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**ITEL**  
**Pullman**  
March 30, 1989

RECORDATION NO 16265 FILED 1425  
APR 5 1989 - 2 10 PM  
INTERSTATE COMMERCE COMMISSION

**IteI Rail Corporation**  
55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000  
(415) 781-1035 Fax

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

Re: **Master Lease Agreement dated June 9, 1988, between IteI Railcar Corporation and Illinois Central Gulf Railroad**

Dear Ms. McGee:

On behalf of IteI Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Master Lease Agreement under a new recordation number.

The parties to the aforementioned instrument are listed below:

IteI Railcar Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Illinois Central Gulf Railroad (Lessee)  
Two Illinois Center  
233 North Michigan Avenue  
Chicago, Illinois 60601-5799

This Master Lease describes the terms and conditions by which equipment, identified in subsequent schedules thereto, is leased.

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

Very truly yours,

*Patricia Schumacker*

Patricia Schumacker  
Legal Department

APR 5 2 04 PM '89  
MOTOR OPERATING UNIT

Interstate Commerce Commission  
Washington, D.C. 20423

4.7.89

OFFICE OF THE SECRETARY

Patricia Schumacker  
Legal Department  
Itel Rail Corporation  
55 Francisco Street  
San Francisco, California 94133

Dear Ms. Schumacker:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4.5.89 at 2:10pm, and assigned recordation number(s). 5768-C

16265 & 16265-A Sincerely yours,

16266 & 16266-A

16267

16268

*Nesta L. McEwen*

Secretary

Enclosure(s)

APR 5 1989 -2 10 PM

## INTERSTATE COMMERCE COMMISSION

MASTER LEASE NO. 2204-00

THIS LEASE AGREEMENT (the "Agreement") is made as of this 30th day of NOVEMBER, 1988, by and between ITEL RAILCAR CORPORATION, a Delaware corporation located at 55 Francisco Street, San Francisco, California 94133, as lessor ("Lessor"), and ILLINOIS CENTRAL RAILROAD COMPANY, a Delaware corporation located at Two Illinois Center, 233 North Michigan Avenue, Chicago, Illinois 60601-5799, as lessee ("Lessee").

1. Scope of the Agreement

- A. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein and in the applicable schedules, a number of items of equipment in the quantity, bearing the reporting marks and of the type, construction and other description set forth in any schedules attached hereto and executed by the parties concurrently herewith or hereafter. The words "Schedules" and "Equipment Schedules" as used herein include the Schedules executed herewith and any Schedule(s) and amendments which are subsequently executed by both parties. When any such Schedule or amendment is so executed, it shall become part of this Agreement. "Cars" shall mean all items of equipment subject to this Agreement and "Car" shall mean an individual item of equipment. The terms and provisions of each Schedule shall control, as to the Cars listed on such Schedule, over any inconsistent or contrary terms and provisions in the body of this Agreement.
- B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the owner and lessor of all Cars and that no joint venture or partnership is being created. Lessee's interest in the Cars shall be that of a lessee only. 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

This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of this Agreement, with respect to the Car(s) listed on any Schedule shall be as set forth on such Schedule.

3. Supply Provisions

- A. Lessee hereby approves the specifications of the Cars described on the applicable Schedule. If any Cars are to be remarked, Lessor shall, at its expense and subject to any recovery of such expense as allowed for in the applicable Schedule, remark the Cars to the designated reporting marks in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement on the date set forth in the applicable Schedule. Commencing upon Delivery (as defined in the

applicable Schedule), Lessor shall not be responsible for any other costs relating to transportation or movement of the Cars to Lessee, and Lessee shall be responsible for all transportation costs relating to the Cars. If Lessor is required to pay any such amount, Lessee shall reimburse Lessor within thirty (30) days of receiving an invoice from Lessor for such amount. Lessee covenants that it shall abide by the Association of American Railroads ("AAR") interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules") for the duration of this Agreement.

- B. With respect to Cars not subject to a fixed rental, Lessee shall not discriminate against the Cars in the provision of off-line loads, operation, use and maintenance vis-a-vis any comparable railcars owned, leased or managed by Lessee, or assigned or interchanged to Lessee.
- C. During the term of this Agreement, Lessor may, at its expense, replace any or all Cars upon prior written notice from Lessor to Lessee with equipment of like condition, dimensions and similar car hire value.

