," and that the Lessor shall at all times be considered to be the owner of the Equipment which is the subject of this Lease for the purposes of all Federal, state, city and local income taxes or for franchise taxes measured by net income, and that this Lease conveys to the Lessee no right, title or interest in the Equipment except as lessee.

22.7 Amendments and Waivers. No term, covenant, agreement or condition of this Lease may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto and except in accordance with the terms of Section 18.4 hereof; provided, however, any breach or default, once waived in writing, shall not be deemed continuing for any purpose of the Operative Agreements.

22.8 Survival. All warranties, representations, indemnities and covenants made by any party hereto, herein or in any certificate or other instrument delivered by any such party or on the behalf of any such party under this Lease, shall be considered to have been relied upon by each other party hereto and shall survive the consummation of the transactions contemplated hereby on the Delivery Date regardless of any investigation made by any such party or on behalf of any such party.

22.9 Limitation of Lessor's Liability. It is expressly agreed and understood that all representations, warranties and undertakings of the Lessor hereunder (except as expressly provided herein) shall be binding upon the Lessor only in its capacity as Owner Trustee under the Trust Agreement, and (except as expressly provided herein) the institution acting as the Lessor shall not be liable in its individual capacity for any breach thereof, except for its gross negligence or willful misconduct or for breach of its covenants, representations and warranties contained herein to the extent covenanted or made in its individual capacity.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

Lessor: FIRST SECURITY BANK OF UTAH, N.A., in its individual capacity as expressly provided herein and otherwise solely as Owner Trustee under Itel Rail Trust No. 89-7

By: _____
Name: Greg A. Hawley
Title: Trust Officer

Lessee: ITEL RAIL CORPORATION

By: _____
Name:
Title:

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

On this ____ day of DEC 21 1989, before me personally appeared Greg A. Hawley, to me personally known, who being duly sworn, says that he is a Trust Officer of FIRST SECURITY BANK OF UTAH, N.A., that said instrument was signed on DEC 21 1989, on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Edith W. Ogilvie
Notary Public

[NOTARIAL SEAL]

Notary Public
EDITH W. OGILVIE
79 South Main
Salt Lake City, Utah 84111
My Commission Expires
October 20, 1993
State of Utah

My Commission Expires:

_____

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

Lessor: FIRST SECURITY BANK OF UTAH, N.A., in its individual capacity as expressly provided herein and otherwise solely as Owner Trustee under Itel Rail Trust No. 89-7

By: _____
Name:
Title:

Lessee: ITEL RAIL CORPORATION

By: Robert Kiehnle
Name: Robert C. Kiehnle
Title: Vice President-Finance and Treasurer

STATE OF CALIFORNIA)
) SS:
CITY AND COUNTY OF SAN FRANCISCO)

On this 21 day of December, 1989, before me personally appeared Robert C. Kiehnle, to me personally known, who being duly sworn, says that he is a Vice President of ITEL RAIL CORPORATION, that said instrument was signed on December 21, 1989 on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

patricia schumacker
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

February 4, 1991

Draft December 27, 1989
8:26 AM
Schedule 1 to
Equipment Lease Agreement

Itel Rail Trust No. 89-7

INTERIM RENT AND BASIC RENT

INTERIM RENT

US$0

BASIC RENT

Rent Payment Date	Percentage of Equipment Cost

Draft December 27, 1989
8:26 AM
Schedule 2 to
Equipment Lease Agreement

Itel Rail Trust No. 89-7

STIPULATED LOSS VALUES

No.	Date	Percentage of Equipment Cost

60ZHC893-MCGOVE-WOR

Draft December 27, 1989
8:26 AM
Schedule 3 to
Equipment Lease Agreement

Itel Rail Trust No. 89-7

TERMINATION VALUES

No.	Date	Percentage of Equipment Cost

Schedule 4 to
Equipment Lease Agreement

DEFINITIONS

Re: Itel Rail Trust No. 89-7

General Provisions

The following terms shall have the following meanings for all purposes of the Operative Agreements referred to below, unless otherwise defined in an Operative Agreement or the context thereof shall otherwise require. In the case of any conflict between the provisions of this Definition Schedule and the provisions of the main body of any Operative Agreement, the provisions of the main body of such Operative Agreement shall control the construction of such Operative Agreement.

Unless the context otherwise requires, (i) references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented and otherwise modified from time to time, and (ii) references to parties to agreements shall be deemed to include the successors and permitted assigns of such parties.

Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of the Operative Agreements, this shall be done in accordance with generally accepted accounting principles at the time in effect, to the extent applicable, except where such principles are inconsistent with the requirements of any Operative Agreement.

Defined Terms

"Affiliate" of any Person shall mean any other Person which directly or indirectly controls, or is controlled by, or is under a common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"After-Tax Basis" shall mean, with respect to any payment received or deemed to have been received by any Person, the amount of such payment supplemented by a further payment to that Person so that the sum of the two payments shall, after deduction of all Federal, state and local income taxes (taking into account any credits or deductions arising therefrom and the timing thereof), computed using an assumed combined effective Federal, state and local income tax rate (taking into account the deductibility of state and local taxes in computing Federal income taxes) determined by using the maximum marginal Federal and state (including any applicable local income taxes) income tax rate in effect for such taxable year, resulting from the receipt (actual or constructive) of such two payments, be equal to such payment received or deemed to have been received.

"Alternative Rate" shall have the meaning specified in Section 2.8(c) of the Participation Agreement.

"Alternative Reset Date" shall have the meaning specified in Section 2.8(c) of the Participation Agreement.

"Applicable Percentage" shall mean, with respect to any Loan Participant, the fraction expressed as a percentage, the numerator of which is the principal balance of the Loan Certificate which such Loan Participant is committed to purchase or then holds, and the denominator of which is the principal balance of all Loan Certificates (including the Loan Certificate committed to or held by such Loan Participant). The Applicable Percentage of the original Loan Participant is set forth by the Loan Participant's name on Schedule 2 to the Participation Agreement.

"Appraisal" shall have the meaning specified in Section 4.3(a) of the Participation Agreement.

"Appraisal Procedure" shall mean the following procedure for determining the Fair Market Sales Value or the Fair Market Rental Value, as the case may be, of any Units: If either party to the Lease shall have given written notice to the other party requesting determination of such value by the Appraisal Procedure, the parties shall consult for the purpose of appointing a qualified independent expert appraiser by mutual agreement. If no such appraiser is so appointed within fifteen (15)

days after such notice is given, each party shall appoint a qualified independent expert appraiser within thirty (30) days after such notice is given. If one party appoints an appraiser pursuant to the preceding sentence, the appraisal shall be made by such appraiser if the other party fails to appoint a second appraiser within the applicable time limit. If both parties appoint appraisers, the two appraisers so appointed shall, within forty-five (45) days after such notice is given, appoint a third independent expert appraiser. If no such third appraiser is appointed within forty-five (45) days after such notice is given, either party may apply to the American Arbitration Association to make such appointment, and both parties shall be bound by any such appointment. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine one or more of the Fair Market Sales Value or the Fair Market Rental Value of such Units within twenty (20) days after its or their appointment. If the parties shall have appointed a single appraiser, its determination of values shall be final. If three appraisers shall be appointed, the values determined by the three appraisers shall be averaged, the determination which differs most from such average shall be excluded, the remaining two determinations shall be averaged and such average shall be final.

"Appraiser" shall have the meaning specified in Section 4.3(a) of the Participation Agreement.

"Assigned Agreements" shall have the meaning specified in Section 1.3 of the Indenture.

"Assumed Reset Date" shall have the meaning specified in Section 2.7 of the Participation Agreement.

"Bank Financing" shall have the meaning specified in the CIT Supplemental Commitment Letter.

"Bankruptcy Code" shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, 11 U.S.C. § 101 et seq.

"Basic Rent" shall mean all rent payable by the Lessee to the Lessor pursuant to Section 2.1(b) of the Lease for the Basic Term, and all rent payable pursuant to Section 20.3 of the Lease for any Renewal Term.

"Basic Term" shall have the meaning specified in Section 3 of the Lease.

"Basic Term Commencement Date" shall have the meaning specified in Section 2 of the Lease Supplement.

"Basic Term Expiration Date" shall mean the date which occurs twelve years and six months after the Basic Term Commencement Date.

"Beneficial Interest" shall mean the interest of the Owner Participant under the Trust Agreement.

"Bill of Sale" shall have the meaning specified in Section 4.1(g) of the Participation Agreement.

"Business Day" shall mean any day other than a Saturday, Sunday or day on which banks in the States of Illinois, Utah, New York or California are authorized or permitted to be closed.

"CIT Supplemental Commitment Letter" shall mean the letter agreement dated November 22, 1989 from The CIT Group/Equipment Financing, Inc. to the Lessee.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall have the meaning specified in Section 1 of the Indenture.

