RECORDATION NO. 17729 FILED 1425
MAR 16 1992 10 25 AM
INTERSTATE COMMERCE COMMISSION

ITEL

March 13, 1992

Itel Rail Corporation
550 California Street
San Francisco, CA 94104
(415) 984-4200

Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, DC 20423

2-076A017 RECORDATION NO. 17729 FILED 1425
MAR 16 1992 10 25 AM
INTERSTATE COMMERCE COMMISSION

Re: 1) Class II and III Railroad Per Diem Lease (the "Lease")
2) Schedule No. 1

Dear Mr. Strickland:

On behalf of Itel Rail Corporation, the above instruments, in three (3) counterparts each, are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the $32 recordation fee.

Please record the subject Lease dated March 6, 1992, between Itel Rail Corporation and TennRail Corporation, under a new recordation number. Please record Schedule No. 1 under the recordation number assigned to the Lease.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessor)
550 California Street
San Francisco, California 94104

TennRail Corporation (Lessee)
111 E. Capitol Street
Jackson, Mississippi 39201

The Lease sets forth the terms and conditions by which railroad equipment is leased. Schedule No. 1 adds to the Lease five hundred eleven (511) 50', Plate C boxcars bearing reporting marks CCR 6000-8014 (n.s.) and six (6) 50', Plate C boxcars to bear TNR reporting marks.

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

Very truly yours,

Patricia Schumacker

Patricia Schumacker

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CLASS II AND III RAILROAD PER DIEM LEASE

This Lease Agreement ("Agreement") is made as of March 6, 1992 between **ITEL RAIL CORPORATION,** a Delaware corporation ("Lessor"), and **TENNRAIL CORPORATION**, a Mississippi corporation ("Lessee").

1. SCOPE OF AGREEMENT

A. **Agreement to Lease:** Lessor and Lessee agree to lease the railroad car(s) ("Car(s)") described in the Schedules. "Schedule" means any schedule signed by both Lessor and Lessee. "Agreement" shall include all Schedules.

B. **Schedules Control:** The terms of any Schedule shall control, as to Cars on such Schedule, over any inconsistent terms elsewhere in this Agreement.

2. TERM AND DELIVERY

This Agreement shall remain in full force until terminated as to all Cars on all Schedules. The lease term with respect to any Car shall commence on the date such Car is marked with Lessee's reporting marks ("Delivery Date") or on such other date set forth on any Schedule and shall expire on the Expiration Date defined on the applicable Schedule. After the Delivery Date of the final Car on any Schedule, Lessor shall provide Lessee a certificate (the "Certificate") setting forth the Delivery Date for each Car and the Expiration Date. Each date on each Certificate shall be deemed accurate, final and binding unless Lessee disputes such date in writing within 14 calendar days of receipt by Lessee of such Certificate.

3. SPECIFICATIONS, TRANSPORTATION EXPENSES, PRIORITY, REPLACEMENT AND SUBSCRIPTION

A. **Specifications:** Car specifications and marks shall be as set forth on the applicable Schedule.

B. **Transportation Expenses:** Lessee shall be liable for all expenses and charges for transportation or movement of any Car requested by Lessee after such Car is first interchanged to Lessee's lines.

C. **Priority Loading:** Lessee shall load any Car prior to loading any similar item of equipment leased by or assigned to Lessee from other parties subsequent to the date of this Agreement, purchased by Lessee subsequent to the date of this Agreement, or received in interchange; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on Lessee's lines. Lessee shall use its best efforts to maximize the off-line utilization of such Cars.

D. **Replacement:** Lessor may at its expense replace any or all Cars with equipment of similar specification and quality upon not less than 10 days prior written notice.

E. **Subscription:** Lessee shall for the term of this Agreement subscribe to the Association of American Railroads ("AAR") Car Service and Car Hire Agreement.

4. ACCEPTANCE

Each Car shall be deemed accepted unless Lessor is otherwise notified in writing within 14 days of such Car's delivery to Lessee.

5. MOVEMENT TO LESSEE'S LINES

Each Car shall be moved to Lessee's lines at the earliest time that is consistent with the convenience and economy of the parties.

6. MAINTENANCE

A. **Definition of Maintenance**: "Maintenance" means all repairs, maintenance, replacement of parts and mandated modifications as are needed to keep any Car in good working order and repair, suitable for loading and interchange and in accordance with the Interchange Rules, the Federal Railroad Administration ("FRA") rules and the rules of any other applicable regulatory body.

