The CIT Group/
Equipment Financing, Inc.

650 CIT Drive
P.O. Box 490
Livingston, NJ 07039-0490
201 535-3583

RECORDATION NO. 8871-F Filed 1425

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INTERSTATE COMMERCE COMMISSION

THE CIT GROUP
Equipment Financing

Robert W. Ihne
Attorney-at-Law

8-224A016

No. AUG 12 1988

Date

Fee $ 13.00

ICC Washington, D. C.

August 12, 1988

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

RE: Documents for Recordation

Dear Ms. McGee:

$13.00 filing fee

I have enclosed three originally executed copies of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

This document, entitled Loan and Security Agreement (the "Assignment") and dated as of August 12, 1988, contains therein an assignment by Assignor to Assignee of the below-referenced lease and functions as a secondary document.

The primary document to which this Assignment is connected is the Lease Agreement, dated March 26, 1976 (as amended since), among Itel Corporation, SSI Rail Corp. and Marinette, Tomahawk and Western Railroad Company with Recordation No. 8871. We request that this Assignment be filed under the next available letter designation under such Recordation No. 8871.

this under 8871-F

ICC OFFICE OF THE SECRETARY
Aug 12 8 48 AM '88
MOTOR OPERATING UNIT

The names and addresses of the parties to the Assignment are as follows:

(Lender/Assignee) The CIT Group/Equipment Financing, Inc.
270 Park Avenue (30th Floor)
New York, New York 10017

(Borrower/Assignor) Itel Rail Corporation
55 Francisco Street
San Francisco, California 94133

Please note that the Assignee, The CIT Group/Equipment Financing, Inc., should be indexed separately under its own name.

A description of the equipment covered by the Assignment follows:

245 single sheath boxcars (Association of American Railroads mechanical designation XM) manufactured by FMC Corporation, each weighing 70 tons and being 50'6" long, and bearing the following identifying numbers:

Counterpart

a company of
MANUFACTURERS HANOVER

MTW 4200 through 4239, 4241 through 4268,
4270 through 4299;
VSO 6250 through 6299;
SRN 5200 through 5209, 5211 through 5224,
5226 through 5287, 5289 through 5299.

A fee of $13.00 is enclosed. Please return all copies of the Assignment not needed by the Commission for recordation to Robert W. Ihne, Esq., The CIT Group/Equipment Financing, Inc., 650 CIT Drive (Room 3327), Livingston, New Jersey 07039.

A short summary of the document to appear in the index follows:

245 boxcars: MTW, VSO and SRN numbers.

Very truly yours,

Robert W. Ihne

Robert W. Ihne

Enclosures

8871-F

8871-F
AUG 12 1988-8 52 AM
INTERSTATE COMMERCE COMMISSION

LOAN AND SECURITY AGREEMENT

LOAN AND SECURITY AGREEMENT, dated as of August 12, 1988, between ITEL RAIL CORPORATION, a Delaware corporation ("Debtor"), and THE CIT GROUP/EQUIPMENT FINANCING, INC. ("CIT"), a New York corporation.

WHEREAS, Debtor presently leases certain railroad equipment from Manufacturers Hanover Leasing Corporation ("MHLC");

WHEREAS, Debtor desires to purchase such equipment from MHLC and to finance part of the purchase price with a loan from CIT (CIT and MHLC are indirect subsidiary corporations of Manufacturers Hanover Corporation);

WHEREAS, CIT is willing to finance Debtor's purchase of such equipment;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement the following terms shall have the following defined meanings, unless the context otherwise requires (such terms to be equally applicable to both singular and plural forms of the terms defined):

"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, CIT. 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.

"Agreement", "hereof", "hereto", "hereunder" and words of similar import shall mean this Loan and Security Agreement, as the same may from time to time be amended, modified or supplemented.

"Assigned Fraction" as defined in Section 6.1 of the Agreement.

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

"CIT" as defined in the introductory paragraph to this Agreement.

"Closing Date" shall mean the date of this Agreement.

"Code" shall mean the Uniform Commercial Code as from time to time in effect in any applicable jurisdiction.

"Collateral" shall mean the Equipment, the Permitted Leases and the Proceeds thereof.

"Cost" shall mean, with respect to each item of Equipment, listed on Schedule A hereto, the purchase price therefor paid by Debtor to MHLC,

"Debtor" as defined in the introductory paragraph to this Agreement.

"Default" shall mean any event which with notice or lapse of time would constitute an Event of Default.

"Determination Date" shall mean, with respect to each Interest Period, the 15th day of the month preceding the month in which such Interest Period ends, or if such 15th day is not a Business Day, then the first Business Day preceding such 15th day.

"Equipment" shall mean any and all of the 245 standard general purpose boxcars listed on Schedule A hereto, together with all accessories, parts, repairs, replacements, substitutions, attachments, modifications, renewals, additions, improvements, upgrades and accessions of, to or upon such items of equipment.

"Event of Default" as defined in Section 7 of this Agreement.

"Event of Loss" shall mean, with respect to any item of Equipment, the actual or constructive loss of such item of Equipment or the use thereof, due to theft, destruction, damage beyond repair or damage from any

reason whatsoever, to an extent which makes repair uneconomical, or rendition thereof unfit for normal use, or the condemnation, confiscation or seizure of, or requisition of title to or use of, such item of Equipment by any governmental authority.

"Existing Permitted Leases" as defined in Section 5.7 of this Agreement.

"I.C.C." shall mean the United States Interstate Commerce Commission.

"Impositions" as defined in Section 5.13 of this Agreement.

"Installment Payment Date" shall mean each date on which a regular installment of principal and interest is due on the Note, as set forth in the Note.

"Interest Period" shall mean successive periods occurring from the date the Loan is made to the last Installment Payment Date. The initial Interest Period shall begin on the date the Loan is made and continue up to but not including the first Installment Payment Date. Each subsequent Interest Period shall begin on the Installment Payment Date following the last day of the preceding Interest Period, and continue up to but not including the next Installment Payment Date. Interest shall be charged for each day of each Interest Period.

"Late Charge Rate" shall mean a rate per annum equal to

but not to exceed the highest rate permitted by applicable law.

"Liens" shall mean liens, mortgages, security interests, pledges, title retentions, financing statements or other encumbrances of any kind whatsoever.

"Loan" shall mean the loan made by CIT pursuant to this Agreement.

"MHLC Lien" as defined in Section 4.8 of this Agreement.

"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 Debtor and its subsidiaries, including preferred stock, common stock, capital surplus and retained earnings.

