

# ITEL RAIL

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

November 17, 1983

RECORDATION NO. 12314 Filed 1425

DEC 7 1983 -9 05 AM

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

INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

This is to request that you cross-index the Consolidated, Amended, and Restated Equipment Trust Agreement, dated as of January 1, 1982, which was filed under I.C.C. Recordation No. 14165, on September 20, 1983 at 3:00 p.m., with the following documents:

1. Lease between Itel Corporation, Rail Division and Apalachicola Northern Railroad, dated January 25, 1977 and filed under I.C.C. Recordation No. 8796, on April 27, 1977 at 12:45 p.m.
2. Lease between Itel Corporation, Rail Division and Arcata and Mad River Railroad, dated July 10, 1978, and filed under I.C.C. Recordation No. 10034, on January 19, 1979 at 2:10 p.m.
3. Lease between Itel Corporation, Rail Division and Atchison, Topeka and Santa Fe Railway Co., dated May 14, 1982, and filed under I.C.C. Recordation No. 13706, on July 26, 1982 at 1:45 p.m.
4. Lease between Itel Corporation, Rail Division and New Orleans Public Belt Railway, dated October 26, 1978, and filed under I.C.C. Recordation No. 10033, on January 19, 1979 at 2:10 p.m.
5. Lease between Itel Corporation, Rail Division and Atchison, Topeka and Santa Fe Railway Co., dated July 30, 1982, and filed under I.C.C. Recordation No. 13818, on October 26, 1982 at 12:40 p.m.

6. Lease between Itel Corporation, Rail Division and Cadiz Railroad, dated November 10, 1976, and filed under I.C.C. Recordation No. 8654, on January 10, 1977 at 2:05 p.m.
7. Lease between Itel Corporation, Rail Division and Camino, Placerville and Lake Tahoe Railroad Co., dated February 9, 1977, and filed under I.C.C. Recordation No. 8798 on April 27, 1977
8. Lease between Itel Corporation, Rail Division and Crab Orchard and Egyptian Railroad, dated June 21, 1978, and filed under I.C.C. Recordation No. 9936, on December 22, 1978 at 3:55 p.m.
9. Lease between Itel Corporation, Rail Division and Detroit, Toledo and Ironton Railway Co., dated March 10, 1981, and filed under I.C.C. Recordation No. 13077, on April 30, 1981 at 2:25 p.m.
10. Lease between Itel Corporation, Rail Division and East Camden and Highland, dated April 26, 1978, and filed under I.C.C. Recordation No. 9756, on October 11, 1978 at 2:45 p.m.
11. Lease between Itel Corporation, Rail Division and Green Bay and Western Railroad Company, dated October 21, 1981, and filed under I.C.C. Recordation No. 13554, on February 18, 1982 at 2:40 p.m.
12. Lease between Itel Corporation, Rail Division and Green Bay and Western Railroad Company, dated March 8, 1979, and filed under I.C.C. Recordation No. 10362, on May 10, 1979 at 2:00 p.m.
13. Lease between Itel Corporation, Rail Division and Maine Central Railroad Company, dated March 22, 1982, and filed under I.C.C. Recordation No. 13664, on June 16, 1982 at 10:10 a. m.
14. Lease between Itel Corporation, Rail Division and Maine Central Railroad Company, dated April 11, 1980, and filed under I.C.C. Recordation No. 11899, on June 11, 1980 at 11:25 a.m.
15. Lease between Itel Corporation, Rail Division and New Orleans Public Belt Railway, dated June 17, 1977, and filed under I.C.C. Recordation No. 8904, on July 26, 1977 at 9:15 a.m.

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16. Lease between Itel Corporation, Rail Division and Port Huron and Detroit Railroad Co., dated February 22, 1977, and filed under I.C.C. Recordation No. 8799 on April 27, 1977 at 12:45 p.m.

17. Lease between Itel Corporation, Rail Division and Rahway Valley Railroad, dated September 19, 1978, and filed under I.C.C. Recordation No. 10111, on February 14, 1979 at 12:30 p.m.

18. Sublease between Texas Mexican Railroad Co. and Soo Line Railroad, dated April 11, 1983, and filed under I.C.C. Recordation No. 14066, on June 21, 1983 at 3:00 p.m.