B. **Definition of Interchange Rules**: "Interchange Rules" means collectively the Field Manual of the AAR Interchange Rules and the Office Manual of the AAR Interchange Rules. References herein to the Interchange Rules provide performance standards and criteria for the condition of the Cars and their maintenance and repair. However, as between Lessor and Lessee, this Agreement, not the Interchange Rules, governs who is responsible for performing and paying for maintenance and repairs.

C. **Maintenance by Lessee**: If any Schedule provides for Maintenance of any Car by Lessee, Lessee shall at its expense cause such Maintenance to be performed in a timely manner. Lessor shall have title to any replacement parts or additions applied to any Car.

D. **Maintenance by Lessor**: If any Schedule provides for Maintenance by Lessor of any Car, then:

(i) **Lessor Responsibility and Exceptions**: Lessor shall at its expense perform in a timely manner such Maintenance. However, such Maintenance shall be at Lessee's expense if it was occasioned by (a) damage (which shall not include ordinary wear) while in Lessee's or Lessee's shipper's possession, custody or control, (b) damage occurring from use other than permitted under this Agreement, or (c) damage for which Lessee would have been responsible under the Interchange Rules had the Car been a foreign car (including damage not noted at time of interchange to Lessee). Lessee shall promptly notify Lessor of any Maintenance required, providing the time, place and nature of any accident or bad order condition.

(ii) **Running Repairs**: To facilitate continued immediate use of any Car, Lessee may make running repairs (utilizing Lessee's own employees, but not any private repair facility or any private contractor on Lessee's property) to those parts of any Car specified in the exhibit attached to the applicable Schedule, but Lessee shall not perform or cause to be performed any other Maintenance on any Car without Lessor's prior written consent. Lessee shall submit a monthly invoice in AAR format for running repairs performed on any Car by Lessee or by another railroad which has billed and received payment therefor from Lessee.

(iii) **Lessee's Reimbursement**: Lessee shall, within 30 days of notification that Lessor has paid a bill for maintenance or repair for which Lessee is responsible, reimburse Lessor for such payment.

7. RECORD KEEPING AND CAR HIRE ACCOUNTING

A. **Record Keeping**: The party ("Record Keeper") designated on the applicable Schedule shall prepare and file and is hereby authorized to and shall receive and maintain all car hire, maintenance and other records and perform all necessary and customary registration and record keeping functions ("Record Keeping") relating to the use of Cars. This shall include but not be limited to (i) registration of the Cars in the Official Railway Equipment Register and "UMLER" placing ownership marks provided by Lessor in the UMLER ownership field; (ii) performance of car hire reconciliation; (iii) collection and receipt of revenues (including car hire); and (iv) compilation of records pertaining to maintenance, repair and billing in accordance with the Interchange Rules and AAR format; provided, that if any Cars are placed in an assignment pool, Record Keeping of those documents that relate solely to the assignment pool shall be performed by the pool operator and all other Record Keeping shall be performed by the Record Keeper. If Lessee is not the Record Keeper, Lessee shall provide Record Keeper with the UMLER pass key with respect to the Cars and

hereby authorizes the Record Keeper to receive the UMLER fleet tape with respect to the Cars. All Record Keeping shall be performed separately with respect to each set of reporting marks and shall be maintained in a form suitable for reasonable inspection by the other party from time to time during regular business hours.

B. **Endorsement and Deposit of Checks and Drafts:** If Lessor is the Record Keeper, Lessor may endorse and deposit in Lessor's account any check, draft or other instrument payable to Lessee from other railroads with respect to the Cars.

C. **Interchange and Movement Records:** If Lessor is the Record Keeper, Lessee hereby authorizes Lessor on behalf of Lessee to subscribe to Lessee's Train 62, 65, 67, 71, 80 and other Car Location Movement Records ("CLM's") from the AAR and agrees to execute any documents necessary to implement such authorization. If Lessee is the Record Keeper, Lessee shall within 10 days after the close of each calendar month supply Lessor with copies of Lessee's CLM's with respect to the Cars.

D. **Car Hire Payables:** Lessee shall transmit or cause to be transmitted to the AAR Lessee's car hire payable records in a format acceptable to the AAR so that such records will be included in the monthly AAR Car Hire Exchange Tape. Upon Lessor's reasonable request, Lessee shall promptly provide Lessor with records of Lessee's car hire payables.