"Note" shall mean the promissory note of Debtor evidencing the Loan, as described in Section 2.2 of this Agreement and substantially in the form of Exhibit A hereto.

"Obligations" shall mean (i) the aggregate unpaid principal amount of, and accrued interest on, the Note; and (ii) all other obligations and liabilities of Debtor to CIT or its successors or assigns, now existing or hereafter incurred, under, arising out of or in connection with this Agreement or the Note.

"Permitted Leases" as defined in Section 5.7 of this Agreement.

"Prepaid Principal Amount" as defined in Section 2.3(a) of this Agreement.

"Proceeds" shall have the meaning assigned to it in the Code, and in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Debtor from time to time with respect to any of the Equipment or the Permitted Leases to the extent such Permitted Leases relate to the Equipment; (ii) any and all payments (in any form whatsoever) made or due and payable to Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Equipment by any governmental body, authority, bureau or agency; and (iii) any and all other rents or profits or other amounts from time to time paid or payable in connection with any of the Equipment or the Permitted Leases to the extent such Permitted Leases relate to the Equipment.

"Purchase and Sale Agreement" shall mean the Purchase and Sale Agreement, dated as of the date hereof, relating to the sale by MHLC of the Equipment to Debtor.

"Reference Rate" shall mean the rate publicly announced from time to time as the reference rate of Manufacturers Hanover Trust Company ("MHT"). The Reference Rate in effect during any Interest Period shall be the Reference Rate in effect at the close of business on the applicable Determination Date. The Reference Rate is not intended to be the lowest rate of interest charged by MHT in connection with extensions of credit to debtors.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

SECTION 2. AMOUNT AND TERMS OF LOAN.

2.1 The Loan. Subject to the terms and conditions of this Agreement, CIT agrees to make the Loan, on the date hereof, to Debtor in the principal amount of The obligation of CIT to make the Loan hereunder shall terminate on August 19, 1988.

2.2 The Note.

The Loan shall be evidenced by a promissory note of Debtor substantially in the form of Exhibit A hereto. The Note shall (i) be payable as to principal in consecutive quarterly installments, which installments will be payable on the dates and in the amounts set forth in such Note; and (ii) bear interest from the date thereof on the unpaid principal amount thereof at a rate per annum equal to

until such amount shall become due and payable (whether at the stated maturity thereof, by acceleration or otherwise), which interest shall be payable on the dates for the payment of principal set forth in the Note. Any

amount not paid when due under the Note shall bear late charges thereon, calculated at the Late Charge Rate, from the due date thereof until such amount shall be paid in full.

2.3 Prepayment.

(a) In the event that any item of Equipment shall suffer an Event of Loss, Debtor shall make a prepayment on the Note, on the Installment Payment Date next following the occurrence of such Event of Loss, in an amount determined (i) by multiplying (A) the unpaid principal amount of the Note by (B) a fraction the numerator of which shall be the Cost of the item of Equipment which suffered the Event of Loss and the denominator of which shall be the original principal amount of the Note (the amount obtained by multiplying (i)(A) and (i)(B) hereof shall be herein referred to as the "Prepaid Principal Amount"), and (ii) by adding interest accrued, with respect to the Prepaid Principal Amount, to the date of such prepayment. Upon payment in full of any such prepayment amount, and so long as no Default or Event of Default has occurred and is continuing, the item of Equipment subject to such Event of Loss shall be released from the security interest of this Agreement, and CIT shall execute any documents reasonably requested by Debtor to evidence such release.

(b) In the case of any prepayment permitted by this Section 2.3(b), such prepayment shall be permitted only if no Default or Event of Default has occurred and is continuing and if notice thereof shall have been given by Debtor to CIT not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for such prepayment.

Debtor may prepay the Note in full without penalty on any Installment Payment Date during the three-year period beginning with the date of this Agreement only if (i) Debtor has requested in writing the permission of CIT to take one of the actions prohibited by Section 5.10 (a) through (d)

hereof and CIT refuses to grant such permission within 30 days after receipt of such request, or (ii) Debtor provides CIT with written evidence, satisfactory to CIT, that, prior to the expiration of existing policies, Debtor is unable to obtain either (A) insurance of the type, amount and containing the provisions required by Section 5.12 hereof or (B) any other substitute insurance coverage satisfactory to CIT, or (iii) in anticipation of an event which would result in a violation of Debtor's covenant concerning its Net Worth set forth in Section 5.14 hereof, Debtor has requested in writing that such covenant be amended or that CIT waive in advance an Event of Default thereunder and CIT refuses to grant such request within 30 days after receipt of such request.

Debtor may prepay the Note in full or in part on any Installment Payment Date during the term of the Loan simultaneously with the sale of some or all of the Equipment; provided, however, that (A) any partial prepayment shall be in the same proportion to the total principal outstanding as the number of items of Equipment sold stands to the total number of items of Equipment (including the items of Equipment sold) in existence prior to the date of such sale, and (B) any such sale shall be of at least 50 items of Equipment. Upon any such prepayment, CIT shall release its security interest in the items of Equipment sold.

In addition to the rights of Debtor to prepay the Note set forth in the two preceding paragraphs, on any Installment Payment Date occurring after the three-year period beginning on the date of this Agreement, Debtor may prepay the Note, either in full or in part, without penalty. With respect to a prepayment permitted pursuant to this paragraph, CIT shall not be obligated to release its security interest in any of the Collateral until all of the Obligations have been paid in full.

Upon any notice of prepayment being given under this Section 2.3(b), there shall become due and payable, on the date specified in such

notice, the principal amount of the Note, or portion thereof specified in such notice, together with interest accrued on such principal amount to the date fixed for such prepayment and any other amounts payable under the Note.

(c) In the event of any partial prepayment of the Note under this Section 2.3, the principal amount prepaid shall be applied proportionately to reduce the remaining principal installments.

(d) Except as provided in Subsections (a) and (b) of this Section 2.3, the Note may not be prepaid in whole or in part.

2.4 Use of Proceeds. The proceeds of the Loan shall be applied by Debtor solely in payment of the Cost of the Equipment.

SECTION 3. CONDITIONS OF LOAN.

CIT shall not be required to make the Loan hereunder unless on the Closing Date:

3.1 Purchase and Sale. The Purchase and Sale Agreement shall have been executed and delivered by Debtor, and MHLC shall have received directly from Debtor that portion of the purchase price not being financed hereunder.

