

# ITEL

February 8, 1987

## Istel Rail Corporation

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

RECORDATION NO. 11 51710 & Recorded

FEB 19 1987 12-00 PM

No. 7-050A090

Date FEB 19 1987

Fee \$ 20.00

Hon. Noretta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

INTERSTATE COMMERCE COMMISSION

ICC Washington, D.C.

Re: Lease Agreement dated December 19, 1986, between Istel Rail Corporation and Chicago, Central & Pacific Railroad Company

Dear Ms. McGee:

On behalf of Istel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with a check in the amount of \$20 covering the recordation fee.

Please record this Lease Agreement under a new recordation number and cross-index same with the Equipment Trust Agreement dated January 1, 1982, between Istel Rail Corporation and First Security Bank of Utah, N.A., which was filed with the ICC on September 20, 1983, and given Recordation No. 14165.

The parties to the aforementioned are listed below:

Istel Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Chicago, Central & Pacific Railroad Company (Lessee)  
P. O. Box 1800  
Waterloo, Iowa 50704

This equipment covered by this Lease is fifty (50) 50'6", 70-ton, Plate C, XM boxcars bearing reporting marks CCI-50.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the fee receipt and a letter from the ICC acknowledging this filing.

Very truly yours,

*patricia schumacker*

Patricia Schumacker  
Legal Department

:ps  
Enclosures

Ginny Hanger

ICC OFFICE OF  
THE SECRETARY  
FEB 19 11 59 AM '87  
MOTOR OPERATING UNIT

*Counterparts*

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

2/19/87

Patricia Schumacker-  
Legal Department  
Ite1 Rail Corporation  
55 Francisco Street  
San Francisco, CA. 94133

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/19/87 at 12:00PM, and assigned re-  
recording number(s). 15170

Sincerely yours,

*Noreta R. McGehee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

11/19/86

RECORDATION NO. 1 5170 Filed & Recorded

LEASE AGREEMENT FEB 19 1987 12-00 PM

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT (the "Agreement") is made as of this 19 day of December, 1986, between ITEL RAIL CORPORATION, a Delaware corporation, 55 Francisco Street, San Francisco, California, 94133, as the lessor ("Lessor") and CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY, a Delaware corporation, Post Office Box 1800, Waterloo, Iowa 50704, as the lessee ("Lessee").

ASSIGNED TO FIRST SECURITY BANK OF UTAH, N.A., TRUSTEE, UNDER A LEASE ASSIGNMENT.

1. Scope of Agreement

- A. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein, a number of items of equipment of the number, type, construction and other description set forth in any lease schedules attached hereto and executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Equipment Schedule or Equipment Schedules executed herewith and any additional Equipment Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car."
- B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Agreement with respect to each Car described on each Schedule shall commence at 12:01 a.m. on the date and at the location that such Car is remarked pursuant to Subsection 3.A., and shall expire as to all of the Cars described on each Schedule, three (3) years from the date on which the first Car on such Schedule was remarked (the "Initial Term").
- B. If this Agreement has not been terminated early and no unremedied default has occurred pursuant to Section 9, the Agreement may be extended upon mutual written agreement of the parties hereto. Any term occurring after the expiration of the Initial Term shall be an "Extended Term."

3. Supply Provisions

- A. Lessee hereby approves the specifications of the Cars delivered to it by Lessor. Lessor shall, at its expense, remark the Cars listed on Equipment Schedule No. 1 with the railroad markings of

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF HELLER FINANCIAL, INC. UNDER THE HELLER FINANCIAL, INC. LOAN AND SECURITY AGREEMENT WITH ITEL RAIL CORPORATION DATED AS OF SEPTEMBER 30, 1986.