E. **Change of Record Keeper:** If Lessor is not the Record Keeper and Lessee desires to change the Record Keeper, Lessee will not select a Record Keeper other than Lessor without Lessor's prior written consent.

F. **Car Hire Accounting for Other Equipment:** If Lessor is the Record Keeper, it shall perform car hire accounting for any equipment not leased from Lessor but bearing the same reporting marks upon terms set forth in a separate car hire service agreement containing reasonable and customary terms.

G. **If Lessor Not Record Keeper:** If Lessee or a third party is the Record Keeper, Lessee shall within the following time periods after the end of a month in which car hire is earned on any Car ("Service Month") provide or cause to be provided to Lessor:

(i) **Two Months After the End of the Service Month:** (a) an amount equal to 100% of actual mileage allowances reported during the month which is two months after the service month and 80% of hourly revenues earned during the Service Month, and (b) a report in a form acceptable to Lessor reporting 100% of the total hourly revenues earned during the Service Month and 100% of the actual mileage allowances reported during the month which is two months after the Service Month.

(ii) **Three Months After the End of the Service Month:** An additional 10% of the hourly revenues earned during the Service Month.

(iii) **Four Months After the End of the Service Month:** The remaining 10% of the hourly revenues earned during the Service Month, plus a report in a form acceptable to Lessor reporting: (a) by Car the hourly revenues earned in hours and dollars, (b) by Car the mileage allowances reported in miles and dollars, (c) total hours and mileage for all Cars on any Schedule itemized by paying road.

The accuracy of payments made pursuant to this Section shall be reviewed in conjunction with Final Calculations referred to in Section 12.F. Any necessary adjustments shall be made at such time.

8. INSPECTION

Lessee shall permit Lessor reasonable access during normal business hours to examine the Cars on Lessee's lines or Lessee's records relating to the Cars. Lessor shall provide Lessee with a 24 hour notice prior to inspecting Cars or records located on Lessee's property.

9. INSURANCE

A. Lessee's Insurance Obligation: Lessee shall at its expense carry and maintain on the Cars while on Lessee's lines or under Lessee's custody or control (i) all risk physical loss and damage insurance and (ii) public liability insurance. Insurance policies shall be in such amounts and for such risks and with such insurance companies as are satisfactory to Lessor. Said policies shall name Lessor and any financing party designated in writing by Lessor as additional insureds and as loss payees and shall provide that they shall receive 30 days prior written notice of any material changes in coverage or cancellation. Lessee's policies shall be primary to any other insurance carried by or for the additional insureds and Lessee shall cause its insurer specifically to waive subrogation, claim and recovery with respect to such other insurance. Any and all deductible amounts in Lessee's policies shall be paid by Lessee in the event of loss.

B. Certificates of Insurance: Lessee shall furnish to Lessor certificates of insurance from Lessee's insurer or broker confirming the above insurance upon execution hereof, within 30 days of a written request from Lessor and on February 1 of each year during the term of this Agreement.

10. TAXES

Unless otherwise designated on an applicable Schedule, Lessor shall reimburse Lessee for all federal, state and local property taxes assessed against or levied upon the Cars and paid by Lessee. Lessor may contest such taxes in appropriate proceedings and Lessee will cooperate with Lessor in such contest. Lessor shall not be liable for penalties or interest payable. Lessee shall forward to Lessor upon receipt copies of all correspondence, notifications of proposed assessments and tax bills with respect to such property taxes. Upon Lessor's reasonable request Lessee shall provide Lessor with a draft of Lessee's property tax return before it is filed. Lessee shall be liable for all other taxes or governmental impositions with respect to the Cars.

11. STORAGE

In the event that any Car is not in use while subject to this Agreement, Lessee shall be responsible for storing such Car at its expense in a secure location.

12. RENT

A. Definitions:

(i) "**Eligible Lines**" means, with respect to any Cars on any Schedule, the railroad lines owned and operated by Lessee as of the date such Schedule is executed by the parties. If Lessee's lines expand through purchase, Lessee's merger with another railroad or otherwise or if Lessee's lines are sold to and become lines of another railroad, then lines other than the Eligible Lines shall be deemed to be lines of a foreign road for purposes of determining Revenues and for purposes of Section 12.D., and CLM's required in Section 7.C. shall continue to be provided to Lessor as if Lessee's lines were still only the Eligible Lines. If Lessee sells or otherwise disposes of a part but not all of the railroad lines owned and operated by Lessee as of the date such Schedule is executed by the parties, "Eligible Lines" shall mean only that part retained by Lessee.

