

The CIT Group/
Equipment Financing, Inc.

300 South Grand Avenue
3rd Floor
Los Angeles, CA 90071
213 621-8181



**Equipment
Financing**

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

No. 8-244A058

Date AUG 31 1988

Fee \$ 13.00

ICC Washington, D. C.

August 30, 1988

REGISTRATION NO. 1 5794

AUG 31 1988 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

\$13.00 filing fee

ICC OFFICE OF
THE SECRETARY

AUG 31 1 05 PM '88

MOTOR OPERATING UNIT

RE: Master Railroad Equipment Lease dated as of August 30, 1988 between ITEL Rail Corporation and The CIT Group/Equipment Financing, Inc.

On behalf of The CIT Group/Equipment Financing, Inc., the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13.00 recordation fee.

The parties to the aforementioned instrument are listed below:

ITEL Rail Corporation (Lessee)
55 Francisco Street
San Francisco, California 94133

The CIT Group/Equipment Financing, Inc. (Lessor)
300 South Grand Avenue, Third Floor
Los Angeles, California 90071

A general description of the equipment covered by the Master Railroad Equipment Lease is three hundred (300) centerbeam 73 ft., 100 ton flatcars, manufactured by Thrall Car Manufacturing Company. The Equipment will be specifically identified in acceptance certificates under the same recordation number as the Master Railroad Equipment Lease.

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

Sincerely,

Timothy J. White
Timothy J. White
Vice President - Legal

TJW/egm

Enclosures

*Need
Rec. No.
C. Dunlop
Michael Towell*

Interstate Commerce Commission

Washington, D.C. 20423

8/31/88

OFFICE OF THE SECRETARY

Timothy J. White
Vice President-Legal
The CIT Group
Equipment Financing Inc
300 South Grand Avenue 3rd Floor
Los Angeles, CA. 90071

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/31/88 at 1:15pm, and assigned recordation number(s). 15794

Sincerely yours,



Secretary

Enclosure(s)

1
REGISTRATION NO. 5794
AUG 31 1988 - 1 15 PM
INTERSTATE COMMERCE COMMISSION

MASTER RAILROAD EQUIPMENT LEASE

Dated as of August 30, 1988

Between

ITEL RAIL CORPORATION, as Lessee

And

The CIT Group/Equipment Financing, Inc., as Lessor

As further described in Section 27(h), to the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease may be created through the transfer or possession of any counterpart other than Counterpart Number 1. This is not Counterpart Number 1.

MASTER RAILROAD EQUIPMENT LEASE

THIS MASTER RAILROAD EQUIPMENT LEASE, dated as of August 30, 1988 is entered into by and between The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor"), and ITEL Rail Corporation, a Delaware corporation ("Lessee").

1. Lease.

(a) Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor hereunder, three hundred (300) centerbeam flatcars manufactured by Thrall Car Manufacturing Company (the "Equipment") which are described generally on Exhibit A hereto and which are more specifically defined in each Certificate (as hereinafter defined) executed from time to time by the parties hereto. Each item of Equipment shall be subjected to this Lease by the execution by the parties hereto of an Acceptance Certificate in substantially the form of Exhibit B hereto (a "Certificate"). Lessee's execution and delivery to Lessor of a Certificate with respect to any item of Equipment shall constitute Lessee's irrevocable acceptance of such item of Equipment for all purposes of this Lease. Each Certificate shall incorporate therein all of the terms and conditions of this Lease and shall constitute a part of this Lease to the same extent as if the provisions thereof were set forth in full therein.

Each Certificate shall be executed and all Equipment subjected to this Lease on or before December 30, 1988. Lessor shall have no obligation after such date to accept any Certificate hereunder or to purchase or commence the lease of any Equipment; provided, however, that this shall not affect Lessor's and Lessee's rights and obligations with respect to Equipment accepted on or before December 30, 1988. Lessor shall have no obligation to accept more than five (5) Certificates hereunder, and each Certificate shall cover items of Equipment having a total Lessor's Cost (as hereinafter defined) of at least \$400,000.00.

(b) The total Lessor's Cost of all items of Equipment leased pursuant hereto shall not exceed the sum of

(c) Lessee shall arrange for delivery of each item of Equipment and Lessor shall have no responsibility or obligation whatsoever with respect to such arrangement.

(d) Lessor shall not be obligated to accept or execute a Certificate with respect to any item of Equipment unless all of the conditions set forth in Section 24 hereof that are applicable to such item of Equipment shall have been fulfilled to the satisfaction of Lessor.

2. Definitions.

(a) As used in this Lease, the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"AAR" shall mean the Association of American Railroads.

"Affiliate" shall mean any entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Lessor. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

"Amortization Deductions" as defined in Section 10(b)(i) hereof.

"Appraisal Procedure" shall mean the following procedure for determining the Fair Market Sale Value or the Fair Market Rental Value of the Equipment. If either Lessor or Lessee shall request by notice ("Appraisal Request") to the other that either the Fair Market Sale Value or the Fair Market Rental Value (whichever is applicable) be determined by the Appraisal Procedure: (i) Lessor and Lessee shall, within 15 days after the Appraisal Request, appoint an independent appraiser mutually satisfactory to them; or (ii) if the parties are unable to agree on a mutually acceptable appraiser within such time, Lessor and Lessee shall each appoint one independent appraiser (provided, that if either party hereto fails to notify the other party hereto of the identity of the independent appraiser chosen by it within 30 days after the Appraisal Request, the determination of such value shall be made by the independent appraiser chosen by such other party); and (iii) if such appraisers cannot agree on such value within 20 days after their appointment, such appraisers shall appoint a third independent appraiser (or, if they fail to agree upon a third appraiser within 20 days after their appointment, such third independent appraiser shall within 20 days thereafter be appointed by the American Arbitration Association) and within 20 days after his appointment, such third appraiser shall select, from the values proposed by the other two appraisers, the value closest to his own opinion of such value. The Fair Market Sale Value of any item of Equipment will, in no event, exceed of the Lessor's Cost of such item of Equipment. The expenses of the appraiser or appraisers shall be paid equally by Lessor and Lessee.

"Assumptions" shall mean the assumptions set forth in clause (i)(II) of Subsection 10(b) hereof as adjusted pursuant to clause (vi) of Subsection 10(b) hereof.

"Business Day" shall mean a day other than a Saturday, Sunday or legal holiday under the laws of the State of New York.

"Certificate" as defined in Section 1(a) hereof.

"Change in Tax Law" shall mean any change in Federal tax law or regulations in effect as of the date of this Lease, which change occurs or becomes effective at any time after the date of this Lease, including without limitation, any technical corrections to the Reform Act.

"Code" shall mean the Internal Revenue Code of 1986 as it may be amended hereafter, or any comparable successor law.

"Commencement Date" as defined in Section 3 hereof.

"Default" shall mean any event or condition which after the giving of notice or lapse of time or both would become an Event of Default.

"Depreciation Deductions" as defined in Section 10(b)(i)(A) hereof.

"DOT" shall mean the United States Department of Transportation.

"Effective Rate" as defined in Section 10(b)(v) hereof.

"Equipment" as defined in Section 1(a) hereof.

"Event of Default" as defined in Section 17 hereof.

"Event of Loss" shall mean, with respect to any item of Equipment, the actual or constructive total loss of such item of Equipment or the use thereof, due to theft, destruction, damage beyond repair or rendition thereof permanently unfit for normal use from any reason whatsoever, or the condemnation, confiscation, requisition or seizure of such item of Equipment.

"Fair Market Rental Value" shall, at any time with respect to any item of Equipment, be equal to the annual rental value of such item of Equipment for the appropriate Renewal Term which would be obtained in an arm's-length transaction between an informed and willing lessor under no compulsion to lease and an informed and willing lessee-user (other than a lessee currently in possession). Fair Market Rental Value shall be determined by

the Appraisal Procedure provided that the request for appraisal is made at least 180 days (but not more than 360 days) prior to the expiration of the Primary Term or any Renewal Term, as the case may be, of the item of Equipment, which determination shall be made on the assumption that the item of Equipment is free and clear of all Liens and is in the condition and repair in which it is required to be returned pursuant to Section 6(a) hereof.

"Fair Market Sale Value" shall, at any time with respect to any item of Equipment, be equal to the sale value of such item of Equipment which would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer-user (other than a lessee currently in possession or scrap dealer). For purposes of Section 6(b) hereof, Fair Market Sale Value shall be determined by the Appraisal Procedure (with the expenses of the appraiser or appraisers paid equally by Lessor and Lessee), which determination shall be made (a) without deduction for any costs or expenses of dismantling or removal; and (b) on the assumption that such item of Equipment is free and clear of all liens and is in the condition and repair in which it is required to be returned pursuant to Section 6(a) hereof. For purposes of Section 18(c) hereof, Fair Market Sale Value shall be determined (at Lessee's expense) by an independent appraiser selected by Lessor, on an "as-is, where-is" basis, without regard to the provisions of clauses (a) and (b) above; provided, that, if Lessor shall have sold any item of Equipment pursuant to Section 18(b) hereof prior to giving the notice referred to in Section 18(c) hereof, Fair Market Sale Value of such item of Equipment shall be the net proceeds of such sale after deduction of all reasonable costs and expenses incurred by Lessor in connection therewith; provided further, that if for any reason Lessor is not able to obtain possession of any item of Equipment pursuant to Section 18(a) hereof, the Fair Market Sale Value of such item of Equipment shall be zero.

"FRA" shall mean the Federal Railway Administration.

"ICC" shall mean the United States Interstate Commerce Commission.

"Imposition" as defined in Section 10(a) hereof.

"Indemnitee" as defined in Section 16 hereof.

"Indemnity Event" as defined in clause (ii) of Subsection 10(b) hereof.

"Interchange Rules" shall mean the rules of DOT, the ICC and the current Interchange Rules or supplements thereto of the Mechanical Division of the AAR as the same may be in effect from time to time, or rules then in effect in substitution therefor, with respect to the use and maintenance of each item of Equipment subject to this Lease.

"Late Charge Rate" shall mean an interest rate per annum equal to three percent over the Reference Rate, but not to exceed the highest rate permitted by applicable law.

"Lease" and the terms "hereof", "herein", "hereto" and "hereunder", when used in this Master Railroad Equipment Lease, shall mean and include this Master Railroad Equipment Lease and each Certificate hereto, as the same may from time to time be amended, modified or supplemented.

"Lease Term" shall mean, with respect to any item of Equipment, the Primary Term, and if renewed, each Renewal Term.

"Lessor's Cost" shall mean, with respect to any item of Equipment, the total amount paid by Lessor for such item of Equipment, which amount shall be set forth in the Certificate pertaining to such item of Equipment.