"Commitment Letter" shall mean the commitment letter dated July 26, 1989 among the Lessee and the Owner Participant.

"Conditional Reset Date" shall mean the date which occurs five (5) days after the Conditional Reset Notice Date.

"Conditional Reset Notice Date" shall have the meaning specified in Section 2.8(c) of the Participation Agreement.

"Conditional Reset Rate" shall mean the average of the seven year and ten year U.S. Treasury Bond yield to maturity plus 2.75% as set forth five (5) days prior to the Conditional Reset Date.

"Coupon Rate" shall mean, with respect to any Loan Certificates, the Floating Rate, an Optional Fixed Rate, the Mandatory Fixed Rate, the Conditional Reset Rate or the Alternative Rate, as determined in accordance with Sections 2.3(e) and 2.8 of the Participation Agreement.

"Cure Period" shall have the meaning specified in Section 7.3(a) of the Indenture.

"Debt Maturity Date" shall mean the eleventh anniversary of the Basic Term Commencement Date.

"Debt Payment Date" shall mean the 26th day of each June and December up to and including the Debt Maturity Date.

"Debt Percentage" shall mean 80%.

"Delivery Date" shall have the meaning specified in Section 2.3(a)(i) of the Participation Agreement.

"Economic Return" shall mean the aggregate after-tax cash flow, nominal after-tax yield under the multiple investment sinking fund method of analysis, and average life of the Owner Participant's net equity investment in the aggregate.

"Equipment" shall mean collectively those items of railroad rolling stock described in the Lease Supplement and the Indenture Supplement, together with any and all accessions, additions, improvements and replacements from time to time incorporated or installed on any item thereof which are the property of the Owner Trustee pursuant to the terms of the Lease, and "Unit" shall mean individually the various items thereof.

"Equipment Cost" shall mean, for each Unit, the purchase price therefor paid by the Owner Trustee to the Lessee pursuant to Section 2 of the Participation Agreement and as set forth in the Lease Supplement with respect to such Unit.

"Equity Percentage" shall mean 20%.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor law.

"Event of Loss" shall have the meaning specified in Section 11.1 of the Lease.

"Excepted Rights in Collateral" shall mean (i) all indemnity payments (including without limitation, payments under the Tax Indemnity Agreement) to which the Owner Trustee or the Owner Participant, or any of their respective Affiliates (or the respective successors, assigns, agents, officers, directors or employees of the Owner Trustee or the Owner Participant), is entitled, (ii) any amounts payable under any Operative Agreement to reimburse the Owner Trustee or the Owner Participant, or any of their respective Affiliates (including the reasonable expenses of the Owner Trustee or the Owner Participant incurred in connection with any such payment), for performing or complying with any of the obligations of the Lessee under and as permitted by any Operative Agreement, (iii) any amount payable to the Owner Participant by any Transferee as the purchase price of the Owner Participant's Beneficial Interest, (iv) any insurance proceeds (or payments with respect to risks self-insured) under liability policies to which the Owner Trustee or the Owner Participant, or any of their respective Affiliates (or the respective successors, assigns, agents, officers, directors or employees of the Owner Trustee or the Owner Participant), is entitled, (v) any interest or late charge on any amount payable under clauses (i) through (iv) hereof, and (vi) all rights with respect to the foregoing (subject to the provisions of Section 3.6(a) of the Indenture) and all rights and interests with respect to the Tax Indemnity Agreement.

"Excess Amount" shall have the meaning specified in Section 9.8 of the Participation Agreement.

"Expenses" shall have the meaning specified in Section 8.2(a) of the Participation Agreement.

"Fair Market Rental Value" shall mean with respect to the Equipment or any Unit, the fair market rental value of the Equipment or such Unit, determined in accordance with Section 20.5 of the Lease.

"Fair Market Sales Value" shall mean with respect to the Equipment or any Unit, the fair market sales value of the Equipment or such Unit, determined in accordance with Section 20.5 of the Lease.

"Fixed Rate Renewal Term" shall have the meaning specified in Section 20.3(a) of the Lease.

"Floating Rate" shall mean the rate of interest publicly announced by Manufacturers Hanover Trust Company in New York, New York from time to time as its reference rate plus 1.0%.

"Foreign Person" shall mean any Person who, for United States Federal income tax purposes, is a foreign corporation, a nonresident alien individual, a nonresident alien fiduciary of a foreign estate or trust, or a foreign partnership one or more members of which is, for United States Federal income tax purposes, a foreign corporation, a nonresident alien individual or a nonresident alien fiduciary of a foreign estate or trust.

