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New Number

LAW OFFICES

ALVORD AND ALVORD

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N W

WASHINGTON, D.C.

20006-2973

(202) 393-2266

ELIAS C ALVORD (1942)
ELLSWORTH C ALVORD (1964)

ROBERT W ALVORD*
CHARLES T KAPPLER
JOHN H DOYLE*
RICHARD N BAGENSTOS
JAMES C MARTIN JR*

* ALSO ADMITTED IN NEW YORK
* ALSO ADMITTED IN MARYLAND

OF COUNSEL
URBAN A LESTER

CABLE ADDRESS
ALVORD

TELEX
440367 A AND A

TELEFAX
(202) 393-2156

RECORDATION NO 16852 FILED 1426

APR 27 1990 - 1 05 PM
INTERSTATE COMMERCE COMMISSION

Mr. Noretta R. McGee
Secretary
INTERSTATE COMMERCE COMMISSION
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two fully executed original copies of a Loan and Security Agreement dated as of April 27, 1990, a primary document as defined in the Commission's Rules for the Recordation of Documents, 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Debtor: Rex Railways, Inc.
55 Francisco Street
San Francisco, California 94133

Secured Party: The CIT Group/Equipment Financing, Inc.
300 South Grand Avenue
Los Angeles, California 90071

A description of the railroad equipment covered by the enclosed document is:

Seventy-four (74) 50'6" IL XL box cars bearing LRS marks and numbers 5001 through 5014 and 5016 through 5075, each both inclusive

Ninety-five (95) 50'6" inside length XF box cars bearing WC marks and numbers 25600 through 25647 and 25649 through 25695, each both inclusive (formerly in the series MNS 49800 through MNS 49899).

C. T. Kappler

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
April 27, 1990
Page Two

Also enclosed is a check in the amount of \$15 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return a stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

A short summary of the enclosed primary document to appear in the Commission's Index is:

Loan and Security Agreement dated as of April 27, 1990 between Rex Railways, Inc., Debtor, and The CIT Group/Equipment Financing, Inc., Secured Party, covering 74 IL XL box cars LRS 5001 - LRS 5075 (except 5015) and 95 XF box cars, WC 25600 - WC 25695 (except 25648).

Very truly yours,

Charles T. Kappler

Enclosures
CTK/bg

Interstate Commerce Commission
Washington, D.C. 20423

4/27/90

OFFICE OF THE SECRETARY

Charles T. Kappler
Alvord & Alvord
918 16th St. N.W.
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/27/90 at 1:05pm and assigned recordation number(s). 10402-C & 16852

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

LOAN AND SECURITY AGREEMENT

APR 27 1990 -1 05 PM

INTERSTATE COMMERCE COMMISSION

THIS LOAN AND SECURITY AGREEMENT, dated as of April 27, 1990 is entered into by and between Rex Railways, Inc., a New Jersey corporation ("Debtor"), and The CIT Group/Equipment Financing, Inc., a New York corporation ("CIT"). 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 Exhibit A hereto, the value set forth opposite such item or group of Equipment.

"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 1979 ACF Model XF 70-ton boxcars and 1979 ACF Model XL 70-ton boxcars listed on Exhibit 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.

"Guarantor" shall mean ITEL Rail Corporation, a Delaware corporation.

"Guaranty Agreement" shall mean a guaranty agreement, executed by Guarantor, substantially in the form attached hereto as Exhibit C.

"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, with respect to any Note, each date on which a regular installment of principal and interest is due on such 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 three percent (3.0%) over the Reference Rate, but not to exceed the highest rate permitted by applicable law.

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

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

"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 B hereto.

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

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, 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 aggregate cost of all items of Equipment (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 event any of the existing Permitted Leases has a provision allowing a lessee to purchase the Equipment subject to such Permitted Lease at the end of the lease term for the then existing fair market value of such Equipment, and the lessee exercises its purchase option, then Debtor shall make a prepayment on the Note in an amount determined by (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 items of Equipment that were sold to the lessee and the denominator of which shall be the aggregate Cost of all items of Equipment, and (ii) by adding interest accrued to the amount determined in (i) above, to the date of such prepayment.

