14030

RECORDATION NO. ..... Filed 1425

MAY 27 1983 - 2 15 PM

INTERSTATE COMMERCE COMMISSION

ITEL RAIL

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

3-1471075

No.

Date MAY 25 1983

Fee $ 60.00

ICC Washington, D. C.

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I.C.C.
FEE OPERATION BR.

May , 1983

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 April 28, 1983 between Itel Corporation, Rail Division and the McCloud River Railroad Company (the "Lease").

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

1. McCloud River Railroad Company
   P.O. Drawer A
   McCloud, California 96507

2. Itel Corporation, Rail Division
   55 Francisco, 7th Floor
   San Francisco, California 94133

The equipment covered by this Lease is seven (7) 60' 100-ton boxcars, A.A.R. mechanical designation XM, bearing reporting marks MR 2500 through MR 2506, inclusive.

Also enclosed is a check in the amount of $60.00 for the required recording fee.

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 me by mail.

Sincerely,

Patricia Salas Pineda
Counsel

PSP:dmm
Enclosures

cc: Sandra Costa
Itel Corporation

Interstate Commerce Commission
Washington, D.C. 20423

5/27/83

OFFICE OF THE SECRETARY

Patricia Salas Pineda,Counsel
Itel RailDivision
55 Francisco
San Francisco,Calif. 94133

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act,49 U.S.C. 11303, on 5/27/83 at 2:15pm , and assigned re-recordation number(s). 14030

Sincerely yours,

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

14030

RECORDATION NO. ..... Filed 1425

L-0484
4/29/83

MAY 27 1983 -2 15 PM

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") made as of this 28th day of April, 1983, between **ITEL CORPORATION, RAIL DIVISION**, a Delaware corporation, 55 Francisco Street, San Francisco, 94133, as the lessor ("Lessor") and **McCLOUD RIVER RAILROAD COMPANY**, a California corporation, P.O. Drawer A, McCloud, California, 96057, 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 "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

A. This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Agreement with respect to each Car described on each Schedule shall commence at 12:00 Noon 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 on November 15, 1993 ("Initial Term").

B. If this Agreement has not been earlier terminated and no default has occurred, which is continuing, the Agreement shall automatically be extended for not more than five consecutive periods of twelve (12) months each (the "Extended Term") with respect to all of the Cars described on each Schedule, provided however, that Lessor or Lessee may terminate this Agreement at the end of the Initial Term or any Extended Terms as to all, but not fewer than all, of the Cars on the Schedules by written notice delivered to the other not less than twelve (12) months prior to the end of the Initial Term or any Extended Terms.

3. Supply Provisions

A. Lessee hereby approves the specifications of the Cars delivered to it by Lessor. Lessee shall, at Lessor's expense, restencil the Cars with the railroad markings of Lessee in compliance with all applicable regulations. Upon written request by Lessee to Lessor that the Cars be equipped with plywood lining, Lessee, or an agent designated by Lessor may, with Lessor's prior written approval, make such modification at Lessor's expense. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:00 Noon on the date and at the location such Car is restencilled. 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 Association of American Railroads ("AAR") interchange rules. If Lessor incurs expenses in having other railroads move Cars in accordance with this Section with Lessee's 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 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 such Car is delivered pursuant to this Section.

B. Lessee shall load the Cars leased from Lessor prior to loading any boxcars leased by or assigned to Lessee from other parties subsequent to the date of this Agreement, purchased by Lessee subsequent to the date of this Agreement, or interchanged from other railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

C. 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.

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, 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 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 hereby authorizes Lessor to be the subscriber to the car hire exchange tape, Train 62 Junction Advices, and the Train 11 Location Advices with respect to the Cars and agrees to execute any other documents necessary for such authorization.

