

# ITEL RAIL

55 Francisco  
San Francisco, California 94133  
(415) 955-9090  
Telex 34234

3-101A113

14002  
RECORDATION NO. \_\_\_\_\_ FROM \_\_\_\_\_

APR 11 1983 - 1 05 PM

INTERSTATE COMMERCE COMMISSION

March 30, 1983

No. APR 11 1983

Date .....

Fee \$ ..... *6.00* .....

ICC Washington, D. C.

Ms. Agatha Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Corporation for filing and recordation four counterparts of the following document:

Lease Agreement dated February 17, 1983 between Itel Corporation, Rail Division as lessor and Soo Line Railroad Company as lessee.

Please cross-index the above-referenced Lease with the following document, which was filed on December 22, 1978 at 10:00 a.m. and given recordation No. 9932:

Equipment Trust Agreement 1978, Series 3 dated as of November 1, 1978 between First Security Bank of Utah, N.A. as trustee and Itel Corporation, Rail Division.

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

1. Soo Line Railroad Company  
Soo Line Building  
Box 530  
Minneapolis, Minnesota 55440
2. Itel Corporation, Rail Division  
55 Francisco, 7th Floor  
San Francisco, California 94133

*New Number*

*Agatha Mergenovich - D.E. Addison*

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FEE OPERATION BR.

Ms. Agatha Mergenovich, Secretary  
March 20, 1983  
Page Two

The equipment covered by this Lease is two hundred (200) flush deck flatcars, 89'4" in length, AAR mechanical designation FC, bearing reporting marks SOO 54694 through and including SOO 54893.

Also enclosed is a check in the amount of \$60.00 for the required recording and cross-indexing fees.

Please stamp all counterparts of the enclosed Lease with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be returned to the bearer of this letter.

Sincerely,



Patricia Salas Pineda  
Counsel

PSP:dmm  
Enclosures

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

Robert S. Clark, Esq.  
Senior Trust Officer  
First Security Bank of Utah, N.A.  
Corporate Trust Division  
79 South Main Street  
Salt Lake City, Utah 84125

Doug Drummond  
IteI Corporation

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**OFFICE OF THE SECRETARY**

Patricia Salas Pineda  
Itel Corp-Rail Division  
55 Francisco 7th Floor  
San Francisco, California 94133

April 11, 1983

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/11/83 at 1:05PM , and assigned re-  
recording number(s). 14002

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

L-0425  
2/15/83

RECORDATION NO. 14002  
APR 11 1983 - 1 05 PM  
INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT (the "Agreement") made as of this 17th day of February, 1983, between ITEL CORPORATION, RAIL DIVISION, a Delaware corporation, 55 Francisco, San Francisco 94133, as the lessor ("Lessor") and SOO LINE RAILROAD COMPANY, a Minnesota corporation, Soo Line Building, Box 530, Minneapolis, Minnesota 55440, as the lessee ("Lessee").

1. Scope of Agreement

- A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from the Lessor upon the terms and conditions set forth herein, a number of items of equipment of the number, type, construction and other description set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Equipment 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 it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

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 Equipment Schedule shall commence at 12:00 P.M. on the date and at the location that such Car is restencilled pursuant to Section 3.A., and shall expire as to all of the Cars described on each Equipment Schedule, three (3) years from the date on which the first Car on such Equipment Schedule was restencilled (the "Term").

3. Restencilling and Delivery

- A. Lessee hereby approves the specifications of the Cars set forth on each Equipment Schedule attached hereto. The procedures for the restencilling of the Cars prior to delivery to Lessee shall be as follows:
- (i) Lessee shall, at Lessor's expense, secure and move to a shop designated by Lessor commencing no later than March 31, 1983, sixty (60) flatcars from the series currently marked BFJR 104000-104099, at a rate of not less than five (5) Cars per week, provided, however, any movements on Lessee's line shall not be at Lessor's expense. Lessor shall, at its expense, modify said sixty (60) flatcars so as to conform with the description of the Cars set forth on Equipment Schedule No. 1 and restencil said sixty (60) flatcars with the reporting marks SOO 54694 through and including SOO 54753 in compliance with all applicable regulations.

