ITEL

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

October 11, 1988

RECORDATION NO. 15884

OCT 17 1988 12 25 PM

INTERSTATE COMMERCE COMMISSION

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

Re: Railcar Lease Agreement dated September 14, 1988, between Itel Rail Corporation, Itel Railcar Corporation and The Atchison, Topeka and Santa Fe Railway Company

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the $13 recordation fee.

Please record this Railcar Lease Agreement under a new recordation number.

The parties to the aforementioned instrument are listed below:

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

The Atchison, Topeka and Santa Fe Railway Company (Lessee)
920 Southeast Quincy Street
Topeka, Kansas 66628

This Railcar Lease Agreement sets forth the terms and conditions under which equipment set forth in subsequent schedules thereto is leased.

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

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Department

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Patricia Schumacker
Itel Rail Corporation
55 Francisco Street
San Francisco, CA 94133

10/17/88

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/17/88 at 12:05PM, and assigned recordation number(s). 15880, 15880-A & B

Sincerely yours,

Noreta R. McGee

Secretary

Enclosure(s)

SE-30
(7/79)

RECORDATION NO. 15880 FILED 1425

OCT 17 1989 - 10 05 AM

INTERSTATE COMMERCE COMMISSION

CERTIFICATION OF TRUE COPY

On October 6, 1988, I, Marianne L. Ledda, examined the original copy of the Railcar Lease Agreement dated September 14, 1988, between Itel Rail Corporation and Itel Railcar Corporation, severally as Lessors, and The Atchison, Topeka and Santa Fe Railway Company (Lot 2200), as Lessee, and I hereby certify that I have compared the attached duplicate copy with the original, and that it is a complete, true and correct copy of the original in all respects, including the dates, signatures and acknowledgements thereof.

Marianne L. Ledda

MARIANNE L. LEDDA

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

On October ~~6~~ 11, 1988, before the undersigned, a Notary Public for the State of California, personally appeared Marianne L. Ledda, known to me to be the person whose name is subscribed to the above instrument, acknowledged that she executed the same.

OFFICIAL SEAL
PATRICIA SCHUMACKER
Notary Public-California
SAN FRANCISCO COUNTY
My Comm. Exp. Feb. 4, 1991

Patricia Schumacker

Notary Public

RECORDATION NO. 1 5880 Filed 1425

OCT 17 1988 - 10 02 AM -00

INTERSTATE COMMERCE COMMISSION

RAILCAR LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") made as of this 14th day of September, 1988, between ITEL RAIL CORPORATION, a Delaware corporation, ITEL RAILCAR CORPORATION, a Delaware corporation, 55 Francisco Street, San Francisco, California 94133, severally, as lessors and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation, with its principal place of business at 920 Southeast Quincy Street, Topeka, Kansas 66628 as the lessee ("Lessee").

1. Scope of Agreement

A. Itel Rail Corporation is lessor hereunder only with respect to all Cars on equipment schedules executed by it, and Itel Railcar Corporation is lessor hereunder only with respect to all Cars listed on equipment schedules executed by it. The capitalized term "Lessor" in any context shall refer either to Itel Rail Corporation or to Itel Railcar Corporation, whichever is the lessor of the Cars referred to or affected by such reference. The liabilities, obligations, benefits and rights of Itel Rail Corporation and Itel Railcar Corporation, shall be several, not joint, and shall only apply to each in respect of the respective Cars for which it is lessor.

B. Upon its full execution, this Agreement shall supersede the Agreement dated January 27, 1987, between Evans Railcar Leasing Company, predecessor in interest to Itel Railcar Corporation, and Lessee and all schedules thereto.

C. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein and in the applicable schedule(s), as defined below, railroad cars of the quantity, type, construction and other description (hereinafter referred to as the "Cars") as set forth in any executed schedule(s) attached hereto. The word "Schedule" as used herein includes the Equipment Schedule or Equipment Schedules executed herewith and any additional Equipment Schedules and amendments thereto, each of which when signed by both parties shall become part of this Agreement. The terms and provisions of each fully-executed Schedule shall control, as to the Cars listed on such Schedule, over any inconsistent or contrary terms and provisions in the body of this Agreement.

D. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the lessor of all Cars and that no joint venture or partnership is being created. Lessee's interest in the Cars shall be that of a lessee only. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

This Agreement shall be effective as to any Car on the date of delivery by Lessor of such Car, as provided in Section 3 hereof, and shall be in effect only with respect to equipment which Lessor and Lessee add to this Agreement as Cars identified in Schedule(s) signed by both parties. The lease term with respect to all Cars covered by a particular Schedule shall continue for the period specified in such Schedule unless sooner terminated in accordance with the provisions of this Agreement. Unless the expiration date is specified in such Schedule, upon the delivery of the final Car on each Schedule, Lessor shall provide written notice to Lessee of the expiration date of the Agreement with respect to the Cars on such Schedule. Unless, within fifteen (15) days of the date of such notice, Lessee demonstrates to the reasonable satisfaction of Lessor that such expiration date is wrong, Lessee shall be deemed to have concurred with such expiration date.

3. Supply Provisions

A. Lessee hereby approves the specifications of the Cars described in the applicable Schedule. If any Cars set forth in any fully-executed Schedule are to be remarked, Lessor shall, at its initial expense and subject to the recovery of such initial remarking and transportation expenses as set forth in such Schedule, remark such Cars with the reporting marks shown on the applicable Schedule in compliance with all applicable regulations. After the Cars have been remarked, Lessor shall deliver the Cars as promptly as is reasonably possible to the Initial Delivery Point specified in the applicable Schedule. From and after delivery of any Car, Lessor shall not be responsible for any other costs relating to transportation or movement of the Cars to Lessee and Lessee shall be responsible for all transportation costs relating to the Cars.

B. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Cars with similar railcars upon prior written notice from Lessor to Lessee; provided, however, that any such replacement shall not prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

C. With respect to each Car not subject to a fixed rental, Lessee shall load such Car prior to loading any similar equipment leased by or assigned to Lessee from other parties subsequent to the date of this Agreement, or purchased by Lessee subsequent to the date of this Agreement; provided, however, that this shall in no event prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor. Additionally, Lessee shall not discriminate against the Cars in the operation, use, maintenance or the provision of off-line loads vis-a-vis any comparable railcars received by Lessee in interchange. Lessee shall use its best efforts to maximize the off-line utilization of such Cars.

4. Maintenance, Tax and Insurance

A. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules; provided, however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned (i) by damage or other condition caused by negligence of Lessee or anyone other than Lessor; (ii) by damage or other condition caused by loading, unloading or use other than as permitted under this Agreement; (iii) by loss or damage resulting from any commodity or other material loaded in or on any Car. Lessee shall also be responsible for all costs in excess of the amount specified on the applicable Schedule (such specified amount the "Interior Maintenance Amount") associated with repairing, replacing or maintaining interior lading equipment, special interiors and linings and removable parts in safe, operating condition. Any reasonable transportation costs incurred by reason of movement of the Cars for any maintenance provided for in this paragraph shall be at Lessee's sole expense. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee shall use its best efforts to minimize any damage to the Cars which may be caused by any shipper. Lessee shall not place any Car into a private contract repair facility or have any Car repaired by a private contractor on Lessee's lines unless Lessee has received prior approval from Lessor and all such repairs are performed under the direction and control of Lessor. If Lessor receives payment from a party other than Lessee for any damages described in this Subsection 4.A. for which Lessee is responsible, Lessee's obligation to pay for such damage will be reduced by the amount collected by Lessor from such other party; provided, however, that Lessor shall have no obligation to actively seek such payments from third parties.

B. (i) Subject to Subsection 4.B.(ii) hereinbelow, Lessor may also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Lessee may make running repairs to those parts of the Cars specified in the exhibit attached to the applicable Schedule, so as to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. With respect to the Cars, any repairs performed by Lessee at Lessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties hereto. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any

alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor. Should the AAR Mechanical Department inspect or investigate Lessee's facilities and determine that restitution is due owners of railcars repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all railcars owned or managed by Lessor, including the Cars, that were repaired at Lessee's facilities. Lessor shall have the right to perform certain Repairs, as hereinafter defined, to the Cars at a location on Lessee's property which is mutually agreeable to Lessor and Lessee. Repairs ("Repairs") shall be of the type that Lessor determines Lessee would not normally perform or of the type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Repairs.