B. Lessor 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) from other railroad companies, maintenance and repair, and billing in accordance with the AAR Interchange Rules ("Interchange Rules"). Immediately upon receipt from other railroads of any Revenues in the form of a draft, check or other instrument payable to Lessee, Lessor shall be entitled to endorse and deposit such draft, check or other instrument into Lessor's account and to retain such Revenues as set forth in Subsection 7.D. All record keeping performed by Lessor hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessor in a form suitable for reasonable inspection by Lessee from time to time during Lessor's regular business hours. 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 shall, on a monthly basis, supply Lessor with copies of Lessee's interchange records with respect to the Cars interchanged to and from Lessee's railroad line. Upon Lessor's reasonable request, Lessee shall promptly provide Lessor with records of Lessee's car hire payables. In the event Lessee fails to provide Lessor with records of car hire payables, and as a result, a user or handling railroad refuses to pay Revenues (as hereinafter defined in Section 7) owed, Lessee shall, within ten (10) days after Lessor's request, pay to Lessor such unpaid Revenues. Lessor has the right to offset against Lessee's revenue sharing portion set forth in Subsection 7.C., any sums arising out of this Agreement which are owed by Lessee to Lessor but which remain unpaid.

C. If Lessee acquires or leases or has acquired or leased additional equipment bearing the reporting marks of Lessee from a party other than Lessor ("Other Equipment"), Lessor shall perform car hire accounting for the Other Equipment. Lessor and Lessee shall enter into a car hire service agreement ("Car Hire Agreement") associated with Lessor's performance of car hire accounting for the Other Equipment. Under such Car Hire Agreement, Lessor shall, on behalf of Lessee, receive car hire rental and other payments relating to the use and handling of the Other Equipment by other railroads ("Funds") and shall deposit the Funds into an Agency Bank Account for the purpose of segregating the Funds from the Revenues (as hereinafter defined in Section 7) relating to the Cars so as to insure that the interests of both Lessor and Lessee are protected. Upon entering such Car Hire Agreement, Lessee shall agree to pay to Lessor, on a monthly basis, a fee which is mutually agreeable to Lessor and Lessee.

5. <u>Maintenance, Tax and Insurance</u>

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 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. 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. Lessee may make running repairs 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, alterations, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Lessor.

C. As long as this Agreement shall remain in effect, Lessee shall be responsible for the Cars **(i)** while in Lessee's possession or control, and **(ii)** in the same manner that Lessee is responsible under 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; 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. 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, Lessee's insurance policies shall be primary to any other valid and available

insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee's insurer specifically agrees to waive subrogation and/or claim and/or recovery with respect to any Other Insurance. 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 evidenced on the Certificate of Insurance provided to the Lessor. In the event, and 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. Any and all deductibles in the described policies shall be assumed by the Lessee.

D. Within thirty (30) days from Lessor's receipt of the receipted copy of the paid tax bill, Lessor agrees to reimburse Lessee 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 imposted during the term of this Agreement, except taxes on income imposed on Lessee, gross receipts or sales and use tax imposed on the mileage charges and/or 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 city, county, state or other 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, Lessee shall, at its expense, store the Cars, if necessary, 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: **(1)** all reasonable transportation costs incurred to move the Cars to a storage location; **(2)** all reasonable transportation costs incurred in removing the Cars from the storage location; and **(3)** the actual costs incurred for the storage of any or all of the Cars. 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. 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, whether or not collected

and received by Lessor 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 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 are on lease to Lessee, commencing from the Initial Loading.

B. Lessor shall receive all Revenues earned by the Cars prior to their 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. Lessee agrees to pay the following rent to Lessor for the use of the Cars:

(i) In the event Revenues earned from the Initial Loading through and including June 30, 1984, are equal to or less than the sum equal to the Revenues which the Cars would have earned in the aggregate at a Utilization Rate of sixty (60) percent ("First Base Rental"), Lessor shall retain a sum equal to one hundred (100) percent of the total Revenues.