"Lessor's Economics" shall mean the after-tax yield and periodic after-tax cash flow anticipated by Lessor as of the date of this Lease, in connection with the transactions contemplated by this Lease, as determined by Lessor.

"Lessor's Liens" shall mean any mortgage, pledge, lien, security interest, charge, encumbrance, financing statement, title retention or any other right or claim of any person claiming through or under Lessor.

"Liens" shall mean any mortgage, pledge, lien, security interest, charge, encumbrance, financing statement, title retention or any other right or claim of any person, other than any Lessor's Lien or Permitted Lien.

"Loan and Security Agreement" shall mean the Loan and Security Agreement, dated as of August 12, 1988, entered into by and between Lessor, as secured party, and Lessee, as Debtor.

"Loss Payment Date" shall mean with respect to any item of Equipment the date on which payment, as described in Section 15(b) hereof, is made to the Lessor by the Lessee as the result of an Event of Loss with respect to such item.

"Net Worth" shall mean all amounts that would, according to generally accepted accounting principles, be included as total stockholders' equity on the consolidated balance sheet of Lessee and its subsidiaries, including preferred stock, common stock, capital surplus and retained earnings.

"Permitted Liens" shall mean (a) Liens for taxes payable by or attributable to Lessee which are either not yet due or are being contested in good faith and by appropriate proceedings, so long as, in the reasonable opinion of Lessor, such proceedings do not involve any material danger of the sale, forfeiture or loss of any item of Equipment, title thereto or any interest therein and do not interfere with the use of any item of Equipment, (b) materialmens', mechanics', workers', repairers', employees' or other like Liens arising in the ordinary course of business of Lessee for amounts either not yet overdue or being contested in a manner which complies with clause (a) above, (c) Liens arising out of judgments, awards or provisional remedies against Lessee with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and which have been either effectively stayed or bonded, and (d) Permitted Subleases.

"Primary Term" as defined in Section 3(a) hereof.

"Purchase and Sale Agreement" shall mean the Purchase and Sale Agreement, dated as of August 12, 1988, entered into by and between Lessee, as purchaser, and Manufacturers Hanover Leasing Corporation, as seller.

"Reference Rate" shall mean the rate of interest publicly announced by Manufacturers Hanover Trust ("MHT") in New York, New York from time to time as its reference rate, or any rate of interest which is the successor or replacement for the rate designated as the "Reference Rate". The Reference Rate is not intended to be the lowest rate of interest charged by MHT in connection with extensions of credit to debtors. The Reference Rate shall be determined at the close of business on the 15th day of each calendar month (if the 15th day is not a Business Day then on the first preceding Business Day) and shall become effective as of the first day of the calendar month succeeding such determination and shall continue in effect to, and including, the last day of said calendar month.

"Reform Act" shall mean the Tax Reform Act of 1986.

"Renewal Term" shall mean, with respect to any item of Equipment, each period during which the term of the lease of such item of Equipment is extended pursuant to Subsection 3(b) hereof.

"Rent Payment Date" shall mean each June 30 and December 31 on which an installment of rent is due and payable pursuant to Section 4 hereof during the Primary Term and pursuant to Subsection 3(b) hereof during each Renewal Term.

"Stipulated Loss Value" shall mean, with respect to any item of Equipment, the amount determined by multiplying the Lessor's Cost of such item of Equipment by the percentage set forth in Schedule A hereto opposite the applicable Rent Payment Date; provided, that for purposes of Sections 15(b) and 18(c) hereof, any determination of Stipulated Loss Value as of a date occurring after the final Rent Payment Date with respect to such item of Equipment, shall be made as of such final Rent Payment Date.

"Tax Benefits" shall mean such deductions and other benefits as are provided by the Code to an owner of property, including Depreciation Deductions and Amortization Deductions.

(b) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

3. Term.

(a) Primary Term. The Primary Term of the lease of each item of Equipment hereunder shall commence on the Commencement Date specified in the Certificate pertaining thereto ("Commencement Date") and, unless earlier terminated pursuant to the provisions hereof, shall continue until December 31, 2003.

(b) Renewal Option. So long as no Default or Event of Default shall have occurred and be continuing, Lessee may, by written notice delivered to Lessor at least 180 days (but not more than 360 days) prior to the expiration of the Primary Term, extend the lease term of any item of Equipment for a period of one year or two years (each a "Renewal Term") from the expiration of the Primary Term, as shall be specified in such notice. If Lessee elects to extend the lease term of any item of Equipment for a one-year period, it may, so long as there shall not have occurred and be continuing any Default or Event of Default hereunder, by written notice delivered to Lessor at least 180 days (but not more than 360 days) prior to the expiration of such one-year period, extend the lease term of such item of Equipment for an additional one-year period.

All provisions of this Lease shall be applicable during each Renewal Term except that (i) during such Renewal Term Lessee shall pay rent in consecutive quarterly installments, on the last day of March, June, September and December of each year

of such Renewal Term, with each installment being in an amount equal to one quarter of the Fair Market Rental Value of the item of Equipment as of the commencement of such Renewal Term; and (ii) for the purposes of determining the Stipulated Loss Value of such item of Equipment after the determination of the Fair Market Rental Value, Lessor and Lessee shall substitute a new schedule for Schedule A attached hereto.

4. Rent; Unconditional Obligations.

(a) During the Primary Term, Lessee shall pay to Lessor rent for each item of Equipment then subject to this Lease as follows:

(i) On each Rent Payment Date beginning June 30, 1989 through and including December 31, 1994, a payment in arrears in an amount equal to _____ of the Lessor's Cost of the Equipment.

(ii) On each Rent Payment Date beginning June 30, 1995 through and including December 31, 2003, a payment in arrears in an amount equal to _____ of the Lessor's Cost of the Equipment.

(iii) On December 31, 1988, interim rent for each item of Equipment from the Commencement Date for such item of Equipment through December 31, 1988, a payment in arrears in an amount equal to (x) _____ of the Lessor's Cost of such item of Equipment multiplied by (y) a fraction, the numerator of which is the number of days elapsed from the applicable Commencement Date through and including December 31, 1988, and the denominator of which is 180.

(iv) Each installment of rent payable hereunder shall be payable at an address specified by Lessor.

(b) Lessee shall also pay to Lessor, on demand, interest at the Late Charge Rate on any installment of rent and on any other amount owing hereunder which is not paid when due, for any period for which the same shall be overdue. Each payment made under this Lease shall be applied first to the payment of interest then owing and then to rent or other amounts owing hereunder. Interest shall be computed on the basis of a 360-day year and actual days elapsed.

(c) This Lease is a net lease, and Lessee's obligation to pay all rent and all other amounts payable hereunder is ABSOLUTE AND UNCONDITIONAL under any and all circumstances and shall not be affected by any circumstances of any character whatsoever,

including, without limitation, (i) any set-off, counterclaim, recoupment, defense, abatement or reduction or any right which Lessee may have against Lessor, the manufacturer or supplier of any of the Equipment or anyone else for any reason whatsoever; (ii) any defect in the title, condition, design, or operation of, or lack of fitness for use of, or any damage to, or loss of, all or any part of the Equipment from any cause whatsoever; (iii) the existence of any Liens with respect to the Equipment; (iv) the invalidity, unenforceability or Lessee's disaffirmance of this Lease or any other document related hereto; or (v) the prohibition of or interference with the use or possession by Lessee of all or any part of the Equipment, for any reason whatsoever, including without limitation, by reason of (1) claims for patent, trademark or copyright infringement; (2) present or future governmental laws, rules or orders; (3) the insolvency, bankruptcy or reorganization of any person; and (4) any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, to the extent the foregoing is enforceable. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which may at any time hereafter be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Equipment. If for any reason whatsoever this Lease or any Certificate, other than pursuant to Section 15(b) hereof, shall be terminated in whole or in part by operation of law or otherwise, Lessee will nonetheless pay to Lessor an amount equal to each installment of rent at the time such installment would have become due and payable in accordance with the terms hereof, or Lessor may, at its sole option, exercise any other option provided herein or by applicable law. Each payment of rent or, except as may be provided in Section 10 hereof, other amount paid by Lessee hereunder shall be final and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

5. Disclaimer; Assignment of Warranties.

(a) LESSOR NEITHER MAKES NOR SHALL BE DEEMED TO HAVE MADE AND LESSEE HEREBY EXPRESSLY WAIVES ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO THE DESIGN, QUALITY OR CONDITION OF THE EQUIPMENT OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR AS TO THE TITLE TO OR LESSOR'S OR LESSEE'S INTEREST IN THE EQUIPMENT (EXCEPT AS TO LESSOR'S LIENS) OR AS TO ANY OTHER MATTER RELATING TO THE EQUIPMENT OR ANY PART THEREOF.

LESSEE CONFIRMS THAT IT HAS SELECTED THE EQUIPMENT AND EACH PART THEREOF ON THE BASIS OF ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENTS, REPRESENTATIONS OR WARRANTIES MADE BY LESSOR, AND LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OR VENDOR OF ANY PART OF THE EQUIPMENT.

LESSOR NEITHER MAKES NOR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE ACCOUNTING TREATMENT TO BE ACCORDED TO THE TRANSACTIONS CONTEMPLATED BY THIS LEASE OR, EXCEPT AS PROVIDED IN SECTION 10 HEREOF, AS TO ANY TAX CONSEQUENCES AND/OR TAX TREATMENT THEREOF.

(b) Lessor hereby assigns to Lessee such rights as Lessor may have (to the extent Lessor may validly assign such rights) under all manufacturers' and suppliers' warranties, and any other warranties or rights of indemnity from third parties with respect to the Equipment; provided, however, that the foregoing rights shall automatically revert to Lessor upon the occurrence and during the continuance of any Event of Default hereunder, or upon the return of the Equipment to Lessor, except to the extent that Lessee's indemnity obligations hereunder survive such return. Lessee agrees to settle all claims with respect to the Equipment directly with the manufacturers or suppliers thereof, and to give Lessor prompt notice of any such settlement and the details of such settlement.

