

ITEL

July 8, 1988

Itel Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000
RECORDATION NO. 1. 5725 FILING 1400

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

JUL 14 1988-3 30 PM

INTERSTATE COMMERCE COMMISSION

Re: **Master Lease No. 2210-00 dated June 17, 1988, between Itel Railcar Corporation and Wisconsin Central Ltd.**

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) 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 Railcar Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Wisconsin Central Ltd. (Lessee)
One O'Hare Centre
6250 North River Road
Rosemont, Illinois 60018

This Master Lease covers equipment described in schedules added thereto.

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

7/15/88

OFFICE OF THE SECRETARY

Patricia Schumacker
Itel Rail Corporation
55 Francisco 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 7/15/88 at 3:30pm, and assigned recordation number(s). 17525, 15725-A, 15725-B, 15725-C & 15726, 15727 15639-A & 15639-B Sincerely yours,

Neville R. McGee

Secretary

Enclosure(s)

MASTER LEASE NO. 2210-00

JUL 14 1988-3 30 PM

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT ("Agreement") is made as of this 17th day of June, 1988, by and between ITEL RAILCAR CORPORATION, a Delaware corporation located at 55 Francisco Street, San Francisco, California 94133, as lessor ("Lessor"), and WISCONSIN CENTRAL LTD, an Illinois corporation, located at One O'Hare Centre, 6250 North River Road, Rosemont, Illinois 60018, 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 of the reporting marks, type, construction and other description set forth in any Schedules attached hereto and executed by the parties concurrently herewith or hereafter. The word "Schedule" as used herein includes the Schedule executed herewith and any additional Schedule(s) and amendments thereto, each of which when signed by both parties shall become part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car." 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 each Schedule attached to the Agreement shall be as set forth on such Schedule.

3. Supply Provisions

- A. The Cars described on the applicable Schedule will be delivered to Lessee in interchange condition, free from any and all defects under the regulations of the Federal Railroad Administration, the Association of American Railroads or other such regulatory body, in a condition fit for commercial service and in compliance with the specifications listed in the applicable Schedule. 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 (i) Lessee inspects and accepts such Car at the location such Car is remarked or (ii) the empty Car is delivered to a mutually agreeable interchange point and is inspected and accepted by Lessee pursuant to delivery specifications provided herein. If the Cars are delivered in interchange to Lessee prior to Lessee's inspection, the Cars may be moved by Lessee to Fond du Lac, Wisconsin for such inspection. Any Car(s) which Lessee does not elect to inspect within five (5) days shall be conclusively deemed delivered and accepted by Lessee ("Delivery"). If any Car does not meet the delivery specifications provided herein, Lessor may elect to have Lessee make any necessary repairs or have such repairs made at an independent repair facility, in which case Lessee shall not charge any transportation costs for movement of the Cars over its lines to the facility. Lessee shall not be responsible for any transportation cost incurred for the movement of the Cars over the lines of other railroads related to such repairs. Except as otherwise specified herein, from and after Delivery, 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 ("AAR") interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules") for the duration of this Agreement.

- B. 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 prior written notice from Lessor to Lessee; provided, however, such equipment is: 1) of equal or greater car hire rates; and 2) of like type, design, dimensions and condition. Any such equipment replaced shall be subject to the terms and conditions of this Agreement and the applicable Schedule.

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 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 ICC and any other regulatory agencies with respect to the Cars.
- B. All 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 that pertain to car hire, records pertaining to maintenance and repair, and billing in accordance with the Interchange Rules shall be performed by the party designated in the applicable Schedule. If Lessor performs such record keeping functions, 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. 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.

