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ITEL CORPORATION NO. _____ FILING 1988

August 18, 1988 **AUG 21 1988 - 11 10 AM** ***

INTERSTATE COMMERCE COMMISSION

Itel Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

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

Re: **Master Car Lease dated as of August 8, 1988, between Itel Railcar Corporation and CSX Transportation, Inc.**

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 Car 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

CSX Equipment, a unit of
CSX Transportation, Inc.
Treasury Department - S/C B7J
100 North Charles Street
Baltimore, Maryland 21201

This Master Car Lease sets forth the terms and conditions by which equipment, described 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:
Enclosuresco Street

7/14/88

CSX TRANSPORTATION, INC.

AUG 21 1988 - 11 44 AM

MASTER CAR LEASE

INTERSTATE COMMERCE COMMISSION

THIS MASTER CAR LEASE ("Lease") dated as of August 8, 1988, is by and between ITEL RAILCAR CORPORATION as lessor ("Lessor") and CSX TRANSPORTATION, INC., ("Lessee").

1. Capitalization.

Capitalized words are used herein for the convenience of the parties. The specific definitions or uses of such words are contained in the main body of the Lease and in each Exhibit.

2. Cars.

Lessor agrees to lease to Lessee and Lessee agrees to and does hereby lease from Lessor the various railcars ("Cars") described in the appropriate current and future Exhibit(s), as incorporated herein, pursuant to the provisions of the Lease. The terms and provisions of each Exhibit shall control over any inconsistent or contrary terms and provisions in the Lease.

3. Transfer and Use.

Lessor agrees to deliver the Cars to Lessee ("Delivery") and Lessee agrees to return the Cars to Lessor ("Return"), at the Transfer Points designated in the appropriate Exhibit(s), as amended from time to time unless agreed otherwise. Lessor is solely responsible for all charges, including but not limited to linehaul, switching and storage charges, of connecting railroads that might accrue as a result of the movement of Cars to or from the Transfer Point prior to Delivery and after Return of the Cars. Except for storage charges that might otherwise apply pursuant to Paragraph 15, Lessor shall not be responsible for any linehaul, switching or storage charges regarding the Cars from time of Delivery until time of Return. Lessee agrees to use the Cars solely for shipment of the specified commodities set forth in the appropriate Exhibit exclusively in its own service or in normal interchange service with other railroads.

4. Rental.

Lessee agrees to pay the Rental specified in the appropriate Exhibit(s) for each of the Cars from the date of Delivery until the date of Return at the appropriate Transfer Points. Such Rental shall be paid to Lessor in advance, on the first day of each semiannual period in which rental accrued, prorating, however, any partial periods. Rental on Cars permanently deleted by Lessor will be prorated to the date of deletion and the excess Rental will be returned to the Lessee within thirty (30) days of the Cars being removed from service.

5. Incorporation of Documents.

Except as otherwise expressly provided herein, the parties agree to incorporate and be governed by the provisions of the Field Manual of the AAR Interchange Rules, AAR Circular No. OT-5 and 49 CFR Parts 215, 231 and 232, all as amended, supplemented or superseded throughout the term of this Lease.

6. Inspection Upon Delivery and Return.

Each of the Cars may be inspected by the parties on or before both the Delivery and Return dates. The inspections will be conducted at the Transfer Points or other mutually agreeable locations. The condition of the Car will be noted on a joint inspection certificate ("JIC"), a blank copy of which is attached. Upon Delivery to Lessee, all Cars must be in the following condition: (1) empty, (2) in good operating status, (3) free of apparent defects (4) reasonably acceptable to Lessee as being capable of immediate loading and transportation of the Specified Commodities and (5) suitable for interchange in accordance with the Interchange Rules of the Association of American Railroads ("AAR Rules"). Upon Return to Lessor all Cars shall be in Return Condition specified in the appropriate Exhibit. If a Car is in need of repair prior to acceptance for Delivery or Return, a separate inspection will be held after repairs have been made. Should either party waive inspection at Delivery or Return, the records of the other party will control regarding the condition of the Car on that date.