6. Return; Purchase Option.

(a) Return and Storage. Lessee shall, upon the expiration of the Lease Term of each item of Equipment, return such item of Equipment to Lessor at such location or locations (not to exceed three (3) locations) within the continental United States of America as Lessee and Lessor shall mutually agree upon in writing. Lessor shall designate its requested location(s) in writing not more than one hundred fifty (150) days and not less than one hundred twenty (120) days before the expiration of the Lease Term, and Lessor and Lessee shall reach agreement no less than ninety (90) days before the expiration of the Lease Term. Lessee hereby further agrees that, if requested by Lessor, it shall store such items of Equipment for a period of up to ninety (90) days after the expiration of the Lease Term. During any such storage period Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such item of Equipment, to inspect the same; provided, however, that Lessee shall not be liable, except in the case of gross negligence of Lessee or of its employees or agents (any railroad at which the Equipment is stored and such railroad's agents and employees shall not be deemed to be agents of Lessee), for any injury to, or the death of, any person exercising, either

on behalf of Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence. During any such storage period Lessee shall maintain the insurance required by Section 9 hereof and maintain such item of Equipment in such manner as Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances. Each item of Equipment when delivered to Lessor shall have installed all components, accessories, and parts installed thereon at the time of delivery thereof hereunder, or replacements therefor and alterations thereon made in accordance with the provisions of this Lease, none of which shall be broken or missing, shall be in as good condition and state of repair as at the time of delivery thereof hereunder, ordinary wear and tear and changes and alterations properly made by Lessee as permitted under this Lease excepted, suitable for the transport of items normally transported by railcars of similar type and age, conforming to all applicable FRA (or successor agency) safety rules and regulations, and meeting the Interchange Rules, and if no such Interchange Rules are then in effect, meeting the Interchange Rules as then last previously in effect; and shall be otherwise in good operating condition and in the condition as required by Section 11 hereof, and in any event suitable for service with Class 1 (as such classification is employed by the ICC) rail carriers; and Lessee shall pay for or perform any repairs necessary to restore the Equipment to such condition. For any item of Equipment not so returned by the date of expiration of this Lease, Lessee shall pay to Lessor a rent per day equal to the daily equivalent of the semi-annual or quarterly, as the case may be, rent most previously paid for such item of Equipment by Lessee to Lessor, and any rent, per diem or similar charges earned by Lessee in excess of the rent per day paid therefor to Lessor as aforesaid in respect of the use, lease or rent of such item of Equipment after the date of expiration of this Lease shall, for the first ninety (90) days after the date of expiration of this Lease, belong to Lessee, and from the ninety-first (91st) day on belong to Lessor and shall be promptly turned over to Lessor. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee to so assemble, deliver, store and transport the Leased Equipment. Until such item of Equipment is returned to Lessor pursuant to the provisions of this Section, all of the provisions of this Lease with respect thereto shall continue in full force and effect. Lessee shall pay all the costs and expenses in connection with or incidental

to the return of the Equipment, including, without limitation, the cost of assembling, insuring, delivering, transporting and storing the Equipment. At the time of such return the Equipment shall be free and clear of all Liens.

(b) Purchase Option. So long as no Default or Event of Default shall have occurred and be continuing, Lessee may, by written notice given to Lessor at least 180 days (but not more than 360 days) prior to the expiration date of the Lease Term of any item of Equipment (which notice shall be irrevocable), elect to purchase such item of Equipment on such expiration date for a cash purchase price equal to the Fair Market Sale Value of such item of Equipment determined as of such expiration date pursuant to the Appraisal Procedure (but in no event to exceed of the Lessor's Cost of such items of Equipment), plus an amount equal to all taxes (other than any taxes measured solely by the gain on such sale), costs and expenses (including out-of-pocket legal fees and expenses) reasonably incurred or paid by Lessor in connection with such sale. Upon payment by Lessee of such purchase price, and of all other amounts then due and payable by Lessee hereunder, Lessor shall transfer title to such item of Equipment to Lessee on an "as-is, where-is" basis, without recourse and without representation or warranty of any kind, express or implied, as to the Equipment itself as distinguished from the purchase and sale transaction, other than a representation and warranty that such item of Equipment is free and clear of any Lessor's Liens.

7. Representations and Warranties. In order to induce Lessor to enter into this Lease and to lease the Equipment to Lessee hereunder, Lessee represents and warrants that:

(a) Organization. Lessee is a duly organized, validly existing corporation in good standing under the laws of the State of Delaware and is duly qualified to do business in all jurisdictions in which qualification is required in order for it to carry out the transactions contemplated by this Lease.

(b) Power and Authority. Lessee has full corporate power, authority and legal right to execute, deliver and perform this Lease, and the execution, delivery and performance hereof has been duly authorized by all necessary corporate action of Lessee.

(c) Enforceability. This Lease has been duly executed and delivered by Lessee and, assuming the due authorization, execution and delivery hereof by Lessor, constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except as enforceability may be limited by

applicable bankruptcy, reorganization or other similar laws now or hereafter in effect relating to creditor rights, and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(d) Consents and Permits. The execution, delivery and performance of this Lease does not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of Lessee, and will not contravene any law, regulation, judgment or decree applicable to Lessee, or the restated certificate of incorporation or by-laws of Lessee, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien upon any property of Lessee under any mortgage, instrument or other agreement to which Lessee is a party or by which Lessee or its assets may be bound or affected (except Liens in favor of Lessor); and no authorization, approval, license, filing or registration with any court or governmental agency or instrumentality (including without limitation the ICC) is necessary in connection with the execution, delivery, performance, validity and enforceability of this Lease, except for filings of this Lease with the ICC, and UCC financing statements.

(e) No Defaults. Lessee is not in material default, and no event or condition exists which after the giving of notice or lapse of time or both would constitute an event of default, under any mortgage, indenture, contract, agreement, judgment or other undertaking to which Lessee is a party or is binding upon Lessee or upon any of its assets, except for any such default, event or condition which, individually or in the aggregate, would not affect Lessee's ability to perform its obligations under this Lease.

(f) Title to Equipment. On each Commencement Date, Lessor shall have good and marketable title to the items of Equipment being subjected to this Lease on such date, free and clear of all Liens, except Liens in favor of the manufacturer of the Equipment that will be discharged by Lessor's payment to the manufacturer of the Lessor's Cost of the Equipment.

(g) No Litigation. There is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against or affecting Lessee (A) which involves the Equipment or the transactions contemplated by this Lease; or (B) which, if adversely determined, could reasonably be expected to have a material adverse effect on the financial condition, business or operations of Lessee.

(h) Financial Condition of the Lessee. The financial statements of Lessee as at and for (a) the fiscal year ended December 31, 1987, audited by Arthur Young & Company, and (b) the quarter ended March 31, 1988, certified by the chief financial officer of Lessee, are complete and correct and fairly present the financial condition of Lessee and the results of its operations for the respective periods covered thereby, there are no known contingent liabilities or liabilities for taxes of Lessee which are not reflected in said financial statements and since the date thereof, there has been no material adverse change in such financial condition or operations.

(i) Lease Not a Security. Lessee (i) is not a "carrier" as defined in 49 U.S.C. Section 11301, and this Lease is not a "security" as defined in such statute; (ii) does not own or control any rail carrier which is not either a Class II or Class III (as such classifications are employed by the ICC) rail carrier; and (iii) Lessee is not subject to 49 U.S.C. Section 11301 by the ICC or by any other administrative or judicial authority.

(j) Tax Returns. Lessee has filed all tax returns that are required under the laws of the United States and any state or subdivision thereof and has paid all taxes shown to be due and payable except those which are being contested by appropriate proceedings, and there are no Federal tax liens against the Lessee.

8. Prohibition Against Liens; Markings.

(a) Prohibition Against Liens. Lessee, at its own expense, will promptly pay or cause to be paid, or otherwise satisfy and discharge, any and all sums claimed by any party by, through or under Lessee or its successors or assigns which, if unpaid, might become a Lien upon any item of Equipment, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the title, property or rights of Lessor created or purported to be created hereunder.

(b) Markings.

(i) Duty to Number and Mark Equipment. Lessee will cause each item of Equipment to be kept numbered with the identifying number set forth in the applicable Certificate, and will keep and maintain permanently and conspicuously marked on each side of each item of Equipment, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION," with applicable

changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such item of Equipment. Lessee will not change the identifying number of any item of Equipment unless a statement of new numbers shall be delivered to Lessor and filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited.

(ii) Prohibition Against Certain Designations. The Equipment may be lettered with the names or initials or other insignia customarily used by Lessee or any sublessee or their affiliates, but Lessee will not allow the name of any other person, association or corporation to be placed on any item of Equipment as a designation that might reasonably be interpreted as a claim of legal ownership.

9. Insurance. Lessee shall at all times during the term of this Agreement, carry and maintain or cause to be carried and maintained on the Equipment at its or its Permitted Sublessee's cost and expense, similar public liability and physical damage insurance on the Equipment as it carries with respect to similar railcars owned or leased by it, and Lessor shall be loss payee on such property insurance, and an additional insured on such liability insurance, as its interests may appear. Notwithstanding the foregoing, Lessee may allow Permitted Sublessees of the Equipment to self-insure to the extent Lessee allows similar Permitted Sublessees of railcars leased by Lessee to self-insure; provided, however, that in any event Lessee shall maintain railcar contingent physical damage and contingent liability insurance covering the Equipment. All physical damage insurance shall be "All-Risk" with such insurers as shall be reasonably satisfactory to Lessor; provided, however, that the amount of physical damage insurance shall not be less than the lesser of (a) the greater of the full replacement value or the Stipulated Loss Value of the Equipment, or (b) \$3,000,000.00 per occurrence. All physical damage insurance policies shall be made payable to Lessor as its interest may appear. All contingent liability insurance policies shall name Lessor as additional insured. All insurance policies will be in form and substance reasonably acceptable to Lessor. Lessee shall deliver certificates of insurance to Lessor prior to policy expiration or upon Lessor's request, but Lessor shall bear no duty or liability to ascertain as to the existence or adequacy of such insurance. Each insurance policy shall, among other things, require that the insurer give Lessor at least 30 days' prior written notice of any material alteration in the terms of such policy or of the cancellation thereof. The insurance required to be maintained hereunder shall be primary with no other insurance maintained by Lessor (if any) contributory.

10. Taxes.

(a) General Tax Indemnity. (i) Indemnity. Lessee hereby agrees to pay and indemnify and hold Lessor harmless from and against, all fees, taxes (whether sales, use, excise, personal property or other taxes), imposts, duties, withholdings, assessments and other governmental charges of whatever kind or character, however designated (together with any penalties, fines or interest thereon), all of the foregoing being herein collectively called "Impositions", which are at any time levied or imposed against Lessor, Lessee, this Lease, the Equipment or any part thereof by any federal, state or local government or taxing authority in the United States or by any foreign government or any subdivision or taxing authority thereof upon, with respect to, as a result of or measured by (i) the Equipment (or any part thereof), or this Lease or the interest of the Lessor therein; or (ii) the purchase, ownership, delivery, leasing, possession, maintenance, use, operation, return, sale or other disposition of the Equipment or any part thereof; or (iii) the rentals, receipts or earnings payable under this Lease or otherwise arising from the Equipment or any part thereof; excluding, however, taxes based on or measured by the net income of Lessor that are imposed by (1) the United States of America, or (2) any State of the United States of America or any political subdivision of any such State in which Lessor is subject to Impositions as the result (whether solely or in part) of business or transactions unrelated to this Lease. Any payment which Lessee shall be required to make with respect to any indemnified Imposition shall include an amount necessary to hold Lessor harmless on an after-tax basis and shall be reduced by the amount of any income taxes saved by Lessor by reason of the payment or accrual of the indemnified Imposition. The obligations of Lessee under this Section 10(a) shall survive the expiration or earlier termination of this Lease. Lessee shall not be required to pay any Imposition if such Imposition results solely from the voluntary transfer or other voluntary disposition by Lessor of any interest in the Lease or any item of Equipment.