(c) Except as provided in paragraphs (a) and (b) above, the Note may not be prepaid in whole or in part.

SECTION 3. CONDITIONS OF LOAN.

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

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

3.2 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 documents 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.

3.3 Resolutions. CIT shall have received a certified copy of all 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 Notes and the transactions contemplated hereby has been duly taken.

3.4 Opinions of Counsel. CIT shall have received the written opinions addressed to it of (a) counsel for Debtor as to matters set forth in Sections 4.1 through 4.8, and 4.10 hereof; (b) counsel for Guarantor as to the matters set forth in Sections 4 (a) - (f) and (h) of the Guaranty; and (c) outside counsel for CIT as to the matters set forth in Section 4.9 hereof.

3.5 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.

3.6 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.

3.7 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 such 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.

3.8 No Material Adverse Change. In the sole judgment of CIT there shall have been no material adverse change in the financial condition, business or operations of Guarantor since December 31, 1988.

3.9 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.

3.10 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.

3.11 Certificate of Incumbency of Guarantor. CIT shall have received a certificate of incumbency of Guarantor signed by the Secretary or Assistant Secretary of Guarantor which certificate shall certify the names of the officers of Guarantor authorized to execute the Guaranty Agreement and related documents on behalf of Guarantor, 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 Guarantor cancelling or amending the prior certificate and submitting the signatures of the officers named in such further certificate.

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

3.13 Appraisal. CIT shall have conducted a satisfactory physical appraisal of the Equipment, which appraisal must indicate that the equipment has a fair market value of not less than \$ 3,100,000.00.

SECTION 4. REPRESENTATIONS AND WARRANTIES.

In order to induce CIT to enter into this Agreement and to make each 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 New Jersey, 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 and the Note, 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 or the Note, or the validity or enforceability of this Agreement or the Note, 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 and the Note 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.

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 and the Note has been duly authorized, executed and delivered by Debtor and, assuming the due authorization, execution and delivery thereof by CIT, 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 each 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.

4.9 CIT's Security Interest. On each Closing Date CIT shall have a legal, valid and continuing first priority security interest in the Collateral, subject to no Liens, 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 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.

4.12 Principal Place of Business. Debtor's principal place of business is located at 55 Francisco Street, San Francisco, CA 94133, Attn: Treasurer.

4.13 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 (ii) of Section 5.8 hereof which involve a claim for unpaid taxes or assessments in an amount of _____ or more); (iv) any dispute between Debtor and any governmental regulatory body or other party that involves any of the Collateral or that might 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 proper conduct 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 THIS SECTION INTENTIONALLY LEFT BLANK.

5.6 Further Assurance. 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 Equipment; 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 two leases set forth in Exhibit A hereto.

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) mechanics', materialmen's, workmen's, repairman's and other similar liens arising in the ordinary course of business securing obligations which are not overdue and (iii) 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) hereof.

(b) Debtor will cause each item of Equipment to be kept numbered with the identifying number set forth in Exhibit 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 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 and conform to 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 originally intended function or use of the Equipment or 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 similar boxcar contingent physical damage and contingent liability insurance covering the Equipment as it carries with respect to similar boxcars owned or leased by it. 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) 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 there from (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 changed 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.

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 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 be 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 representation or warranty now or hereafter made by Debtor in this Agreement or by Guarantor in the Guaranty Agreement or by Debtor or Guarantor in any schedule, certificate, statement, report, financial data, notice, or writing furnished at any time by Debtor or Guarantor 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 Debtor's or Guarantor'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), or 5.12 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, in the ordinary course of Debtor's business, knowledge of such failure; or (ii) the date on which notice thereof shall be given by CIT to Debtor; or

(e) Debtor or Guarantor shall 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

(f) Debtor shall default in the payment of any obligation or default in the performance or observance of any term, condition or agreement contained in any obligation or obligations to any other party aggregating \$ or more, or in any agreement relating thereto, whether such obligation is for borrowed money, under any capitalized lease or for the deferred purchase price of property, including interest thereon; or