Lessee in compliance with all applicable regulations. The Cars listed on Equipment Schedule No. 2 and any additional Equipment Schedule(s), shall be remarked with the railroad markings of Lessee in compliance with all applicable regulations and delivered as set forth herein only upon the mutual written agreement of the parties hereto. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:01 a.m. on the date and at the location such Car is remarked ("Delivery"). After the Cars have been remarked, the Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon as is consistent with mutual convenience and economy. Lessor warrants that, upon Delivery, each Car shall meet or exceed specifications for interchange service as defined in the Field Manual of the Association of American Railroads ("AAR") interchange rules and shall be in acceptable condition for Class A boxcar loading. Lessor shall use its best efforts to deliver all of the Cars to Lessee within one hundred twenty (120) days after the full execution of this Agreement. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and to ensure optimal use of the Cars after the Initial Loading (as hereinafter defined), Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and AAR interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules"). Lessee covenants that it shall subscribe to the Interchange Rules for the duration of this Agreement. If Lessor incurs expenses in having other railroads move Cars in accordance with this Section with Lessee's request or approval, except for any expenses incurred in the initial delivery of such Cars to Lessee's railroad line pursuant to this Section, Lessee shall reimburse Lessor for such expenses within ten (10) days of receipt of an invoice from Lessor. For the purposes hereof, the term "Initial Loading" as to each Car, shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after the Delivery (as defined hereinabove) of such Car.

- B.** Lessee shall at no time discriminate against the Cars in the provision of off-line loads, operation, use, maintenance or in any other manner as compared with any comparable boxcars; including boxcars owned, leased or managed by Lessee or assigned or interchanged to Lessee.
- C.** Additional Cars shall be leased from Lessor by Lessee only upon the mutual agreement of the parties. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Cars with similar boxcars upon prior written notice from Lessor to Lessee; provided, however, that any such replacement shall not prevent or prohibit Lessee from fulfilling its obligations to

provide transportation and facilities upon reasonable request therefor.

**4. Record Keeping**

- A. Lessor shall, at its expense and with Lessee's assistance, prepare and file with respect to the Cars all documents relating to the registration of the Cars. Such matters shall include, but are not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars. Lessee shall allow Lessor to register each Car in UMLER in such a manner that Lessor, or its agent, is allowed access to any required information with regard to each Car.
- B. Lessee shall perform all record keeping functions relating to the use of the Cars including but not limited to, car hire reconciliation, collection and receipt of Revenues (as defined in Section 7 hereinbelow) from other railroad companies, records pertaining to maintenance and repair, and billing in accordance with the Interchange Rules. All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during Lessee's regular business hours.
- C. Upon Lessor's reasonable request, Lessee shall supply Lessor with daily telephone reports of the number of Cars in Lessee's possession or control. Lessee hereby authorizes Lessor to subscribe to the Train 71, 80 and 86 Advices for the Cars. Within thirty (30) days after each calendar month in which activity occurs with respect to the Cars ("Activity Month"), Lessee shall provide Lessor with interchange records for the Cars with respect to such Activity Month.

**5. Maintenance, Tax and Insurance**

- A. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned by the fault of Lessee, or arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for

damage not noted at the time of interchange. Lessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper. With respect to the Cars, any repairs performed by Lessee at Lessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties hereto.

- B.** Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Lessee may only make running repairs to those parts of the Cars specified in Exhibit A attached hereto to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any alteration, improvement or addition shall be and remain with Lessor. Lessor shall have the right to perform certain Repairs, as hereinafter defined, to the Cars at a location on Lessee's property which is mutually agreeable to Lessor and Lessee. Repairs ("Repairs") shall be of the type that Lessor determines Lessee would not normally perform or of the type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Repairs.
- C.** Lessee shall be responsible for the Cars: (i) while in Lessee's possession or control; and (ii) in the same manner and under the same circumstances that Lessee is responsible under the Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to the Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional named insureds and shall also list Lessor and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other

Insurance. Any and all deductibles in the described policies shall be paid by the Lessee.

- D. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to the Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a Certified Copy of each insurance policy upon written request. In the event that, and only with Lessor's written approval, Lessee shall be permitted to self-insure on any specified interests, the Lessee hereby warrants to place the Lessor in the same position as if the relating insurance had been effected.
- E. Lessor agrees to reimburse Lessee, within thirty (30) days from Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by the Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to each Car, the Agreement or the delivery of the Cars which remained unpaid as of the date of the delivery of the Cars to Lessee or which are assessed, levied or imposed during the term of this Agreement, except taxes on income imposed on Lessee, gross receipts or sales or use tax imposed on the mileage charges and car hire revenue or sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