3.2 Note. The Note evidencing such Loan shall have been duly executed and delivered to CIT.

3.3 Certificate of Incumbency of Debtor. CIT shall have received a certificate of incumbency of Debtor signed by the Secretary or Assistant Secretary of Debtor, which certificate shall certify the names of the officers of Debtor authorized to execute any documents hereunder or under any other related document on behalf of Debtor, together with specimen signatures of such officers, and CIT may conclusively rely on such certificate until receipt of a further certificate of the Secretary or Assistant Secretary of Debtor cancelling or amending the prior certificate and submitting the signatures of the officers named in such further certificate.

3.4 Resolutions. CIT shall have received a certified copy of the corporate proceedings of Debtor evidencing that all action required to be taken in connection with the authorization, execution, delivery and performance of this Agreement and the Note and the transactions contemplated hereby has been duly taken.

3.5 Opinions of Counsel. CIT shall have received written opinions addressed to it of (a) in-house counsel for Debtor as to the matters set forth in Sections 4.1 through 4.10 hereof, and (b) outside counsel for Debtor as to the matters set forth in Section 4.10 hereof.

3.6 Insurance. CIT shall have received evidence satisfactory to it that the Equipment being financed hereunder is insured in accordance with the provisions of this Agreement.

3.7 Security Interest. All filings, recordings and other actions deemed necessary or desirable by CIT in order to establish, protect, preserve and perfect its security interest in the Equipment and in the Permitted Leases as a valid perfected first priority security interest shall have been duly effected, including, without limitation, the filing and recording of this Agreement, any Permitted Leases and other related documents with the I.C.C. pursuant to 49 U.S.C. Section 11303 and the filing of financing statements under provisions of the Code, all in form and substance satisfactory to CIT, and all fees, taxes and other charges relating to such filings and recordings shall have been paid by Debtor. The requirements set forth in Section 6.1 with respect to the Existing Permitted Leases shall have been satisfied. CIT acknowledges that the requirements contained in clauses (i), (ii)(a), (iv) and (v) of Section 6.1 have been satisfied with respect to the Existing Permitted Leases.

3.8 Representations. (i) The representations and warranties contained in this Agreement shall be true and correct in all material respects on and as of the date of the making of the Loan; (ii) no Default or Event of Default shall be in existence on the date of the making of the Loan or shall occur as a result of such Loan; and (iii) acceptance by Debtor of the Loan shall constitute a representation by Debtor that the statements contained in clauses (i) and (ii) above are true and correct on the date of the Loan.

3.9 No Material Adverse Change. In the sole reasonable judgment of CIT, there shall have been no material adverse change in the financial condition, business or operations of Debtor since December 31, 1987.

3.10 Other Documents and Information. CIT shall have received from Debtor, in form and substance satisfactory to CIT, such other documents and information as CIT shall reasonably request.

3.11 Legal Matters. All legal matters with respect to, and all legal documents executed in connection with, the transactions contemplated by this Agreement shall be reasonably satisfactory to counsel for CIT.

SECTION 4. REPRESENTATIONS AND WARRANTIES.

In order to induce CIT to enter into this Agreement and to make the Loan, Debtor represents and warrants to CIT that, on and as of the date hereof:

4.1 Organization. Debtor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has the necessary authority and power to own the Equipment and its other assets, to lease the Equipment and to transact the business in which it is engaged, and is duly qualified to do business in each jurisdiction in which the conduct of its business or the ownership of its assets requires such qualification, except where failure to qualify would not have a material adverse effect on the financial condition, business or assets of Debtor.

4.2 Power and Authority. Debtor has full corporate power, authority and legal right to execute and deliver this Agreement, the Note and the Purchase and Sale Agreement, to perform its obligations hereunder and thereunder, to borrow hereunder and to grant the security interest created by this Agreement.

4.3 Consents and Permits. No consent of any other party (including any stockholders, trustees, holders of indebtedness or lessees under Permitted Leases), and no consent, license, approval or authorization of, exemption by, or registration or declaration with, any governmental body, authority, bureau or agency (including without limitation the I.C.C.) is required in connection with the execution, delivery or performance by Debtor of this Agreement, the Note or the Purchase and Sale Agreement, or the validity or enforceability of this Agreement, the Note or the Purchase and Sale Agreement, except for filings necessary to perfect the security interest granted hereby.

4.4 No Legal Bar. The execution, delivery and performance by Debtor of this Agreement, the Note and the Purchase and Sale Agreement do not and will not violate any provision of any applicable law or regulation or of any judgment, award, order, writ or decree of any court or governmental instrumentality, will not violate any provision of the charter or by-laws of Debtor and will not violate any provision of or cause a default under any material mortgage, indenture, contract, agreement or other undertaking to which Debtor is a party or which is binding upon Debtor or upon any of its assets, and will not result in the creation or imposition of any Lien on any of the assets of Debtor other than the security interest intended to be created hereby and by the Purchase and Sale Agreement.

4.5 No Defaults. Debtor is not in 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 Debtor is a party or which is binding upon Debtor or upon any of its assets, except for any such default, event or condition which, individually or in the aggregate, would not affect Debtor's ability to perform its obligations under the Agreement or would not have a material adverse effect on the financial condition, business or assets of Debtor.

4.6 Enforceability. Each of the Agreement, the Note and the Purchase and Sale Agreement has been duly authorized, executed and delivered by Debtor and, assuming the due authorization, execution and delivery thereof by CIT and MHLC, as the case may be, constitutes a legal, valid and binding obligation of Debtor 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).

4.7 No Litigation. There is no action, suit, investigation or proceeding pending or, to the knowledge of Debtor, threatened against or affecting Debtor or any of its assets (a) which involves any of the Collateral or any of the transactions contemplated by this Agreement; or (b) which, if adversely determined, would reasonably be expected to have an adverse effect upon the transactions contemplated by this Agreement or a material adverse effect on the business, operations or financial condition of Debtor.

4.8 Title to Equipment. On the Closing Date Debtor shall have good and marketable title to the Equipment, subject to no Liens except the security interest created hereby in favor of CIT, the security interest granted by Debtor to MHLC under the Purchase and Sale Agreement (the "MHLC Lien") and any

Liens created by or through MHLC (provided that any Liens arising out of or related to Permitted Leases, or materialmen's, mechanics', workmen's, repairmen's and other similar liens shall not be deemed to be Liens created by or through MHLC).

4.9 CIT's Security Interest. On the Closing Date CIT shall have a legal, valid and continuing first priority security interest in the Collateral, subject to no Liens other than the MHLC Lien, and all filings, recordings or other actions necessary or desirable in order to establish, protect and perfect such security interest in favor of CIT as a perfected first priority security interest in such Collateral will have been duly effected, and all taxes, fees and other charges in connection therewith shall have been duly paid.