"Guidelines" shall mean the guidelines set forth in Revenue Procedure 75-21, 1975-1 C.B. 715, as further set forth in Revenue Procedure 75-28, 1975-1 C.B. 752, and as modified in Revenue Procedure 76-30, 1976-2 C.B. 647 and Revenue Procedure 79-48, 1979-2 C.B. 529 that are applied by the Internal Revenue Service in determining, for advance ruling purposes, whether leveraged lease transactions (other than transactions which are treated as leases pursuant to Section 168(f)(8) of the Code) are leases for Federal income tax purposes.

"Income Inclusions" shall have the meaning specified in Section 6 of the Tax Indemnity Agreement.

"Indemnified Party" shall mean each of the Participants, the Owner Trustee, the Trust Estate and the Indenture Trustee, and the successors, permitted assigns, agents, servants, officers and employees of each of the foregoing.

"Indemnitee" shall have the meaning specified in Section 6.2 of the Participation Agreement.

"Indemnitor" shall have the meaning specified in Section 6.2 of the Participation Agreement.

"Indemnity Payment" shall mean any payment made by the Lessee to an Indemnified Party pursuant to Section 8 of the Participation Agreement or pursuant to the Tax Indemnity Agreement.

"Indenture" shall mean the Security Agreement and Trust Indenture dated as of December 14, 1989 between the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, as amended, supplemented or otherwise modified from time to time.

"Indenture Default" shall mean an Indenture Event of Default or an event which with notice or lapse of time or both would become an Indenture Event of Default.

"Indenture Event of Default" shall have the meaning specified in Section 7.1 of the Indenture.

"Indenture Supplement" shall mean the Indenture Supplement No. 1 dated the Delivery Date, substantially in the form of Exhibit B to the Indenture, between the Owner Trustee and the Indenture Trustee, covering the Equipment.

"Indenture Trustee" shall mean Continental Bank, National Association, and its successors in trust as Indenture Trustee under the Indenture.

"Interchange Rules" shall have the meaning specified in Section 6 of the Lease.

"Intercompany Transactions" shall have the meaning specified in the CIT Supplemental Commitment Letter.

"Interest" shall mean the Beneficial Interest or a Loan Certificate, individually, and "Interests" shall mean the Beneficial Interest and the Loan Certificates, collectively.

"Interim Interest" shall have the meaning specified in Section 2.2(d) of the Participation Agreement.

"Interim Rent" shall have the meaning specified in Section 2.1(a) of the Lease.

"Interim Term" shall have the meaning specified in Section 3 of the Lease.

"Investment" shall mean, as applied to the Lessee, any direct or indirect purchase or other acquisition by the Lessee of stock or other securities, or of a

beneficial interest in stock or other securities, of any other person, and any direct or indirect loan (other than loans made in the ordinary course of business of the Lessee to a Person unaffiliated with the Lessee), advance (including deposits with financial institutions, but excluding prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business and demand deposit accounts with financial institutions that are desirable for the conduct of the Lessee's business), or capital contributions by the Lessee to any other Person. The amount of any Investment shall be determined in conformity with generally accepted accounting principles at the time in effect.

"Late Rate" shall mean the higher of interest at the annual rate equal to (i) the Coupon Rate plus 2% or (ii) the Prime Rate plus 2% (or the highest rate permitted by applicable law, whichever is less).

"Lease" or "Lease Agreement" or "Equipment Lease" shall mean the Equipment Lease Agreement dated as of December 14, 1989 between the Owner Trustee, as lessor, and the Lessee as amended, supplemented or otherwise modified from time to time.

"Lease Default" shall mean a Lease Event of Default or an event which with notice or lapse of time or both would become a Lease Event of Default.

"Lease Event of Default" shall have the meaning specified in Section 15.1 of the Lease.

"Lease Rate" shall mean the rate that discounts the stream of Basic Rent to the Total Equipment Cost on the Delivery Date.

"Lease Supplement" shall mean the Lease Supplement No. 1 dated the Delivery Date, substantially in the form of Exhibit A to the Lease, between the Lessor and the Lessee, covering the Equipment.

"Lease Term" shall mean the Interim Term, the Basic Term and any Renewal Term then in effect.

"Lessee" shall mean Itel Rail Corporation, a Delaware corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"Lessee Agreements" shall mean the Operative Agreements to which the Lessee is a party.

"Lessor" shall have the meaning specified in the recitals to the Lease.

