(7)

RECORDATION NO. 16460 FILED 1425

AUG 2 1989 12 45 PM

INTERSTATE COMMERCE COMMISSION

ITEL Pullman

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

July 28, 1989

9-214A018

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

Re: Master Lease dated as of July 14, 1989, between Itel Rail Corporation and MidSouth Rail Corporation

Dear Ms. McGee:

On behalf of Itel 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 under a new recordation number.

The parties to the aforementioned instrument are listed below:

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

MidSouth Rail Corporation (Lessee)
111 E. Capitol Street
Jackson, Mississippi 39201

This Master Lease describes the terms and conditions by which equipment, set forth 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

PS:
Enclosures

Interstate Commerce Commission

Washington, D.C. 20423

8/3/89

OFFICE OF THE SECRETARY

Patricia Schumacker
Itel Rail Corporation
55 Framncisco Street
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 8/2/89 , at 12:45pm , and assigned recordation number(s). 16460 & 16460-A & 16461 & 16461-A

Sincerely yours,

Noreta R. McGee

Noreta R. McGee
Secretary

Enclosure(s)

RECORDATION NO 16460 FILED 1425

AUG 2 1989 -12 45 PM

INTERSTATE COMMERCE COMMISSION

MASTER LEASE

THIS LEASE AGREEMENT ("Agreement") is made as of this 14th day of July, 1989, by and between ITEL RAIL CORPORATION, a Delaware corporation located at 55 Francisco Street, San Francisco, California 94133, as lessor, and MIDSOUTH RAIL CORPORATION, a Delaware corporation, located at 111 East Capitol Street, Suite 500, Jackson, Mississippi 39201, as lessee ("Lessee").

1. Scope of the Agreement

A. Lessor (as defined hereinbelow) agrees to lease to Lessee and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein and in the Schedule(s) attached hereto, a number of items of equipment 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 word "Schedule" includes the schedules executed herewith and any schedules 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 attached to the Agreement shall be as set forth on such Schedule.

3. Supply Provisions

A. Lessee hereby approves the specifications of the Cars described on the Schedule(s) attached hereto. If the Cars are to be remarked, Lessor shall, at its expense and subject to any recovery of such expense as allowed for in any 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), Lessee shall be liable for all costs, charges and expenses on account of or relating to transportation or movement of any Car. 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 subscribe to the Association of American Railroads interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department for the duration of this Agreement.

B. With respect to each Car not subject to a fixed rental, Lessee shall load such Car prior to loading any similar equipment 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 received in interchange. Lessee shall use its best efforts to maximize the off-line utilization of such Cars.

C. During the term of this Agreement, Lessor may, at its expense, replace any or all Cars with similar equipment upon not less than ten (10) days prior written notice from Lessor to Lessee.

4. Record Keeping

A. The party designated on the applicable Schedule shall prepare and file all documents relating to the registration, maintenance and record keeping functions normally performed with respect to railroad equipment of the type subject to this Agreement including, but not limited to: (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 any other regulatory agencies with respect to the Cars.

B. If any Cars are placed into an assignment pool, documents relating to the assignment pool shall be handled by the pool operator. All other record keeping functions relating to the use of the Cars by Lessee and railroads, including but not limited to car hire reconciliation, collection and receipt of revenues from other railroad companies, records pertaining to maintenance and repair, and billing in accordance with the AAR interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules") shall be performed by the party designated in the applicable Schedule. The party designated to perform record keeping in the applicable Schedule shall continue to do so for the duration of the Agreement with respect to the Cars described on such Schedule; provided, however, that Lessor, at its option, may assume record keeping for such Cars if Lessee is designated to perform record keeping and desires to transfer its responsibility to do so to a third party. All record keeping performed hereunder and all records of payments, changes and correspondence related to the Cars shall be separately recorded and maintained in a form suitable for reasonable inspection by the other party from time to time during regular business hours. Upon Lessor's request, Lessee shall supply Lessor with telephone reports of the number of Cars in Lessee's possession and control.