19. Lease between Itel Corporation, Rail Division, and Soo Line Railroad Co., dated February 17, 1983, and filed under I.C.C. Recordation No. 14002 on April 11, 1983 at 1:05 p.m.

20. Lease between Itel Corporation, Rail Division and Texas Mexican Railroad Co., dated March 15, 1978, and filed under I.C.C. Recordation No. 9778, on October 17, 1978 at 3:30 p.m.

21. Lease between Itel Corporation, Rail Division and Toledo, Peoria and Western Railroad Co., dated September 10, 1980, and filed under I.C.C. Recordation No. 12314 on October 16, 1980 at 2:40 p.m.

22. Lease between Itel Corporation, Rail Division and Valley and Siletz Railroad, dated July 26, 1978, and filed under I.C.C. Recordation No. 10032 on January 19, 1979 at 2:10 p.m.

23. Lease between Itel Corporation, Rail Division and Providence and Worcester Co., dated March 13, 1978, and filed under I.C.C. Recordation No. 9924, on December 19, 1978 at 2:45 p.m.

24. Assignment between Providence and Worcester Company and Warwick Railway Corp., dated April 24, 1980, and filed under I.C.C. Recordation No. 9924-E, on October 17, 1980 at 12:45 p.m.

25. Lease between Itel Corporation, Rail Division and Arkansas and Louisiana Missouri Railroad, dated June 14, 1977, and filed under I.C.C. Recordation No. 9049, on October 21, 1977 at 1:05 p.m.

26. Lease between Itel Corporation, Rail Division and Atlanta and St. Andrews Bay Railway Co., dated May 5, 1978, and filed under I.C.C. Recordation No. 9703, on September 22, 1978 at 2:15 p.m.

27. Lease between Itel Corporation, Rail Division and Greenville and Northern Railroad Co., dated August 6, 1976, and filed under I.C.C. Recordation No. 9102, on November 25, 1977 at 1:15 p.m.

28. Lease between Itel Corporation, Rail Division and Marinette, Tomahawk and Western Railroad Co., dated December 23, 1977, and filed under I.C.C. Recordation No. 9406, on May 26, 1978 at 2:30 p.m.

29. Lease between Itel Corporation, Rail Division and North Louisiana and Gulf Railroad Co., dated July 21, 1977, and filed under I.C.C. Recordation No. 9073, on November 10, 1977 at 2:20 p.m.

30. Lease between Itel Corporation, Rail Division and Escanaba and Lake Superior Railroad Company, dated December 22, 1976, and filed under I.C.C. Recordation No. 8653, on January 10, 1977 at 2:20 p.m.

31. Lease between SSI Rail Corp. and Lake Erie, Franklin and Clarion Railroad, dated January 3, 1977, and filed under I.C.C. Recordation No. 8668, on January 21, 1977 at 2:30 p.m.

32. Lease between SSI Rail Corp. and Minnesota, Dakota and Western Railroad, dated July 26, 1978, and filed under I.C.C. Recordation No. 10129, on February 22, 1979 at 11:40 a.m.

33. Lease between SSI Rail Corp. and Pearl River Valley Railroad Co., dated March 24, 1976, and filed under I.C.C. Recordation No. 8487-A, on August 27, 1976 at 1:30 p.m.

34. Lease between SSI Rail Corp. and Sierra Railroad Co., dated September 27, 1978, and filed under I.C.C. Recordation No. 10152, on February 26, 1979 at 2:30 p.m.

35. Sublease between McCloud River Railroad Co. and Camino, Placerville and Lake Tahoe Railroad Co., dated January 24, 1980 and filed under I.C.C. Recordation No. 8819-G, on May 5, 1980 at 3:15 p.m.