## 6. Storage

As long as there is sufficient room on Lessee's railroad tracks and Lessee is not obligated to store equipment other than the Cars on such available track pursuant to the agreement (see Exhibit B) made prior to the beginning of the Initial Term, Lessee shall, at its expense and if deemed necessary by Lessor, store the Cars on its railroad tracks. In the event that Lessee's capacity to store any or all of the Cars on Lessee's railroad tracks is impaired at any time, then Lessee shall be responsible for the following with respect to each Car stored: (i) all reasonable transportation costs incurred to move the Cars to a storage location; (ii) all reasonable transportation costs incurred in removing the Cars from the storage location; and (iii) the actual costs incurred for the storage. If

Lessor pays for any costs referred to in this Section, Lessee shall reimburse Lessor for such cost within ten (10) days from Lessee's receipt of Lessor's invoice. Lessor shall assist Lessee so as to minimize Lessee's exposure under this Section.

7. Rent

A. Definitions

- (i) "Per Diem Revenues" is defined as the total per diem revenues earned and due from other railroad companies for the use or handling of the Cars calculated as set forth in Subsection 7.G. hereinbelow, including but not limited to, per diem, whether or not collected and received by Lessor and undiminished by any claimed abatement, reduction or offset caused by any action of Lessee. Upon any such abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (ii) "Mileage Revenues" is defined as the total revenues earned and due from other railroad companies for the use or handling of the Cars calculated as set forth in Subsection 7.G. hereinbelow, including but not limited to, mileage, whether or not collected and received by Lessor and without regard to any claimed abatement, reduction or offset caused by any action of Lessee. Upon any such abatement, reduction or offset Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (iii) "Revenues" is defined as the sum of Per Diem Revenues and Mileage Revenues.
- (iv) The "Utilization Rate" of the Cars shall be a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Cars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars were on lease to Lessee, commencing from the Initial Loading provided, however, that for each Car which is placed into a repair facility by Lessor and is in such facility in excess of fifteen (15) days, one (1) day shall be deducted from the aggregate number of days in the denominator for each day that such Car is in the repair facility for the purpose of calculating the Utilization Rate for the applicable period unless the damage to such Car was caused by Lessee.
- (v) The "Base Rent"

Per Diem Revenues which the Cars, in the aggregate, would have earned at a Utilization Rate of

The "Base Rent" commencing from January 1, 1989 through and including the end of the Initial Term ("Third Rental Period") is defined as a sum equal to the Per Diem Revenues which the Cars, in the aggregate, would have earned at a Utilization Rate of

- B. Lessor shall receive all Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 7.C. upon the Initial Loading of such Car.
- C. Subject to the provision of Subsection 7.G., Lessee agrees to pay the following rent to Lessor for the use of the Cars:
  - (i) In the event Revenues earned in any calendar year or applicable portion thereof ("Year") are equal to or less than the applicable Base Rent, Lessor shall retain a sum equal to
  - (ii) In the event Per Diem Revenues earned in any Year exceed the applicable Base Rent,
  - (iii) Lessor shall receive an amount equal to one hundred percent (100%) of the Mileage Revenues earned and due from other railroad companies with respect to the Cars.
- D. The calculations required in Subsection 7.C shall be made within five (5) months after the end of each calendar year ("Final Calculations"). However, to enable Lessor to meet its financial commitments, Lessee shall pay to Lessor within sixty (60) days after the end of each calendar month ("Month") an amount equal to eighty percent (80%) of the Revenues earned for such Month and shall report to Lessor the total hours earned, miles travelled and dollar figure equal to one hundred percent (100%) of the Revenues for such Month. Lessee shall remit to Lessor ten percent (10%) of the Revenues earned for each Month within ninety (90) days after the end of such Month and the final ten percent (10%) of the Revenues earned for each Month within one hundred twenty (120) days after the end of such Month. Lessor shall within five (5) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

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E.

If, with respect to any calendar quarter or quarters, <sup>1</sup>Revenues received by Lessor are less than <sup>2</sup>~~the amount of Revenues the Cars, in the aggregate, would have earned at a Utilization Rate of~~ ("Base Utilization"), Lessor may, at any time, and

1 Per Diem  
657:71372

2

per Car per calendar quarter

3 Per Diem Revenues for                      4 Amount                      5 Per Diem                      6 Base Amount.  
7 actual Per Diem Revenues exceed the Base Amount