C. If Lessor performs such record keeping functions, this Subsection 4.C. shall apply. Immediately upon receipt from any railroad 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 the rental section of this Agreement or the applicable Schedule. Lessee shall insure that its payable car hire records are transmitted to the AAR in an acceptable format so as to be included in the monthly AAR Car Hire Exchange Tape. Lessee shall reimburse Lessor for additional expenses incurred in excess of AAR Car Hire Exchange Tape costs.

D. This Subsection 4.D. shall apply only with respect to Cars which are not subject to a fixed rental and for which Lessee is responsible to perform car hire accounting. Lessee authorizes Lessor to subscribe to Train 65, 67 and 80 Advices. Unless Lessor is allowed to subscribe to the Train 65 and 67 Advices, Lessee shall, within ten (10) days after the close of each calendar month, supply Lessor with copies of Lessee's interchange records with respect to cars interchanged to and from Lessee's railroad line.

E. This Subsection 4.E. shall apply only with respect to Cars for which Lessor is responsible to perform car hire accounting. Lessee authorizes Lessor to subscribe to Train 62, 65, 67 and 80 Advices.

5. <u>Maintenance</u>

A. This Subsection 5.A. shall apply only with respect to those Car(s) for which Lessee is designated in the applicable Schedule(s) 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. Any parts, replacements or additions made to any Car are deemed accessions to such Car and title thereto shall vest immediately in Lessor. In the event that Lessor performs any repair work for Lessee, all sums due Lessor for such repair work shall be reimbursed to Lessor as additional rental. "Repair Work" is defined as all repairs, maintenance, or replacements required to keep and maintain the Cars in good working order and repair. All repairs must be made in accordance the Interchange Rules, as amended from time to time. Lessor has the right to inspect the Cars at any time to ensure that they are in compliance with applicable regulations.

B. Section 5.B. shall apply only with respect to those Cars for which Lessor is designated in Schedule(s) attached hereto as responsible for maintenance.

(i) 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 such maintenance (a) was occasioned by the fault of Lessee; (b) results from loading, unloading or use other than permitted under this Agreement; (c) is for the

purpose of repairing, replacing or maintaining interior lading equipment, special interiors and linings or removable parts; (d) relates to damage resulting from any commodity or material loaded in any Car; or (e) arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such Maintenance for Cars not bearing Lessee's reporting marks. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any maintenance required, providing when available, the time, place and nature of any accident or bad order condition, and identifying the last commodity shipped in the Car. Lessee may make running repairs to those parts of the Cars specified in the applicable exhibit attached to the Schedule describing such Cars 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 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. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Any repairs performed to the Cars 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. 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 equipment owned or managed by Lessor, including the Cars that were repaired at Lessee's facilities.

(ii) Lessor shall have the right to perform Non-Routine Repairs, as hereinafter defined, to the Cars at a location on Lessee's property which is mutually agreeable to Lessor and Lessee or at a contract repair facility. Non-Routine Repairs ("Non-Routine Repairs") shall be defined as repairs of the type that Lessor determines that Lessee would not normally perform or of the type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Non-Routine Repairs.

(iii) Lessor shall make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules.

(iv) Title to any alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor.

6. Tax and Insurance

A. 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 the Cars are on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to Lessor. All insurance policies 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 as loss-payees. 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 that said insurance expires, Lessor has the right to purchase the insurance described above 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, which 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, 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. Lessor shall retain the discretion to allow Lessee to be self-insured as to specified interests; and such self-insurance by Lessee shall require Lessor's written approval and shall place Lessor in the same position it would have been in had Lessee obtained the insurance specified in Subsection 6.A., hereinabove.

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) is not in use while subject to this Agreement, Lessee shall be responsible for storing any such Car(s) on its lines, at its expense, or for paying all costs associated with storing such Car(s) at another location. Any storage location provided by Lessee which is off Lessee's lines, shall be as secure as if the Cars were stored on Lessee's lines. If Lessor pays any such storage-related costs, Lessee shall reimburse Lessor for such costs 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 sharing portion, if any, set forth in the rental section of the Schedule(s), any sums arising out of this Agreement which are owed by Lessee to Lessor but which remain unpaid.