4.10 Note Not a Security. Debtor is not a "carrier" as defined in 49 U.S.C. Section 11301 and neither this Agreement nor the Note is a "security" as defined in such statute. Debtor has at no time owned or controlled any rail carrier that was not either a Class II or a Class III (as such classifications are employed by the I.C.C.) rail carrier. Debtor has at no time been subjected to 49 U.S.C. Section 11301 by the I.C.C. or by any other administrative or judicial authority. I.C.C. approval is not required in connection with any of the transactions contemplated hereby.

4.11 Financial Condition of Debtor. The consolidated financial statements of Debtor 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 Debtor, copies of which have been heretofore delivered to CIT, are complete and correct, have been prepared in accordance with generally accepted accounting principles consistently applied, and present fairly the financial position of Debtor as at said dates and the

results of its operations for the periods ended on said dates, and there has been no material adverse change in the financial condition, business or operations of Debtor since said dates.

4.12 Taxes. Debtor has filed all Federal, state and local income tax returns that are required to be filed, and has paid all taxes as shown on said returns and all assessments received by it to the extent that such taxes and assessments have become due, except for any taxes and assessments which are being contested in good faith by appropriate proceedings, and Debtor does not have any knowledge of any actual or proposed deficiency or additional assessment in connection therewith. The charges, accruals and reserves on the books of Debtor in respect of Federal, state and local taxes for all open years, and for the current fiscal year, make adequate provision for all unpaid tax liabilities for such periods. No state or local sales or other similar tax is payable in connection with the sale of the Equipment to Debtor by MHLC.

4.13 Principal Place of Business. Debtor's principal place of business is located at 55 Francisco Street, San Francisco, California 94133.

4.14 Existing Leases of Equipment. Each item of Equipment is presently subject to one of the Existing Permitted Leases. The copies of the Existing Permitted Leases, as amended to date, heretofore delivered to CIT, are true, correct and complete copies of said Existing Permitted Leases.

SECTION 5. COVENANTS.

Debtor covenants and agrees that from and after the date hereof and so long as the Note is outstanding and this Agreement is in effect:

5.1 Notices. Promptly upon becoming aware of the same, Debtor will give written notice to CIT of (i) the occurrence of any Default or Event of Default; (ii) the occurrence of any Event of Loss; (iii) the commencement or threat of any material litigation or proceedings affecting Debtor or the Collateral (including without limitation any proceedings referred to in clause

(iv) of Section 5.8 hereof which involve a claim for unpaid taxes or assessments in an amount of $50,000 or more); (iv) any dispute between Debtor and any governmental regulatory body or other party that involves any of the Collateral or that would materially interfere with the normal business operations of Debtor; and (v) a termination of, or a material default under, any Permitted Lease.

5.2 Laws; Obligations; Operations. Debtor will (i) duly observe and conform to all requirements of any governmental authorities relating to the conduct of its business or to its properties or assets; (ii) obtain and keep in full force and effect all rights, franchises, licenses and permits which are necessary to the properconduct of its business; (iii) obtain or cause to be obtained as promptly as possible any governmental, administrative or agency approval and make any filing or registration therewith which at the time shall be required with respect to the performance of its obligations under this Agreement or the operation of its business, except in the case of clauses (i), (ii) and (iii) above, where failure to do any of the foregoing would not have a material adverse effect on Debtor's financial condition, business or assets; and (iv) pay or cause to be paid all fees, taxes, assessments and governmental charges or levies imposed upon any of the Equipment or with respect to any of the Permitted Leases, except insofar as any such fees, taxes, assessments and governmental charges or levies (a) are being contested by Debtor (at its expense) in good faith by appropriate proceedings, and (b) have not resulted in liens which are capable of being foreclosed.

5.3 Location of Equipment; Inspection. Upon the request of CIT, Debtor shall use reasonable efforts to determine, and shall promptly inform CIT of, the location of any or all of the Equipment, and CIT or its authorized representative shall be permitted, at any reasonable time or times, to inspect such Equipment and any records related thereto or to the Permitted Leases (to

the extent such inspection is within Debtor's control and at CIT's sole risk of injury). Following the occurrence and during the continuation of an Event of Default, CIT may, at any reasonable time or times, inspect the books and records of Debtor.

5.4 Books. Debtor will keep proper books of record and account in which full, true and correct entries in accordance with generally accepted accounting principles will be made of all dealings or transactions in relation to its business and activities.

5.5 Financial Information. Debtor will furnish to CIT (a) as soon as available, but in any event not later than 120 days after the end of each fiscal year of Debtor, a consolidated balance sheet of Debtor as at the end of such fiscal year, and consolidated statements of income and changes in financial position of Debtor for such 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 Debtor, a consolidated balance sheet of Debtor as at the end of such quarterly period and a consolidated statement of income of Debtor for such quarterly period and for the portion of the fiscal year then ended, 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 Debtor; and (c) promptly, such additional financial and other information as CIT may from time to time reasonably request.

5.6 Further Assurances. Debtor will promptly, at any time and from time to time, at its sole expense, execute and deliver to CIT such further instruments and documents, and take such further action, as CIT may from time to time reasonably request in order to further carry out the intent and purpose of this Agreement and to establish and protect the rights, interests and remedies created, or intended to be created, in favor of CIT hereby, including, without limitation, the execution, delivery, recordation and filing of documents with the I.C.C. or financing statements and continuation statements pursuant to the Code. Debtor will promptly furnish CIT with evidence of all such recordings and filings. Debtor hereby authorizes CIT, in such jurisdictions where such action is authorized by law, to effect any such recordation or filing without the signature of Debtor thereon and to file as valid financing statements in the applicable financing statement records, photocopies hereof and of any other financing statement executed in connection herewith. Debtor will pay, or reimburse CIT for, any and all out-of-pocket fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation and protection of CIT's security interest in the Collateral, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payments or discharge of any taxes or Liens upon or in respect of the Collateral, premiums for insurance with respect to the Equipment required by this Agreement and all other out-of-pocket fees, costs and expenses in connection with protecting, maintaining or preserving the Equipment and CIT's interests therein and in the Permitted Leases, whether through judicial proceedings or otherwise, or in connection with defending or prosecuting any actions, suits or proceedings arising out of or related to the Collateral; and all such amounts that are paid by CIT shall, until reimbursed by Debtor, constitute Obligations of Debtor secured by the Collateral.