~~AAA~~ PAG

~~AAA~~ PAG

~~AAA~~ PAG

at its option, terminate this Agreement as to such Cars as Lessor shall determine up to such a number of Cars as is necessary to bring the ~~utilization of the Cars up to the Base~~ <sup>3</sup>utilization for such calendar quarter or quarters (such number of Cars the "Low Utilization Cars"); provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by paying to Lessor an amount equal to the difference between actual <sup>5</sup>Revenues for such calendar quarter or quarters and the ~~amount of Revenues the Cars, in the aggregate, would have earned at the Base Utilization for such calendar quarter or quarters.~~ <sup>6</sup>amount of Revenues the Cars, in the aggregate, would have earned at the Base Utilization for such calendar quarter or quarters. If Lessee does not void such termination notice as set forth in the preceding sentence, Lessor may, as its exclusive remedy, terminate any or all of the Low Utilization Cars at any time thereafter, regardless of whether or not <sup>7</sup>the Utilization Rate exceeds the Base Utilization at such time as Lessor elects to terminate such Cars.

F. If any Cars have remained on Lessee's railroad lines because Lessee has not complied with Subsection 3.B. herein, Lessor may, at its option, terminate any or all of the Cars from the Agreement by providing not less than ten (10) days' prior written notice to Lessee.

G. The parties agree that the rental rates used in determining the charges to be paid to Lessor for use of the Cars under this Agreement, except the rental rates for the Cars while the Cars on the lines of ICG, shall be the hourly and mileage car rates prescribed for excluded boxcars under the Commission's decision in ICC Ex Parte No. 346 (Sub-No. 19) served September 12, 1986, set forth in the Appendix to such decision in paragraph (c)(3) of #9 C.F.R. 1039.14. Lessor acknowledges that Lessee has entered into an agreement ("ICG Agreement") with Illinois Central Gulf Railroad Company ("ICG") which allows ICG to pay a rate of ten dollars (\$10) per day for boxcars bearing CCP reporting marks, and will accept that rate for the Cars while the Cars are on ICG's lines only while the ICG Agreement is in effect. In the event that Lessor receives rentals for the use of such Cars during the Initial Term or any Extended Term that are lower in amount than those specified for excluded boxcars as provided herein, whether as a result of a bilateral agreement entered into by Lessee or otherwise, Lessee shall ensure that Lessor receives the amount of revenues such Cars would have earned under the rates for excluded boxcars as provided herein.

H. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor for such Month with respect to the maintenance of the Cars. Such report shall include all repair charges received by Lessee during the previous Month. Lessor shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly report and maintenance bill.

I. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car

Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee.

- J. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Lessee shall notify Lessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Lessee fails to notify Lessor within sixty (60) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.
- K. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 7.

**8. Possession and Use**

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
- B. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.

- C. The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of a rail common carrier. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. During the term of this Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.
- D. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars or any interest therein, or in this Agreement or Schedule thereto, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 8.A. hereinabove. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

**9. Default**

- A. The occurrence of any of the following events shall be an event of default:
  - (i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the Lessee receives notice that any such payment is due;
  - (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days after Lessee receives notice of such breach;
  - (iii) The initiation by or against the Lessee of any proceeding:
    - a) for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder; or
    - b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness;
  - (iv) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;
  - (v) Any action by Lessee to discontinue rail service on all or a substantial portion of its track or to abandon any of its rail properties which affect the use of the Cars.
- B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs,

expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate this Agreement and recover damages and/or may:

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

## 10. Expiration or Early Termination

### A. Expiration

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

- (i) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of expiration. Lessee shall, at Lessor's option, provide, with respect to any Car described on any Schedule which is either on the Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of expiration, whichever date is later; provided, however, that if Lessee is required to store equipment other than the Cars on its railroad tracks pursuant to the agreement (see Exhibit B) made prior to the beginning of the Initial Term, Lessee shall provide such free storage for as many Cars as is available on its tracks after the storage of such other equipment.
- (ii) At the option of Lessor, either Lessee or a contractor chosen by Lessor shall, at Lessee's expense, remark the Cars as set forth in Subsection 10.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. After remarking, Lessee shall, at Lessor's option, use its best

efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

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

**B. Early Termination**

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

- (i) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of early termination. Lessee shall, at Lessor's option, provide, with respect to any Car described on any Schedule which is either on the Lessee's railroad tracks at the time of early termination or is subsequently returned to Lessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of early termination or the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of early termination, whichever date is later; provided, however, that if Lessee is required to store equipment other than the Cars on its tracks pursuant to the agreement \_\_\_\_\_ (see Exhibit B) made prior to the beginning of the Initial Term, Lessee shall provide such free storage for as many Cars as is available on its tracks after the storage of such other equipment.
- (ii) At the option of Lessor, either Lessee or a contractor chosen by Lessor shall, at Lessee's expense, remark the Cars as set forth in Subsection 10.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. After remarking, Lessee shall, at Lessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.
- (iii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Lessee. Lessee shall bear the expense of remarking such Cars.