(ii) In the event Lessor makes any addition, alteration or modification ("Required Modifications") on the Cars that is required by the U.S. Department of Transportation or by any other governmental agency or non-governmental entity having jurisdiction over the safety, operation or use of railroad equipment, Lessee agrees to pay an additional monthly charge of one dollar and seventy-five cents ($1.75) per Car for each one hundred dollars ($100) expended by Lessor on such Car, effective as of the date such Car is released from shop after any such Required Modification is applied. If Lessor determines at its sole discretion prior to making any Required Modification that the cost thereof is not economical to expend in view of the age of any Car and Lessor elects to remove such Car from the Agreement rather than to have such Required Modification applied, then rental with respect to such Car shall terminate upon the date specified in writing by Lessor, provided that such date shall be prior to the date the Required Modification is to be made.

C. In the event that (i) any Car shall be or become lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or (ii) the purchase price of any Car shall have been refunded by the vendor to Lessor (or its transferee or assignee) pursuant to the terms of its patent indemnity therefor, or (iii) any Car shall be taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of the applicable Schedule or by any other governmental entity resulting in loss of possession by Lessee for a period of ninety (90) consecutive days or until the end of the term or any renewal term of this Agreement (such occurrences being hereinafter called "Casualty Occurrences") during the term or any renewal term of this Agreement, then Lessor may, but is not obligated to, at any time and from time to time, replace such Car ("Casualty Car") with a railcar of similar description as set forth in the applicable Schedule ("Replacement Cars"), which Replacement Cars shall become subject to all terms and conditions of this

Agreement effective as of their delivery to Lessee. The parties shall execute amendments to the Schedule applicable to such Cars and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Agreement with respect to Casualty Cars, or to include any Replacement Cars with the terms and provisions of this Agreement and of any other document under which Lessor has assigned its rights under such Schedule, as permitted in this Agreement.

D. In the event of any Casualty Occurrence, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise Lessor of such occurrence. Except where Lessor shall have received payment for such Casualty Occurrence from a handling railroad or other party under and pursuant to Interchange Rules, Lessee shall, within 45 days after demand by Lessor, promptly pay Lessor the same amount as prescribed in the Interchange Rules for loss of such Car.

E. Lessee shall be responsible for the Cars (i) while in Lessee's possession or control; and (ii) in the same manner and under the same circumstances that Lessee is responsible under the Interchange Rules for similar equipment not owned by Lessee.

F. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in an amount not to exceed ten million dollars ($10 million) per occurrence and for such risks and with such insurance companies as are satisfactory to Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor, any financing party designated by Lessor by written notice to Lessee ("Financing Party") and any assignee of Lessor as additional named insureds and shall also list Lessor, Financing Party and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee. Lessee shall provide Lessor with a Certified Copy of each insurance policy upon Lessor's prior written request. In the event that Lessee elects to self-insure on any specified interests, Lessee hereby warrants to place Lessor in the same position as if the above insurance had been effected.

G. Lessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify Lessor and its successors against taxes, fees, levies, imposts, duties or withholdings of any nature together with penalties, fines or interest thereon imposed on, incurred by or asserted against: (1) the Cars; (2) the lease, sublease or delivery of the Cars; (3) revenues earned by the Cars, including but not limited to mileage charges and/or car hire revenues, during the term of this Agreement, except taxes on income imposed on Lessor while Cars are on Lessee's lines. Lessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars. Lessee's obligations under this Section are limited to amounts directly related to possession and use of the Cars.

5. Storage

If storage of any Cars is required during the term of the Agreement, Lessee shall be responsible for all costs associated with such storage.

6. Rent

During the term of this Agreement, Lessee shall pay to Lessor for each Car, commencing on the date of delivery thereof, the rental specified in the applicable Schedule. Such rental will cease on the date the Cars are returned pursuant to Section 9 hereinbelow.