(ii) "**Revenue Rates**" means the prescribed by the ICC in any applicable time period for each Car.

(iii) "**Revenues**" means the total revenues, calculated at the Revenue Rates, that are earned or due in any applicable time period for the use or handling of the Cars on any Schedule on all railroad lines other than the including, but not limited to, whether or not collected and received by the Record Keeper, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

(iv) "**Initial Loading**" of a Car shall be the date such Car is loaded off Lessee's railroad line with the first load of freight.

B. **Rent Payment**: Lessee shall pay Lessor rent as set forth on each applicable Schedule.

C. **Revenue Shortfalls**: If as a result of any action or inaction by Lessee (including but not limited to any abatement, reduction or offset claimed by a using or handling carrier), Lessor shall receive with respect to any calendar year amounts for the use or handling of the Cars on any Schedule on any railroad line other than the Eligible Lines which are less than the Revenues earned during such calendar year or are less than the Cars would have earned at the Revenue Rates, Lessee shall pay to Lessor within 10 days of Lessor's request an amount equal to the difference between the amount actually received and the Revenues such Cars would have earned at the Revenue Rates.

D. **Lessee Operation of Other Lines**: If Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

E. **Third Party Agreements Affecting Revenues**: Without Lessor's prior written approval, Lessee shall not enter into any agreement with any party that affects the Revenues earned by any Cars.

F. **Final Calculations**: The calculations required in this Section 12 and on each applicable Schedule shall be made within 5 months of the end of each calendar year ("Final Calculations"). Lessor shall, prior to making such Final Calculations, retain the Revenues and other payments received by it on behalf of Lessee. Lessor shall within 3 months after the end of each calendar quarter calculate on a quarterly year-to-date basis the approximate amounts due both parties pursuant to this Section and the applicable Schedule. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation; provided, however, that within 20 days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

G. **Failure to Give Priority Loading**: If any Car has remained on the Eligible Lines because Lessee has failed to give priority to the Car as specified in Subsection 3.C. of this Agreement, Lessee shall be liable for and remit to Lessor an amount equal to the Revenues which would have been generated if such Car had been in the possession and use of a foreign road for the entire period during which such Car is on the Eligible Lines as a result of such failure with each Car traveling the Average Number of Miles Per Day set forth on the applicable Schedule.

H. **If Car Hire Rates Not Prescribed**:

(i) If the ICC ceases to prescribe car hire rates or significantly alters in a way adverse to Lessor the manner in which car hire rates are prescribed or the rates themselves, the parties shall in good faith negotiate to amend this Section and the applicable Schedules so that the amounts Lessor receives in rent after such ICC action are approximately the same as Lessor would have received had no such ICC action occurred. If such good faith negotiations are unsuccessful, Lessor may terminate the Agreement with respect to any or all of the Cars on any Schedule upon not less than 30 days written notice to Lessee at any time during the Agreement.

(ii) Lessor shall determine car hire rates offered to users of deprescribed Cars and shall, at Lessor's expense, prepare and present the owner's case in any arbitration or other proceeding held to resolve disputed car hire rates.

I. **Offset**: Lessor may retain any amounts owed to or collected on behalf of Lessee to offset any sums owed to Lessor by Lessee.

13. CASUALTY CARS

A. **Casualty While Not in Lessee's Possession**: If any Car is destroyed or damaged beyond repair while not

in the possession, custody or control of Lessee or Lessee's agent or shipper and such destruction or damage of a Car has been reported in accordance with the Interchange Rules, such Car will be removed from the rental calculations of this Agreement on the date car hire ceases as set forth in Rules 7 and 8 of the AAR's Code of Car Hire. Lessor shall be entitled to all casualty proceeds from the Car.

B. **Casualty While in Lessee's Possession:** If any Car, while in the possession, custody or control of Lessee or Lessee's agent or shipper, is destroyed or damaged to the extent that such damage exceeds the Depreciated Value ("DV") as provided in the Interchange Rules for such Car, Lessee shall promptly notify Lessor in writing of such damage or destruction and shall remit to Lessor in accordance with the Interchange Rules an amount equal to the DV of such Car within the earlier of (i) 30 days of receipt of an invoice from Lessor or (ii) 90 days of the damage or destruction date. Such Car shall remain subject to the terms of this Agreement, including the rental terms, until the date on which Lessor receives all amounts due to it hereunder.