5. Maintenance

- A. This Subsection 5.A. shall apply only with respect to Car(s) for which Lessee is designated in Schedule(s) attached hereto to perform or cause to be performed maintenance and pay all cost and expenses for maintenance in any Schedule attached hereto. 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 immediately vest in Lessor. In the event that Lessor performs any repair work for Lessee at Lessee's request, all sums due Lessor 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 preventive maintenance necessary to keep and maintain the Cars in good working order and repair. Lessor has the right to inspect the Cars at any time during normal business hours to ensure that they are in compliance with AAR regulations.
- B. 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 to the extent such Maintenance (i) was occasioned by the fault of Lessee; (ii) results from loading, unloading or use other than permitted under this Agreement; (iii) is for the purpose of repair, replacement or maintenance of 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 requiring such Maintenance. 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 may make running repairs to those parts of the Cars specified in the applicable Exhibit B 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 use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any Maintenance required including, when available, the time, place and nature of any accident. 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. 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 as specified in the Interchange Rules. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. 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 Nonroutine 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. Repairs ("Nonroutine Repairs") is defined as repairs of a type that Lessor determines Lessee would not normally perform or 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. 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.
- E. Lessor shall be responsible for all transportation costs incurred for the movement of the Car(s) to any repair facilities off Lessee's lines for any Maintenance requested by Lessor, and Lessor agrees to pay to Lessee within thirty (30) days of receipt of any invoice such transportation costs; provided, however, such maintenance was not occasioned by the fault of Lessee as set forth in Subsection 5.B. hereinabove.

6. Tax and Insurance

- A. Lessee shall be responsible for the Cars: (i) while in Lessee's possession or control; and (ii) in the same 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 or damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control in an amount not less than five million dollars (\$5,000,000); and (ii) "all risk" public liability insurance with respect to third party personal injury and property damage with single limits per occurrence of not less than ten million dollars (\$10,000,000). It is understood between the parties that the above referenced coverage shall be subject to Lessee's self-insured retention, not to exceed five hundred thousand dollars (\$500,000) for the insurance described in (i) above and not to exceed three million dollars (\$3,000,000) for the insurance described in (ii) above. 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 insureds or shall list Lessor, Financing Party and any assignee of Lessor as loss-payees on the insurance policies, as applicable. 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. 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.
- 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 providing a storage location and paying all costs associated with storing such Car(s). Any storage location provided by Lessee which is off Lessee's lines, shall be as secure as if such Cars were stored on Lessee's line.

9. Possession and Use

- A. Throughout the continuance of this Agreement and 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 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 Mexico (not more than ten percent (10%) of the Cars shall be in Mexico at any one time); provided, however, that Lessee shall provide written notification to its shippers that Lessee's Cars are not to be sent to destinations in Mexico; and (iv) in such service as will not constitute a train hauling substantially a single commodity between the same points on a regular basis. However, except as to Lessee's right to quiet enjoyment of the Cars so long as Lessee is not in default, 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. In the event of a default by Lessor under such financing agreement, Lessee agrees to take the aforesaid actions as directed by such secured party with respect to the Cars subject to such secured party's interest.
- 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 and 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, or an assignee, mortgagee, trustee, pledgee or security holder of Lessor or 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 and approved in writing by Lessor.

8. Rent

- A. During the term of this Agreement, Lessee shall pay to Lessor for each Car, commencing on the date of Delivery, as defined in Subsection 3.A., and at the times provided in the applicable Schedule, 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) hereto 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 Casualty Car, Lessee shall notify Lessor of the occurrence of such damage as set forth in the AAR Interchange Rules, and rental shall abate from the date Lessor receives, from Lessee or other carrier, a written request for a DV Statement until such DV Statement is received by Lessee or other carrier. 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 with similar equipment ("Replacement Car") upon prior written notice from Lessor to Lessee; provided, however, that such Replacement Car is: 1) of equal or greater car hire rates; and 2) of like type, design, dimensions and condition. Any Replacement Car shall be subject to the terms and conditions of this Agreement and the applicable Schedule.
- 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.

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, or the car hire revenues earned thereby, or in this Agreement or Schedules 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 such cost 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 nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after receipt of written notification of such nonpayment.
- (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days after receipt of written notification of such breach.
- (iii) 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; unless such petition shall be dismissed or discharged within sixty (60) days of filing.
- (iv) The subjection of a substantial portion of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;
- (v) Any action by Lessee to discontinue rail service on all or a substantial portion of its track or to abandon all or a substantial portion all of its rail properties.