(ii) Reports; Contest Rights.

Lessee hereby covenants and agrees that with respect to the payment of Impositions and the preparation of related tax reports and returns, Lessee shall:

(A) to the extent permitted by law or regulation and unless otherwise notified by Lessor, properly prepare and timely file in the manner required by applicable law, all returns and reports pertaining to the Impositions, excluding, however, income tax returns and all returns and reports for Impositions not indemnified pursuant to this Subsection 10(a);

(B) to the extent permitted by law or regulation, make payment directly to the appropriate taxing authorities of all amounts due with respect to the Impositions; and

(C) promptly notify Lessor in all cases in which law, regulation, or custom does not permit Lessee to file and make payment directly, provided, that Lessee shall nonetheless prepare and deliver such report or return to Lessor within a reasonable time prior to the time such report or return is to be filed.

Lessee further agrees that within five (5) days of receipt of Lessor's request, it shall furnish Lessor with evidence that all (i) such reports or returns have been filed, including, without limitation, the furnishing of photocopies of such reports or returns, and (ii) applicable Impositions have been paid.

Should any taxing authority formally propose in writing to require one or more adjustments with respect to any return or report filed by Lessee pursuant to this Subsection 10(a), then Lessee (provided it has in good faith determined that there exists a meritorious basis for contesting such adjustment(s) and provided that Lessor has reasonably determined that the action to be taken will not result in any danger of sale, forfeiture, or loss of, or the creation of any Lien allowing the lienholder, without further action, to sell or foreclose (unless Lessee shall have adequately bonded such Lien in a manner reasonably satisfactory to Lessor) on any item of Equipment, or any part thereof, or any interest therein) may at its expense contest such adjustment(s) by appropriate administrative proceedings. Lessee shall notify Lessor at the inception of any such contest, shall promptly provide Lessor with such information with respect thereto as Lessor may from time to time reasonably request, and in any case, shall advise Lessor of the disposition of any such contest. Should any taxing authority formally propose in writing to require one or more adjustments which would create a liability for which Lessee has agreed to indemnify Lessor pursuant to this Subsection 10(a) and the contest is one which can only be maintained in the name of Lessor (or in the names of Lessee and Lessor), or through judicial proceedings, then Lessor shall contest, or shall cooperate with Lessee in a contest of, the adjustment(s) to the extent contemplated by, and subject to the following conditions:

- (a) although Lessor will keep Lessee informed as to the progress of such contest and will, if requested, consult with Lessee's tax counsel, the conduct of such contest shall remain within the sole discretion of Lessor and its tax counsel, who shall determine the nature of all actions to be taken to contest such Impositions, including (A) whether the

contest shall be initially by way of judicial or administrative proceedings, or both, (B) whether the Impositions shall be contested either by resisting payment and protesting such Impositions or by paying the Impositions and seeking a refund thereof and (C) if Lessor shall undertake judicial action, the court of competent jurisdiction in which to contest such proposed adjustment;

- (b) Lessor may decline to contest any Imposition or terminate such contest at any time in its sole discretion, in which case Lessee's obligation to indemnify with respect to such Imposition shall, except in the cases set forth in clauses (d) and (e) below, terminate;
- (c) Lessor shall not settle such contest without the written consent of Lessee, which shall not be unreasonably withheld;
- (d) Lessor shall not be required to undertake any proceedings if the Imposition is in an amount of less than \$50,000.00; and
- (e) Lessor shall not be required to take any action to contest any such Imposition unless and until (A) Lessor shall have determined that the action to be taken will not result in the danger of sale, forfeiture or loss of, or the creation of a Lien allowing the lienholder, without further action, to sell or foreclose on, the item of Equipment or any interest therein, and (B) Lessee shall have acknowledged its liability to Lessor for an indemnity payment pursuant to this Subsection 10(a) with respect to such Imposition if and to the extent Lessor shall not prevail in the contest of such proposed adjustment, and (C) Lessee shall have delivered to Lessor a written undertaking reasonably satisfactory to Lessor by which Lessee agrees to indemnify Lessor for any liability or loss that Lessor may incur as a result of contesting the Imposition and to pay Lessor on demand all costs and expenses that Lessor may incur in connection with contesting such Imposition, including, without limitation, (x) reasonable attorneys', accountants', engineers' and like professional fees and expenses, and expenses (but

not fees) of Lessor's in-house attorneys, and (z) the amount of any interest, penalties or additions to tax that may be payable as a result of contesting such Imposition.

Lessee further agrees to notify Lessor of any audits by any state or local taxing authority with respect to any of the Impositions, promptly to provide Lessor with such information with respect thereto as Lessor may from time to time reasonably request, and in any case to advise Lessor of the disposition of any such audit.

The agreement regarding filing and payment of state and local tax reports and returns by Lessee and the contest rights granted Lessee pursuant to this Subsection 10(a)(ii) shall remain in full force until and unless terminated by a writing executed by Lessor and Lessee; provided, however, that (i) the agreement with respect to the direct filing by Lessee of all returns and reports pertaining to the Impositions and (ii) Lessee's right to contest any proposed adjustment and Lessor's obligation to contest any proposed adjustment under this Subsection 10(a)(ii) may be unilaterally terminated, at Lessor's option, by notice given by Lessor to Lessee and expressly stating that such rights are being terminated, which notice may only be given should there have occurred and be continuing a Default or Event of Default under this Lease.

(b) Special Tax Indemnities.

(i) Lessor has calculated the rentals and Stipulated Loss Values based in part on the following representations and warranties of Lessee and on the assumptions set forth below:

I. Representations and Warranties.

Lessee represents and warrants that:

(a) Recovery Period. Each item of Equipment has a recovery period of seven (7) years within the meaning of Section 168(c) of the Code.

(b) Reform Act. Each item of Equipment is property to which Sections 168(b)(1), 168(c) and 168(d) of the Code apply.

(c) Estimated Useful Life. The estimated useful life of the Equipment is equal to at least 125% of the Lease Term.

(d) Residual Value. The estimated fair market value of each item of Equipment at the end of the Lease Term will be at least 20% of the Lessor's Cost thereof (without including in such value any increase or decrease for inflation or deflation, and after subtracting from such value any cost for removal and delivery of possession of such item of Equipment to Lessor at the end of the Lease Term).

(e) Limited Use Property. No item of Equipment is or will be "limited use property" within the meaning of IRS Revenue Procedure 76-30.

(f) No Inconsistent Action. Lessee has not taken and will not take any action in connection with filing its Federal income tax returns that would cause any of the Assumptions to be incorrect.

(g) U.S. Use. The items of Equipment will not be used predominantly outside the United States within the meaning of Section 48(a)(2) or 168(g)(1)(A) of the Code during any taxable year (or portion thereof) of Lessor beginning or ending within the Lease Term.

(h) Public Utility Property. At all times during the Lease Term, none of the Equipment will constitute "public utility property" within the meaning of Sections 167(1)(3)(A) or 46(f)(5) of the Code.

(i) Fair Market Value. On the Commencement Date, the fair market value of each item of Equipment will be equal to the Lessor's Cost thereof and the Lessor's unadjusted tax basis in such item of Equipment will not be less than the Lessor's Cost thereof.

(j) Non-Permitted Use. Lessee will not permit any item of Equipment to be used by a tax-exempt organization, a governmental unit or a foreign person within the meanings of Sections 48(a)(4), 48(a)(5), or 168(h)(2) of the Code.

(k) No Improvements. On the Commencement Date of each item of Equipment, no improvements, modifications or additions to any item of Equipment are required in order to render such item of Equipment complete for its intended use.

II. Assumptions.

It is assumed by Lessee and Lessor:

(A) that Lessor will be entitled to depreciation deductions ("Depreciation Deductions") under Section 168(a) of the Code for each item of Equipment in an amount determined, commencing with the taxable year in which such item is accepted hereunder, by using (i) the method described in Section 168(b)(1) of the Code, (ii) an applicable recovery period of seven (7) years, (iii) the half-year convention described in Section 168(d)(1) of the Code, and (iv) an initial adjusted basis equal to the Lessor's Cost of such item of Equipment;

(B) that Lessor will be entitled to deductions for amortization with respect to all ordinary and necessary fees, disbursements and other expenses ("Amortization Deductions") paid or to be paid by Lessor in connection with this Lease at a rate no less rapid than straight line over the Lease Term;

(C) that the rate of tax imposed on the Federal taxable income of Lessor will be _____ that the rate of state and local income taxes imposed on Lessor will be _____ that the rate of state and local taxes imposed on or measured by the net income of Lessor (after benefit of the deduction for such state and local taxes for Federal income tax purposes) will be _____ and the net income upon which such state and local taxes will be imposed will equal Lessor's Federal taxable income, so that Lessor's Federal taxable income will be subject to an over-all effective rate of (the "Effective Rate"); and

(D) that Lessor will have sufficient gross income within the meaning of Section 61(a) of the Code to fully benefit from the Depreciation Deductions and the Amortization Deductions.

(ii) Except as set forth in subsections (iii) and (viii) below, if on any one or more occasions, (1) if as a direct or indirect result in whole or in part of any act or failure to act by Lessee, any Permitted Sublessee, or any user or person in possession of any item of Equipment, or if as a direct or indirect result in whole or in part of (x) any breach, inaccuracy or incorrectness, of any representation, warranty, covenant or agreement of the Lessee hereunder, or (y) any bankruptcy of Lessee or other proceedings for the relief of debtors involving the Lessee or any foreclosure on or against Lessee or any Permitted Sublessee, Lessor shall lose, shall not have or shall lose the right to claim or shall not have substantial authority (within the meaning of Section 6661 of the Code and the regulations promulgated thereunder) for claiming, or there shall be disallowed, recalculated, or recaptured all or any portion of the Tax Benefits, or (2) Lessor is required to include in its gross income an amount of rent prior to the period(s) for which such amounts are payable in accordance with the terms of this Lease, (hereinafter each of the events described in clauses (1)

and (2) of this clause (ii) of this Subsection 10(b) shall be referred to individually as an "Indemnity Event"); then, in connection with each such occasion Lessee agrees to pay Lessor from time to time upon demand an amount which (after deduction of all taxes required to be paid by Lessor in respect of the receipt of said indemnity amount under the laws of any Federal, state or local government or taxing authority of the United States or of any taxing authority or government subsidiary of any foreign country, provided, that for purposes of determining the amount of taxes required to be paid by Lessor in respect of the receipt of said indemnity amount, it shall be assumed that Federal, state and local taxes are payable by Lessor at the highest marginal statutory rates in effect for the relevant period) shall be equal to the sum of (A) the amount of net additional income taxes paid or payable by Lessor (computed in accordance with Subsection 10(b)(v) hereof) in consequence of the occurrence of an Indemnity Event; and (B) any interest or penalty which may be assessed in connection with the foregoing, including, without limitation, any addition to tax due to the underpayment of estimated taxes assessed against Lessor in connection therewith.