36. Lease between SSI Rail Corp., and McCloud River Railroad Co., dated April 20, 1977, and filed under I.C.C. Recordation No. 8819, on May 11, 1977 at 1:15 p.m.
37. Lease between SSI Rail Corp., and City of Prineville Railway Co., dated April 26, 1977, and filed under I.C.C. Recordation No. 8896 on July 20, 1977.
38. Lease between Itel Corporation, Rail Division and Kyle Railways, Inc., dated February 17, 1982, and filed under I.C.C. Recordation No. 13666, on June 17, 1982 at 10:50 a.m.
39. Sublease between Kyle Railways, Inc. and Natchez Trace Railroad, dated February 18, 1982, and filed under I.C.C. Recordation No. 13666-B, on June 17, 1982 at 10:50 a.m.
40. Sublease between McCloud River Railroad Co. and Sierra Railroad Co., dated August 29, 1980, and filed under I.C.C. Recordation No. 8819-N, on September 16, 1980 at 1:35 p.m.
41. Lease between SSI Rail Corp. and Terminal Railway of Alabama, dated April 4, 1977, and filed under I.C.C. Recordation No. 8797, on April 27, 1977 at 12:45 p.m.
42. Lease between SSI Rail Corp. and Toledo, Peoria and Western Railroad Co., dated January 12, 1977, and filed under I.C.C. Recordation No. 8676, on January 24, 1977 at 2:45 p.m.
43. Lease between Itel Corp. and Ashley, Drew and Northern Railway Co., dated March 29, 1977, and filed under I.C.C. Recordation No. 8837 on May 27, 1977.
44. Lease between SSI Rail Corp. and Corinth and Counce Railroad Company, dated April 29, 1977, and filed under I.C.C. Recordation No. 8838, on May 27, 1977 at 1:45 p.m.
45. Lease between Itel Corporation, Rail Division and Green Bay and Western Railroad Co., dated April 22, 1981, and filed under I.C.C. Recordation No. 13073, on April 30, 1981 at 10:50 a.m.
46. Lease between Itel and Meridian and Bigbee Railroad Company, dated June 1, 1977, and filed under I.C.C. Recordation No. 9072, on November 10, 1977 at 2:20 p.m.

47. Lease between Itel Rail and Apache Railway, dated June 1, 1976, and filed under I.C.C. Recordation No. 8709, on February 23, 1977 at 11:40 a.m.
48. Lease between Itel Corporation, Rail Division and Clarendon & Pittsford Railroad Co., dated October 18, 1976, and filed under I.C.C. Recordation No. 8658, on January 12, 1977 at 1:45 p.m.
49. Lease between Itel Corporation, Rail Division and FMC/Chemical Group, dated December 3, 1976, and filed under I.C.C. Recordation No. 8809-A, on May 11, 1977 at 1:15 p.m.
50. Lease between SSI Rail Inc., and Green Mountain Railroad Co., dated January 2, 1976, and filed under I.C.C. Recordation No. 9050, on October 21, 1977 at 1:05 p.m.
51. Lease between Itel Corporation, Rail Division and Hartford & Slocomb Railway Co., dated July 1, 1975, and filed under I.C.C. Recordation No. 9168, on January 9, 1978 at 2:05 p.m.
52. Lease between Itel Corporation, Rail Division and Lake Erie, Franklin and Clarion Railroad, dated January 3, 1977, and filed under I.C.C. Recordation No. 8853-A, on June 1, 1977 at 1:10 p.m.
53. Lease between Itel Corporation, Rail Division and McCloud River Railroad, dated April 20, 1983, and filed under I.C.C. Recordation No. 14029, on May 27, 1983 at 1:40 p.m.
54. Lease between Itel Corporation, Rail Division and Mississippi Export Railway Co., dated April 25, 1978 and filed under I.C.C. Recordation No. 9460, on June 27, 1978 at 8:50 a.m.
55. Lease between Itel Corporation, Rail Division and Sabine River and Northern Railroad Co., dated December 23, 1977, and filed under I.C.C. Recordation No. 9407, on May 26, 1978 at 2:30 p.m.
56. Lease between Itel Corporation, Rail Division and Valdosta Southern Railway Co., dated March 26, 1976, and filed under I.C.C. Recordation No. 8343-A on May 25, 1976 at 10:45 p.m.

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57. Lease between Itel Corporation, Rail Division and Valdosta Southern Railway Co., dated December 23, 1977, and filed under I.C.C. Recordation No. 9400, on May 26, 1978 at 2:30 p.m.