7. Use and Possession

A. Throughout the continuance of this Agreement so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from and after delivery of such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with all Association of American Railroads ("AAR") Interchange Rules; (ii) in compliance with the terms and provisions of this Agreement; (iii) only within the continental limits of the United States of America or in temporary or incidental use in Canada and Mexico; and (iv) in such service as will not constitute a train hauling predominantly a single commodity, such as coal or grain, between the same points on a regular basis, commonly referred to as a "unit train". However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder for all activity through the date such Car is returned to such party shall be paid directly to such party, and that the Cars immediately be returned to such party. Lessee acknowledges that there may be more

than one such secured party, and that the Cars on each Equipment Schedule are severable and each Equipment Schedule constitutes a separate lease of equipment and may be subject to the security interest of separate secured parties. In the event of a default by Lessor under such financing agreement(s), Lessee agrees to take the aforesaid actions as directed by each secured party with respect to the Cars subject to such secured party's interest. For the purposes of the exercise by any secured party of any of Lessor's rights or remedies provided hereunder or otherwise arising, Lessee agrees that each secured party can exercise such rights and remedies independently and severally with respect to those Cars subject to such secured party's interest, and such exercise shall not affect or impair the rights and remedies of Lessor or any other secured party, and shall not terminate or otherwise affect the rights, duties or obligations of Lessee, with respect to any other Cars.

B. At Lessor's election all Cars may be marked to indicate the rights of Lessor, or an assignee, mortgagee, trustee, pledgee or security holder of Lessor or a lessor to Lessor. Except for renewal and maintenance of the aforesaid lettering or lettering (but not reporting marks) indicating that the Car is leased to Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee. Lessee shall not remove or change the reporting marks and numbers indicated on the applicable Schedule except upon the written direction or consent of Lessor.

C. Lessee shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars or any interest therein, or in this Agreement or Schedule hereto, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 7.A. hereinabove. Lessee shall promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. <u>Default</u>

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by it within thirty (30) days after the date that such payment is due;

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days after receipt of notice from Lessor or awareness by Lessee of such breach;

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

(iv) Any action by Lessee to discontinue rail service on a substantial portion of its track that would materially affect Lessee's ability to perform its obligations hereunder.

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

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

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessee shall, if directed by Lessor, unload the Cars within a reasonable time from such direction and deliver the Cars within thirty (30) days thereafter to Lessor at an interchange point or points on Lessee's lines designated by Lessor, and Lessor shall henceforth hold, possess and enjoy the same free from any right of Lessee, and/or

(iii) If Lessee is in default for nonpayment of any sum required herein or Lessor has incurred expenses because of Lessee's negligence, without terminating this Agreement, Lessor may repossess the Cars and relet the same or any part thereof to others upon such terms as Lessor desires. The proceeds of any such reletting shall first be applied to the expense (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee(s) and then to the payment of rent due under this Agreement. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Lessor shall not be obligated to do any act or exercise any diligence whatsoever in the procuring of another lessee to mitigate the damages of Lessee or otherwise. The election of Lessor to relet the Cars and the acceptance of a new lessee shall not release

Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Agreement and the retaking of the Cars.

9. Expiration or Early Termination

Upon the expiration or termination of this Agreement with respect to any Car, Lessee shall, at its sole expense, surrender forthwith possession of such Car to Lessor [or to any secured party ("Secured Party") as provided for in Section 7 hereinabove] by delivering same to Lessor or to Secured Party at such repair shop, storage or terminal facility or interchange point on Lessee's lines as Lessor may designate by notice to Lessee. Each Car so surrendered shall be in the same or better condition, order and repair as when delivered to Lessee, and shall be free of all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee and of any and all Rule 95 damage and damage or other condition caused by Lessee's negligence or by Lessee's shippers. If, prior to delivery to Lessee, any Cars were remarked at Lessor's expense, then Lessee shall, at its expense and to Lessor's or Secured Party's specifications, place such reporting marks and numbers on any or all of the Cars as Lessor or Secured Party shall designate in writing to Lessee. Until the Cars are delivered to Lessor or Secured Party pursuant to this Section 9, Lessee shall continue to be liable for and shall pay all rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Agreement as though such termination or expiration had not occurred. Upon delivery to Lessor or to Secured Party of any Car(s) in accordance with the previous sentence and the payment of all rental due through such date of delivery to Lessor or to Secured Party, no further rental will be due with respect to such Car(s). Lessee agrees to provide storage at its expense, upon the request of Lessor, for any or all of the Cars for one hundred twenty (120) days after the date of expiration or termination of this Agreement. Nothing in this Section 9 shall give Lessee the right to retain possession of any Car after expiration or termination of this Agreement with respect to such Car.