"Lessor's Liens" means any Lien affecting, on or in respect of the Equipment, the Lease, the Trust Estate, the Collateral, any payment of Rent or on any part thereof, or any amount or part thereof due or payable on the Loan Certificates arising as a result of (i) claims against or affecting the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Lease or the Participation Agreement, or (ii) acts or omissions of the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Lease or the Participation Agreement or not permitted under the Lease or under the Participation Agreement or in breach of any covenant or agreement of such Person set forth in any of the Operative Agreements, or (iii) Taxes imposed against the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant or the Trust Estate which are not indemnified against by the Lessee pursuant to the Participation Agreement or under the Tax Indemnity Agreement, or (iv) claims against the Lessor or the Owner Participant arising out of the transfer (whether voluntary or involuntary) of the Lessor or the Owner Participant (without the consent of the Lessee, the Indenture Trustee and the Loan Participants) of all or any portion of their respective interests in the Equipment, the Trust Estate or the Operative Agreements, other than a transfer pursuant to Sections 11, 12, 15.2, 20.1 or 20.2 of the Lease; provided that in each case, no such Lien need be discharged so long as it is being contested in good faith and by appropriate legal proceedings in any reasonable manner which does not adversely affect the rights or interests of the Indemnitees.

"Lien" shall mean any mortgage, pledge, security interest, lien, encumbrance, disposition of title or other charge of any kind on property.

"Loan Certificates" shall mean the Secured Loan Certificates due on the Debt Maturity Date of the Owner Trustee, bearing interest at the Coupon Rate, substantially in the form of Exhibit A to the Indenture.

"Loan Participant" shall mean the holder of any Loan Certificate issued, registered and outstanding under the Indenture, and its respective successors and assigns.

"Loan Value" shall have the meaning specified in Section 5.1(c) of the Indenture.

"Make-Whole Amount" shall mean, in connection with any prepayment of the Loan Certificates pursuant to Sections 6.2(b), 6.2(c) and 6.2(d) of the Indenture, the excess, if any, of (i) the aggregate present value as of the date of such prepayment of each dollar of principal being prepaid and the amount of interest that would have been payable in respect of such dollar if such prepayment had not been made, determined by discounting such amounts at the Reinvestment Rate from the respective dates on which they would have been payable, over (ii) 100% of the principal amount of the outstanding Loan Certificates being prepaid. If the Reinvestment Rate is equal to or higher than the Coupon Rate, the Make-Whole Amount shall be zero.

"Mandatory Fixed Rate" shall mean the average of the seven year and ten year U.S. Treasury Bond yield to maturity plus 2.35% as set forth five (5) days prior to the Mandatory Reset Date.

"Mandatory Reset Date" shall have the meaning specified in Section 2.8(b) of the Participation Agreement.

"Maximum Debt Amount" shall mean an amount equal to US$2,166,800.

"Maximum Equipment Cost" shall mean an amount equal to US$2,708,500.

"Maximum Equity Amount" shall mean an amount equal to US$541,700.

"Modifications" shall have the meaning specified in Section 7(b) of the Lease.

"New Loan Certificates" shall have the meaning specified in Section 2.5(a) of the Indenture.

"New Loan Participants" shall have the meaning specified in Section 9.2(b) of the Participation Agreement.

"New Loans" shall have the meaning specified in Section 9.2(a) of the Participation Agreement.

"Non-Indemnified Items" shall have the meaning specified in Section 8.1 of the Participation Agreement.

"Non-Severable Modifications" shall mean any Modification (i) that is not readily removable without causing material damage to the Equipment or any Unit, (ii) that is required by Section 6 of the Lease or (iii) that is a Part which is a replacement of or substitution for a Part existing on the Delivery Date (and any successive replacements for or substitutions of such Part).

"Offer" shall have the meaning specified in Section 6.1(h) of the Participation Agreement.

"Officer's Certificate" shall mean a certificate signed (i) in the case of a corporation by the President, any Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of such corporation, (ii) in the case of a partnership by the Chairman of the Board, the President or any Vice President, the Treasurer or an Assistant Treasurer of a corporate general partner, and (iii) in the case of a commercial bank or trust company, the Chairman or Vice Chairman of the Executive Committee or the Treasurer, any Trust Officer, any Vice President, any Executive or Senior or Second or Assistant Vice President, or any other officer or assistant officer customarily performing the functions similar to those performed by the persons who at the time shall be such officers, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

"Old Loan Certificates" shall have the meaning specified in Section 2.5(a) of the Indenture.

"Old Rail" shall have the meaning specified in Section 3.2(e) of the Participation Agreement.