(iii) Lessee shall not be required to pay Lessor the amount provided for in subsection (ii) above of this subsection 10(b) if the Indemnity Event shall result solely because of the occurrence of any of the following events:

(A) Lessee is required by the terms hereof to pay and shall have paid the Stipulated Loss Value for said item of Equipment;

(B) A voluntary transfer or other voluntary disposition by Lessor of any interest in this Lease or any item of Equipment for Federal income tax purposes, but only if (1), such voluntary transfer or other voluntary disposition shall be the direct cause of the loss of the Tax Benefits, and (2), such voluntary transfer or other voluntary disposition shall occur at a time when Lessor is not exercising any remedy provided for in Section 18 hereof;

(C) The failure of Lessor to claim the Tax Benefits unless (1) Lessor for any reason shall lose, shall not have, or shall lose the right to claim, the Tax Benefits or (2) independent counsel for Lessor chosen by Lessor but reasonably acceptable to Lessee shall determine that Lessor does not have substantial authority (within the meaning of Section 6661 of the Code and the regulations promulgated thereunder) to claim the Tax Benefits; or

(D) The failure of Lessor to have sufficient gross income within the meaning of Section 61(a) of the Code to benefit from the Depreciation Deductions or the Amortization Deductions, as the case may be.

(iv) If for any reason Lessor is required to include in its gross income for Federal, state or local income tax purposes at any time with respect to any item of Equipment (unless entitled to an equal deduction in the same taxable year) any part or all of the cost of (A) any repairs and maintenance of any item of Equipment, (B) any alterations, modifications, improvements or additions to any item of Equipment, or (C) any other expenditures by Lessee with respect to any item of Equipment, then Lessee shall pay Lessor, upon demand, the sum of (1) the amount of any increase in Lessor's Federal, state and local income taxes resulting from the inclusion of such costs in the gross income of Lessor, such amount to be decreased by any savings by Lessor in such taxes resulting from such costs, (2) the amount of any interest or penalties, including any addition to tax due to the underpayment of estimated taxes, assessed against Lessor in connection therewith, and (3) the amount of any taxes required to be paid by Lessor in respect of the receipt of amounts specified in clauses (1) and (2) above and this clause (3), provided, that for purposes of determining the amount of taxes required to be paid by Lessor in respect of the receipt of said indemnity amounts, it shall be assumed that Federal, state and local taxes are payable by Lessor at the highest marginal statutory rates in effect for the relevant period.

(v) Calculation by Lessor of any indemnity amounts payable by Lessee under this Subsection 10(b) shall be made by Lessor on a pro-forma basis, holding constant the Assumptions, except those Assumptions which are themselves affected by the Indemnity Event, or any previous Indemnity Event, and measuring the impact of those changed Assumptions on the original pricing model, and on the basis of the following additional assumptions: that in computing its Federal, state and local income tax liability (1) Lessor can concurrently fully utilize the Tax Benefits that are the subject of an Indemnity Event against Federal income taxes payable at the Effective Rate, (2) in the event Lessor is required to include in its gross income any amount described in Subsection (ii)(2) or (iv) of this Section 10(b), Lessor will be subject to Federal, state and local taxes on any such amount at the Effective Rate, and (3) each Indemnity Event will result in state and local income tax consequences to Lessor that mirror Lessor's Federal income tax consequences. At Lessor's option, indemnity payments with regard to a given Indemnity Event may take the form of a single payment or of an adjustment to rentals, either over the remainder of the Lease Term or retroactive to the Commencement Date or a combination of the foregoing. In any case, Stipulated Loss Values shall be adjusted by Lessor to those values determined by Lessor as necessary to maintain Lessor's

Economics, and in a manner consistent with the calculation of indemnity payments. In no event will Lessee be entitled to inspect the tax returns of Lessor, or any other document which Lessor deems to be confidential.

(vi) If any indemnity payments shall be made by Lessee under this Subsection 10(b), then for purposes of calculating any indemnity payments required to be made by reason of any subsequent Indemnity Event, the Assumptions shall be revised, if necessary, to reflect the altered tax consequences which gave rise to indemnity payments required to be made pursuant to this Subsection 10(b).

(vii) For the purposes of this Subsection 10(b) only, the term "Lessor" shall include the "common parent" and all other corporations included in the affiliated group, within the meaning of Section 1504 of the Code (or any other successor section thereto), of which Lessor is or becomes a member.

(viii) If the Internal Revenue Service shall propose an adjustment to the Federal income taxes of Lessor for which Lessee would be required to indemnify Lessor pursuant to this Section 10(b), Lessor shall (I) notify Lessee promptly of such claim, (II) forbear payment of the tax claimed for at least 30 days after giving such notice (if such forbearance is permitted by law), (III) advise Lessee of all action taken or proposed to be taken by the Internal Revenue Service, and, (IV) if the Lessee shall within 30 days after such notice request that such proposed adjustment be contested and furnish Lessor with an opinion of independent tax counsel reasonably satisfactory to Lessor to the effect that there exists substantial authority for contesting such proposed adjustment, then Lessor shall contest such proposed adjustment in good faith, subject, however, to the following conditions:

- (a) although Lessor will keep Lessee informed as to the progress of such contest and will, if requested, consult with Lessee's tax counsel, the conduct of such contest shall remain within the sole discretion of Lessor and its tax counsel, who shall determine the nature of all actions to be taken to contest such proposed adjustment, including (A) whether the contest shall be initially by way of judicial or administrative proceedings, or both, (B) whether the proposed adjustment shall be contested either by resisting payment and protesting such proposed adjustment or by paying

the tax and seeking a refund thereof and (C) if Lessor shall undertake judicial action, the court of competent jurisdiction in which to contest such proposed adjustment;

- (b) Lessor may decline to contest any such proposed adjustment or terminate such contest at any time in its sole discretion, in which case Lessee's obligation to indemnify with respect to such proposed adjustment shall, except in the cases set forth in clauses (d) and (e) below, terminate;
- (c) Lessor shall not settle such contest without the written consent of Lessee, which shall not be unreasonably withheld;
- (d) Lessor shall not be required to undertake any proceedings if the proposed adjustment relates to tax payments of less than \$200,000.00 (and for this purpose any proposed adjustment that relates to an issue that could affect more than one taxable year shall be treated as involving the total potential undiscounted payments, taking into account all taxable years to which the proposed adjustment could relate) or if the proposed adjustment relates solely to (1) the allocation of basis among different items of depreciable property being depreciated over the same useful life or (2) the taxable year in which any credit or deduction is properly allowable if it is recognized that the credit or deduction is allowable for a prior taxable year that is still open and that the appropriate tax returns will be amended to claim such credit or deduction; and
- (e) Lessor shall not be required to take any action to contest any such proposed adjustment unless and until (A) Lessor shall have determined that the action to be taken will not result in the danger of sale, forfeiture or loss of, or the creation of a Lien allowing the lienholder, without further action, to sell or foreclose on, the item of Equipment or any interest therein, and (B) Lessee shall have acknowledged its liability to Lessor for an indemnity payment pursuant to this Subsection 10(b) with respect to such proposed adjustment if and to the extent Lessor shall not prevail in the contest of such proposed adjustment, and (C) Lessee shall have delivered to Lessor a written undertaking reasonably satisfactory to Lessor by

which Lessee agrees to indemnify Lessor for any liability or loss that Lessor may incur as a result of contesting the proposed adjustment and to pay Lessor on demand all costs and expenses that Lessor may incur in connection with contesting such proposed adjustment, including, without limitation, (x) reasonable attorneys', accountants', engineers' and like professional fees and expenses, and expenses (but not fees) of Lessor's in-house attorneys, and (z) the amount of any interest, penalties or additions to tax that may be payable as a result of contesting such proposed adjustment.

If Lessor shall elect to contest such proposed adjustment by paying the tax claimed (including such other amounts payable as interest, penalties or additions in respect of such tax) and seeking a refund, Lessee at its option either will lend to Lessor, interest free, sufficient funds to pay the tax (including such interest, penalties or additions to tax) which loan shall, subject to the set-off described below, be repaid in full by Lessor upon the conclusion of the contest (an "Advance"), or will pay to Lessor the amount payable by Lessee pursuant to Subsection 10(b)(ii), as if such tax (including such interest, penalties or additions to tax) were due and payable. Upon the final determination of any contest in respect of amounts for which Lessee shall have made an Advance, Lessee's obligations hereunder, if any, with respect to such contested amounts shall be determined as if such Advance had not been made. Such obligation of Lessee and Lessor's obligation to repay such Advance will be satisfied first by set-off against each other. Any amount owing by Lessor to Lessee after set-off shall be treated as a payment due to Lessee payable as provided in Subsection 10(b)(ii). Upon receipt by Lessor of a refund of any tax and other amounts so paid by it and in respect of which Lessee has made an Advance, Lessor shall promptly pay to Lessee the amount of any interest paid or credited to Lessor in respect of such refund that is fairly attributable to an amount paid with such Advance after deducting from the amount of such interest any Federal, state and local income taxes payable by Lessor as a result of the receipt or accrual of such interest and after adding to the amount of such interest any Federal, state or local income taxes saved by reason of the deductibility of the payment or accrual by Lessor of such interest and taxes payable by Lessor as a result of the receipt or accrual of such interest. Notwithstanding the foregoing, Lessor shall not be required to make any payment hereunder (and no interest shall accrue) (i) to the extent that such payment (excluding interest received from a taxing authority other than any interest previously paid or reimbursed by Lessee that is included in such refund) would exceed the amount previously paid by Lessee to Lessor with

respect to the event giving rise to such refund, (ii) before such time as Lessee shall have made all payments or indemnities then due pursuant to the Lease and (iii) if an Event of Default shall have occurred and be continuing.

(ix) The provisions of this Subsection 10(b) shall survive the expiration or earlier termination of this Lease.

11. Compliance with Laws; Maintenance and Repairs.

(a) Lessee agrees to comply with all applicable DOT, ICC, FRA and all other governmental laws, regulations, requirements and rules, and with the applicable rules of the AAR, with respect to the use and maintenance of each item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any item of Equipment in order to comply with such laws, regulations, requirements and rules (including, without limitation, the Interchange Rules), Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in Lessor.