(ii) In the event Revenues earned from the Initial Loading through and including June 30, 1984, exceed the First Base Rental, Lessor shall retain an amount equal to the First Base Rental plus fifty (50) percent of all the Revenues earned in excess of the First Base Rental and Lessee shall receive the remaining fifty (50) percent of all Revenues earned in excess of the First Base Rental.

(iii) In the event Revenues earned from July 1, 1984 through and including June 30, 1985, are equal to or less than the sum equal to the Revenues which the Cars would have earned in the aggregate at a Utilization Rate of seventy (70) percent ("Second Base Rental"), Lessor shall retain a sum equal to one hundred (100) percent of the total Revenues.

(iv) In the event Revenues earned from July 1, 1984 through and including June 30, 1985, exceed the Second Base Rental, Lessor shall retain an amount equal to the Second Base Rental plus fifty (50) percent of all the Revenues earned in excess of the Second Base Rental and Lessee shall receive the remaining fifty (50) percent of all Revenues earned in excess of the Second Base Rental.

(v) In the event Revenues earned from July 1, 1985 through and including November 15, 1993, (or the last day of any Extended Term), are equal to or less than the sum equal to the Revenues which the Cars would have earned in the aggregate at a Utilization Rate of eighty-five (85) percent ("Third Base Rental"), Lessor shall retain a sum equal to one hundred (100) percent of the total Revenues.

(vi) In the event Revenues earned from July 1, 1985 through and including November 15, 1993, (or the last day of any Extended Term), exceed the Third Base Rental, Lessor shall retain an amount equal to the Third Base Rental plus fifty (50) percent of all the Revenues earned in excess of the Third Base Rental and Lessee shall receive the remaining fifty (50) percent of all Revenues earned in excess of the Third Base Rental.

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, Lessor shall, prior to making such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year to date basis the approximate amounts owed under Subsection 7.C., Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year to date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

E. If, with respect to any calendar quarter, Revenues are less than the amount the Cars would earn in the aggregate at a Utilization Rate of eighty-seven and one-half (87.5) 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 Revenues the Cars would have earned in the aggregate at a Utilization Rate of eighty-seven and one-half (87.5) percent.

F. If, subsequent to the Initial Loading, any Car remains on Lessee's railroad tracks for more than seven (7) consecutive days, excluding those days such Car is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Lessee, Lessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and take possession of such Car on Lessee's railroad tracks. If any such Car has remained on Lessee's railroad tracks for more than seven (7) consecutive days because Lessee has not given preference to

the Cars as specified in Subsection 3.B., Lessee shall be liable for and remit to Lessor an amount equal to the Revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period during which such Car is on Lessee's railroad line.

G. 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 on the date car hire ceased as set forth in the aforementioned Rule 7. 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 nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due;

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days thereafter;

(iii) The filing by or against the Lessee of any petition or the initiation by or against the Lessee of any proceeding: **(a)** for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder; or **(b)** under any bankruptcy, reorganization, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness.

(iv) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(v) Any action by Lessee to discontinue rail service on all or a portion of its track or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

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

(i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, and/or

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

10. Expiration or Earlier Termination

A. Event of 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, Lessor shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of expiration. Lessee shall, at Lessor's option, provide, with respect to any Car described on each Schedule which is either on the Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad, up to one hundred twenty (120) days free storage on its railroad tracks from the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of expiration. At the option of Lessor, either Lessee or a contractor chosen by Lessor shall at Lessor's expense, repaint and restencil 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 repainting and restencilling, Lessee shall, at Lessor's option, load the Cars with freight and deliver them to a connecting carrier for shipment.

(ii) 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. Lessor shall bear the expense of repainting and restencilling the Cars.