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:

- (i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, as to the affected Schedule(s);
 - (ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars subject to the affected Schedule, whereupon all right and interest of Lessee in the Cars described in such Schedule shall terminate; and thereupon Lessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall, in addition, have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof;
 - (iii) Without terminating this Agreement repossess the Cars subject to the affected Schedule. Lessor may relet the same or any part thereof to others upon such terms as Lessor desires. The proceeds of any such reletting shall first be applied to the expense (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee(s), and then to the payment of rent due through the term of this Agreement. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. The election of Lessor to relet the Cars and the acceptance of a new lessee shall not release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Agreement and the retaking of the Cars.
- C. If Lessor defaults in the performance of any of the material covenants of this Lease, and such default continues after ten (10) days written notice to and demand on Lessor to cure such default, Lessee may immediately upon written notice to Lessor, at its option: (i) terminate this Lease as to those Schedules affected by the default, and at Lessor's expense, including all costs of transportation, switching and storage, return the Cars involved to Lessor; or (ii) proceed by any lawful means to enforce performance of this Lease or to recover damages for the breach thereof, in which case Lessor shall bear the costs and expenses, including attorney's fees, incurred by Lessee in exercising such remedies.
- D. (i) Notwithstanding anything contained in this Section 10, in the event of a default and failure to cure by Lessee in the obligations of Lessee contained in Subsections 6.A., 9.C., 9.D., 12.A., 13, or 15.A., or upon the occurrence of the

defaults set forth in Subsections 10.A.(i), 10.A.(iii), 10.A.(iv) or 10.A.(v), then Lessor shall be entitled, at its option, to exercise all remedies set forth in Subsection 10.B. and any other rights or remedies to which it is entitled by law or in equity, with respect to any or all of the Cars subject to this Agreement, not only the Cars subject to the affected Schedule.

- (ii) Notwithstanding anything contained in this Section 10, in the event of a default and failure to cure by Lessor in the obligations of Lessor contained in Section 5, Subsection 9.A., through and including lines 1 to "a regular basis" in line 16, and Subsection 12.B. of the Agreement, then Lessee shall be entitled, at its option, to terminate this Agreement effective upon written notice to Lessor and/or proceed by any lawful means to enforce performance by Lessor of this Agreement, recover damages for a breach thereof or exercise any other rights or remedies to which Lessee is entitled by law or in equity.

11. Expiration or Termination

A. Upon the expiration or termination of the Agreement with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:

- (i) With the exception of Casualty Cars, as defined hereinabove, Lessee shall insure that each Car returned to Lessor upon the expiration or termination of the Agreement shall be (i) in the same or better condition, order and repair as when delivered to Lessee, normal wear excepted; (ii) in interchange condition in accordance with AAR and FRA regulations; and (iii) suitable for loading and free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If Lessor requests that a remarked Car be loaded with freight and moved to a destination off Lessee's lines, such Car shall meet all return conditions provided herein before such Car is loaded.
- (ii) So long as termination shall not have been occasioned by default on the part of Lessor, if some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of expiration. Lessee shall, at Lessor's option, provide, with respect to any Car described on any Schedule which is either on the Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad tracks, up to sixty (60) days free storage, and up to one hundred twenty (120) days free storage with respect to any Car described on any Schedule which is terminated due to default on the part of Lessee, on its railroad tracks from either the date of expiration, termination or the date the last Car subject to such Schedule is returned to Lessee's railroad line subsequent to the time of expiration or

termination, whichever date is later. During the term of free storage, Lessee shall be liable for any and all damage occasioned by the fault or negligence of the Lessee; provided, however, that Lessee shall only be liable for damage or injury to third parties occasioned by the gross negligence of Lessee (it being understood that employees and agents of Lessee shall not be considered third parties). After remarking, if desired by Lessor, Lessee shall at Lessor's option, either move such Car to any interchange point(s) on Lessee's lines selected by Lessor or use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall have no obligation to pay any car hire or mileage allowances for remarked Cars during the movement of such Cars off Lessee's lines.