5.7 No Disposition of Collateral. Debtor will not sell, convey, transfer, exchange, lease or otherwise relinquish possession or dispose of any of the Collateral or attempt or offer to do any of the foregoing except as provided in Section 2.3 (b) hereof or as hereinafter provided in this Section. Debtor may lease or permit a lessee to sublease (any such lease or sublease satisfying all of the conditions contained in the following clauses (i) through (vi) being hereinafter referred to as a "Permitted Lease") any item of Equipment to a company duly incorporated under the laws of the United States or any state thereof, or of Canada or any province thereof, provided that (i) Debtor shall notify CIT in writing of such Permitted Lease within 30 days after its entry into same; provided, however, that in the case of such a lease with a company organized in Canada, Debtor shall have demonstrated to the satisfaction of CIT, at least 30 days prior to its entry into such lease, that all filings, recordings, registrations or other actions necessary or desirable to preserve and protect CIT's interest in the Collateral have been or will be accomplished; (ii) such Permitted Lease shall be in compliance with all applicable laws and governmental regulations; (iii) such Permitted Lease shall not affect or reduce any of the obligations of Debtor hereunder and the Note and all obligations of Debtor hereunder shall continue in full force and effect as the obligations of a principal and not the obligations of a surety; (iv) the rights of the lessee under a Permitted Lease shall be subject and subordinate to all the terms of, and all the rights of CIT under, this Agreement, except that such lessee shall have the right of quiet enjoyment with respect to the leased Equipment as long as it is not in default under its Permitted Lease; (v) the insurance required to be maintained pursuant to Section 5.12 hereof shall continue in full force and effect irrespective of such Permitted Lease; and (vi) the requirements contained in Section 6.1 hereof shall be satisfied. For purposes of this Agreement, the term "Permitted Lease" shall include the three leases, each

originally dated March 26, 1976 (as since amended), between Debtor (as successor in interest to Itel Corporation and SSI Rail Corp.) and (a) Marinette, Tomahawk and Western Railroad Company; (b) Sabine River & Northern Railroad Company; and (c) Valdosta Southern Railroad Company, respectively, and bearing I.C.C. recordation numbers of 8871, 8246 and 8343, respectively (the "Existing Permitted Leases").

5.8 No Liens. Debtor will not create, assume or suffer to exist any Lien of any kind upon the Collateral except for (i) the security interest created hereby, (ii) the MHLC Lien, (iii) liens created by or through MHLC, (iv) mechanics', materialmen's, workmen's, repairmen's and other similar liens arising in the ordinary course of business securing obligations which are not overdue and (v) liens for taxes or assessments not yet due or which are being contested by Debtor (at its expense) in good faith by appropriate proceedings as long as such liens are not capable of being foreclosed.

5.9 Debtor's Title; CIT's Security Interest; Identification Marks.

(a) Debtor will warrant and defend its title to the Equipment as represented in Section 4.8 hereof, and CIT's perfected first priority security interest in the Collateral, against all claims and demands whatsoever, except with respect to liens set forth in Section 5.8 (ii), (iii) and (iv) hereof.

(b) Debtor will cause each item of Equipment to be kept numbered with the identifying number set forth in Schedule A hereto, and will, as soon as practicable, keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each such item the following legend in letters not less than one inch in height:

> Ownership subject to a security interest filed with the Interstate Commerce Commission.

Debtor shall make such appropriate changes thereof and additions as from time to time may be required by law in order to protect CIT's security interest in

such Equipment. Debtor will replace promptly any such name and words which may be removed, defaced or destroyed. Debtor will not change the identifying number of any item of Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement shall be delivered to CIT and filed, recorded and deposited by Debtor in all public offices where this Agreement shall have been filed, recorded and deposited in such manner as to protect CIT's first priority security interest in the Collateral. Except as provided in this Section, Debtor will not allow the name of any person, association or corporation to be placed on any item of Equipment as a designation that might be interpreted as a claim of ownership or other interest in the Equipment; provided, however, that Debtor may allow such items to be lettered with the names or initials or other insignia customarily used by Debtor or the lessee under a Permitted Lease on railroad equipment used by them of the same or similar type.

5.10 No Changes in Debtor. Debtor 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 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 CIT, change its name or its chief place of business.

5.11 Use of Equipment; Maintenance.

(a) Debtor will require any lessees under Permitted Leases to agree (i) to use the Equipment in a careful and proper manner, (ii) to comply with all governmental laws, rules and regulations and all interchange rules of the Association of American Railroads relating thereto, and (iii) to operate the Equipment only by competent and duly qualified personnel. Debtor will

cause the Equipment to be used within the continental United States, Alaska, Canada and Mexico; provided, however, that at no time shall more than 25% of the items of Equipment (not including items of Equipment leased to a company organized under the laws of Canada or a province thereof pursuant to clause (i) of Section 5.7 hereof) be located within Mexico and Canada and that Debtor shall at all times remain in compliance with the terms and provisions of this Agreement in respect of each item of Equipment, wherever located.

(b) Debtor will, at its own expense, cause the Equipment to be kept and maintained in good repair, condition and working order and will cause to be furnished all parts, replacements, mechanisms, devices and servicing required therefor so that the condition and operating efficiency thereof will at all times be maintained and preserved, fair wear and tear excepted. All such repairs, parts, mechanisms, devices and replacements shall immediately, without further act, become part of the Equipment and subject to the security interest created by this Agreement. Debtor will not make or authorize any improvement, change, addition or alteration to the Equipment if such improvement, change, addition or alteration will impair the value of the Equipment as it existed immediately prior to such improvement, change, addition or alteration.

5.12 Insurance.

Debtor 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 lessees' cost and expense, similar public liability and property damage insurance on the Equipment as it carries with respect to similar boxcars owned or leased by it, and CIT shall be an additional insured and loss payee on such property insurance, and an additional insured on such liability insurance, as its interests may appear. Notwithstanding the foregoing, Debtor may allow lessees of the Equipment to self-insure to the extent Debtor allows similar lessees of boxcars owned by Debtor to self-insure; provided, however, that in

any event Debtor shall maintain boxcar 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 CIT; provided, however, that the amount of physical damage insurance shall not be less than the lesser of (a) the then aggregate outstanding principal amount of the Note, or (b) $3,000,000 per occurrence. All physical damage insurance policies shall be made payable to CIT as its interest may appear. All contingent liability insurance policies shall name CIT as additional insured. All insurance policies will be in form and substance reasonably acceptable to CIT. Debtor shall deliver certificates of insurance to CIT prior to policy expiration or upon CIT's request, but CIT 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 CIT 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 CIT (if any) contributory.