(g) the institution by Debtor or Guarantor of proceedings to be adjudicated a bankrupt or insolvent, or the consent by Debtor or Guarantor to the institution of bankruptcy or insolvency proceedings against it, or the commencement by Debtor

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

(h) the entry of a decree or order for relief by a court having jurisdiction in respect of Debtor or Guarantor adjudging Debtor or Guarantor a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition of or in respect of Debtor or Guarantor 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 Guarantor or of any substantial part of its property, or ordering the winding-up or liquidation of the affairs of either of them, and the continuance of any such decree or order unstayed and in effect for a period of 90 days; or

(i) Guarantor shall default upon its guarantee pursuant to the terms thereof or if any such guarantee shall cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Guarantor or Guarantor shall deny that it has any further liability to CIT with respect thereto.

SECTION 8. REMEDIES.

8.1 If an Event of Default specified in Subsections 7(g) or (h) 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 attorney's 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 any 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: Rex Railways, Inc.
55 Francisco Street
San Francisco, CA 94133

Attention: Treasurer

- with a copy to -

Itel Rail Corporation
55 Francisco Street
San Francisco, CA 94133

Attention: Vice President - Finance

CIT: The CIT Group/Equipment Financing, Inc.
300 South Grand Avenue, 3rd Floor
Los Angeles, California 90071

Attention: Vice President - Credit

- and -

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

Attention: Senior Vice President -Credit

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), 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 Notes, 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 Notes 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 Notes and 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 willful 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 Notes 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 Notes, 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 effect 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 actio 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 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, POSTAGE 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.

10. Commitment Fee. CIT acknowledges receipt from Debtor of a commitment fee in the amount of \$ 15,500.00 (the "Commitment Fee"). CIT agrees to refund to Debtor after the expiration of the commitment period hereunder and completion by CIT of all follow-up matters related to the transactions contemplated hereby (net, however, or any out-of-pocket fees, costs, disbursements and expenses incurred by CIT in connection with the transactions contemplated hereby), as the refundable portion of the Commitment Fee, an amount which bears the same relationship to \$ 15,500.00 as the aggregate principal amount of all Loans made hereunder (but in no event to exceed \$3,100,000.00) bears to \$ 3,100,000.00. Debtor agrees that the difference, if any, between \$ 15,500.00 and the amount determined in accordance with the foregoing sentence shall be retained by CIT. In the event no Loan is made hereunder, CIT shall retain the entire Commitment Fee.

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.

REX RAILWAYS, INC.

By: Robert Kiehnle

Name: ROBERT C KIEHNLE

Title: Vice President Treasurer

THE CIT GROUP/EQUIPMENT FINANCING,
INC.

By: Walter R Empey

Name: WALTER R Empey

Title: VP

State of California)
) SS.:
County of San Francisco)

On this 25th day of April, 1990, before me personally appeared ROBERT KIEHNLE to me known, who being by me duly sworn, says that he is a Vice President + Treasurer of Rex Railways, Inc.; that said instrument was signed 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.

Sharon L. Van Fossan
Signature of Notary Public

My Commission expires

8/16/91



State of California)
) SS.:
County of Los Angeles)

On this 26th day of April, 1990, before me personally appeared WALTER R. LUPEY, to me known, who being by me duly sworn, says that he is a Vice President of The CIT Group/Equipment Financing, Inc.; that said instrument was signed 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.

Timothy J White
Signature of Notary Public

My Commission expires

10/16/92

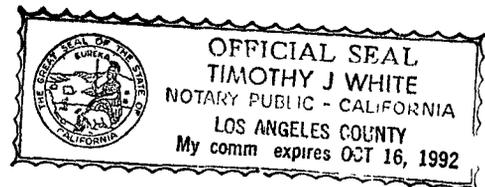
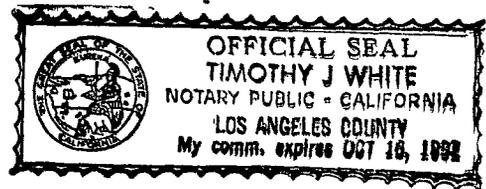


EXHIBIT A, attached to and forming a part of the Loan and Security Agreement, dated as of April 27, 1990 entered into by and between Rex Railways, Inc., a New Jersey corporation ("Debtor") and The CIT Group/Equipment Financing, Inc., a New York Corporation ("CIT").