- (ii) Lessee shall, at its expense, secure and move to a shop on Lessee's line no later than March 31, 1983, the remaining forty (40) flatcars from the series currently marked BFJR 104000-104099. Lessee shall, at Lessor's expense, restencil said forty (40) flatcars with the reporting marks SOO 54754 through and including SOO 54793 (as described on Equipment Schedule No. 2) in compliance with all applicable regulations at a cost not to exceed \$50.00 per Car. During the restencilling for the forty (40) Cars set forth herein, Lessor shall have the option to inspect, at its expense, the said forty (40) Cars.
- (iii) Lessor, shall, at its expense, restencil the one hundred (100) Cars described on Equipment Schedule No. 3 attached hereto with the reporting marks SOO 54794 through and including SOO 54893 in compliance with all applicable regulations.

Each Car referenced in Section 3.A.(ii) hereof shall be deemed delivered and subject to all the terms and provisions of this Agreement at 12:00 noon on the date and at the location such Car is restencilled. Each Car referenced in Sections 3.A.(i) and 3.A.(iii) hereof shall be deemed delivered and subject to all the terms and provisions of this Agreement at 12:00 noon on the date and at the location such Car is restencilled, provided, however, that acceptance of said Car by Lessor and Lessee has been noted on the Joint Inspection Certificate as set forth in Section 3.B. hereof. After the Cars referenced in Section 3.A.(i) and Section 3.A.(iii) have been restencilled, such Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon as it is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay the rent set forth in this Agreement. Concurrent with the restencilling of the Cars referenced in Section 3.A.(ii), Lessee shall execute a Certificate of Restencilling (in the form of Exhibit A attached hereto) specifying the previous and current reporting marks of each Car. Such Certificates of Restencilling shall become attached to and incorporated into this Agreement.

For the purposes hereof, the term "Initial Loading" as to each Car shall be the earlier to occur of either 1) the hour such Car shall have been loaded off Lessee's railroad line with the first load of freight, or 2) 12:00 noon on the thirty-first (31st) day after such Car is delivered pursuant to this Section.

- B. Each Car referenced in Section 3.A.(i) and Section 3.A.(iii) shall be inspected by representatives of both Lessor and Lessee at any location designated by Lessor. Such locations shall not number more than four. The representatives of both Lessor and Lessee shall prepare and execute for each Car a Joint Inspection Certificate ("JIC") as used under Rule 103 of the AAR Interchange Rules. Each Car found following the inspection to be in mechanical and safety compliance with all applicable AAR and Federal Railroad Administration ("FRA") rules and specifications and otherwise meeting the description set forth in the applicable Equipment Schedule attached hereto, shall be accepted for all purposes of this

Agreement by the execution by representatives of both Lessor and Lessee of the JIC, so noting the acceptance. Any Car not meeting the standards set forth in the preceding sentence may be rejected by Lessee and such objections and the reasons therefor shall be set forth in the JIC and thereupon Lessor shall take what steps it deems appropriate to cure such defect and when Lessor has corrected such defect, such Car shall thereupon be reinspected by Lessee and if such Car then meets such standards it shall be so noted on the JIC and upon the restencilling, such Car shall be subject to all terms and conditions of this Agreement.

- C. It is hereby understood that it is the intent of both parties for the Cars to be loaded online for offline destinations and that Lessee shall use reasonable diligence to load the Cars in such a manner so as to maximize the Utilization Rate (as defined in Section 7.A. (ii)) of the Cars.

#### 4. Record Keeping

- A. Lessee shall, at its expense, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to the following: (i) preparation of appropriate Association of American Railroads ("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 Interstate Commerce Commission ("ICC") and/or any other regulatory agencies with respect to the Cars. Lessee shall register each Car in the UMLER in such a manner that Lessor is allowed access to any required information with regard to each Car. In addition, Lessee shall be responsible for any expenses incurred and rent lost as the result of any improper UMLER registration except if due to the fault of Lessor. Lessor agrees to provide to Lessee all necessary information in Lessor's possession to accomplish the above filings and proceedings.
- B. Lessee shall perform all record keeping functions relating to the use of the Cars by Lessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of Revenues (as hereinafter defined in Section 7.A.(i)) from other railroad companies, maintenance and repair, and billing in accordance with the AAR 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. Lessor shall be entitled to make such inspection at will.