9. Casualty Cars

A. 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 and Lessor shall be entitled to all casualty proceeds relating to the Casualty Car.

B. 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 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.

C. Lessor may, at its expense, replace any Casualty Car with similar equipment (such item of equipment a "Replacement Car") upon prior written notice from Lessor to Lessee.

D. 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 9.

10. Possession and Use

A. Throughout the term of this Agreement and 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 (i) in accordance with

the terms of this Agreement; (ii) in conformity with all Interchange Rules; (iii) only within the continental limits of the United States of America or in temporary or incidental use in Canada; and (iv) in such service as will not constitute a train hauling substantially a single commodity between the same points on a regular basis (a train so doing is commonly referred to as a "unit train"), unless otherwise specified in the Schedule(s). 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. 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 and/or that the Cars immediately be returned to such party.

B. Lessee shall be responsible for the Cars (i) while in Lessee's possession and control and (ii) in the same manner and under the same circumstances that Lessee is responsible under the Interchange Rules for similar equipment not bearing the reporting marks of Lessee.

C. 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, 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.

D. 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 markings or lettering indicating that a Car is leased to Lessee or is assigned in accordance with demurrage tariffs, no lettering or marking shall be placed upon any Car by Lessee and Lessee will not remove or change any reporting mark or number 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.

E. Lessee shall not, with regard to the Cars, or any interest therein, including the revenues thereon, or with regard to the Agreement or any Schedule thereto, 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, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 10.A., hereinabove. Lessee shall notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall be attached to any Car. Lessee shall 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 costs.

11. 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 thirty (30) days thereafter;

(iii) The breach by Lessee of any representation, warranty or covenant set forth in Section 13 hereinbelow;

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

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

(vi) Any action by Lessee to discontinue rail service on all or a substantial portion of its track or to abandon any of its rail properties that would affect the use of the Cars.

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

(i) Terminate this Agreement and recover damages, and/or;

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

(iii) By notice in writing to Lessee, terminate Lessee's right to possession and use of some or all of the Cars, whereupon all right and interest of Lessee in such Cars shall terminate; thereupon, Lessor may enter upon any premises where the terminated Cars may be located and take possession of such 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 with respect to terminated Cars, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

12. Expiration or 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 this Section and on the relevant Schedule. Lessee shall insure that each Car returned to Lessor upon the expiration or termination of the Agreement shall be in the following condition:

A. If Lessor is responsible for maintenance of the Cars on the relevant Schedule, each such Car shall be (i) in as good condition, order and repair as when delivered to Lessee, normal wear excepted, (ii) in interchange condition in accordance with AAR and FRA rules and regulations, (iii) suitable for loading of the commodities allowed in the applicable schedule, (iv) free from all accumulations or deposits from commodities transported in or on it while in the service of Lessee, and (v) free of any and all Rule 95 damage.

B. If Lessee is responsible for maintenance of the Cars on the relevant Schedule, each such Car shall be (i) in as good condition, order and repair as when delivered to Lessee, normal wear excepted, (ii) in interchange condition in accordance with AAR and FRA rules and regulations, interchange condition to include the replacement of missing materials and the correction of wrong repairs and items listed in the Interchange Rules as "cause for renewal" and "cause for attention", (iii) suitable for loading, (iv) free from all accumulations or deposits from commodities transported in or on it while in the service of Lessee, and (v) free of any and all Rule 95 damage. The condition of each Car shall be determined by a joint inspection of the Car by the parties.

C. Until the Cars are delivered to Lessor pursuant to this Section, Lessee shall continue to be liable for and shall pay all rental at the rate being paid immediately prior to termination or expiration; provided, however, if Lessor requests the return of the Cars and Lessee fails to return any Cars in its possession, Lessor, at its option, may increase the rate Lessee is required to pay to one hundred fifty percent (150%) of the rate being paid 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 shall give Lessee the right to retain possession of any Car after expiration or termination of this Agreement with respect to such Car.