7. Inspection During Lease Term.

Subject to the operating convenience of the Lessee, Lessor may have reasonable access to inspect the Cars while on Lessee's lines, to insure compliance with Lessee's maintenance or repair obligations, as specified in the appropriate Exhibit. Requests for inspection must be coordinated in advance with the Lessee and shall be held at such times and locations as are mutually agreeable to the parties. Lessor and its agents or employees shall follow the instructions of Lessee's designated personnel while on Lessee's property during inspections, but Lessor and its agents or employees assume sole risk for personal injury or death as a result of such inspections unless such personal injury or death results from the sole negligence of Lessee. Lessor may inspect the Cars while in the possession of other railroads.

8. Records.

If the Cars do not bear the reporting marks of Lessee, Lessee agrees to furnish Lessor with service month reports showing the mileage accrued by the Cars while on the lines of Lessee. Such reports are subject to correction and shall be sent within sixty (60) days after the end of the service month.

9. Car Hire Charges/Mileage Allowance Payments.

Lessee shall be entitled to all car hire charges and mileage allowances generated by the Cars. If Cars bear reporting marks of a railroad other than those of Lessee, Lessor shall collect the car hire charges (time and mileage) earned by the Cars to which Lessor is entitled, subject to all applicable tariffs or circulars. Lessor shall credit the amount received against Lessee's obligation for rent hereunder computed separately for each Exhibit, and shall pay any excess to Lessee on a monthly basis within thirty (30) days after receipt by Lessor. Lessor shall not be responsible to Lessee for any car hire charges due but not received unless Lessor shall not have attempted to enforce its rights to such car hire charges with substantially the same diligence as it applies generally to car hire charges due for other cars bearing its reporting marks. No car hire charges will apply when the Cars are on the lines of Lessee.

If Cars bearing private reporting marks are used, mileage allowance payments due from other railroads will be paid to Lessee on the same basis applicable for car hire charges, as described in the preceding subparagraph.

If Cars bear the reporting marks of Lessee, Lessee shall retain all car hire charges earned by such Cars.

10. Destruction of Car.

If a Car is damaged or destroyed beyond economic repair, the Car will be removed from Lessee's service. No replacement Car will be furnished unless agreed to by both parties. Lessee will provide written notice to Lessor regarding such removal. Rental will continue until the next Rental payment date following notification. A settlement value payment, pursuant to AAR Interchange Rule 107, or a otherwise agreed, will be paid by Lessee as of that date.

11. Commodity Damage.

Lessor shall not be liable for any loss of or damage to commodities shipped in the Cars, unless such damage is due to the negligence of Lessor, its agents or employees.

12. Lettering.

No change in the reporting marks or numbers of the Cars will be made without the prior written consent of Lessor, except as authorized pursuant to the appropriate Exhibit. If upon termination or expiration of the Lease with respect to any Car the Car bears the reporting marks of Lessee, Lessee shall, at its sole cost and expense, have the reporting marks changed to the marks designated by Lessor.

13. Sublease.

Lessee shall not assign or sublease this Lease or any of its rights obligations hereunder or loan any of the Cars without the prior written consent of Lessor; provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars. Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease. The making of any such sublease by Lessee shall not serve to relieve Lessee of any liability or undertaking under the Lease. All rights of Lessor under the Lease may be assigned, pledged, mortgaged, transferred or otherwise disposed of by Lessor either in whole or in part.

14. Default.

If Lessee shall fail to perform any of its obligations hereunder, Lessor shall provide written notice to Lessee, specifying alleged failure. If a failure to pay Rental is not corrected within fifteen (15) days or a failure to perform any other obligation is not corrected within thirty (30) days, or if a proceeding shall have been commenced by or against Lessee under any Federal or State bankruptcy law or other laws for the appointment of a receiver, assignee or trustee of Lessee or its property and has not within thirty (30) days been dismissed, stayed or otherwise rendered ineffective, or if Lessee shall make a general assignment for the benefit of creditors, then in any such event Lessor, at its sole election, may, upon written notice, exercise all rights and remedies (Lessor being entitled to recovery of all costs, expenses and attorney's fees incurred in enforcing its rights and remedies hereunder) provided by law, including:

- (i) Terminate this Lease in its entirety or with respect to the Cars with respect to which such default has occurred and recover damages for breach hereof; or
- (ii) Proceed by any lawful means to enforce performance by Lessee Of this Lease; or
- (iii) Terminate Lessee's right to possession and use of some or all of the Cars, and recover from Lessee all rental which are due or would have been due through the end of the Lease term, (reduced to the present value) together with Lessor's costs and expenses, including reasonable attorney's fees; provided, however, that Lessor must attempt to lease the Cars to other parties pursuant to the most favorable terms then available in the marketplace, provided, however, that Lessor shall not be obligated to give preference or priority to such returned Cars but shall attempt to lease the returned Cars with the same diligence that it would use to lease equipment of similar design or use, and any contractual rental that Lessor is able to obtain shall be subtracted from Lessor's damages.

15. Storage.

At the end of the appropriate Exhibit Term, Lessee will tender all Cars remaining in active service to Lessor pursuant to the Return Condition paragraph in the appropriate Exhibit. Upon Lessee's notice to return the Cars to Lessor, Lessor will, within thirty (30) days, arrange for a joint inspection, at a time and location that is mutually agreeable to Lessee and Lessor. If Lessor or Lessee does not wish to perform a joint inspection of the Cars, then the other party shall inspect the Cars and execute a JIC for each Car, and in such event, such party's JIC shall be deemed conclusive regarding the condition of each Car. Lessee agrees to provide storage at its expense, upon the request of Lessor, for any or all of the Cars for sixty (60) days after the date of expiration or termination of the Lease as it pertains to any or all Exhibit(s). If any Cars remain on Lessee's lines beyond such free storage period at Lessor's request or failure to provide disposition for such Car, then Lessor shall pay to Lessee a mutually agreeable daily rate for each day such Car remains in storage beyond the free storage period. Nothing in this Storage Section shall give Lessee the right to retain possession of any Car after expiration or termination of the Lease with respect to such Car. During the term of free storage, Lessee shall be liable for any and all damage to the Cars occasioned by the active negligence of the Lessee; thereafter, Lessee shall only be responsible for damage to the Cars occasioned by its gross negligence.

16. Taxes.

Taxes will handled as set forth on the appropriate Exhibit.

17. Possession and Use.

Throughout the continuance of this Lease 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 (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 Exhibit. However, except as to Lessee's right to quiet enjoyment of the Cars (at the rental specified in the appropriate Exhibit and 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 Lease. 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 Lease) 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.

18. Car Modification.

Should any Cars require modification pursuant to a regulation of the U.S. Department of Transportation or other agency having jurisdiction over the operation or use of the Cars, Lessor may elect to do either of the following: (A) permanently delete the affected Cars from this Lease upon ninety (90) days notice or (B) arrange to make the appropriate modifications at its expense. If the modifications are made at Lessor's expense, the Exhibit Term for the Cars will be extended, without additional rental, by the number of days that the Cars are out of Lessee's service. If Lessor elects option (A), Lessee has forty-five (45) days from receipt of Lessor's notice within which to notify Lessor that Lessee will perform the appropriate modifications at its expense. Details of such modifications must be submitted in writing and approved by Lessor prior to the performance of the modifications by Lessee. Such approval shall not be unreasonably withheld or delayed. If the modifications are made by Lessee at its expense, the Exhibit Term for the Cars will be extended, without additional Rental, by the number of days, rounded to the nearest whole, obtained by dividing the Lessee's total charges for performing the modifications by the proportional daily rate for the Cars.

19. Insurance.

A. Lessee shall, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained: (i) all risk, physical loss and damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to the Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor, any financing party designated by Lessor by written notice to Lessee ('Financing Party') and any assignee of Lessor as additional named insureds and 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. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ('Other Insurance') effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee.

B. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions. Lessee shall be permitted to self-insure on any specified interest, provided that Lessee hereby warrants to place Lessor in the same position as if the insurance described above had been effected.