<u>Permitted Lease/Lessee</u>	<u>Equipment Description and Markings</u>
1. Lease Agreement, dated March 5, 1979, between Rex Railways, Inc. as lessor, and Laurinburg & Southern Company, as lessee, recorded with the Interstate Commerce Commission on May 29, 1979 at 4 p.m., and given Recordation No. 10402.	1. Seventy-four (74) 50' 6" IL XL box cars manufactured by ACF Industries, equipped with 70-ton trucks, ten-foot sliding doors, nailable steel floors, and interior equipment including lading strap anchors and belt rails for XL classification, bearing numbers LRS 5001 - 5014 and 5016 - 5075. The value of each boxcar is
2. Lease Agreement, dated March 6, 1979, between Rex Railways, Inc., as lessor, and Soo Line Railroad Company, successor in interest to Minneapolis, Northfield and Southern Railway, as lessee, recorded with the Interstate Commerce Commission on May 29, 1979 at 4 p.m. and given Recordation No. 10402A	Ninety-five (95) 50' 6" inside length XF box cars manufactured by ACF Industries being 70-tons in weight, and having interior equipment which includes lading strap anchors, and a permitted loading use for food grade products. The box cars bear numbers WC 25600 - 25647 and 25649 - 25695. The value of each boxcar is
2a. Sublease Agreement, dated August 1, 1988, between Soo Line Railroad Company, as sublessor, and Wisconsin Central Ltd., as sublessee, recorded with the Interstate Commerce Commission on October 2, 1989 and given Recordation No. 16561.	

EXHIBIT B, attached to and forming a part of the Loan and Security Agreement, dated as of April 27, 1990 entered into by and between Rex Railways, Inc., a New Jersey corporation ("Debtor") and The CIT Group/Equipment Financing, Inc., a New York corporation ("CIT").

PROMISSORY NOTE

Los Angeles, California
April _____, 1990

FOR VALUE RECEIVED, REX RAILWAYS, INC. ("Debtor") promises to pay to the order of THE CIT GROUP/EQUIPMENT FINANCING, INC. ("CIT") at such address as CIT may designate, in lawful money of the United States, the principal sum of _____ Dollars
in 84 consecutive installments as follows:

83 equal consecutive monthly installments of principal in the amount of _____ each, and a 84th monthly installment of principal in the amount of _____
The first installment of principal shall be due and payable on May _____, 1990, with the following installments to be due and payable on the _____ day of each month thereafter until payment in full of this Note.

Debtor shall pay interest together with each such installment of principal, in like money, from the date hereof until payment in full, on the unpaid principal balance hereof. The interest rate in effect for each Interest Period shall be a rate per annum equal to one-eighth of one percent (.125%) above the Reference Rate, but in no event to exceed the maximum rate permitted by applicable law. Interest shall be calculated on the basis of a 360-day year and the actual numbers of days elapsed. Any amount not paid when due under this 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. Each payment shall be applied first to the payment of any unpaid late charges, second to the payment of any unpaid interest on the principal sum, and third to the payment of principal.

This Note is the Note referred to in the Loan and Security Agreement, dated as of April 27, 1990, between Debtor and CIT (herein, as the same may from time to time be amended, supplemented or otherwise modified, called the "Agreement"), is secured as provided therein and is subject to prepayment only as provided therein, and the holder hereof is entitled to the benefits thereof.

Terms defined in the Agreement shall have the same meaning when used in this Note, unless the context shall otherwise require.

Debtor hereby waives presentment, demand for payment, notice of dishonor and any and all other notices or demands in connection with the delivery, acceptance, performance, default or enforcement of this Note and hereby consents too any extensions of time, renewals, releases, waivers or modifications that may be granted or consented to by the holder of this Note.

Upon the occurrence and continuation of any one or more of the Events of Default specified in the Agreement, the amounts then remaining unpaid on this Note, together with any interest accrued, may be declared to be (or, with respect to certain Events of Default, automatically shall become) immediately due and payable as provided therein.