58. Lease between Itel Corporation, Rail Division and Vermont Railway Co., dated December 4, 1975, and filed under I.C.C. Recordation No. 9279 on March 13, 1978 at 2:20 p.m.

Enclosed is a check in the amount of \$580.00 covering the appropriate cross-indexing fees. If you have any questions please feel free to contact me at (415) 955-0547.

Sincerely,



Patricia Salas Pineda  
Counsel

PSP:dmm  
Enclosures

ITEL RAIL CORPORATION  
INDEX TO CROSS-INDEXING  
REQUESTED  
IN LETTER OF NOVEMBER 17, 1983

Each ICC Recordation No. listed below to be cross-indexed to (1) Recordation No. 14165, and (2) all Recordation Nos. listed below to be cross-indexed under Recordation No. 14165.

<u>ICC RECORDATION NO.</u>	<u>PARAGRAPH NO. IN LETTER OF NOVEMBER 17, 1983</u>
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12314  
RECORDATION NO. .... Filed 142b

OCT 16 1980 -2 40 PM

LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT (the "Lease"), is made as of this 10th day of September, 1980, between ITEL CORPORATION, RAIL DIVISION, a Delaware corporation, Two Embarcadero Center, San Francisco, California, 94111 ("Lessor"), as Lessor, and TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY, an Illinois corporation ("Lessee") as Lessee.

1. Scope of Agreement

A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Lease. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Lease. The scheduled items of equipment are hereinafter called collectively the "Cars".

B. It is the intent of the parties to this Lease 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 that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Lease shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the lease with respect to all of the Cars described on each Schedule shall be for fifteen (15) years (the "Initial Term") commencing upon the date when all Cars on such Schedule have been remarked as set forth in Section 3A hereof.

B. If this Lease has not been earlier terminated and no default has occurred, which is continuing, the Lease shall automatically be extended for not more than five consecutive periods of twelve 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 Lease on or after the Initial Term as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to the other not less than twelve months prior to the end of the Initial Term or any Extended Terms.

3. Supply Provisions

A. Lessee hereby approves the specifications for the Cars delivered to it by Lessor. Lessor shall, at its own expense, remark the Cars with the railroad markings of Lessee in compliance with all applicable regulations. The Cars shall be deemed delivered and subject to the terms and provisions of this Lease at 12:00 P. M. on the date each Car is remarked. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after remarking as is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession

\*Substitute "thirteen (13) years" for "fifteen (15) years" (initial term)

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of the Cars leased hereunder, Lessee agrees to pay the rent set forth in this Lease. 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 issue 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. For the purposes hereof, the term "Initial Loading" shall be the earlier to occur of either the first loading of freight for each Car on Lessee's railroad line or the thirty-first (31st) day after the Cars are delivered pursuant to this Section.

**B.** Lessee shall give preference to Lessor by loading the Cars leased from Lessor prior to loading substantially similar cars leased from other parties or purchased by Lessee subsequent to the date of this Lease or interchanged with 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.** Lessee agrees that so long as it shall have on lease any Cars from Lessor, it shall not lease freight cars from any other party until it has received all of the Cars on the Schedule or Schedules. Additional Cars shall be leased from Lessor by Lessee only upon the mutual agreement of the parties. Upon such agreement, such additional Cars shall be identified in Schedules to this Lease and shall benefit from and be subject to this Lease upon execution of the Schedules by Lessor and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturers' delivery schedules, financing satisfactory to Lessor and the mutual acknowledgement of the parties that the addition of such Cars is not likely to reduce the Utilization Rate (as defined in Section 6) of all Cars on lease to Lessee to less than 82 percent and the mileage to less than 170 miles per day in any calendar quarter. If, due to the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule are delivered to Lessee, the lease term shall be deemed to have commenced on the date the final Car of the most recent group of Cars was delivered as is set forth in Section 3A.

#### **4. Record Keeping**

**A.** At no cost to Lessee, Lessor shall during the term of this Lease prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

**B.** Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Lessee and only Lessee shall perform all record keeping functions which relate to the use of the Cars by Lessee and other railroads including, but not limited to car hire accounting. Said record keeping shall be performed in accordance with AAR railroad interchange agreements and rules. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as Lessor shall select.