#### 5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed inspections of (other than interchange inspections), maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the AAR Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was

occasioned by the fault of Lessee, or arises in those instances in which the AAR Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessee shall, at its expense, inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper on Lessee's railroad line.

- B.** Except as otherwise provided herein, Lessor shall arrange to have performed, at its expense, all maintenance, alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition. Lessee may make AAR running repairs to facilitate continued immediate use of each Car, but shall not otherwise make or cause to have made any repairs other than AAR running repairs in excess of three hundred (300) dollars per Car, or any other alterations, improvements, or additions to any Car without Lessor's prior written consent. If, within fifteen (15) days of receipt of Lessee's written request to make or cause to have made repairs in excess of three hundred (300) dollars with respect to any Car, Lessor does not give prior written consent, such Car shall be removed from the rental calculations of this Agreement on the fifteenth (15th) day following Lessor's receipt of Lessee's request until the date such Car is repaired. Lessee shall be liable to Lessor for any Revenues lost due to any unauthorized repair, alterations, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Lessor.
- C.** Lessee shall perform, or arrange to have performed, maintenance and repairs to, and servicing of the sliding bridgeplates of the Cars and, with respect to such sliding bridgeplates, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the AAR Interchange Rules. With respect to each Car, the work referenced in the preceding sentence with respect to the sliding bridgeplates shall be at Lessor's expense for an amount not to exceed \$1,800.00 for all the Cars described on Equipment Schedule No. 1 per calendar year and at Lessee's expense for any amount in excess of \$1,800.00 for all the Cars described on Equipment Schedule No. 1 per calendar year.
- D.** As long as this Agreement shall remain in effect, Lessee shall be responsible for the Cars **(i)** while in Lessee's possession or control, and **(ii)** in the same manner that Lessee is responsible under Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained **(a)** 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; provided, however, that the Lessee may self-insure such Cars to the extent it self-insures equipment owned by the Lessee and similar to the Cars and to the extent such self-insurance is consistent with prudent industry practice, and **(b)** public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies which are satisfactory

to the Lessor; provided, however, that Lessee may self-insure against such liability to the extent such self-insurance is consistent with prudent industry practice, but in any event such insurance shall be at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned by it. Lessee shall furnish to Lessor concurrently with execution hereof, and thereafter at intervals of not more than twelve (12) calendar months, certificates of insurance evidencing the aforesaid insurance. Lessor shall have the right to obtain a Certified Copy of each insurance policy upon written request to the Lessee. 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 bill the cost to Lessee. With respect to the additional insureds, it is further agreed that the same are entitled to full protection afforded by Lessee's insurance policies, and said policies shall be primary to any other valid and available insurance effected by or for the additional insureds in respect of whom the insurers specifically agree to waive subrogation and/or claim and/or recovery. It is further agreed that each policy will be endorsed evidencing the above, and these endorsements will be evidenced on the Certificate of Insurance provided to the Lessor. Any and all deductibles in the described policies shall be assumed by the Lessee.

- E. Lessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify Lessor and its successors against taxes, fees, levies, impost, duties or withholdings of any nature together with penalties, fines or interest thereon (Taxes) imposed on, incurred by or asserted against: (1) the Cars, (2) lease, sublease or delivery of the Cars, (3) revenues earned by the Cars, including but not limited to mileage charges and/or car hire revenues, during the term of this Agreement, except Taxes on income and franchise taxes imposed on Lessor. Lessee shall comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars and shall provide Lessor with a photostatic copy of the receipted ad valorem tax bill within thirty (30) days after receipt.

## 6. Storage

In the event that any or all of the Cars require storage on Lessee's railroad lines at any time prior to the expiration of this Agreement, or earlier termination (as set forth in Section 10.A.), Lessee shall be responsible for the following: (1) all reasonable transportation costs incurred to move the Cars to such storage location; (2) all reasonable transportation costs incurred in removing such Cars from the storage location; and (3) the actual costs incurred for the storage of each Car for up to two hundred seventy (270) days. If Lessor pays for any costs accountable to Lessee referred to in this Section, Lessee shall reimburse Lessor for such cost within thirty (30) days from Lessee's receipt of Lessor's invoice.