B. Event of Earlier Termination

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

(i) If, in the event of earlier termination, whether pursuant to Section 9 or Subsection 7.E. or Subsection 7.F. hereof, 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 earlier termination. Lessee shall, at Lessor's option, provide, with respect to any Car described on each Schedule which is either on the Lessee's railroad tracks at the time of earlier termination or is subsequently returned to Lessee's railroad, up to one hundred twenty (120) days free storage on its railroad tracks from the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of expiration. At the option of Lessor, either Lessee or contractor chosen by Lessor shall at Lessee's expense, repaint and restencil 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 repainting and restencilling, Lessee shall, at Lessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

(ii) If, in the event of earlier termination, whether pursuant to Section 9 or Subsection 7.E. or Subsection 7.F. hereof, 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 repainting and restencilling the Cars.

C. (i) Repainting, with respect to each Car, shall include the following: (i) commercial sandblasting of the sides, ends, doors and, if originally painted the same color as the ends, the visible end portion of the underframe; (ii) application of approved primer and finish paint as according to Lessor's specifications; (iii) application of mandatory AAR markings with approved stencil paint which includes new reporting marks, car numbers and company logos; and (iv) any transportation involved in moving each Car to and from a suitable work area to perform the repainting set forth in this Section.

(ii) Restencilling, with respect to each Car, shall include the following: (i) removal of existing mandatory markings and all company logos of Lessee; (ii) complete cleaning subsequent to the removal of markings and company logos as designated by Lessor; (iii) application of new mandatory markings and company logos; and (iv) any transportation involved in moving each Car to and from a suitable work area to perform the restencilling set forth in this Section.

11. Indemnities

A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN LESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO LESSEE.

B. SUBJECT TO SUBSECTION 11.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH 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.

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 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 and effectiveness 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 con-

nection 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 9 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. Lessee shall furnish to Lessor promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

H. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth herein.

I. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.

J. This Agreement represents the entire Agreement. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

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

ITEL CORPORATION,
RAIL DIVISION

By: [signature]

Title: President

Date: May 10, 1983

McCLOUD RIVER RAILROAD COMPANY

By: [signature]

Title: President

Date: May 2, 1983

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

On this 10th day of May, 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.

OFFICIAL SEAL
RANDI C. SMITH
NOTARY PUBLIC CALIFORNIA
City & County of
San Francisco
My Commission Expires June 24, 1983

Randi C. Smith
Notary Public

STATE OF California)
) ss:
COUNTY OF Siskiyou)

On this 2nd day of May, 1983, before me personally appeared W. J. Herndon, to me personally known, who being by me duly sworn says that such person is President of McCloud River 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.

OFFICIAL SEAL
GUIDO V COTTINI
NOTARY PUBLIC - CALIFORNIA
SISKIYOU COUNTY
My comm. expires JUL 27, 1984
P. O. Box 116, McCloud, CA 96057

Guido V. Cottini
Notary Public

L-0484

EQUIPMENT SCHEDULE NO. 1

Itel Corporation, Rail Division hereby leases the following Cars to McCloud River Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 28, 1983.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions Length	Inside Width	Height	Doors Width	No. of Cars
XM	60' 100-Ton General Boxcars with 15" End-of-Cushioning	MR 2500-2506	60'10"	9'6"	11'0"	12' Sliding	7

ITEL CORPORATION, RAIL DIVISION

BY: [signature]

TITLE: President

DATE: May 10, 1983

McCLOUD RIVER RAILROAD COMPANY

BY: [signature]

TITLE: President

DATE: May 2, 1983

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

On this 10th day of May, 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 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.

OFFICIAL SEAL
RANDI C. SMITH
NOTARY PUBLIC - CALIFORNIA
City & County of
San Francisco
My Commission Expires June 24, 1983

Randi C. Smith
Notary Public

STATE OF California)
) ss:
COUNTY OF Siskiyou)

On this 2nd day of May, 1983, before me personally appeared W. J. Herndon, to me personally known, who being by me duly sworn says that such person is President of McCloud River 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.

OFFICIAL SEAL
GUIDO V COTTINI
NOTARY PUBLIC - CALIFORNIA
SISKIYOU COUNTY
My comm. expires JUL 27, 1984

P. O. Box 116, McCloud, CA 96057

Guido V. Cottini
Notary Public