C. All records maintained by Lessee hereunder and all other records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during regular Lessee business hours. Upon Lessor's request, Lessee shall supply Lessor with such records, including daily telephone reports regarding the number of Cars on Lessee's tracks and the use of the Cars by the Lessee on its railroad line.

## 5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, Lessor will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall 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.

B. Except as provided above, Lessor shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of Lessor, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks. 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 throughout the Initial Term or any Extended Terms of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Lessor's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be with and remain with Lessor.

C. At all times while this Lease is in effect, Lessee shall be responsible for Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the Code of Car Hire Rules and Interpretations-Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining physical loss and damage insurance in the full value of the Cars. Lessee shall also maintain bodily injury and property damage liability insurance in such sum as may be specified by Lessor. Lessee shall furnish Lessor concurrently with the execution of this Lease and thereafter at intervals of not more than twelve (12) calendar months with a certificate of insurance with respect to the Cars, signed by an insurance broker. Said insurance policies shall provide that Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation. All insurance shall be taken out in the name of Lessee and Lessor (or its assignee) as their interests may appear.

D. Lessor agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed

or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. Lessor shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. Lessor and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. Lessor shall review all applicable tax returns prior to filing.

## 6. Lease Rental

A. Lessee agrees to pay to Lessor, at such times as specified in subsection 6B below, Rent (as defined below) for the Cars as follows:

(i) Lessee shall be responsible for collecting and receiving all payments due from other railroad companies for the use or handling of the Cars, including but not limited to mileage payments and per diem payments, (such payments due from other railroad companies, whether or not received by Lessee, and without respect to any claimed abatement, reduction or offset, are hereinafter collectively referred to as "Payments"). Lessee shall pay, as Rent to Lessor, a sum equal to the per diem Payments which the Cars would have earned in the aggregate at a Utilization Rate (as defined below) of .82 plus an amount equal to the mileage Payments that the Cars would have earned had the Cars travelled an average of one hundred and seventy (170) miles each day per diem Payments were earned by the Cars. For the purposes of this Lease, Utilization Rate shall be the quotient reached by dividing the aggregate number of days in each calendar year, or applicable portion thereof, commencing from the Initial Loading, during the Initial Term or any Extended Term hereof, in which Payments were earned on the Cars by the aggregate number of days in each calendar year or applicable portion thereof, commencing from the Initial Loading, during the Initial Term or any Extended Term hereof, in which the Cars were leased to Lessee hereunder. In addition, Lessor shall receive all Payments earned prior to the "Initial Loading."

(ii) Notwithstanding anything above to the contrary, and subject to the provisions of Subsection 6B below, in the event Payments are less than Rent for any calendar year or applicable portion thereof during the Initial Term or any Extended Terms, Lessee shall pay to Lessor, in lieu of Rent, a sum equal to one hundred percent (100%) of the total Payments.

(iii) In the event Payments exceed the Base Rental in any calendar year, Lessor shall retain an amount equal to the Base Rental and Lessee shall receive all Payments received in excess of the Base Rental.

(iv) If Lessor incurs expenses in having other railroads move Cars in accordance with Section 3A, except for any expenses incurred in the initial delivery of such Cars to Lessee's railroad line pursuant to this Lease, Lessee shall reimburse Lessor for such expenses only out of revenues received by Lessee pursuant to Section 6A(iii).

(v) The rental charges payable to Lessor by Lessee shall be paid in the following order until Lessor receives the total amounts due it pursuant to this Section: (1) per diem; (2) mileage; and (3) other.

(vi) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Code of Car Hire Rules

and Interpretations-Freight, upon Lessor's receipt of the appropriate amount due as a result thereof, said damaged or destroyed Car will be removed from the coverage of this Lease as of the date that payment of car hire payments ceased.