"Operative Agreements" shall mean the Participation Agreement, the Bill of Sale, the Trust Agreement, the Lease, the Lease Supplement, the Loan Certificates

outstanding at the time of reference, the Indenture, the Indenture Supplement and the Tax Indemnity Agreement.

"Optional Fixed Rate" shall mean the average of the seven year and ten year U.S. Treasury Bond yield to maturity plus 2.35% as set forth five (5) days prior to the applicable Optional Reset Date.

"Optional Refinancing" shall have the meaning specified in Section 9.2(a) of the Participation Agreement.

"Optional Reset Date" shall have the meaning specified in Section 2.8(a) of the Participation Agreement.

"Owner Participant" shall mean Chase Manhattan Service Corporation (New York), a New York corporation, and its successors and permitted assigns of its Beneficial Interest.

"Owner Participant Agreements" shall mean the Operative Agreements to which the Owner Participant is a party.

"Owner Trustee" shall mean First Security Bank of Utah, N.A., not in its individual capacity but solely as Owner Trustee under the Trust Agreement, and its successors in trust thereunder.

"Owner Trustee Agreements" shall mean the Operative Agreements to which First Security Bank of Utah, N.A., either in its individual or fiduciary capacity, is a party.

"Participants" shall mean the Loan Participants and the Owner Participant.

"Participation Agreement" shall mean the Participation Agreement dated as of December 14, 1989, among the Lessee, the Participants, the Owner Trustee and the Indenture Trustee.

"Parts" means all appliances, parts, instruments, appurtenances, accessories, furnishings, linings and other equipment of whatever nature which may from time to time be incorporated or installed in or attached to the Equipment.

"Permitted Bank" shall have the meaning specified in clause (iii) of the definition of the term "Permitted Investments."

"Permitted Investments" shall mean (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency thereof and maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than 270 days from the date of creation and having at the time such Investment is made a rating of at least A-1 from Standard & Poor's Corporation or at least P-1 from Moody's Investors Service, Inc., (iii) certificates of deposit of any banking institution existing under the laws of the United States of America or any state thereof having capital, surplus and undivided profits (or the equivalent) of at least US$100,000,000 and having at the time such Investment is made, a long term deposit rating of at least A from Standard & Poor's Corporation or its equivalent from Moody's Investors Service, Inc. (such banking institution being hereinafter referred to as a "Permitted Bank"), (iv) money market preferred stock having, at the time such Investment is made, a rating of at least AA from Standard & Poor's Corporation or its equivalent from Moody's Investors Service, Inc., (v) repurchase obligations of Permitted Banks, (vi) Investments in any Subsidiary of the Lessee, (vii) certificates of deposit of non-Permitted Banks existing under the laws of the United States of America or any state thereof in an amount not to exceed either US$10,000,000 in the aggregate or US$1,000,000 with any one such institution, or (viii) certificates of deposit of any banking institution existing under the laws of Canada or any province thereof having capital, surplus and undivided profits (or the equivalent) of at least C$1,000,000,000 or having capital, surplus and undivided profits (or the equivalent) of at least C$250,000,000 and having at the time such investment is made, a long-term deposit rating of at least Aa2 from Moody's Investors Service, Inc., not to exceed C$10,000,000 in the aggregate with respect to all certificates of deposit under this clause (viii).

"Permitted Liens" with respect to the Equipment and each Unit thereof, shall mean: (i) the interests of the Lessee and the Owner Trustee under the Lease and the Lease Supplement; (ii) the interest of the Lessee and any sublessee as provided in any sublease permitted pursuant to Section 19.4 of the Lease; (iii) any Liens thereon for

taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount or validity of which is being contested so long as there exists no material danger of sale, forfeiture, loss or loss of use of such Equipment or Unit; (iv) any Liens of mechanics, suppliers, materialmen, laborers, employees, repairmen and other like Liens arising in the ordinary course of business securing obligations which are not due and payable or the amount or validity of which is being contested so long as there exists no material danger of sale, forfeiture, loss or loss of use of such Equipment or Unit; (v) the Lien and security interest granted to the Indenture Trustee under and pursuant to the Indenture, and the respective rights of the Loan Participants, the Indenture Trustee, the Owner Participant and the Owner Trustee under the Operative Agreements; (vi) Liens arising out of any judgment or award against the Lessee (or any sublessee permitted pursuant to Section 19.4 of the Lease) with respect to which an appeal or proceeding for review is being presented in good faith and with respect to which there shall have been secured a stay of execution pending such appeal or proceeding for review; and (vii) any other Lien with respect to which the Lessee (or any such sublessee) shall have provided a bond adequate in the reasonable opinion of the Owner Trustee and the Indenture Trustee.