In the event that any holder shall institute any action for the enforcement of the collection of this Note, there shall be immediately due and payable, in addition to the unpaid balance hereof, all late charges, and all costs and expenses of such action, including attorneys' fees. Debtor and CIT in any litigation relationg to or in connection with this Note in which they shall be adverse parties, waive trial by jury, and Debtor waives the right to interpose any setoff or counterclaim of any nature or description whatsoever.

Debtor agrees that its liability hereunder is absolute and unconditional without regard to the liability of any party and that no delay on the part of the holder hereof in exercising any power or right hereunder shall operate as a waiver thereof: nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right.

If at any time this transaction would be usurious under applicable law, then regardless of any provision contained in the Agreement, in this 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 the Agreement, this 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 the Debtor and (b) if CIT elects to accelerate the maturity of this Note, or if Debtor prepays the indebtedness described in this Note in accordance with the 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 the Agreement in, this Note or otherwise, shall be credited to Debtor automatically as of the date of acceleration or prepayment.

To the extent permitted by law, Debtor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

REX RAILWAYS, INC.

By: _____

Name: _____

Title: _____

(CORPORATE SEAL)

EXHIBIT C, attached to and forming a part of the Loan and Security Agreement dated as of April 27, 1990 entered into by and between Rex Railways, Inc. a New Jersey corporation ("Debtor") and The CIT Group/Equipment Financing, Inc., a New York corporation ("CIT").

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT ("Guaranty"), dated as of the 27th day of April, 1990, is made by Itel Rail Corporation, a Delaware corporation ("Guarantor"), in favor of The CIT Group/Equipment Financing, Inc., a New York corporation ("CIT").

A. Pursuant to a Loan and Security Agreement dated as of April 27, 1990 (herein, as the same may from time to time be amended, modified or supplemented, called the "Agreement") between Rex Railways, Inc. ("Debtor"), and CIT, CIT has agreed to make loans from time to time to Debtor in an aggregate principal amount not to exceed _____, such loan to be evidenced by a promissory note of Debtor (the "Note");

B. Debtor and Guarantor will derive substantial economic benefit from the loan to Debtor for which the Agreement provides; and

C. CIT is willing to make the loan for which the Agreement provides upon the condition, among other things, that Guarantor execute and deliver to CIT this Guaranty.

In consideration of the foregoing facts and in order to induce CIT to enter into the Agreement and to make the loan contemplated thereunder, Guarantor hereby agrees as follows:

1. Definitions. For all purposes of this Guaranty, unless otherwise defined herein or unless the context otherwise requires, all terms used herein which are defined in the Agreement or the Note shall have the respective meanings given them in the Agreement or the Note, as the case may be.

2. Guaranty.

2.1 Guarantor hereby unconditionally and irrevocably guarantees to CIT and its successors, indorsees, transferees and assigns, (a) the prompt and complete payment when due (whether at the stated maturity, by acceleration or otherwise) of the aggregate unpaid principal amount of, and accrued interest on, the Note and all other obligations and liabilities of Debtor to CIT now existing or hereafter incurred arising out of or in connection with the Agreement or the Note (all such indebtedness, obligations and liabilities being hereinafter called the

"Obligations"), and (b) the due and punctual performance and observance, strictly in accordance with the terms of the Agreement, of each of the terms, conditions, covenants, agreements and indemnities of Debtor under the Agreement, and if for any reason whatsoever Debtor shall fail to do so, Guarantor shall promptly perform and observe the same, and Guarantor further agrees to pay any and all expenses which may be paid or incurred by CIT in collecting from Guarantor any or all of the Obligations and/or in enforcing any rights hereunder.

2.2 The obligations of Guarantor under this Guaranty shall be continuing, absolute and unconditional under any and all circumstances and shall be paid by Guarantor regardless of (a) the validity, regularity, legality or enforceability of the Agreement, any Note, any of the Obligations or any collateral security or other guaranty therefor at any time or from time to time held by CIT; (b) any defense, offset or counterclaim which may at any time be available to or be asserted by Debtor or Guarantor against CIT; or (c) any other event or circumstance whatsoever which may constitute, or might be construed to constitute, an equitable or legal discharge of a surety or a guarantor, it being the purpose and intent of the Guarantor that this Guaranty and the Guarantor's obligations hereunder shall remain in full force and effect and be binding upon Guarantor and its successors until the Obligations and the obligations of Guarantor under this Guaranty shall have been satisfied by payment in full.