5.13 Payment of Taxes.

All payments to be made by Debtor hereunder or by the lessee under any Permitted Lease will be free of expense (including without limitation any withholdings) to CIT for collection or other charges and will be free of expense to CIT with respect to the amount of any local, state, federal, or foreign taxes (other than those measured by CIT's net income and any capital, franchise or similar taxes payable by CIT with respect to the payments made to CIT hereunder or under the Note and provided that in the event CIT assigns this Agreement and the Note to a company organized under the laws of a foreign country, Debtor shall not be responsible for additional taxes, fees, charges or expenses which, but for CIT's assignment to the foreign company, would not

have been assessed or incurred) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title with respect to any of the Equipment (including without limitation, the sale pursuant to the Purchase and Sale Agreement), all of which Impositions Debtor assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. Debtor will also pay promptly all Impositions which may be imposed upon any item of Equipment or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon CIT solely by reason of its security interest therein and will keep at all times all and every part of such item free and clear of all Impositions which might in any way result in a Lien upon any such item; provided, however, that Debtor shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings (at its expense) such Impositions and the nonpayment thereof does not adversely affect the security interest of CIT hereunder or allow the foreclosure of any lien on the Collateral. If any Impositions shall have been charged or levied against CIT directly and paid by CIT, Debtor shall reimburse CIT on presentation of any invoice therefor. The obligations of Debtor under this Section shall survive the termination of this Agreement and the payment of the Note.

5.14 Net Worth. Debtor shall not at any time while any Obligations remain outstanding permit its Net Worth to be less than

SECTION 6. SECURITY INTEREST.

6.1 Grant of Security Interest. As collateral security for the prompt and complete payment and performance when due of all the Obligations and in order to induce CIT to enter into this Agreement and make the Loan in accordance with the terms hereof, Debtor hereby assigns, conveys, mortgages, pledges, hypothecates and transfers to CIT, and hereby grants to CIT a first priority security interest in, all Debtor's right, title and interest in, to and under the Collateral, including, without limitation, all right, title and interest of Debtor in and to all rents, issues, profits, revenues, and other moneys due and to become due to Debtor under, all proceeds of, and all claims for damages arising out of the breach of, any Permitted Lease (to the extent such Permitted Lease relates to the Equipment), the right of Debtor to terminate the same, to perform thereunder, and to compel performance of the terms thereof. Debtor covenants that (i) each Permitted Lease shall contain a provision permitting Debtor to assign such Permitted Lease without the consent of, or (except in the case of the Existing Permitted Leases) notification to, the lessee thereunder; (ii) each Permitted Lease shall also provide (a) that the rights of the lessee thereunder are subject and subordinate (except for its rights of quiet enjoyment as long as it is not in default thereunder) to CIT's rights in the Equipment and (b) that, upon notice from CIT as a secured party that an Event of Default is continuing hereunder, it shall immediately make payment, or cause payment to be made, of all moneys due and to become due under or arising out of said Permitted Lease directly to CIT; (iii) Debtor shall stamp each originally executed copy of each Permitted Lease, and each and every

other copy thereof which Debtor has in its control or possession, to show that all of Debtor's rights, but none of its obligations, under such Permitted Lease (to the extent such Permitted Lease relates to the Equipment) have been assigned to CIT; (iv) Debtor shall immediately deliver a copy of such Permitted Lease to CIT; and (v) Debtor shall immediately cause any Permitted Lease to be recorded with the I.C.C. with a stamp referring to its assignment to CIT under this Agreement; provided that, with respect to the Existing Permitted Leases, (a) Debtor shall promptly notify the lessees thereunder of the assignment of such leases to CIT hereunder and shall use its best efforts to satisfy the requirement contained in clause (ii)(b) above within 90 days from the date hereof, and (b) the requirement contained in clause (v) above shall be deemed to be satisfied by the recording of this Agreement with the I.C.C. Debtor irrevocably authorizes and empowers CIT, at any time during which an Event of Default hereunder shall have occurred and is continuing, 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 CIT under or arising out of any Permitted Lease (to the extent such Permitted Lease relates to the Equipment), to endorse any checks, drafts, or other orders for the payment of money payable to Debtor 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 Debtor or otherwise, which relates to such Permitted Lease (to the extent such Permitted Lease relates to the Equipment) or the Equipment, which CIT may deem to be necessary or advisable in the premises. Whenever a Permitted Lease covers other railroad cars not included as Collateral hereunder and the amount of any payment as rental payments, mileage charges or other rental revenues is calculated on an aggregate basis for all railroad cars leased thereunder and cannot be calculated separately for each such car, for the purposes of this Section 6.1 an amount equal to the Assigned Fraction (as

hereinafter defined) of each such aggregate payment shall be deemed to be payable with respect to the Equipment leased under such Permitted Lease. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of items of Equipment leased under such Permitted Lease and the denominator of which shall be the aggregate number of railroad cars (including all items of Equipment) at the time leased under such Permitted Lease.

6.2 CIT Appointed as Attorney-in-Fact.

(a) Debtor hereby irrevocably constitutes and appoints CIT and any other officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Debtor and in the name of Debtor or in its own name, at any time during which an Event of Default hereunder shall have occurred and is continuing, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement. Debtor hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

(b) The powers conferred on CIT hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. CIT shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Debtor for any act or failure to act.

SECTION 7. EVENTS OF DEFAULT.

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

(a) Debtor shall fail to pay any Obligation within 10 days after the same becomes due (whether at the stated maturity, by acceleration or otherwise); or

(b) Any warranty or representation now or hereafter made by Debtor in connection with this Agreement or any schedule, certificate, statement, report, financial data, notice, or writing furnished at any time by Debtor to CIT, 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 the Borrower's business, operations or financial condition or the Collateral or CIT's security interest therein; or

(c) Debtor shall fail to observe any covenant, condition or agreement contained in Sections 5.7 (except with respect to Debtor's obligation to notify CIT within 30 days after its entry into certain Permitted Leases and Debtor's obligation under Section 6.1 (iv) hereof), 5.10 (a) - (d), 5.12 or 5.14 hereof; or

(d) Debtor shall fail to observe or perform any other covenant, condition or agreement contained in this Agreement, and such failure shall continue unremedied for a period of 30 days after the earlier of (i) the date on which Debtor obtains, or should have obtained, knowledge of such failure; or (ii) the date on which notice thereof shall be given by CIT to Debtor; or

(e) Debtor shall (i) default in the payment of any obligation to CIT or to any of its parent, subsidiaries or other Affiliates, or default in the performance or observance of any other term, condition or agreement related to such obligation, 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 (ii) default in the performance or observance of any term, condition or agreement contained in any obligation or obligations to any other party aggregating $5,000,000 or more, or in any agreement relating thereto, whether such obligation(s) are for borrowed money, under any capitalized lease or for the deferred purchase price property including interest thereon, if following such default such obligation(s) in the amount of $5,000,000 or more becomes due prior to the stated maturity thereof or any collateral given as security therefor is realized upon; or

(f) The institution by Debtor 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 Debtor 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 Debtor or of any substantial part of its property, or the making by it of a general assignment for the benefit of creditors or the admission by it of its inability to pay its debts generally as they become due or the failure of Debtor generally to pay its debts as they become due or the taking of corporate action by Debtor in furtherance of any of the foregoing; or

(g) The entry of a decree or order for relief by a court having jurisdiction in respect of Debtor adjudging Debtor a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition of or in respect of Debtor 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, or assignee, custodian, trustee or sequestrator (or similar official) of Debtor or of any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 days.