## 7. Lease Rental

### A. Definitions

- (i) "Revenues" shall be the total revenues earned and due from other railroad companies for the use or handling of the Cars, including but not limited to, per diem and mileage (except for any reclaim applied to any Car deemed damaged in accordance with Rule 7 of the AAR Code of Car Hire Rules and Interpretation-Freight), whether or not collected and received by Lessee and without regard to any claimed abatement, reduction or offset caused by any action of Lessee, provided, however, that upon the occurrence of any such abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (ii) The "Utilization Rate" of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of hours 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 hours in each calendar year that the Cars are on lease to Lessee, commencing from the Initial Loading.
- (iii) The "Base Rental" shall be defined as the sum equal to the Revenues which the Cars would have earned in the aggregate at a Utilization Rate of fifty (50) percent with the assumption that each Car traveled one hundred thirty-five (135) miles a day.

B. Lessor shall receive all Revenues earned by the Cars prior to their Initial Loading. Each Car delivered pursuant to Section 3.A. hereof shall become subject to the rental calculation under Section 7.C. hereof upon the Initial Loading of such Car.

C. 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 are equal to or less than the Base Rental, Lessee shall pay to Lessor a sum equal to one hundred (100) percent of the total Revenues.
- (ii) In the event Revenues earned in any calendar year or applicable portion thereof exceed the Base Rental, Lessee shall pay to Lessor an amount equal to the Base Rental plus seventy-five (75) percent of all Revenues earned in excess of the Base Rental and Lessee shall retain the remaining twenty-five (25) percent of all Revenues earned in excess of the Base Rental ("Lessee's Revenue Sharing Portion"), provided, however, that Lessee's Revenue Sharing Portion shall be paid to Lessor until it is, in the aggregate, equal to Lessor's out of pocket expenses for modifying the Cars described on Equipment Schedule No. 1 attached hereto by attaching sliding bridgeplates thereto.

- D. (i) The calculations required in Section 7.C. shall be made within five (5) months after the end of each calendar year ("Final Calculations"). In order that Lessor may meet its financial commitments, Lessee shall pay to Lessor by the seventy-fifth (75th) day after the end of each Service Month (as hereinafter defined), ninety-two (92) percent of the total Revenues for that Service Month. For the purposes hereof, Service Month shall be defined as the calendar month in which Revenues were actually earned. At the time payment of ninety-two percent (92%) of the total Revenues is made to Lessor, Lessee shall report to Lessor for the same month, the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the Revenues. Four percent (4%) of the Revenues shall be remitted to Lessor within one hundred five (105) days after the end of each Service Month and the remaining four percent (4%) of the total Revenues shall be remitted to Lessor within one hundred thirty-five (135) days after the end of each Service Month. Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, 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.
- (ii) Upon Lessor's request, Lessee shall provide Lessor with any records of Lessee, including car hire summaries and detailed reports, as Lessor deems necessary to substantiate Revenues earned and received by Lessee for the use and handling of the Cars. Further, Lessor shall be entitled to visit Lessee at any time during normal business hours to review any and all records required to complete the calculations outlined in Section 7.D.(i).
- E. If, with respect to any calendar quarter, the Utilization Rate of the Cars is less than sixty-two (62) percent, Lessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by paying to Lessor an amount equal to the difference between actual Revenues for such calendar quarter and the amount equal to the Revenues which the Cars would have earned in the aggregate at a Utilization Rate of sixty-two (62) percent for such calendar quarter.
- F. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement as of the date and hour car hire ceased as set forth in the aforementioned Rule 7. With respect to any destroyed Car, Lessor shall provide Lessee with the information necessary for Lessee to prepare a depreciation value (DV) statement to provide for a settlement in accordance with AAR Rule 107. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee.

## 8. Possession and Use

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business as set forth in Subsection 8.B. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor in connection with the acquisition of the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.
- B. The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of a rail common carrier. During the term of this Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.
- C. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars, or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

## 9. Default

- A. The occurrence of any of the following events shall be an event of default:
- (i) The breach by Lessee of any term, covenant, or condition of this Agreement, which is not cured within thirty (30) days from the date Lessee receives written notice from Lessor of the breach thereof;
  - (ii) The filing by or against the Lessee of any petition or the initiation by or against the Lessee of any proceeding: (a) for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder; or (b) under any bankruptcy, reorganization, insolvency, moratorium or other laws relating to the relief

of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness;