B. (i) The calculations required by Section 6A shall be made within four months after the end of each calendar year. However, since the parties desire that rental payments shall be made currently so that Lessor may meet its financial commitments, Lessee shall pay to Lessor by the 60th day after the end of each service month eighty-five percent (85%) of the total Payments for that service month. For the purposes hereof, service month shall be defined as the calendar month in which Payments were actually earned. At the time payment of eighty-five percent (85%) of the total Payments ("Initial Payment") is made, Lessee shall report for the same month, the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the Payments. Ten percent of the total Payments shall be remitted to Lessor within ninety (90) days or three months after the end of each Service Month and the remaining five percent of the total Payments shall be remitted to Lessor within one hundred twenty (120) days or three months after the end of each Service Month. Since the parties desire to adjust the amounts paid pursuant to the above more frequently than merely at the end of each calendar year, Lessor shall within three months after the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount due Lessee. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that following each yearly calculation, any amount paid to either party in excess of the amounts required by such yearly calculations shall be promptly refunded to the appropriate party.

(ii) Upon Lessor's request, Lessee shall provide Lessor with any records of Lessee, including car hire summaries and detailed reports, as Lessor deems necessary to substantiate revenue earned and received by Lessee for the use and handling of the Cars. Further, Lessor shall retain the right to visit Lessee at any time during normal business hours to review any and all records required to complete the calculations outlined in Sections 6B(i) and 6B(ii).

C. If for any calendar quarter during the Initial Term or Extended Terms hereof, Payments are less than Rent, Lessor may, at any time, at its option, and upon not less than ten (10) days prior written notice to Lessee, terminate this Lease as to such Cars as Lessor shall determine; provided, however, that, prior to such termination, Lessee may, at its option within ten (10) days of receipt of such notice from Lessor, pay Lessor an amount equal to the difference between the Payments for such calendar quarter and Rent for such calendar quarter.

D. Subsequent to the Initial Loading, if any Car remains on Lessee's railroad tracks for more than seven (7) consecutive days, excluding those days such Cars are undergoing servicing, repair or alteration as provided for in Section 5 unless the same 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 Lease as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven (7) consecutive days because Lessee has not given preference to the Cars as specified in Section 3B, Lessee shall be liable for and remit to Lessor an amount equal to the Payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period.

E. Upon execution of this Lease, the Cars are subject to the rates prescribed in the Code of Car Hire Rules and Interpretations-Freight. If, at any time during the Initial Term or any Extended Terms of the Lease, either Lessor or Lessee possesses or acquires the right under any ICC regulation or order to make any rate change or changes ("Rate Change") from any of the existing Car rates prescribed in the Code of Car Hire Rules and Interpretations-Freight, Lessor and Lessee agree that the written consent of the other party shall be obtained before any Rate Change is made, whether such Rate Change alters the rates prescribed in the Code of Car Hire Rules and Interpretations-Freight or any previously agreed upon rate. Any Rate Change made by Lessee without the prior written consent of the Lessor shall constitute an event of default.

F. Notwithstanding the provisions contained in 6A(i) and 6A(ii) above, Lessee hereby agrees that with respect to Payments due from any other railroad company, no act or omission of Lessee shall result in any claimed reduction or offset thereto or defense to the payment thereof; upon the breach of this Lease, Lessee shall pay to Lessor upon demand an amount equal to any Payments due but not made by such other railroad company because of any such claimed reduction, offset or defense.

## **7. Possession and Use**

A. So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Lease and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retains on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefore to shippers on its railroad tracks. 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 Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Cars 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 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 rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. 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 on or with respect to the Cars or any interest therein or in this Lease or Schedule hereto. 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.

## **8. 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 days after the date any such payment is due.

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

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(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 portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

(vii) Any Rate Change made by Lessee without the prior written consent of Lessor.

B. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Lease for all the Cars or for such Cars as Lessor shall determine (which termination shall not release Lessee from any obligation to pay to Lessor any and all rent or other sums that may then be due or accrued to such date or from the obligation to perform any duty or discharge any other liability occurring prior thereto) and may

(i) Proceed by any lawful means to enforce performance by Lessee of such obligations or to recover damages for a breach thereof (and Lessee agrees to bear Lessor's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), 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 them and henceforth hold, possess and enjoy the same free from any right of Lessee.