#### 4. Record Keeping

- A. Lessee shall, at its expense and with Lessor'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 duties 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 UMLER; and (iii) preparation of any reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and any other regulatory agencies with respect to the Cars. Lessee shall register each Car in UMLER in such a manner that Lessor, or its agent, is allowed access to any required information with regard to said Car. If Lessee fails to register or improperly registers any Car in UMLER, which results in loss of revenues to Lessor, then Lessee shall be responsible for an amount equal to the revenues that would have been earned by such Car had it been properly registered in UMLER, provided Lessor has furnished accurate data in a timely manner in order to properly register such Car and provided further that such Car is not subject to fixed rent.
- 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 from other railroad companies, record keeping associated with 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 maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during Lessee's regular business hours. Upon Lessor's reasonable

request, Lessee shall use its best efforts to supply Lessor with telephone reports of the number of Cars in Lessee's possession or control. Lessee shall authorize Lessor to be a subscriber to the car hire exchange tape and AAR Train 65, 67, 71 and 80 Location Advices or make available for Lessor's inspection the interchange records for the Cars if such subscription is not possible.

- C. This Subsection 4.C. shall apply only with respect to those Cars which are not subject to a fixed rental. Unless Lessor subscribes to the Train II (65 and 67) Location Advices, Lessee shall make available to Lessor, at Lessor's request, Lessee's interchange records with respect to the Cars interchanged to and from Lessee's railroad line.

5. Maintenance

- A. This Subsection 5.A. shall apply only with respect to those Car(s) for which Lessee is designated in any Schedule attached hereto to perform or cause to be performed maintenance and to pay all costs and expenses associated therewith. Lessee shall perform or cause to be performed and pay all costs and expenses associated with the maintenance of the Cars without any abatement in rent or other loss, cost or expense to Lessor. Any parts, replacements or additions made to any Car are deemed accessions to such Car and title thereto shall immediately vest in Lessor. In the event that Lessor performs any Repair Work for Lessee, all sums due for such Repair Work shall be deemed additional rental hereunder. "Repair Work" is defined as all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with the Interchange Rules, as amended from time to time, and all preventative maintenance necessary to keep and maintain the Cars in good working order and repair. Lessor has the right upon Lessee's prior approval which shall not be unreasonably withheld, and so far as it does not interfere with Lessee's ability to provide transportation and services, to inspect the Cars at any time to ensure that they are in compliance with AAR regulations. Lessor shall assume liability for all individuals performing such inspection.
- B. For Cars in any Schedule for which Lessor is responsible for maintenance, Subsection 5.B. shall apply. 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 repairs, maintenance and servicing ("Maintenance") shall be performed at Lessee's expense in the event that it (i) was occasioned by the fault of Lessee, (ii) results from improper loading, unloading or use other than permitted under this Agreement, (iii) is for the purpose of repairing or replacing interior lading equipment, special interiors and linings or removable parts, (iv) relates to damage resulting from any commodity or material loaded in any Car or (v) arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or

liability per AAR Interchange Rule 95B and as amended by the AAR from time to time. With respect to items (ii) and (iii) in the preceding sentence, Lessor shall be responsible for an amount not to exceed the maximum specified in the applicable Schedule (such amount to be known as the "Maximum Maintenance Expense"), and Lessee shall be responsible for all applicable expenses in excess of the applicable Maximum Maintenance Expense. Transportation costs incurred by reason of movement of the Cars for any Maintenance provided for in this paragraph shall be at Lessee's sole expense while the Cars are on Lessee's lines and at Lessor's expense in the event of movement of the Cars off Lessee's lines for such Maintenance. Lessee shall insure that all Cars interchanged to Lessee are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for Rule 95B damage not noted at the time of interchange. Lessee may make running repairs to those parts of the Cars specified in the exhibit attached to the applicable Schedule 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 by Lessor due to any unauthorized repair, alteration, improvement or addition. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any Maintenance required. Lessee shall not place any Car into a private contract repair facility or have any Car repaired by a private contractor on Lessee's property without prior approval from Lessor. All such repairs shall be performed under the direction and control of Lessor.

- C. For Cars in any Schedule for which Lessor is responsible for maintenance, Lessor shall also make, at its expense, all alterations, modification or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Title to any alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor. Lessor shall have the right to perform certain nonroutine repairs, as hereinafter defined, to the Cars at a location on Lessee's property which has been leased to Lessor or at a contract repair facility. "Nonroutine Repairs" shall be defined as repairs of a type that Lessor determines Lessee would not normally perform or of a 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 Nonroutine Repairs.
- D. 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. Should the AAR Mechanical Department inspect or investigate Lessee's maintenance facilities and determine that restitution is due owners of equipment repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all railcars owned or managed by Lessor, including the Cars, that were repaired at Lessee's facilities.

- \* Lessee, at its own discretion and expense, retains the right to dispute or require Lessor to dispute any of the above taxes imposed directly or indirectly on the Lessor or the Lessee.