Unless Lessor shall be (iii) Lessee shall bear the costs associated with remarking each Car. At Lessee's option, Lessee may (a) remark the Cars at its facilities as set forth in this Subsection 11.A.(iii) option and subject to Lessor's inspection to ensure that such remark is in accordance with Lessor's standards or (b) elect not to remark the Cars at its facilities, in which case Lessor shall select a facility and control the remark process. Remarking, with respect to each Car, 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 subsequent to the removal of marking and company logos 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.

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(iv) If Lessor receives or solicits any offer to sell or lease the Cars upon the expiration of this Agreement, and Lessor desires to accept such offer, Lessor shall provide Lessee with notice of the economic terms of such offer. Lessee shall have fifteen (15) days from receipt of such notice in which to elect to purchase or lease such Cars, as the case may be, upon the same terms and conditions as such offer.

B. Until the Delivery of Possession, as herein defined, to Lessor, and unless Lessor shall be Lessee shall continue to be liable for and shall pay all rental at 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. "Delivery of Possession" shall be defined as the date of return of the Cars in compliance with the return conditions described in Subsection 11.A.(1) to Lessor at a maintenance facility or interchange point on Lessee's lines as designated by Lessor or, upon the request of Lessor, the date the Car(s) are loaded out or placed into storage at a mutually agreeable location. Nothing in this Section shall give Lessee the

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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; provided, however, that following expiration or termination due to default of Lessor, Lessee shall have no obligation under this Subsection 12.A. unless the loss or damage is due to the willful or negligent acts of Lessee or its employees; provided, further, however, that Lessee shall only be liable for damage or injury to third parties occasioned by gross negligence of Lessee (it being understood that employees and agents of Lessee shall not be considered third parties).
- 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 excepted.
- C. The indemnities and assumptions of liability herein contained shall survive the expiration or termination of this Agreement.

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 and, insofar as is material to Lessor's rights under this Agreement, 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 Agreement.
- B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in Section 9 hereinabove.
- C. Lessee hereby notifies Lessor that on December 29, 1987, the Railway Labor Executives' Association and the Organization of Minority Vendors filed petitions to revoke exemption granted to

Lessee by the Interstate Commerce Commission in F.D. 31102. While the Lessee is confident that the ICC will deny these petitions, if they were to be granted and the exemptions revoked, such action might have the effect referred to hereinbelow. Except as to the Petitions hereinabove currently before the Interstate Commerce Commission in Finance Docket 31102, there is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.

- D. There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of Lessee to perform its obligations under this Agreement.

14. Inspection

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

15. Miscellaneous

- A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Lessee may not without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder or sublease any Cars to any party. Any purported assignment or sublease in violation hereof shall be void.
- B. All rights of Lessor under this Agreement may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part.
- C. 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 or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in this Agreement; provided such documents do not interfere with Lessee's right to quiet enjoyment of the Cars.

- E. No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power or remedy available to either party nor shall any waiver or indulgence by either party 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: Wisconsin Central Ltd.
One O'Hare Centre
6250 North River Road
Rosemont, IL 60018

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

- H. The obligations and liabilities of Lessor or Lessee hereunder shall survive the expiration or early termination of this Agreement.
- I. 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.
- J. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract.

ITEL RAILCAR CORPORATION

WISCONSIN CENTRAL LTD.

By: *D. Hayes*

By: *J. Power*

Title: *President*

Title: *Exec. V.P.*

Date: *June 17, 1988*

Date: *6/8/88*

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

On this 17th day of June, 1988, 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 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



STATE OF Illinois)
) ss:
COUNTY OF Cook)

On this 8th day of June, 1988, before me personally appeared T.F. POWER, JR., to me personally known, who being by me duly sworn says that such person is EXEC. V.P. of Wisconsin Central Ltd., 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.

Catherine D. Aldana
Notary Public