## 9. Termination

Upon the expiration or earlier termination of this Lease with respect to a Car, Lessee shall promptly return such Car to Lessor by delivering such Car to such location as Lessor shall specify. Lessee's railroad markings shall thereafter be removed from such Car and such markings as may be designated by Lessor shall be placed thereon, at the option of Lessor, by either Lessee or by a contractor chosen by Lessor; provided, however, Lessee shall have no obligation to perform such remarking unless Lessee

receives instructions from Lessor with respect thereto within sixty (60) days after the expiration or earlier termination hereof, as applicable. Upon the expiration of this Lease, Lessor shall bear the expense of repainting and remarking; upon the earlier termination of this Lease, whether pursuant to Section 8 or Subsection 6C hereof or otherwise, Lessee shall bear the expense of repainting and remarking. After repainting and remarking, Lessee shall, at Lessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall, at Lessor's option, provide, with respect to any Car with respect to which this Lease has expired or earlier terminated, up to sixty (60) days free storage on its railroad tracks. If Lessor shall exercise its option to have Lessee remark, load or store the Cars in accordance with the above, necessitating possession of the Cars by Lessee, and Lessee does not have such possession, whether pursuant to the first sentence of this Section or otherwise, Lessor shall cause the Cars to be delivered to Lessee at Lessor's expense.

#### **10. Indemnities**

LESSOR WILL DEFEND, INDEMNIFY AND HOLD LESSEE HARMLESS FROM AND AGAINST (1) ANY AND ALL LOSS OR DAMAGE OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, UNLESS OCCURRING WHILE LESSEE HAS PHYSICAL POSSESSION OF CARS, AND (2) ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST LESSEE WITH RESPECT TO THE CARS (OTHER THAN LOSS OR PHYSICAL DAMAGE TO THE CARS AS PROVIDED IN (1) ABOVE) UNLESS OCCURRING THROUGH THE FAULT OF LESSEE, INCLUDING WITHOUT LIMITATION THE CONSTRUCTION, PURCHASE AND DELIVERY OF THE CARS TO LESSEE'S RAILROAD LINE, OWNERSHIP, LEASING OR RETURN OF THE CARS, OR AS A RESULT OF THE USE, MAINTENANCE, REPAIR, REPLACEMENT, OPERATION OR THE CONDITION THEREOF (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY LESSOR OR LESSEE).

#### **11. Representations, Warranties and Covenants**

Lessee represents, warrants and covenants that:

(i) 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 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 Lease.

(ii) The entering into and performance of this Lease 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.

(iii) 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.

(iv) 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 obligations under this Lease.

## 12. 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. Lessee shall immediately notify Lessor of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. 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.

## 13. Miscellaneous

A. This Lease 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, except that Lessee may not, without the prior written consent of Lessor assign this Lease or any of its rights hereunder or sublease the 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 this Lease and in furtherance of any financing agreement entered into by Lessor in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Lease and Schedules hereto and to confirm the subordination provisions contained in Section 7.

C. It is expressly understood and agreed by the parties hereto that this Lease constitutes a lease of the Cars only and no joint 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 Lease shall be governed by and construed according to the laws of the State of California.

F. 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 above.

G. The obligations and liabilities of Lessee hereunder shall survive the expiration or earlier termination of this Lease.

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

ITEL CORPORATION  
RAIL DIVISION  
By: Carl N. Lyle  
Title: President  
Date: October 15, 1980

TOLEDO, PEORIA AND WESTERN  
RAILROAD COMPANY  
By: R.E. McMillan  
Title: President  
Date: Oct. 1, 1980

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

On this 15th day of October, 1980, before me personally appeared  
Carl N. Taylor, to me personally known, who being  
by me duly sworn says that such person is President of Intel 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.



J.S. Friedman  
Notary Public

STATE OF ILLINOIS )  
 ) ss:  
COUNTY OF TAZEWELL )

On this 1st day of OCTOBER, 1980, before me personally appeared  
MR. R. E. MCMILLAN, to me personally known, who being  
by me duly sworn says that such person is PRESIDENT of Toledo,  
Peoria and Western 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.