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

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

**11. Indemnities**

- A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN LESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO LESSEE.
- B. EXCEPT AS PROVIDED IN SUBSECTION 11.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS AGREEMENT, LESSOR SHALL DEFEND, INDEMNIFY AND HOLD LESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST LESSEE WITH RESPECT TO THE CARS, INCLUDING USE, MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE CARS OR THE CONDITION OF THE CARS (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY LESSOR OR LESSEE).

**12. Representations, Warranties, and Covenants**

Lessee represents, warrants and covenants that:

- A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and, insofar as is material to lessor's rights under this Agreement, has the corporate power, authority and, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.
- B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in Section 8 hereinabove.
- C. There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee such that Lessee's ability to

perform its obligations hereunder would be materially and adversely affected.

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

**13. Inspection**

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

**14. Miscellaneous**

- A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Lessee may not without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.
- B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 8 of this Agreement.
- C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars, except as a Lessee only.
- D. No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power or remedy available to such party nor shall any waiver or indulgence by either party or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- E. This Agreement shall be governed by and construed according to the laws of the State of California.

- F. Lessee shall notify Lessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- G. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car.
- H. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by telex, addressed to the president of the other party at the address set forth herein or at such other address as to which any party shall notify the other party.
- I. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.
- J. This Agreement represents the entire Agreement. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

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

ITEL RAIL CORPORATION

By: *John Hayes*  
 Title: President  
 Date: February 5, 1987

CHICAGO, CENTRAL & PACIFIC  
 RAILROAD COMPANY

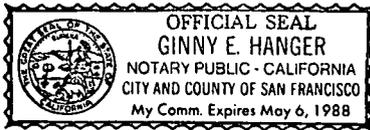
By: *John E. Haley*  
 Title: President  
 Date: December 19, 1986

EXHIBIT A

<u>Running Repairs</u>	<u>Running Repairs Continued</u>
Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers in Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plates
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	
Truck Springs	

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

On this 5th day of February 5, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger  
Notary Public

STATE OF Iowa                    )  
  ) ss:  
COUNTY OF Blackhawk        )

On this 19th day of December, 1986, before me personally appeared John E. Haley, to me personally known, who being by me duly sworn says that such person is President of Chicago, Central & Pacific Railroad Company, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Shirley Austin  
Notary Public

EQUIPMENT SCHEDULE NO. 1

Itel Rail Corporation hereby leases the following Cars to Chicago, Central & Pacific Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of December 19, 1986 .

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	50', 70-ton, Place C box-cars, cushion underframe, nailable steel floors	<del>CC</del> CC 1-50 <i>DDA</i>	50' 6"	9' 6"	11' 1"	10' sliding	50

ITEL RAIL CORPORATION

By: *DD Hayes*

Title: President

Date: February 5, 1987

CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY

By: *Shirley Haley*

Title: President

Date: December 19, 1986

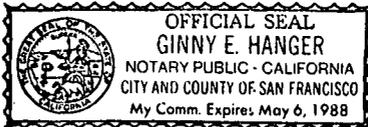
EXHIBIT B

General Electric Railcar Services Corporation Car Leasing Agreement 1458-83.

Purchase and Sale Agreement dated April 1, 1985 (Car Assignment Agreements).

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

On this 5th day of February, 1986<sup>7 (gen)</sup>, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger  
Notary Public

STATE OF Iowa )  
 ) ss:  
COUNTY OF Blackhawk )

On this 19th day of December, 1986, before me personally appeared John E. Haley, to me personally known, who being by me duly sworn says that such person is President of Chicago, Central & Pacific Railroad Company, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Nancy A. Jackson  
Notary Public Nancy A. Jackson