10. Indemnities

A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION, LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) ARISING OUT OF, RELATED TO OR IN CONNECTION WITH THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, OR ARISING OUT OF LESSEE'S POSSESSION OR CONTROL OF THE CARS, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO LESSEE.

B. SUBJECT TO SUBSECTION 10.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS AGREEMENT, LESSOR SHALL DEFEND, INDEMNIFY AND HOLD LESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS.

11. Representations, Warranties, and Covenants

Lessee represents, warrants and covenants that:

A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and, insofar as is material to Lessor's rights under this Agreement, has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in Section 8 hereinabove.

C. There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.

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

12. Inspection

Lessor shall have the right, upon forty-eight (48) hours' prior notice to Lessee, to enter any premises where the Cars may be located at anytime during normal business hours for the purpose of inspecting and examining the Cars to ensure Lessee's compliance with its obligations hereunder. Lessee shall, upon the request of Lessor but not more than once every year, furnish to Lessor a list of all Cars then covered by this Agreement.

13. Miscellaneous

A. Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of Lessor.

B. All rights of Lessor under this Agreement may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part.

C. Subject to restrictions against assignment contained hereinabove, this Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

D. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in this Agreement.

E. All time and mileage payments paid or allowed by other railroads on the Cars shall be the property of Lessor. If, as a result of any action or inaction by Lessee, Lessor receives or earns for the use of any Cars, time or mileage payments calculated at rates lower than the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the April 1988 edition of The Official Railway Equipment Register, Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the revenues such Cars would have earned at the specified rates and the amount of revenues actually received or earned for such Cars.

F. Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such reduction or offset.

G. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

H. The terms of this Agreement and all rights and obligations hereinunder shall be governed by the internal laws of the State of California.

I. Any notice required or permitted to be given pursuant to the terms of this Agreement shall be properly given when made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

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

and: Itel Rail Corporation
55 Francisco Street
San Francisco, CA 94133
Attn: President

Lessee: The Atchison, Topeka and Santa Fe Railway Company
80 E. Jackson Boulevard
Chicago, Illinois 60604
Attn: General Manager Transportation

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

J. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.

K. Lessee shall furnish Lessor promptly, upon their becoming available, with a 10-K and annual report after the close of each accounting year.

L. This Agreement, including all Schedules and Amendments executed by both parties, represents the entire Agreement. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

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

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Agreement as of the day and year first above written.

ITEL RAIL CORPORATION

By: J P Hayes

Title: President

Date: September 14, 1988

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By: B D Lancaster

Title: Asst. to Vice President-Operations

Date: SEPTEMBER 9, 1988

ITEL RAILCAR CORPORATION

By: J P Hayes

Title: President

Date: September 14, 1988

Lot 2202-00

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

On this 14th day of September, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn, says that such person is President of Itel Rail Corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public

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

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

On this 14th day of September, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn, says that such person is President of Itel Railcar Corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public

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

STATE OF ILLINOIS)
) ss:
COUNTY OF Cook)

On this day 9th of SEPTEMBER, 1988, before me personally appeared, B.C. LANCASTER to me personally known, who being by me duly sworn, says that such person is ASST. to V.P.-OPERATIONS, of The Atchison, Topeka and Santa Fe Railway Company, that the foregoing instrument 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.

OFFICIAL SEAL
L M. SURIN
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. FEB. 9,1992

L. M. Surin
Notary Public