D. Lessee shall bear the costs associated with remarking each Car, which remarking shall be performed at a facility selected by Lessor. Remarking shall include the following: a) removal of existing mandatory markings and all company logos of Lessee; b) complete cleaning of the area where new marks are to be placed as designated by Lessor; c) application of new mandatory markings; and d) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section. Lessor shall use its best efforts to insure that the costs associated with remarking each Car are reasonable.

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 and Lessee's obligations under this Agreement, Lessee has the corporate power and authority to and is duly qualified and authorized to: (i) do business wherever necessary to carry out its present business and operations, (ii) own or hold under lease its properties, and (iii) perform its obligations under this Agreement.

B. The entering into and performance of this Agreement by Lessee has been duly authorized by all necessary corporate authority and will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, any agreement of Lessee. Nor will Lessee's entering into and performance of this Agreement result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars or this Agreement 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 10 hereinabove.

C. There is no action or proceeding pending or threatened against Lessee before any court, administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or condition, 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 in writing to Lessor, 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, would alone or in combination with other factors have a material adverse impact on Lessee's business, condition, property, holdings or the ability of Lessee to perform its obligations under this Agreement.

14. Inspection

Lessee shall not deny Lessor reasonable access, at any time during normal business hours, to 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. Lessee shall, upon the request of Lessor but not more frequently than once every year, furnish to Lessor a list, certified by an officer of Lessee, of all Cars then covered by this Agreement.

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 or obligations hereunder or sublease any Cars to any party or assign any Cars to any party not located on the lines of Lessee. Any purported assignment or sublease in violation hereof shall be void.

B. Lessor may assign or transfer this Agreement, and any of its rights and obligations hereunder, in whole or in part without notice to or consent by Lessee.

C. If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to other persons or circumstances shall not be affected thereby, and each provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

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 Schedules hereto, and to confirm the subordination provisions contained in this Agreement.

E. Lessor's failure to exercise or delay in exercising any right, power or remedy available to Lessor shall not constitute a waiver or otherwise affect or impair its rights to the future exercise of any such right, power, or remedy. No waiver, indulgence or partial exercise by Lessor of any right, power, or remedy shall preclude any further exercise thereof or the exercise of any additional right, power or remedy.

F. Lessee shall, promptly upon its becoming available, furnish to Lessor an annual report or audited financial statements, or unaudited financial statements with the audited financial statements of its parent company, and any other financial information reasonably requested by Lessor.

G. Any notices required or permitted to be given pursuant to the terms of this Agreement shall be deemed given when given by telecopy or

telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor: Itel Rail Corporation
55 Francisco Street
San Francisco, California 94133
Attn: President

Lessee: MidSouth Rail Corporation
111 E. Capitol Street,
Suite 500
Jackson, Mississippi 39210
Attn: President

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

H. The terms of this Agreement and all rights and obligations hereinunder shall be governed by the internal laws of the State of California and jurisdiction of any action with respect to this Agreement shall be in the courts located in the City and County of San Francisco, California.

I. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or 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.

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

ITEL RAIL CORPORATION	MIDSOUTH RAIL CORPORATION
By: Robert Kiehnle	By: H. I. Salm
Title: Vice President + Treasurer	Title: VP & CTO
Date: July 14, 1989	Date: JUNE 30, 1989

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

On this 14th day of July, 1989, before me personally appeared ~~Desmond P. Hayes~~ Robert Kichnie, to me personally known, who being by me duly sworn says that such person is Vice President and ~~Chief Executive Officer~~ Treasurer of Itel Rail Corporation, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public

OFFICIAL SEAL
SHARON L VAN FOSSAN
NOTARY PUBLIC - CALIFORNIA
SAN FRANCISCO COUNTY
My comm. expires AUG 16, 1991

STATE OF Mississippi)
) ss:
COUNTY OF Hinds)

On this 30th day of June, 1989, before me personally appeared H I Salmon, to me personally known, who being by me duly sworn says that such person is VP & CTO of MidSouth Rail Corporation, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Donna R May
Notary Public

My Commission Expires May 9, 1992