2.3 Guarantor hereby consents that, without the necessity of any reservation of rights against Guarantor and without notice to or assent by Guarantor, any demand for payment of any of the Obligations made by CIT may be rescinded by CIT and any of the Obligations continued, and/or the Obligations, or the liability of any party upon or for any part thereof, or any collateral security or guaranty therefor, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, settled, compromised, subordinated, waived, surrendered or released by CIT and/or the Agreement, any Note, any collateral security documents or other guaranties or documents in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as CIT may deem advisable from time to time, and/or any collateral security at any time securing the payment of the Obligations may be sold, exchanged, waived, surrendered or released, Guarantor remaining bound hereunder notwithstanding the occurrence of any of the foregoing. CIT shall not have any duty to protect, secure, perfect or insure any collateral security at any time securing the payment of the Obligations. This is a guaranty of performance and payment and not merely of collection. Guarantor waives any requirement that CIT make any demand, commence suit or

exercise any other right or remedy under the Agreement prior to enforcing its rights against Guarantor hereunder. Guarantor waives diligence, presentment, protest, demand for payment and/or notice of default or non-payment to or upon Debtor or Guarantor with respect to the Obligations. When making any demand hereunder against Guarantor, CIT may, but shall be under no obligation to make a similar demand on any other guarantor, and any failure by CIT to make any such demand or to collect any payments from any such other guarantor or any release of such other guarantor shall not relieve Guarantor of its obligations and liabilities hereunder, and shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of CIT against Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

2.4 Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof of reliance by CIT upon this Guaranty or acceptance of this Guaranty. The Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guaranty, and all dealings between Debtor or Guarantor and CIT shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guaranty. Guarantor acknowledges receipt of a copy of the Agreement and the form of the Note.

2.5 This Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time, payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by CIT upon the insolvency, bankruptcy or reorganization of Debtor, or otherwise, all as though such payment had not been made.

3. No Subrogation. Notwithstanding any payment or payments made by Guarantor hereunder, Guarantor shall not be entitled to be subrogated to any of the rights of CIT against Debtor or any other guaranty or collateral security held by CIT for the payment of the Obligations until all amounts owing to CIT by Debtor for or on account of the Obligations shall have been paid in full and the Agreement terminated.

4. Representations and Warranties. Guarantor hereby represents and warrants that (a) Guarantor is a corporation duly organized, validly existing and in good standing under the laws of Delaware; (b) Guarantor has full power, authority and legal right to execute, deliver and perform this Guaranty and the Guarantor has taken all necessary corporate action to authorize

such execution, delivery and performance; (c) this Guaranty has been duly authorized, executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor enforceable in accordance with its terms; (d) no consent of any person (including stockholders or any trustee or holder of any obligations of Guarantor), and no consent, license, approval or authorization of, or registration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery and performance of, and payment under, this Guaranty; (e) the execution, delivery, performance and payment of this Guaranty does not and will not contravene any applicable law, regulation, order or decree, the certificate of incorporation or by-laws of Guarantor or any provision of any indenture, mortgage, contract or other agreement to which Guarantor, or any person controlled by, controlling, or under common control with Guarantor, is a party or by which any of the same or any of their respective assets may be bound; (f) there is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against or affecting Guarantor (A) which involves the transactions contemplated by this Guaranty, or (B) which if adversely determined, could have a material adverse effect on the financial condition, business or operations of Guarantor; (g) all financial statements of Guarantor heretofore furnished CIT are complete and correct and fairly present the financial condition of Guarantor and the results of its operations for the respective periods covered thereby, and there are no known contingent liabilities or liabilities for taxes of Guarantor which are not reflected in said financial statements and since the date of the most recent financial statements of Guarantor furnished to CIT, there has been no material adverse change in the financial condition, business or operations of Guarantor; and (h) Guarantor is not in default under any indenture, mortgage, contract or other agreement to which it is a party or by which Guarantor or any of its assets may be bound.