SECTION 8. REMEDIES.

8.1 If an Event of Default specified in subsections 7(f) or (g) above shall occur, then, and in any such event, the outstanding principal amount of the Note, together with accrued interest thereon and all other amounts owing under or with respect to this Agreement, shall become immediately due and payable without any notice or other action by CIT, and if any other Event of Default shall occur and be continuing, then, and in any such event, CIT may, by notice of default given to Debtor, declare the outstanding principal amount of the Note and all other amounts owing under or with respect to this Agreement to be forthwith due and payable, whereupon the outstanding principal amount of the Note, together with accrued interest thereon and all other amounts owing under or with respect to this Agreement shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived. During the continuance of any Event of Default hereunder, CIT shall have the right to pursue and enforce any of its rights and remedies under this Section 8.

8.2 (a) If an Event of Default shall occur and be continuing, CIT may exercise in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of secured parties under the Code or under any other applicable law. Without limiting the generality of the foregoing, Debtor agrees that in any such event, CIT, without demand of performance or other demand, advertisement or notice of any kind (except the

notice specified below of time and place of public or private sale) to or upon Debtor or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof (including without limitation giving notice to any lessees under Permitted Leases to remit all payments thereunder directly to CIT), and/or may forthwith sell, lease, assign, give option or options to purchase or otherwise dispose of and deliver the Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange or broker's board or at any of CIT's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. CIT shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor, which right or equity is hereby expressly released. Notwithstanding the foregoing, lessees under Permitted Leases shall be entitled to possession and quiet enjoyment of the Equipment pursuant to the terms of such Permitted Leases so long as such lessees are not in default thereunder and all payments thereunder are remitted directly to CIT.

(b) Debtor further agrees, at CIT's request, forthwith to deliver possession of the Equipment to CIT. For the purpose of delivering possession of any Equipment to CIT as above required, Debtor shall at its own cost, expense and risk forthwith place and store such Equipment upon such storage tracks as CIT reasonably may designate and, if directed by CIT, transport the same to any connecting carrier for shipment to any point directed by CIT. The assembling, delivery, storage and transporting of the Equipment provided for herein shall be at the expense and risk of Debtor and are of the essence of this Agreement, and upon application to any court of equity having jurisdiction

in the premises CIT shall be entitled to a decree against Debtor requiring specific performance of the covenants of Debtor so as to assemble, deliver, store and transport the Equipment. During any storage period, Debtor will permit CIT or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Equipment, to inspect the same at CIT's risk of injury. Without in any way limiting the obligation of Debtor under the foregoing provisions of this Section, Debtor hereby irrevocably appoints CIT as the agent and attorney of Debtor, with full power and authority, at any time while Debtor is obligated to deliver possession of any item of Equipment to CIT under this Section, to demand and take possession of such Equipment in the name and on behalf of Debtor from whomsoever shall be in possession of such Equipment at the time. Notwithstanding the foregoing, lessees under Permitted Leases shall be entitled to possession and quiet enjoyment of the Equipment pursuant to the terms of such Permitted Leases so long as such lessees are not in default thereunder and all payments thereunder are remitted directly to CIT.

(c) CIT shall apply the net proceeds of any collection, recovery, receipt, appropriation, realization or sale (after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any relating to the rights of CIT hereunder, including attorneys' fees and legal expenses) to the payment in whole or in part of the Obligations, in such order as CIT may elect and only after so applying such net proceeds and after the payment by CIT of any other amount required by any provision of law (including Section 9-504(1)(c) of the Code), need CIT account for the surplus, if any, to Debtor. To the extent permitted by applicable law, Debtor waives all claims, damages, and demands against CIT arising out of the repossession, retention or sale of the Collateral. Debtor agrees that CIT need not give more than 10 days' notice

(which notification shall be deemed given when mailed, postage prepaid, addressed to Debtor at its address set forth in Section 9.2 hereof) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters. Debtor shall be liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which CIT is entitled.

8.3 Debtor agrees to pay all costs of CIT, including attorneys' fees, incurred with respect to the collection of any of the Obligations and the enforcement of any of its respective rights hereunder.

8.4 Except as hereinabove provided in Section 8 and to the extent permitted by applicable law, Debtor hereby waives presentment, demand, protest or any notice of any kind in connection with the collection of the Note following an Event of Default.

SECTION 9. MISCELLANEOUS.

9.1 No Waiver; Cumulative Remedies. No failure or delay on the part of CIT in exercising any right, remedy, power or privilege hereunder or under the Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No right or remedy in this Agreement is intended to be exclusive but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to CIT at law or in equity; and the exercise by CIT of any one or more of such remedies shall not preclude the simultaneous or later exercise by CIT of any or all such other remedies. To the extent permitted by law, Debtor waives any rights now or hereafter conferred by statute or otherwise which limit or modify any of CIT's rights or remedies under this Agreement.

9.2 Notices. All notices, requests and demands to or upon any party hereto shall be deemed to have been duly given or made when deposited in the United States mail, first class postage prepaid, addressed to such party as follows, or to such other address as may be hereafter designated in writing by such party to the other party hereto:

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

CIT: The CIT Group/Equipment Financing, Inc.
270 Park Avenue (30th Floor)
New York, New York 10017
Attention: Senior Credit Officer

- and -

The CIT Group/Equipment Financing, Inc.
Western Business Center
300 South Grand Avenue (3rd Floor)
Los Angeles, California 90071
Attention: Regional Credit Manager

9.3 Payment of Expenses and Taxes; Indemnity; Performance by CIT of Debtor's Obligations.

(a) Debtor agrees, whether or not the transactions contemplated by this Agreement shall be consummated (unless such failure to consummate is due to the fault of CIT or MHLC), to pay (i) all costs and expenses of CIT in connection with the negotiation, preparation, execution and delivery of this Agreement, and the other documents relating hereto, including, without limitation, the reasonable fees and disbursements of outside counsel to CIT; (ii) all fees and taxes in connection with the recording of this Agreement or

any other document or instrument required hereby or the filing of any financing statements under the Code; and (iii) all costs and expenses of CIT in connection with the enforcement of this Agreement and the Note, including all legal fees and disbursements arising in connection therewith. Debtor also agrees to pay, and to indemnify and save CIT harmless from any delay in paying, all taxes, including without limitation, sales, use, stamp and personal property taxes (other than any corporate income, capital, franchise or similar taxes payable by CIT with respect to the payments made to CIT hereunder or thereunder) and all license, filing and registration fees and assessments and other charges, if any, which may be payable or determined to be payable in connection with the execution, delivery and performance of this Agreement or the Note or any modification thereof.