- (iii) The subjection of a substantial portion of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;
- (iv) Any action by Lessee to discontinue rail service on a substantial portion of its track or abandon a substantial portion of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

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

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

#### 10. Expiration or Earlier Termination

A. Upon the expiration of this Agreement or in the event of earlier termination, whether pursuant to Section 9, Section 7.E. or Section 7.F. hereof, with respect to any Car, Lessee shall, at its expense, promptly return such Car to Lessor by delivering such Car to a shop specified by Lessor which shall be on Lessee's railroad tracks. Subsequent procedures shall be as follows:

Lessee shall, at its expense, restencil the Cars in accordance with Lessor's instructions and return the Cars in the same conditions as originally received by Lessee, normal wear and tear excepted. Lessor shall provide to Lessee the restencilling instructions within one hundred eighty (180) days subsequent to the expiration or earlier termination of this Agreement with respect to any Car. Restencilling, with respect to each Car, shall include the following: (a) removal of existing mandatory markings and all company logos of Lessee; (b) complete cleaning subsequent to the removal of markings; (c) application of new mandatory markings as

designated by Lessor; and (d) any transportation involved in moving each Car to and from a suitable work area to perform the restencilling set forth in this Section. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. Lessee shall be responsible for the storage of each Car on its railroad line for the period subsequent to the date of expiration or earlier termination until such Car is restencilled. Subsequent to the completion of the restencilling of each Car, Lessee shall, upon Lessor's request and at Lessor's sole option, and at Lessee's expense, provide an outbound load for such Car, or in the event no outbound loads are available, deliver such car to any interchange point designated by Lessor on Lessee's railroad tracks.

- B. In the event that any Car is not returned to Lessor as set forth in Section 10.A. herein on or before the date of expiration or earlier termination of this Agreement, all of Lessee's obligations under this Agreement shall remain in full force and effect with respect to all Cars which have not been returned by Lessee to Lessor until such Cars are returned to Lessor as set forth in Section 10.A. herein.

## **11. Indemnities**

- A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN LESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO LESSEE.
- B. SUBJECT TO SECTION 11.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH HEREIN, LESSOR WILL DEFEND, INDEMNIFY AND HOLD LESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST LESSEE WITH RESPECT TO THE CARS, INCLUDING WITHOUT LIMITATION, THE LEASING OR RETURN OF THE CARS, USE, MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE CARS OR THE CONDITION OF THE CARS (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY LESSOR OR LESSEE).

## **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 has the corporate power, authority and, insofar as is material to Lessor's rights under this Agreement, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

- 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.

**13. Inspection**

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

**14. Assignment to Itel Rail Corporation**

The parties agree that all rights and obligations of Lessor may be assigned to Itel Rail Corporation upon confirmation of a Plan of Reorganization for Itel Corporation by the United States Bankruptcy Court, Northern District of California or by another court of competent jurisdiction, and that upon such assignment and upon the assumption of Itel Rail Corporation of all of Itel Corporation's obligations hereunder, Itel Corporation is hereby released from all liabilities hereunder without further action by the parties and Itel Rail Corporation shall assume all such obligations without further action by the parties.

**15. 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 Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

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

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

ITEL CORPORATION,  
RAIL DIVISION

By: *Edward M. Dea*

Title: *President*

Date: *March 14, 1983*

SOO LINE  
RAILROAD COMPANY

By: *C. E. Leary*

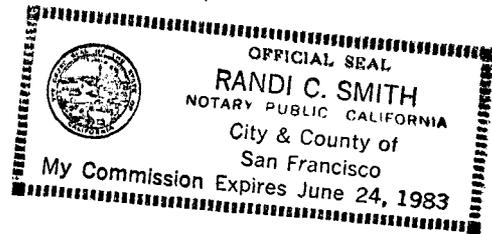
Title: *Vice President Operations*

Date: *February 17, 1983*

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

On this 16<sup>th</sup> day of March, 1983, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of Itel Corporation, Rail Division, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

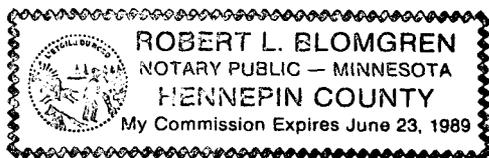
Randi C. Smith  
Notary Public



STATE OF Minnesota )  
 ) ss:  
COUNTY OF Hennepin )