6. Tax and Insurance

- A. Lessee shall be responsible for the Cars: (i) while in Lessee's possession or control; and (ii) in the 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 and damage insurance with respect to the Cars while on Lessee's tracks or in the 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, any financing party designated by Lessor by written notice to Lessee ("Financing Party") and any assignee of Lessor as additional named insureds and shall also list Lessor, Financing Party and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor, Financing Party 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 Lessee.
- B. 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 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. In the event that, and only with Lessor's written approval, Lessee shall be permitted to self-insure or any specified interests, Lessee hereby warrants to place Lessor in the same position as if the above insurance had been effected.
- C. Responsibility for taxes for the Cars shall be as set forth on the applicable Schedule hereto. \*

7. Storage

In the event that any Car(s), while subject to this Agreement, is stored by Lessee or by Lessor at Lessee's request, then Lessee shall be responsible for all costs associated with storing such Car(s). If Lessor pays for any costs referred to in this Section, Lessee shall reimburse

Lessor for such cost within ten (10) days after receiving an invoice from Lessor for such costs.

8. Rent

- A. During the term of this Agreement, Lessee shall pay to Lessor for each Car, commencing on the date of delivery thereof, the monthly rental specified in the applicable Schedule.
- B. Unless otherwise specified in the applicable Schedule hereto, rental payments shall not abate if any Car is out of service for any reason whatsoever.
- C. Lessor has the right to offset against Lessee's revenue share set forth in the applicable Schedule any sums arising out of this Agreement which are owed by Lessee to Lessor but which remain unpaid.
- D. In the event destruction or damage beyond repair of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car ("Casualty Car") will be removed from the rental calculations of this Agreement on the date car hire ceases as set forth in the aforementioned Rules 7 and 8.
- E. 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 ("Casualty Car"), Lessee shall notify Lessor of the occurrence of such damage as set forth in the AAR Interchange Rules. 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 and such Car shall remain subject to the terms of this Agreement, including the rental terms, until the date on which Lessor receives all amounts due to it hereunder. 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.
- F. Lessor may, at its expense, replace any Casualty Car upon prior written notice from Lessor to Lessee with equipment of like condition, dimensions and similar car hire value ("Replacement Car").
- G. Lessor and Lessee agree to cooperate with and to assist each other in any manner reasonably 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 8.

9. Use and Possession

- A. Throughout the continuance of this Agreement, so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from and after delivery of such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with all Association of American Railroads ("AAR") Interchange Rules; (ii) in compliance with the terms and provisions of this Agreement; (iii) only within the continental limits of the United States of America or in temporary or incidental use in Canada, and Lessee shall use its best efforts not to load the Cars to Mexico; and (iv) in such service as will not constitute a train hauling predominantly a single commodity, between the same points on a regular basis, commonly referred to as a "unit train". 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 that rentals and other sums due hereunder shall be paid directly to such party.
- B. Lessee agrees that 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, regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, and in accordance with all rules established by the AAR, except that either Lessor or Lessee may by appropriate proceedings timely instituted and diligently conducted, contest the application of any such act, rule, regulation or order at the expense of the contesting party.
- C. At Lessor's election Cars may be marked to indicate the rights of Lessor, of an assignee, mortgagee, trustee, pledgee or security holder of Lessor, or of a lessor to Lessor. Except for renewal and maintenance of the aforesaid marks, no lettering or marking shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the applicable Schedule except upon the written direction or consent of Lessor. Lessee shall be responsible for all costs associated with any marking changes made at its request. Any such marking changes shall be approved in writing by Lessor.
- 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 by, through or under it, on, or with respect to the Cars or any interest therein, of the revenues earned thereby, or in this Agreement or any Schedule hereto, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 9.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. If Lessee fails to take action as described in the previous sentence, Lessor may, at Lessee's expense, take such action and Lessee shall pay the cost thereof within ten (10) days of receiving an invoice from Lessor for such expense.

10. Default

A. The occurrence of any of the following events shall be an Event of Default:

- (i) The failure of Lessee to make payments required hereunder within thirty (30) days following receipt by Lessee of written notice of nonpayment from Lessor;
- (ii) The breach by Lessee of any other term, covenant or condition of this Agreement for which no cure is being attempted by Lessee within thirty (30) days following receipt by Lessee of written notice of such breach from Lessor;
- (iii) The failure of Lessee or a Trustee to assume all of the obligations of Lessee under this Lease in accordance with the provisions of 11 U.S.C. Section 1168 or any successor section, if a petition in a bankruptcy is filed by Lessee or if a petition in Bankruptcy, which is not subject to a motion to dismiss by Lessee, is filed against Lessee;
- (iv) The failure of Lessee to move to dismiss a petition in bankruptcy, which is filed against Lessee and is subject to a motion to dismiss by Lessee, within ninety (90) days of notice to Lessee of such filing;
- (v) The subjection of all or substantially all of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;
- (vi) Any abandonment of or discontinuance by Lessee of rail service over all or a substantial portion of Lessee's rail system that would materially affect Lessee's ability to perform its obligations hereunder.