(b) Debtor hereby further agrees, whether or not the transactions contemplated by this Agreement shall be consummated to pay, indemnify, and hold CIT harmless from and against any and all other liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, out-of-pocket costs, expenses (including outside legal expenses) or disbursements of any kind or nature whatsoever arising out of or with respect to this Agreement, the Equipment or CIT's interest therein, including without limitation, the execution, delivery, enforcement, performance or administration of this Agreement and the Note or the manufacture, purchase, ownership, possession, use, selection, operation or condition of the Equipment or any part thereof (the foregoing being referred to as the "indemnified liabilities"), provided, that Debtor shall have no obligation hereunder with respect to indemnified liabilities arising from the gross negligence or wilful misconduct of CIT.

(c) If Debtor fails to perform or comply with any of its agreements contained herein and CIT shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expenses of CIT incurred in

connection with such performance or compliance, together with interest thereon at the rate provided for in the Note shall be payable by Debtor to CIT on demand and, until such payment, shall constitute Obligations secured hereby.

(d) The obligations of Debtor under this Section shall survive the termination of this Agreement and the payment of the Note.

9.4 Survival of Representations and Warranties. All representations and warranties made in this Agreement and any certificates delivered pursuant hereto or thereto shall survive the execution and delivery of this Agreement and the making of the Loan hereunder.

9.5 Amendments; Waivers. No provision of this Agreement, the Note, or any related agreements, may be amended or modified in any way, nor may noncompliance therewith be waived, except pursuant to a written instrument executed by CIT and Debtor. In the case of any waiver, CIT and Debtor shall be restored to their former position and rights hereunder, under the Note, and under any related agreements, and any Default or Event of Default waived shall be deemed to be cured and not continuing, but no such waiver shall in any way be, or be construed to be, a waiver of any other or subsequent Default or Event of Default, or impair any right consequent thereon.

9.6 Counterparts. This Agreement may be executed by the parties hereto on any number of separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9.7 Headings. The headings of the Sections and paragraphs are for convenience only, are not part of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

9.8 Successors or Assigns. This Agreement shall be binding upon and inure to the benefit of Debtor and CIT and their respective successors and assigns, except that Debtor may not assign or transfer its rights hereunder or any interest herein without the prior written consent of CIT.

9.9 Merger Clause. This Agreement contains the full, final and exclusive statement of the agreement between CIT and Debtor relating to the transactions hereby contemplated.

9.10 Construction. Any provision of this Agreement 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 shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law, Debtor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. This Agreement and the Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

9.11 No Usury. If at any time this transaction would be usurious under applicable law, then regardless of any provision contained in this Agreement, in the Note or in any other agreement made in connection with this transaction, it is agreed that (a) the total of all consideration which constitutes interest under applicable law that is contracted for, charged or received upon this Agreement, the Note or any such other agreement shall under no circumstances exceed the maximum rate of interest authorized by applicable law and any excess shall be credited to Debtor and (b) if CIT elects to accelerate the maturity of the Note, or if Debtor prepays the indebtedness described in the Note in accordance with this Agreement or if CIT otherwise permits Debtor to prepay such indebtedness, any amounts which because of such

action would constitute interest may never include more than the maximum rate of interest authorized by applicable law and any excess interest, if any, provided for in this Agreement, in the Note or otherwise, shall be credited to Debtor automatically as of the date of the acceleration or prepayment.

9.12 Jurisdiction. Debtor hereby irrevocably consents and agrees that any legal action, suit, or proceeding arising out of or in any way in connection with this Agreement 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 CIT may elect, and by execution and delivery of this Agreement, Debtor 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. Debtor irrevocably consents to service of any summons and/or legal process by registered or certified United States air mail, postge prepaid, to Debtor at the address set forth in Section 9.2 hereof, such method of service to constitute, in every respect, sufficient and effective service of process in any such legal action or proceeding. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law or limit the right of CIT to bring actions, suits or proceedings in the courts of any other jurisdiction. Debtor further agrees that final judgment against it in any such legal action, suit or proceeding shall be conclusive 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, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

ITEL RAIL CORPORATION

By: Robert Kiehnle

Name: ROBERT C. KIEHNLE
Title: VICE PRESIDENT - FINANCE

THE CIT GROUP/EQUIPMENT FINANCING, INC.

By: George Finguerra

Name: George Finguerra
Title: President & CEO

State of ~~New York~~ California)

) SS.:

County of ~~New York~~ San Francisco)

On this 8th day of August, 1988, before me personally appeared Robert C. Kiehnle to me known, who being by me duly sworn, says thatthat he is a Vice President - Finance of Itel Rail Corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledges that the execution of the foregoing instrument was the free act and deed of such corporation.

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

Sharon L. Van Fossan
Signature of Notary Public

My Commission expires August 16, 1991

State of ~~California~~ NEW YORK)

) SS.:

County of ~~San Francisco~~ NEW YORK)

On this 9th day of August 1988, before me personally appeared GEORGE FINGUERRA, to me known, who being by me duly sworn, says that he is ~~a~~ PRESIDENT + CEO of The CIT Group/Equipment Financing, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Catherine A. Ochetal

Signature of Notary Public

My Commission expires 2/28/89

CATHERINE A. OCHETAL
Notary Public, State of New York
No. 24-4714453
Qualified in Kings County
Commission Expires ~~March 30, 19~~ Feb. 28, 1989

SCHEDULE A

Description of Equipment

245 single sheath boxcars (Association of American Railroads mechanical designation XM) manufactured by FMC Corporation, each weighing 70 tons and being 50'6" long, and bearing the following identifying numbers:

MTW 4200 through 4239, 4241 through 4268, 4270 through 4299;
VSO 6250 through 6299;
SRN 5200 through 5209, 5211 through 5224, 5226 through 5287, 5289 through 5299