On this 17th day of February, 1983, before me personally appeared C. C. Leary, to me personally known, who being by me duly sworn says that such person is Vice President Operations of Soo Line Railroad Company, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robert L. Blomgren  
Notary Public



L-0425

EQUIPMENT SCHEDULE NO. 1

Itel Corporation, Rail Division hereby leases the following Cars to Soo Line Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of February 17, 1983.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
FC	70-ton Flush Deck Flatcar with Sliding Bridgeplates Mfg. by: Pullman-Standard Built: 11/78-2/79 Lot #: 1016 AAR Car Type Code P712 Handling Capabilities: (2) 45' Trailers (dry van with 36" King Pin setting) or combination of 20'-40' containers.	SOO 54694- 54753	89'4"	N/A	N/A	N/A	60

ITEL CORPORATION, RAIL DIVISION

By: *Edward J. Dea*

Title: President

Date: March 14, 1983

SOO LINE RAILROAD COMPANY

By: *C. E. Leary*

Title: Vice President Operations

Date: February 17, 1983

L-0425

EQUIPMENT SCHEDULE NO. 2

Itel Corporation, Rail Division hereby leases the following Cars to Soo Line Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of February 17, 1983.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
FC	70-Ton Flush Deck Flatcar Mfg. By: Pullman-Standard Built: 11/78-2/79 Lot #: 1016 AAR Car Type Code: P710 Handling Capabilities: (2) 40' trailers or combination of 20'-40' containers.	SOO 54754-54793	89'4"	N/A	N/A	N/A	40

ITEL CORPORATION, RAIL DIVISION

By: *Edward M. [Signature]*

Title: *President*

Date: *March 14, 1983*

SOO LINE RAILROAD COMPANY

By: *C. C. Leary*

Title: Vice President Operations

Date: February 17, 1983

EQUIPMENT SCHEDULE NO. 3

Itel Corporation, Rail Division hereby leases the following Cars to Soo Line Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of February 17, 1983.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
FC	70-Ton Flush Deck Flatcar AAR Type Code: P710 Handling Capabilities: (2) 40' trailers or combination of 20'-40' containers.	SOO 54794- 54893	89'4"	N/A	N/A	N/A	100

The Cars described on this Equipment Schedule No. 3 shall have been manufactured by either or both of the following:

- a. Pullman-Standard  
Built: 11/78-2/79  
Lot #: 1016
- b. Bethlehem  
Built: 12/78-1/79  
Lot #: 3400-489

ITEL CORPORATION, RAIL DIVISION

By: *Edward M. Deen*

Title: *President*

Date: *March 14, 1983*

SOO LINE RAILROAD COMPANY

By: *C. C. Keary*

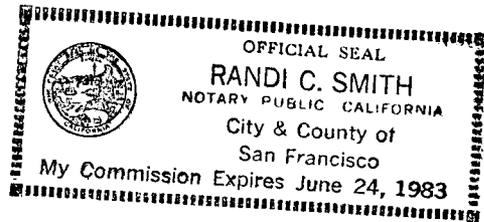
Title: Vice President Operations

Date: February 17, 1983

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

On this 16<sup>th</sup> day of March, 1983, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of IteI Corporation, Rail Division, that the foregoing Equipment Schedule Nos. 1, 2 and 3 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Randi C. Smith  
Notary Public



STATE OF Minnesota )  
 )  
 ) ss:  
COUNTY OF Hennepin )

On this 17th day of February, 1983, before me personally appeared C. C. Leary, to me personally known, who being by me duly sworn says that such person is Vice President Operations of Soo Line Railroad Company, that the foregoing Equipment Schedule Nos. 1, 2 and 3 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robert L. Blomgren  
Notary Public

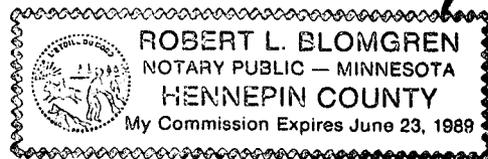


EXHIBIT A

CERTIFICATE OF RESTORATION

Date of  
Restoration

Current  
Factor Mark

Previous  
Factor Mark

Authorized Representative  
of the Railroad Company