5. No Changes in Guarantor. Guarantor covenants and agrees that from and after the date hereof and so long as any of the Obligations remain outstanding, it will not (a) enter into any transaction of merger or consolidation unless it is the surviving corporation and after giving effect to such merger or consolidation its tangible net worth equals or exceeds that which existed prior to such merger or consolidation; or (b) liquidate or dissolve; or (c) sell or otherwise dispose of all or any substantial part of its assets; or (d) without limiting the generality of clause (c), sell, transfer or otherwise dispose of any stock of Debtor owned by it as of the date hereof; or (e) without thirty (30) days prior written notice to CIT change its name or chief place of business.

6. Covenants of Guarantor. Guarantor covenants and agrees that from and after the date hereof and so long as any of the Obligations remain outstanding, it will: (1) promptly give written notice to CIT of (i) the occurrence of any Default or Event of Default of which it is or should be aware; (ii) the commencement or threat of any material litigation or proceedings affecting it; and (iii) any dispute between it and any governmental regulatory body or other party that might materially interfere with its normal business operations; (2) (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) maintain its existence as a legal entity and obtain and keep in full force and effect all rights, franchises, licenses and permits which are necessary to the proper conduct of its business; and (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 Guaranty or the operation of its business; (3) permit CIT or its authorized representative at any reasonable time or times following the occurrence and during the continuation of an Event of Default to inspect its books and records; (4) 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; and (5) furnish to CIT the following financial statements, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved, (a) as soon as available, but not later than 120 days after each fiscal year end, its consolidated balance sheet as at the end of such fiscal year, and its consolidated statements of income and cash flows for such fiscal year, together with equivalent information for the prior fiscal year, audited by certified public accountants acceptable to CIT; (b) as soon as available, but no later than 90 days after the end of each of the first three quarterly periods of each fiscal year, its consolidated balance sheet as at the end of such quarterly period and its consolidated statement of income and cash flows for such quarterly period and for the portion of the fiscal year then ended, together with equivalent information for the prior comparable quarterly period, certified by its chief financial officer; and (c) promptly, such additional financial and other information as CIT may from time to time reasonably request.

7. Financial Covenant. Guarantor covenants and agrees that from and after the date hereof and so long as any of the Obligations remain outstanding it shall not permit its tangible net worth (defined as all amounts that would, according

to generally accepted accounting principles, be included as total stockholders' equity on the consolidated balance sheet of Guarantor and its subsidiaries, including preferred stock, common stock, capital surplus and retained earnings) to be less than
Dollars

8. Notices. All notices, requests and demands to or upon Guarantor, and all notices or requests to CIT, shall be deemed duly given or made when deposited in the United States mail, first class postage prepaid, and addressed,

if to Guarantor:

Itel Rail Corporation
55 Francisco Street
San Francisco, CA 94133
Attention: Vice President-
Financial

if to CIT:

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

and

The CIT Group/Equipment
Financing, Inc.
270 Park Avenue
30th Floor
New York, New York 10017
Attention: Senior Vice
President - Credit

or in either case, to such other address as may be hereafter designated in writing by either of them to the other.

9. No Waiver; Cumulative Remedies. A waiver by CIT of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which CIT would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of CIT any right, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law.

10. Miscellaneous. None of the terms or provisions of this Guaranty may be amended, waived, altered, modified, or terminated except by an instrument in writing signed by the party against which enforcement of such amendment, waiver, alteration, modification or termination is sought. This Guaranty and all obligations of Guarantor hereunder shall be binding upon the successors and assigns of Guarantor, and shall, together with the rights and remedies of CIT hereunder, inure to the benefit of CIT and its successors and assigns. The invalidity, illegality or unenforceability of any provision of this Guaranty shall not affect the validity, legality or enforceability of any other provision of this Guaranty. This Guaranty shall be governed by, and be construed and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized officer as of the day and year first above written.

ITEL RAIL CORPORATION

By: _____

Title: _____