"Person" shall mean an individual, partnership, corporation, trust, association or unincorporated organization, and a government or agency or political subdivision thereof.

"Prepayment Period" shall have the meaning specified in Section 2.8(c) of the Participation Agreement.

"Pricing Assumptions" shall have the meaning specified in Section 2.7(a) of the Participation Agreement.

"Prime Rate" shall mean the rate announced from time to time by The Chase Manhattan Bank, N.A. as its prime commercial lending rate.

"Pro Forma Financials" shall mean at any date, the unaudited pro forma financial statements of the Lessee as of the preceding month end which reflect the completed funding of the transactions contemplated by the

Participation Agreement, the Bank Financing and the effect of the anticipated Securitized Financing and Intercompany Transactions.

"Pullman" shall have the meaning specified in Section 3.2(e) of the Participation Agreement.

"Recap Officer's Certificate" shall mean a certificate from a Vice President or more senior officer of the Lessee substantially in the form of Exhibit D to the Participation Agreement.

"Register" shall have the meaning specified in Section 2.3 of the Indenture.

"Reinvestment Rate" shall mean 75 basis points plus the arithmetic mean of the yields under the respective headings "This Week" and "Last Week" published in the Statistical Release under the caption "Treasury Constant Maturities" for the maturity (rounded to the nearest month) corresponding to the Weighted Average Life to Maturity of the principal of the Loan Certificates being prepaid. If no maturity exactly corresponds to such Weighted Average Life to Maturity, yields for the two published maturities most closely corresponding to such Weighted Average Life to Maturity shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Rate shall be interpolated or extrapolated for such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For the purposes of calculating the Reinvestment Rate, the most recent Statistical Release published prior to the date of payment hereunder shall be used.

"Renewal Term" shall mean any term in respect of which the Lessee shall have exercised its option to renew the Lease pursuant to Section 20.3 thereof, including any Fixed Rate Renewal Term.

"Rent" shall mean all Interim Rent, Basic Rent and Supplemental Rent.

"Rent Payment Dates" shall mean June 26, 1990 and the 26th day of each June and December thereafter during the Lease Term but excluding the Basic Term Expiration Date.

"Replacement Refinancing" shall have the meaning specified in Section 9.2(a) of the Participation Agreement.

"Reset Notice" shall have the meaning specified in Section 2.8(c) of the Participation Agreement.

"Reset Offer" shall have the meaning specified in Section 2.8(c) of the Participation Agreement.

"Secured Indebtedness" shall mean the outstanding Loan Certificates and all principal thereof (and the Make-Whole Amount, if any) and interest thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Owner Trustee under the terms of the outstanding Loan Certificates or the Indenture.

"Securitized Financing" shall have the meaning specified in the CIT Supplemental Commitment Letter.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Senior Debt" of the Lessee and its consolidated Subsidiaries means indebtedness incurred by the Lessee and its consolidated Subsidiaries of any term of maturity incurred in respect of (i) money borrowed or raised, (ii) any bond, note, loan, stock, debenture or similar instrument, (iii) acceptance or documentary credit facilities, (iv) the deferred payment for assets or services acquired (other than payments deferred for not more than 60 days for assets or services acquired, where such deferral is granted or acquisition is made in the ordinary course of business), (v) rental payments under leases (whether in respect of land, machinery, equipment or otherwise) which are treated as capitalized leases for the purposes of generally accepted accounting principles in the United States of America as in force at the date of the Lease and (vi) the present value (discounted at a per annum rate equal to the interest rate on the debt incurred by the lessor in connection with the acquisition of the equipment subject to such lease, or if there is no such rate or the Lessee does not know such rate, at the Prime Rate in effect at the inception of such lease) of all rentals under operating leases. Senior Debt shall not include any Unsecured Subordinated Debt.

"Severable Modifications" shall mean any Modification that is not a Non-Severable Modification.

"Statistical Release" shall mean the statistical release designated "H.15(519)" or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded U.S. Government Securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination hereunder, then such other reasonably comparable index which shall be designated by the holders of a majority of the outstanding Loan Certificates.

"Stipulated Loss Value" shall mean during the Interim Term and the Basic Term the amount determined in accordance with Section 11 of the Lease and Schedule 2 to the Lease, and during any Renewal Term, the amount determined in accordance with Section 20.6 of the Lease.