(b) Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear; provided that in no event shall the Lessee knowingly permit such item of Equipment to be exposed to or be used to carry, whether as consignments for common carrier shipment or otherwise, any toxic or explosive materials. Lessee shall, at its own cost and expense, maintain and keep the Leased Equipment in good order, condition and repair, ordinary wear and tear excepted, but in all cases usable in the manner for which it was designed and intended and in compliance with the Interchange Rules for railcars operating on the railroads, and in any event at the same level of maintenance at which Lessee keeps equipment which it owns or leases similar in nature to the Equipment. Except as required by the provisions of subsection (a) hereof, Lessee shall not modify any item of Equipment without the prior written authority and approval of Lessor, except for such modifications that do not decrease the value of the Equipment. Any parts installed or replacements made by Lessee upon any item of Equipment pursuant to subsection (a) hereof or pursuant to its obligation to maintain and keep such item of Equipment in good order, condition and repair under this Section 11 shall be considered accessions to such item of Equipment and title thereto shall be immediately vested in Lessor without cost or expense to Lessor. Lessee shall make no other additions or improvements to any item of Equipment unless the same are readily removable without causing damage to such item of Equipment. Title to any such readily removable additions or improvements shall remain with Lessee. If Lessee shall at its cost cause such readily

removable additions or improvements to be made to any item of Equipment, Lessee agrees that, if requested by Lessor, it will, prior to the return of such item of Equipment to Lessor hereunder, remove the same at its own expense without causing damage to such item of Equipment and repair all damages, if any, resulting from such removal.

12. Inspection. Lessor or its authorized representatives may at any reasonable time or times and upon reasonable notice inspect (to the extent within Lessee's control) the Equipment and the books and records of Lessee. Any such inspection shall be at Lessor's or its representative's sole risk of personal injury.

13. THIS SECTION INTENTIONALLY LEFT BLANK.

14. THIS SECTION INTENTIONALLY LEFT BLANK.

15. Loss or Damage.

(a) All risk of loss, theft, damage or destruction to the Equipment or any part thereof, however incurred or occasioned, shall be borne by Lessee and, unless such occurrence constitutes an Event of Loss pursuant to paragraph (b) of this Section, Lessee shall promptly cause the affected part or parts of the Equipment to be replaced or restored to the condition and repair required to be maintained by Section 11 hereof.

(b) If an Event of Loss with respect to five or more items of Equipment shall occur, Lessee shall promptly give Lessor written notice thereof, and Lessee shall pay to Lessor on a date which is the earlier of ninety (90) days after Lessee has knowledge of said Event of Loss or the next scheduled Rent Payment Date, (the "Loss Payment Date") an amount equal to the sum of (i) the Stipulated Loss Value of such item of Equipment computed as of the Rent Payment Date with respect to such item of Equipment on or immediately preceding the date of the occurrence of such Event of Loss, unless the Loss Payment Date is also a Rent Payment Date, in which case the Stipulated Loss Value of such item of Equipment shall be computed as of such Rent Payment Date; and (ii) all rent and other amounts due and owing hereunder for such item of Equipment on or prior to the Loss Payment Date. If an Event of Loss with respect to four or less items of Equipment shall occur, Lessee shall promptly give Lessor written notice thereof, and Lessee shall pay to Lessor on the next scheduled Rent Payment Date after Lessee has knowledge of such Event of Loss the Stipulated Loss Value of such item of Equipment as of such Rent Payment Date together with the amount provided for in clause (ii) of the preceding sentence. Upon payment of any such amount to Lessor, the lease of such item of Equipment

hereunder shall terminate, and Lessor will transfer to Lessee, Lessor's right, title and interest in and to such item of Equipment, on an "as-is, where-is" basis, without recourse and without representation or warranty, express or implied, other than a representation and warranty that such item of Equipment is free and clear of any Lessor's Liens.

(c) Any payments received at any time by Lessor or Lessee from any insurer with respect to loss or damage to the Equipment shall be applied as follows: (i) if such payments are received with respect to an Event of Loss they shall be paid to Lessor, but to the extent received by Lessor, they shall reduce or discharge, as the case may be, Lessee's obligation to pay the amounts due to Lessor under Section 15(b) hereof with respect to such Event of Loss; or (ii) if such payments are received with respect to any loss of or damage to the Equipment other than an Event of Loss, such payments shall, unless a Default or Event of Default shall have occurred and be continuing, be paid over to Lessee to reimburse Lessee for its payment of the costs and expenses incurred by Lessee in replacing or restoring pursuant to Section 15(a) hereof the part or parts of the Equipment which suffered such loss or damage.

16. General Indemnity. Lessee assumes liability for, and shall indemnify, protect, save and keep harmless Lessor and its agents, servants, successors and assigns (an "Indemnitee") from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, on, incurred by or asserted against any Indemnitee, in any way relating to or arising out of this Lease or the enforcement hereof, or the manufacture, purchase, acceptance, rejection, ownership, possession, use, selection, delivery, lease, operation, condition, sale, return or other disposition of the Equipment or any part thereof (including, without limitation, latent or other defects, whether or not discoverable by Lessee or any other person, any claim in tort for strict liability and any claim for patent, trademark or copyright infringement); provided, however, that Lessee shall not be required to indemnify any Indemnitee for loss or liability arising from acts or events which occur after the Equipment has been returned to Lessor in accordance with this Lease, or for loss or liability resulting solely from the willful misconduct or gross negligence of such Indemnitee. Any payments made by Lessee under this Section 16 shall be made on a net after-tax basis. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

17. Events of Default. The following events shall each constitute an event of default (herein called "Event of Default") under this Lease:

(i) Lessee shall fail to make any payment of rent or other amount owing hereunder within 10 days after the same is due; or

(ii) Lessee shall fail to maintain the insurance required by Section 9 hereof or to perform or observe any of the covenants contained in Sections 20(a) or 21(a) through (d); or

(iii) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it with respect to this Lease and such failure shall continue unremedied for 30 days after the earlier of (a) the date on which Lessee obtains knowledge of such failure; or (b) the date on which notice thereof shall be given by Lessor to Lessee; or

(iv) any warranty or representation now or hereafter made by Lessee in connection with this Lease or any schedule, certificate, statement, report, financial data, notice, or writing furnished at any time by Lessee to Lessor, misstates any fact set forth therein or omits any fact required to be set forth therein as of the date on which the facts set forth therein are stated or certified, and (i) such misstatement or omission occurs under circumstances indicating that such misstatement or omission was knowingly or intentionally made or (ii) such misstatement or omission is material as it relates to Lessee's business, operations or financial condition or the Equipment or Lessor's interest therein; or

(v) An event of default by Lessee shall occur and be continuing under any obligation of Lessee to Lessor or any of Lessor's Affiliates or subsidiaries, including but not limited to the Loan and Security Agreement, and/or the Purchase and Sale Agreement, whether such obligation is for borrowed money, under any capitalized lease, or for the deferred purchase price of property; or

(vi) Lessee shall (A) default in the payment of any obligation for which the principal balance outstanding is or more, whether such obligation is for borrowed money, under any capitalized lease or for the deferred purchase price of property, including interest thereon, beyond the period of grace, if any, provided with respect thereto, or (B) default in the performance or observance of any other term, condition or agreement contained in any such obligation or in any agreement relating thereto, if the effect of such defaults referred to in clauses (A) and (B) is to cause, or permit the holder or holders of such obligation (or a trustee on behalf of such holder or holders) to cause such obligation to become due prior to its stated maturity or to realize upon any collateral given as security therefor; or

(vii) the entry of a decree or order for relief by a court having jurisdiction in respect of Lessee, adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition of or in respect of Lessee in an involuntary proceeding or case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of Lessee or of any substantial part of its property, or ordering the winding-up or liquidation of its affairs, if any such decree or order continues unstayed and in effect for a period of 90 days; or

(viii) the institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the commencement by Lessee of a voluntary proceeding or case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by it to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of Lessee or of any substantial part of its property, or the failure of Lessee generally to pay its debts as they become due or the taking of corporate action by Lessee in furtherance of any of the foregoing.

18. Remedies. If an Event of Default specified in Subsections 17(vii) and (viii) above shall occur before delivery and acceptance of any item of Equipment, then Lessor shall not be obligated to purchase or lease any item of Equipment hereunder, and this Lease shall, without any declaration or other action by Lessor, be in default. If an Event of Default, other than an Event of Default specified in Subsection 17(vii) or (viii) above shall occur and be continuing, Lessor may, at its option, declare this Lease to be in default. At any time after this Lease is in default under the first sentence of this Section 18 or after Lessor has declared this Lease to be in default under the second sentence of this Section 18, Lessor may do any one or more of the following with respect to all of the Equipment or any part thereof as Lessor in its sole discretion shall elect, to the extent permitted by applicable law then in effect:

(a) demand that Lessee, and Lessee shall at its expense upon such demand, return the Equipment promptly to Lessor at such place in the continental United States of America as Lessor shall specify, or Lessor, at its option, and to the extent within

Lessee's control, may enter upon the premises where the Equipment is located and take immediate possession of the Equipment and remove the same by summary proceedings or otherwise;

(b) sell the Equipment at public or private sale, with or without notice, advertisement or publication, as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Equipment as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto;

(c) by written notice to Lessee specifying a payment date which shall be not earlier than 20 days after the date of such notice, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, all accrued and unpaid rent for the Equipment due on all Rent Payment Dates up to and including the payment date specified in such notice plus an amount (together with interest on such amount at the Late Charge Rate, from the payment date specified in such notice to the date of actual payment) equal to the excess, if any, of the Stipulated Loss Value of the Equipment as of the payment date specified in such notice over the Fair Market Sale Value of the Equipment as of such date;

(d) Lessor may exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Lease.

In addition, Lessee shall be liable for any and all unpaid rent and other amounts due hereunder before or during the exercise of any of the foregoing remedies and for all legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the placing of the Equipment in the condition required by Section 11 hereof.

No remedy referred to in this Section 18 is intended to be exclusive but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to Lessor at law or in equity; and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. No express or implied waiver by Lessor of an Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default. To the extent permitted by applicable law, Lessee hereby waives any rights now

or hereafter conferred by statute or otherwise which may require Lessor to sell, or lease or otherwise use the Equipment in mitigation of Lessor's damages or losses or which may otherwise limit or modify any of Lessor's rights or remedies under this Lease. Notwithstanding the foregoing or anything else contained in this Lease, all Permitted Sublessees shall be entitled to possession, use and quiet enjoyment of the Equipment pursuant to the terms of their respective Permitted Subleases so long as such Permitted Sublessees are not in default under their Permitted Subleases.