Joy F. Mayberry  
Notary Public

EQUIPMENT SCHEDULE NO. 1

Itel Corporation, Rail Division hereby leases the following Equipment to \_\_\_\_\_  
Toledo, Peoria & Western Railroad Company subject to  
the terms and conditions of that certain Lease Agreement dated as of \_\_\_\_\_  
September 10, 1980.

Description	Reporting Marks and Numbers	Inside Dimensions			Type of Door	Type of Suspension	No. of Items of Equipment
		Length	Width	Height			
70 Ton flush deck flatcars for trailer and container service	TPW 105076- TPW 105100	89'	N/A	N/A	N/A	N/A	25

ITEL CORPORATION, RAIL DIVISION

BY: Carl M. Lay  
TITLE: President  
DATE: October 15, 1980

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

BY: R. E. McMillan  
TITLE: President  
DATE: Oct. 1, 1980

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

On this 15th day of October, 1980, before me personally appeared  
Carl N. Taylor, 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.

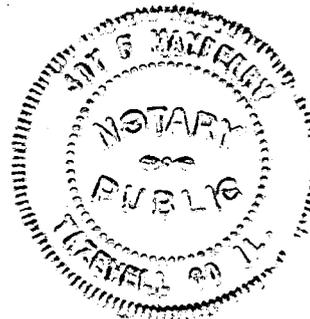


J.S. Friedman  
Notary Public

STATE OF ILLINOIS )  
 )  
COUNTY OF TAZEWELL ) ss:

On this 1st day of OCTOBER, 1980, before me personally appeared  
MR. R. E. MCMILLAN, to me personally known, who being  
by me duly sworn says that such person is PRESIDENT of Toledo,  
Peoria & Western 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.

Joy F. Mayberry  
Notary Public



# ITEL

12314

Rail Division

October 15, 1980

RECORDATION NO. .... Filed 1426

Two Embarcadero Center  
San Francisco, California 94111

(415) 955-9090

Telex 34234

OCT 16 1980 -2 40 PM

INTERSTATE COMMERCE COMMISSION

0-233A-81  
Date: 10/15/80  
Fee \$ 60.00

ICC Washington, D. C.

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

Re: Lease Agreement made as of September 10, 1980 between Itel Corporation,  
Rail Division and Toledo, Peoria and Western Railroad Company.

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,  
Rail Division, for filing and recordation, four (4) counterparts of the following  
document:

New number

Lease Agreement, made as of September 10, 1980, between Itel  
Corporation, Rail Division and Toledo, Peoria and Western Railroad  
Company

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

1. Itel Corporation, Rail Division  
Two Embarcadero Center  
San Francisco, CA 94111
2. Toledo, Peoria and Western Railroad Company  
2000 East Washington Street  
East Peoria, Illinois 61611

note  
Cross indexing  
→

Please cross-index the above referenced document with the following document,  
which is filed under Recordation No. 9932:

Equipment Trust Agreement, dated November 1, 1978 between Citibank,  
N.A., as Trustee, and Itel Corporation.

The equipment covered by the enclosed Lease Agreement is twenty-five (25)  
flatcars (A.A.R. mechanical designation FC; 89' in length), currently marked PW  
105076 through and including PW 105100, to be remarked TPW 105076 through  
and including TPW 105100.

Enclosed also is a check for \$60.00 for the required recordation fee (\$50.00)  
and cross-indexing (\$10.00) fee.

RECEIVED  
OCT 16 2 34 PM '80  
FEE OPERATION BR.  
C.C.

*Countdown - Kevin J. Foster*

# ITEL

## Rail Division

Ms. Agatha Mergenovich  
October 15, 1980  
Page Two

Please stamp all counterparts of the enclosed document 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 delivered to the bearer of this letter.

Sincerely,



Patricia Salas Pineda  
Counsel

PSP/rcs

cc: Robert Clarke, Esq.  
Michael Walsh, Esq.  
Steven C. Wight

**Interstate Commerce Commission**

Washington, D.C. 20423

10/16/80

OFFICE OF THE SECRETARY

**Patricia Salas Pineda  
Itel Rail Division  
Two Embarcadero Center  
San Francisco, California 94111**

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 **10/16/ 80** at **2:40pm**, and assigned re-  
recording number (s) **12314**.

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)