"Subsidiary" of any Person shall mean any corporation, association, or other business entity of which more than 50% (by number of votes) of the Voting Stock at the time outstanding shall at the time be owned, directly or indirectly, by such Person or by any other corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by such Person and any one or more such Subsidiaries.

"Supplemental Rent" shall mean all amounts, liabilities and obligations (other than Interim Rent and Basic Rent) which the Lessee is obligated to pay under the Operative Agreements to or on behalf of any of the other parties thereto, including, but not limited to, Termination Value and Stipulated Loss Value payments, and amounts, if any, payable, under Section 2.6 of the Participation Agreement (to the extent such payment does not give rise to a rental adjustment under Section 2.3 of the Lease) by the Lessee.

"Tangible Assets" means, at any date, all of the assets of the Lessee and its consolidated Subsidiaries as determined in accordance with generally accepted accounting principles then in effect consistently applied except: (a) patents, copyrights, trademarks, trade names, franchises, goodwill, and other intangibles; (b) unamortized debt discount and expense; (c) fixed assets to the extent of any write-up in the book value thereof

resulting from a revaluation effective after the Delivery Date; and (d) Investments which are not Permitted Investments.

"Tangible Net Worth" means, at any date: (a) the book value (net of depreciation, obsolescence, amortization, valuation, and other proper reserves as determined in accordance with generally accepted accounting principles consistently applied) at which Tangible Assets would be shown on a consolidated balance sheet of the Lessee and its Subsidiaries at such date prepared in accordance with generally accepted accounting principles then in effect consistently applied; less (b) the amount at which the liabilities of the Lessee and its Subsidiaries would be shown on such consolidated balance sheet.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement dated as of December 14, 1989 between the Lessee and the Owner Participant relating to Itel Rail Trust No. 89-7.

"Taxes" shall have the meaning specified in Section 8.1 of the Participation Agreement.

"Terminated Units" shall have the meaning specified in Section 12.1 of the Lease.

"Termination Date" shall have the meaning specified in Section 12.1 of the Lease.

"Termination Value" shall mean, with respect to each Unit, an amount determined in accordance with Section 12 of the Lease and Schedule 3 to the Lease.

"Total Equipment Cost" shall mean the sum of the Equipment Cost for each Unit delivered under the Lease.

"Transaction Costs" shall have the meaning specified in Section 2.6(a) of the Participation Agreement.

"Transferee" shall have the meaning specified in Section 6.1(a) of the Participation Agreement.

"Trust" shall have the meaning specified in the Trust Agreement.

"Trust Agreement" shall mean the Trust Agreement dated as of December 14, 1989 between the Owner Participant and First Security Bank of Utah, N.A., as Owner Trustee under Itel Rail Trust No. 89-7.

"Trust Estate" shall mean all the estate, right, title and interest of the Owner Trustee in, to and under the Equipment and the Operative Agreements including, without limitation, all funds advanced to the Owner Trustee by the Owner Participant, all proceeds from the sale of the Loan Certificates, all installments and other payments of Interim Rent, Basic Rent, Supplemental Rent, insurance proceeds, Stipulated Loss Values, condemnation awards, Termination Values, purchase price, sale proceeds, and all other proceeds of any kind for or with respect to the Equipment and the Operative Agreements, but excluding Excepted Rights in Collateral and payments related thereto.

"Trustee" shall mean the Owner Trustee or the Indenture Trustee, individually, and "Trustees" shall mean the Owner Trustee and the Indenture Trustee, collectively.

"Unit" shall mean each unit or item of Equipment.

"Unsecured Subordinated Debt" means any unsecured indebtedness which would be Senior Debt but for the fact that it is junior and subordinated in right of payment or otherwise to any Senior Debt of the Lessee or its consolidated Subsidiaries.

"Voting Stock" shall mean Securities of any class or classes of a corporation, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the board of directors (or persons performing similar functions).

"Weighted Average Life to Maturity" of the principal amount of the Loan Certificates being prepaid shall mean, as of the time of any determination thereof, the number of years obtained by dividing the then Remaining Dollar-Years of such principal by the aggregate amount of such principal. The term "Remaining Dollar-Years" of such principal shall mean the amount obtained by (i) multiplying (1) the remainder of (A) the amount of principal that would have become due on each scheduled

payment date if such prepayment had not been made, less (B) the amount of principal on the Loan Certificates scheduled to become due on such date after giving effect to such prepayment and the application thereof, by (2) the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination and such scheduled payment date, and (ii) totalling the products obtained in (i).