19. Lessor's Right to Perform. If Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein, Lessor may itself make such payment or perform or comply with such agreement in a reasonable manner, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Charge Rate, shall be deemed to be additional rent, payable by Lessee on demand.

20. Possession; Subleasing; Assignment of Subleases.

(a) Except as permitted by Subsection (b) hereof, the Equipment shall at all times be in the sole possession and control of Lessee, and Lessee will not, without the prior written consent of Lessor, or, except as otherwise provided in this Lease, sell, transfer, assign or encumber this Lease or any interest herein or sublease, or otherwise transfer its interest in the Equipment, and any attempted assignment, sublease or other transfer by Lessee in violation of this Section 20 shall be void.

(b) So long as no Default or Event of Default shall have occurred and be continuing, Lessee may, without the prior written consent of Lessor, sublease (or permit a sublessee to further sublease) any item of Equipment provided that any such sublease or further sublease (a "Permitted Sublease") must satisfy the following conditions: (i) such Permitted Sublease shall be in compliance with all applicable laws and governmental regulations; (ii) such Permitted Sublease shall not affect or reduce any of the obligations of Lessee hereunder and this Lease and all obligations of Lessee hereunder shall continue in full force and effect as the obligations of a principal and not the obligations of a surety; (iii) the rights of a sublessee (a "Permitted Sublessee") under a Permitted Sublease shall be subject and subordinate to all the terms of, and all the rights of CIT under, this Lease, except that such Permitted Sublessee shall have the right of possession, use and quiet enjoyment with respect to the subleased Equipment pursuant to the terms of such Permitted

Sublease so long as such Permitted Sublessee is not in default under its Permitted Sublease; (iv) the insurance required to be maintained pursuant to Section 9 hereof shall continue in full force and effect irrespective of such Permitted Lease; and (v) the Permitted Sublessee must be a company incorporated under the laws of the United States, any state thereof, or the District of Columbia.

(c) To secure the payment and performance of Lessee's obligations under this Lease, Lessee does hereby assign and grant a security interest to Lessor in all of the right, title and interest of Lessee in, to, and under any and all Permitted Subleases for any item of Equipment, to the extent such Permitted Subleases relate to the Equipment, in effect from time to time including, without limitation, all right, title and interest of Lessee in and to all rents, issues, profits, revenues, and other income of the items of Equipment and other moneys due and to become due to Lessee under, all proceeds of, and all claims for damages arising out of, the breach of any such Permitted Sublease, to the extent such Permitted Subleases relate to the Equipment, the right of Lessee to terminate the same, to perform thereunder, and to compel performance of the terms thereof. Lessee covenants (i) that any and all Permitted Subleases described above shall contain a provision permitting the Lessee to assign the Permitted Sublease and a provision obligating the Permitted Sublessee, upon notice from the Lessor, to immediately make payment of all monies due and to become due under or arising out of said Permitted Sublease to Lessor; (ii) that Lessee shall stamp Lessee's record copy and each and every other copy, which Lessee has in its possession, of the Permitted Sublease, to show that such Permitted Subleases have been assigned to Lessor; (iii) Lessee shall immediately cause any Permitted Sublease to be recorded with the ICC with a stamp referring to its assignment to CIT, to the extent such Permitted Subleases relate to the Equipment, under this Lease; (iv) that upon reasonable notice from Lessor, Lessee will provide Lessor (a) with a complete list of all Permitted Subleases then in existence setting forth in reasonable detail the terms thereof in a manner satisfactory to Lessor, or at Lessee's option, complete copies of such Permitted Subleases and any amendments thereto and (b) with a list setting forth, to the best of Lessee's ability given available information, the location and Permitted Sublessee of each item of Equipment; and (v) that upon the demand of Lessor, such demand to be made only upon the occurrence and continuance of an Event of Default, Lessee will specifically authorize and direct each person liable therefore to make payments of all monies due and to become due under or arising out of the Permitted Subleases, to the extent such Permitted Subleases relate to the Equipment, directly to Lessor and upon such demand irrevocably authorizes and empowers Lessor to ask, demand, receive, receipt, and give

acquittance for any and all such amounts which are to become due or payable or remain unpaid at any time or times to Lessor by each such person under or arising out of any Permitted Sublease, to endorse any checks, drafts, or other orders for the payment of money payable to Lessee in payment therefor; and in its discretion to file any claims or take any action or proceeding either in its own name or in the name of Lessee or otherwise which Lessor may reasonably deem to be necessary or advisable in the premises. Lessee hereby irrevocably authorizes Lessor after any such demand has been made, in its own name and in the name and on behalf of Lessee, to give notification to persons obligated under a Permitted Sublease of this Lease that payment is to be made to Lessor as provided above.

21. No Changes in Lessee. Lessee will not (a) enter into any transaction of merger or consolidation unless it is the surviving corporation and after giving effect to such merger or consolidation its tangible net worth equals or exceeds that which existed prior to such merger or consolidation; or (b) liquidate or dissolve; or (c) sell, transfer or otherwise dispose of all or any substantial part of its assets; or (d) change its form of organization from that of a corporation to some other form; or (e) without thirty (30) days prior written notice to Lessor, change its name or its chief place of business.

22. Further Assurances; Financial Information.

(a) Lessee will, at its expense, promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Lease and to establish and protect the rights, interests and remedies created or intended to be created in favor of Lessor hereunder, including, without limitation, the execution, delivery, recordation and filing of documents with the ICC, and the execution and filing of Uniform Commercial Code financing statements in the appropriate jurisdictions. To the extent permitted by applicable law, Lessee hereby authorizes Lessor to file any such financing statements without the signature of Lessee.

(b) Lessee will furnish to Lessor (a) as soon as available, but in any event not later than 120 days after the end of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such fiscal year, and consolidated statements of income and changes in financial position of Lessee for such fiscal year, together with equivalent information for the prior fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved

and audited by Arthur Young & Company or another nationally recognized firm of independent certified public accountants; (b) as soon as available, but in any event not later than 90 days after the end of each of the first three quarterly periods of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such quarterly period and consolidated statements of income and changes in financial position of Lessee for such quarterly period and for the portion of the fiscal year then ended, together with equivalent information for the prior comparable quarterly period, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by the chief financial officer of Lessee; and (c) promptly, such additional financial and other information as Lessor may from time to time reasonably request.

23. Notices. All notices, demands and other communications hereunder shall be in writing, and shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed as follows or to such other address as any of the following persons may from time to time designate in writing to the other persons listed below:

Lessor: The CIT Group/Equipment Financing, Inc.
 300 South Grand Avenue
 3rd Floor
 Los Angeles, California 90071
 Attention: Vice President - Credit

and

The CIT Group/Equipment Financing, Inc.
270 Park Avenue
New York, New York 10017
Attention: Senior Vice President - Credit

Lessee: Itel Rail Corporation
 55 Francisco Street
 San Francisco, California 94133
 Attention: Vice President - Finance

24. Conditions Precedent:

(a) Lessor shall not be obligated to accept and execute the first Certificate or to lease any Equipment to Lessee hereunder unless:

(i) Lessor shall have received a copy of resolutions of the Board of Directors of Lessee, certified by the Secretary or an Assistant Secretary of Lessee as of the date of the first Certificate, authorizing the execution, delivery and performance by Lessee of this Lease and the Certificates;

(ii) Lessor shall have received an incumbency and signature certificate of Lessee, dated the date of the first Certificate and in form and substance reasonably satisfactory to Lessor, setting forth the names and signatures of each officer of Lessee authorized to sign this Lease, the Certificates and all other instruments and documents relating thereto, which certificate may be relied on by Lessor until it receives written notice to the contrary;

(iii) Lessor shall have received an opinion of counsel for Lessee, dated the date of the first Certificate and in form and substance reasonably satisfactory to Lessor, to the same effect as clauses (a) through (e) and (g) of Section 7 hereof; and

(iv) Lessor shall have received evidence satisfactory to it as to the due compliance by Lessee with the provisions regarding insurance contained in Section 9 hereof.

(b) Lessor shall not be obligated to accept and execute any Certificate or to lease the items of Equipment described therein to Lessee hereunder unless:

(i) Lessor shall have received good and marketable title to such Equipment, free and clear of Liens, except Liens in favor of the manufacturer of the Equipment that will be discharged by Lessor's payment to the manufacturer of the Lessor's Cost of the Equipment;

(ii) Lessor shall have received evidence satisfactory to it as to the proper calculation of the amount of Lessor's Cost of such items of Equipment and shall be satisfied that all amounts included in Lessor's Cost have been, or concurrently with Lessor's acceptance of such Certificate will be, paid in full;

(iii) Such Uniform Commercial Code financing statements with respect to the items of Equipment covered by such Certificate as Lessor shall deem necessary or desirable in order to perfect and protect its interests therein shall have been duly executed and filed, at Lessee's expense, in such public offices as Lessor shall direct;

(iv) All representations and warranties of Lessee contained herein or in any document or certificate furnished Lessor in connection herewith shall be true and correct on and as of the date of such Certificate with the same force and effect as if made on and as of such date; no Event of Default or Default shall be in existence on such date or shall occur as a result of the lease by Lessee of the Equipment specified in such Certificate;

(v) In the sole judgment of Lessor, there shall have been no material adverse change in the financial condition or business of Lessee from December 31, 1987;

(vi) Lessor shall have received from Lessee, in form and substance reasonably satisfactory to it, such other documents and information as Lessor shall reasonably request;

(vii) All legal matters in connection with the transactions contemplated by this Lease shall be reasonably satisfactory to Lessor's counsel;

(viii) No Change in Tax Law, which in the sole judgment of Lessor would adversely effect Lessor's Economics, shall have occurred or shall appear, in Lessor's good faith judgment, to be imminent;

(ix) An original of this Lease and of each Certificate shall have been duly filed, recorded or deposited with the ICC in accordance with 49 U.S.C. Section 11303; and

(x) Lessor shall have received an Assignment of Purchase Order in substantially the form of Exhibit C hereto with respect to each purchase order entered into between Lessee and the manufacturer of the Equipment.

(c) After delivery and acceptance of any item of Equipment pursuant to any Certificate, the Lease shall continue in full force and effect with respect to such items of Equipment notwithstanding the failure of any conditions set forth in (b) above with respect to any item of Equipment not yet delivered (so long as the failure of such conditions would not constitute a Default or Event or Default hereunder).

25. Transaction Fee. Lessor hereby acknowledges receipt of a non-refundable transaction fee in the amount of \$25,000.00. So long as all items of Equipment are subjected to this Lease, Lessor will apply the entire transaction fee to the earliest rents due under this Lease.