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; 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 enforcement of any provision of this Agreement.

11. Expiration or Early Termination

Upon the expiration or termination of this Agreement with respect to Cars on any Schedule, Lessee shall surrender possession of such Cars to Lessor pursuant to the early termination or expiration provisions in the relevant Schedule. Each Car so surrendered shall be in the same order and repair as when delivered to Lessee, normal wear excepted, and shall be free of all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee and free of any and all Rule 95B damage. Until the delivery of possession of a Car to Lessor pursuant to this Section 11, Lessee shall continue to be liable for and shall pay all rental on said Car at the rate in effect immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Agreement as though such termination or expiration had not occurred. Nothing in this Section 11 shall give Lessee the right to retain possession of any Car after expiration or termination of this Agreement with respect to such Car.

12. Indemnities

- A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION, LIABILITY COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) ARISING OUT OF, RELATED TO OR IN CONNECTION WITH 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 12.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.

13. 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. Insofar as is material to Lessor's rights under this Agreement, Lessor has the corporate power and authority, and is duly qualified and authorized to do business wherever necessary to carry out its present business and operations, 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, 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 9 hereinabove.
- C. There is no action or proceeding pending or threatened against Lessee as of the date of this Agreement before any court, administrative agency, or other governmental body which Lessee has not disclosed to Lessor and 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 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.

14. Inspection

Lessor shall have the right upon Lessee's prior approval which shall not be unreasonably withheld, and so far as it does not interfere with Lessee's ability to provide transportation and services, to enter at any time during normal business hours any premises where the Cars may be located for the purpose of inspecting and examining the Cars to ensure Lessee's compliance with its obligations hereunder. Lessor shall assume liability for all individuals performing such inspection.

15. Miscellaneous

- A. Except for the normal interchange and customer assignment pools customary in the industry, Lessee shall have no right to assign, sublease, or loan any of the Cars or enter into any agreement with any other party with respect to the Cars ("Third Party Agreement(s)") without the prior written consent of Lessor.

- ADW  
JLB
- B. All rights of Lessor under this Agreement may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part. Lessor shall ~~use its best efforts to~~ provide Lessee with thirty (30) days' prior written notice of any action which will materially affect Lessee, within thirty (30) days following any such action.
  - C. Subject to the restrictions against assignment contained hereinabove, this Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.
  - D. 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, financing, or use of the Cars, in order to confirm the financing parties' interest in and to the Cars, this Agreement and the Schedules hereto and to confirm the subordination provisions contained in this Agreement.
  - E. 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 of such right, power or remedy or the exercise of any other right, power or remedy.
  - F. The terms of this Agreement and all rights and obligations hereinunder shall be governed by the internal laws of the State of California.
  - G. Any notice required or permitted to be given pursuant to the terms of this Agreement shall be properly given when made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor: ITEL Railcar Corporation  
55 Francisco Street  
San Francisco, CA 94133  
Attn: President

Lessee: Illinois Central Railroad Company  
Two Illinois Center  
233 North Michigan Avenue  
Chicago, Illinois 60601-5799  
Attn: President

or at such other addresses as Lessor or Lessee may from time to time designate.

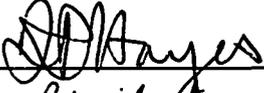
- H. The obligations and liabilities of Lessor and Lessee hereunder may survive the expiration or early termination of this Agreement.
- I. This Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.

J. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Agreement as of the day and year first above written.

ITEL RAILCAR CORPORATION

ILLINOIS CENTRAL RAILROAD COMPANY

By:   
Title: President  
Date: 1/16/89

By:   
Title: V.P. - Transp.  
Date: 12-27-88

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

On this 16<sup>th</sup> day of January, 1988<sup>9</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 Railcar Corporation, that the foregoing instrument 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.

Sharon L. Van Fossan  
Notary Public



STATE OF Illinois )  
 ) ss:  
COUNTY OF Cook )

On this 27<sup>th</sup> day of December, 1988, before me personally appeared H.B. Bergsmiller, to me personally known, who being by me duly sworn, says that such person is VP-Transportation, of Illinois Central Railroad Company, that the foregoing instrument 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.

Elizabeth A. Simnick  
Notary Public