20. Notice.

Unless otherwise provided, any notice sent pursuant to this Lease must be in writing and addressed as follows:

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

To Lessee: CSX Equipment, a unit of
CSX Transportation, Inc.
Treasury Department - S/C B7J
100 North Charles Street
Baltimore, MD 21201

21. Non-Waiver.

The failure of either party to enforce any provision of this Lease or to prosecute any default shall not be considered as a waiver of that provision or as a bar to the prosecution of that default unless so indicated in writing.

22. Confidentiality.

Neither party may disclose the provision of this Lease to a third party, excluding any parent, affiliate, subsidiary company, creditors of Lessor under any Instrument to which the Cars or any of them are subject, or potential buyers of the Cars, without the written consent of the other party, unless otherwise required by law or as provided in any sublease or assignment. The existence of this Lease may be disclosed without such consent. Lessor may file this Lease and any amendments or Exhibits thereto with the Interstate Commerce Commission (but shall delete the rental terms from any such filing) and shall provide Lessee with a file stamped original when it is received by Lessor.

23. Inspection of Records.

Each party agrees to allow the other party, or its authorized representative, to inspect, during normal business hours, any or all of its records regarding its rights and its obligations contained in this Lease. Such records include but are not limited to papers, microfiche, tapes and similar items concerning car hire, mileage allowance, repair/maintenance/destruction of Cars, rentals, taxes, Instruments, and other topics concerning the various rights and obligations of the parties.

24. Titles.

All titles to paragraphs are for the information and convenience of the parties and are not substantive.

25. Entire Understanding.

This Lease constitutes the entire understanding of the parties, shall be construed pursuant to the laws of the State of Illinois, and shall be binding upon them, their respective successors, assigns and legal representatives. It shall remain in full force and effect until all Cars have been tendered for return to Lessor. Any modification to this Lease must be in writing and signed by both parties.

26. Indemnification.

- A. Lessee shall defend, indemnify and hold Lessor harmless from and against any loss, damage, destruction or liability arising out of or in connection with the Cars which is occasioned by the fault of Lessee, or arising out of Lessee's possession of the Cars (which shall be deemed to include possession or use ~~by shippers located on or near Lessee's lines~~), or in those instances in which the Interchange Rules would assign responsibility for such loss, damage, destruction or liability of the Cars to Lessee. ZORN
- * of the Cars while on the private track of a shipper that is directly served by Lessee)
- B. Subject to Section A., and except for those claims, causes of action, damages, liabilities, costs or expenses for which Lessee shall be responsible as set forth in the Lease, Lessor shall defend, indemnify and hold Lessee harmless against any and all loss, damage or destruction or liability arising out of or in connection with the Cars which is occasioned by the fault of Lessor or in those instances in which the Interchange Rules would assign responsibility for such loss, damage, destruction or liability of the Cars to Lessor.
- C. The indemnities and assumptions of liability contained in this Section shall survive the termination of the Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

27. Miscellaneous.

- A. It is expressly understood and agreed by the parties hereto that the Lease constitutes a lease of the Cars only and no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars, except as a lessee only.
- B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor of

its assignees in connection with the acquisition of financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars; provided such documents do not interfere with Lessee's right to quiet enjoyment (upon the terms of this Lease) of the Cars.

C. Except as expressly modified by the Amendment, all terms and provisions of the Lease shall remain in full force and effect and shall not be modified, altered or amended, except by an agreement in writing signed by the parties.

D. This Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease in two counterparts (each of which shall be deemed an original) the day and year first above written.

ATTEST:

ITEL RAILCAR CORPORATION (Lessor)

Howard Schaber
Title: Asst. Sec'y

By: [Signature]
Title: President

ATTEST:

CSX TRANSPORTATION, INC. (Lessee)

P. J. [Signature]
Title: Assistant Secretary

By: [Signature]
Title: President and Chief Executive Officer - CSX Equipment

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

On this 8th day of August, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Master Car Lease 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 MARYLAND)
) ss
CITY OF BALTIMORE)

On this 28th day of July, 1988, before me personally appeared Richard L. Leatherwood, to me personally known, who being me duly sworn says that such person is President and CEO - CSX Equipment of CSX Transportation, Inc., that the foregoing Master Car Lease was signed on behalf of said corporation by authority its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Glenda J. Green
Notary Public