26. Financial Covenant. Lessee hereby covenants and agrees that, so long as any item of Equipment is subject to this Lease, it will not permit its Net Worth to be less than the amounts set forth below for the time period set forth below:

Net Worth

Time Period

through December 31, 1988
through December 31, 1989
through December 31, 1990
through December 31, 1991
through December 31, 1992
through December 31, 1993
and thereafter

27. Miscellaneous.

(a) Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(b) No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No delay or failure on the part of Lessor to exercise any power or right hereunder shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. After the occurrence of any Event of Default, the acceptance by Lessor of any payment of rent or other sum owed by Lessee pursuant hereto shall not constitute a waiver by Lessor of such Event of Default, regardless of Lessor's knowledge or lack of knowledge thereof at the time of acceptance of any such payment, and shall not constitute a reinstatement of this Lease if this Lease shall have been declared in default by Lessor pursuant to Section 18 hereof or otherwise, unless Lessor shall have agreed in writing to reinstate the Lease and to waive the Default or Event of Default.

(c) Whether or not any of the transactions contemplated hereby shall be consummated, Lessee agrees to pay all reasonable out-of-pocket expenses of Lessor in connection with the negotiation and preparation of this Lease, including, without limitation, the reasonable fees and disbursements of counsel for Lessor, in connection with the preparation, execution and delivery of this Lease and related documents.

(d) This Lease contains the full, final and exclusive statement of the agreement between Lessor and Lessee relating to the lease of the Equipment .

(e) This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in the Equipment except as lessee only.

(f) This Lease and the covenants and agreements contained herein shall be binding upon, and inure to the benefit of, Lessor and its successors and assigns and Lessee and, to the extent permitted by Section 20 hereof, its successors and assigns.

(g) The headings of the sections are for convenience of reference only, are not a part of this Lease and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

(h) THIS LEASE MAY BE EXECUTED BY THE PARTIES HERETO ON ANY NUMBER OF SEPERATE COUNTERPARTS, EACH OF WHICH WHEN SO EXECUTED AND DELIVERED SHALL BE AN ORIGINAL, FULLY ENFORCEABLE COUNTERPART FOR ALL PURPOSES EXCEPT THAT ONLY THE COUNTERPART MARKED "COUNTERPART NUMBER 1" SHALL CONSTITUTE "CHATTEL PAPER" WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE IN EFFECT IN ANY JURISDICTION.

(i) This Lease shall be governed by and construed in accordance with the laws of the State of New York.

(j) Lessee hereby irrevocably consents and agrees that any legal action, suit, or proceeding arising out of or in any way in connection with this Lease may be instituted or brought in the courts of the State of New York, in the County of New York, or the United States Courts for the Southern District of New York, as Lessor may elect, and by execution and delivery of this Lease, Lessee hereby irrevocably accepts and submits to, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of any such court, and to all proceedings in such courts. Lessee irrevocably consents to service of any summons and/or legal process by registered or certified United States air mail, postage prepaid, to Lessee at the address set forth in Section 23 hereof, such method of

service to constitute, in every respect, sufficient and effective service of process in any legal action or proceeding. Nothing in this Lease shall affect the right to service of process in any other manner permitted by law or limit the right of Lessor to bring actions, suits or proceedings in the court of any other jurisdiction. Lessee further agrees that final judgment against it in any such legal action, suit or proceeding and may be enforced in any other jurisdiction, within or outside the United States of America, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of the liability.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease to be duly executed as of the day and year first above written.

THE CIT GROUP/EQUIPMENT
FINANCING, INC

By: _____

Title: _____

ITEL RAIL CORPORATION

By: _____

Title: _____

[Handwritten Signature]

Vice President

[Handwritten Signature]

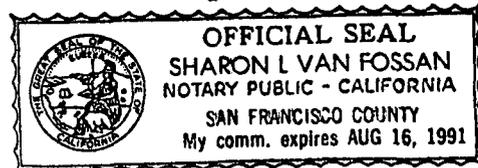
Vice President Finance

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

On this 26th day of August, 1988, before me personally appeared Robert Kiehnle, to me personally known, who being by me duly sworn says that such person is Vice President - Finance of ITEL Rail Corporation, that the foregoing Master Railroad Equipment 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 CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)



On this 26th day of August, 1988, before me personally appeared G. TODD DERR, to me personally known, who being by me duly sworn says that such person is Vice President of The CIT Group/Equipment Financing, Inc., that the foregoing Master Railroad Equipment 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



EXHIBIT A, attached to and forming a part of the Master Railroad Equipment Lease dated as of August 30, 1988 entered into by and between Itel Rail Corporation, a Delaware corporation ("Lessee") and The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor").

General Equipment Description

Three hundred (300) Centerbeam 73 ft., 100 ton Flatcars, manufactured by Thrall Car Manufacturing Company.

EXHIBIT B, attached to and forming a part of the Master Railroad Equipment Lease dated as of August 30, 1988 entered into by and between Itel Rail Corporation, a Delaware corporation ("Lessee") and The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor").

ACCEPTANCE CERTIFICATE NO.

TO MASTER RAILROAD EQUIPMENT LEASE NO.

Commencement Date: _____
Expiration Date: December 31, 2003
Interim Rent Payment Date: December 31, 1988
First Rent Payment Date: June 30, 1989
Last Rent Payment Date: December 31, 2003
No. of Consecutive Semi-Annual Rent Payments: 30
Semi-Annual Rental for
the First Twelve (12) Rental Payments: \$ _____
Semi-Annual Rental for
the Subsequent Eighteen (18) Rental Payments: \$ _____
Total Rental (not including Interim Rent): \$ _____
Lessor's Cost of Equipment: \$ _____

THIS ACCEPTANCE CERTIFICATE is executed and delivered by The CIT Group/Equipment Financing, Inc., ("Lessor") and Itel Rail Corporation ("Lessee") pursuant to and in accordance with the Master Railroad Equipment Lease dated as of August ____, 1988 between Lessor and Lessee (the "Lease"; the defined terms therein being used herein with their defined meanings).

1. The Equipment covered by this Certificate consists of the items described in the Schedule attached hereto.

2. Lessee hereby: (i) confirms that the items of Equipment covered hereby have been inspected by Lessee, have been delivered in good working order and condition and are of the size, design, capacity and manufacture selected by it and meet the provisions of the purchase orders with respect thereto; (ii) confirms that no Default or Event of Default is in existence as of the Commencement Date set forth above, nor shall any default or Event of Default occur as a result of the lease by Lessee of the Equipment specified herein; (iii) confirms that all representations and warranties of Lessee contained in the Lease or in any document or certificate furnished Lessor by Lessee in connection herewith on or before the date hereof, are true and correct in all material respects as of the Commencement Date set forth above with the same

force and effect as if made on such date; (iv) irrevocably accepts said items of Equipment "as-is, where-is" for all purposes of the Lease as of the Commencement Date set forth above; and (v) confirms that each item of Equipment has been marked in accordance with Section 8 of the Lease.

3. All of the terms, provisions and conditions of the Lease are hereby incorporated herein and made a part hereof as if such terms, provisions and conditions were set forth in full in this Certificate. By their execution and delivery of this Certificate, the parties hereto reaffirm all of the terms, provisions and conditions of the Lease.

IN WITNESS WHEREOF, Lessee has caused this Acceptance Certificate to be duly executed by its duly authorized officer as of the Commencement Date set forth above.

ITEL RAIL CORPORATION

By: _____

Title: _____

ACCEPTED AS OF THE COMMENCEMENT

DATE SET FORTH ABOVE.

THE CIT GROUP/EQUIPMENT
FINANCING, INC.

By: _____

Title: _____

SCHEDULE 1, attached to and forming a part of the Acceptance Certificate No. _____ to the Master Railroad Equipment Lease dated as of August ____, 1988 entered into by and between IteI Rail Corporation, a Delaware corporation ("Lessee") and The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor").

EQUIPMENT DESCRIPTION

QTY. MANUFACTURER MODEL # DESCRIPTION SERIAL NOS. LESSOR'S COST

	Thrall Car Manufacturing Company		73 ft., 100 ton Center- beam Flatcars		
--	--	--	---	--	--

TOTAL LESSOR'S COST \$ _____

EXHIBIT C, attached to and forming a part of the Master Railroad Equipment Lease dated as of August 30, 1988 entered into by and Between Itel Rail Corporation, a Delaware corporation ("Lessee") and The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor").

ASSIGNMENT OF PURCHASE ORDER

WHEREAS, Itel Rail Corporation (the "Company") has executed and delivered the purchase order attached to Exhibit I which is attached hereto, to Thrall Car Manufacturing Company (the "Purchase Order"), which Purchase Order covers the property described in such Exhibit I (the "Equipment"); and

WHEREAS, the Company desires to assign to The CIT Group/Equipment Financing, Inc. ("CIT") all of its rights and obligations under the Purchase Order so that CIT might purchase and take title to the Equipment in the Company's stead.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company (a) represents and warrants that the Purchase Order constitutes the entire understanding of the parties thereto with respect to the purchase and sale of the Equipment covered thereby; (b) hereby assigns to CIT all of its rights under the Purchase Order; (c) hereby assigns to CIT and CIT hereby assumes and agrees to perform the Company's obligations under the Purchase Order; and (d) represents and warrants that no consent from Thrall Car Manufacturing Company is required in connection with the execution, delivery and performance of this Assignment or for the validity or enforceability of this Assignment.
2. Pursuant to this Assignment, Thrall Car Manufacturing Company may look to CIT for full performance of all of the Company's obligations under the Purchase Order; provided, however, that the Company hereby agrees with CIT that the Company shall continue to be responsible for the actual performance of all such obligations (with the exception of the obligations to pay the purchase price of the Equipment) and to the extent not inconsistent with the Master Railroad

Equipment Lease the Company agrees to hold harmless and indemnify CIT from all liability, loss, damage, and expense arising from or directly or indirectly attributable to such obligations.

3. If (a) the Master Railroad Lease Agreement has not been executed by the parties hereto on or before August 31, 1988, or (b) the deliveries and acceptances contemplated by the Master Railroad Lease Agreement have not been completely consummated on or before December 30, 1988, CIT agrees to reassign the Purchase Order to the Company, in the case of clause (a), with respect to all items of Equipment, and in the case of clause (b), with respect to those items of Equipment not delivered on or before December 30, 1988.

IN WITNESS WHEREOF, the parties have duly executed this Assignment by their authorized representatives as of the date opposite their respective signatures.

THE CIT GROUP/EQUIPMENT
FINANCING, INC.

By: _____

Date: _____

Title: _____

ITEL RAIL CORPORATION

By: _____

Date: _____

Title: _____

EXHIBIT I

EXHIBIT I to that certain Assignment of Purchase Order between
The CIT Group/Equipment Financing, Inc. and Itel Rail
Corporation.

Copy of Itel Rail Corporation - Thrall Car Manufacturing
Company Purchase Order.