C. **Substitution of Car:** Lessor may at its expense replace any such destroyed Car with similar equipment upon prior written notice to Lessee.

14. POSSESSION AND USE

A. **Use:** This Agreement and Lessee's rights are subject and subordinate to the rights and remedies of any lender, owner or other party which finances the Cars. Financing agreements between such parties and Lessor determine whether Cars may be used in Canada or Mexico. Consequently, no use greater than temporary or incidental may be made of the Cars in Canada and no use may be made in Mexico without Lessor's prior written consent, which may be given if financing agreements so permit. The Cars may not be used in unit train service (other than incidentally) unless an applicable Schedule provides otherwise.

B. **Compliance:** Lessee agrees that while Cars are in Lessee's possession, custody or control the Cars shall be used in compliance with all applicable laws, regulations and AAR rules.

C. **Marks to Show Ownership or Security Interests:** Lessor may mark Cars to indicate the rights of Lessor or of any financing party. Lessee may place any marking or lettering on any Car or remove or change any reporting mark or Lessor's lettering only upon the written consent of Lessor.

D. **Lessee Liens:** Lessee shall not directly or indirectly allow to exist encumbrances of any kind on or with regard to any Cars or this Agreement arising by, through or under it except those created for the benefit of Lessor or any financing party. Lessee shall within 5 days notify Lessor in writing if any such encumbrance arises and shall immediately at its expense cause it to be discharged.

15. DEFAULT

A. **Events of Default:** The occurrence of any of the following events shall be an Event of Default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within 10 days after the date such payment is due;

(ii) The breach by Lessee of any other term or condition of this Agreement which is not cured within 30 days after notice of such breach;

(iii) Lessee makes a general assignment for the benefit of creditors or it fails to pay, or states that it is unable to pay, or is unable to pay its debts generally as they become due.

(iv) In the event that Lessee becomes the debtor in a Chapter 11 proceeding under the Bankruptcy Code, the failure of Lessee to assume this Agreement within 90 days of the commencement of the Chapter 11 case.

(v) Any action, event or existence of any condition the effect of which would be to materially impair

Lessee's ability to perform its obligations under this Agreement.

B. **Lessor Remedies**: Upon the occurrence of any Event of Default, Lessor at its option may exercise any or all of the following rights and remedies and any additional rights and remedies permitted by law (none of which shall be exclusive) and shall be entitled to recover all its costs and expenses including attorney fees in enforcing its rights and remedies:

(i) Terminate this Agreement and recover damages; and/or

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

(iii) By notice in writing to Lessee, terminate Lessee's right to possession and use of some or all of the Cars, whereupon all right and interest of Lessee in such Cars shall terminate; thereupon Lessee shall at its expense promptly return such Cars to Lessor at such place as Lessor shall designate and in the condition required as provided in the section of this Agreement captioned "Expiration or Other Termination"; or if Lessee does not so promptly return the Cars on demand Lessor may enter upon any premises where the Cars may be located and take possession of such Cars free from any right of Lessee. Lessee shall pay to Lessor all rental amounts which under the terms of this Agreement may then be due or would have become due for the duration of this Agreement with respect to terminated Cars and any other amounts or damages due hereunder.

16. EXPIRATION OR OTHER TERMINATION

A. **Return of Cars**: Upon the expiration or other termination of this Agreement with respect to any Car on any Schedule, Lessee shall return such Car to Lessor at the interchange point on Lessee's lines designated by Lessor (the "Return Location") or, if applicable, in accordance with Section 15.B.(iii). Lessee shall bear any transportation costs incurred in moving any Car to the Return Location. If the Return Location is on Lessee's tracks, Lessee shall use best efforts to load such Car with freight and deliver it to a connecting carrier for shipment.

B. **Condition Upon Return - Lessee Responsible for Maintenance**: If Lessee is responsible for Maintenance of any Car on any Schedule, except for normal wear and tear, each such Car shall be returned to Lessor (i) in as good condition, order and repair as when delivered to Lessee; (ii) in interchange condition in accordance with AAR and FRA rules and regulations, interchange condition to include the replacement of missing materials and the correction of wrong repairs and items listed in the Interchange Rules as "cause for renewal" and "cause for attention"; (iii) free of any and all Rule 95 damage; (iv) suitable for loading of the commodities allowed in the applicable Schedule; and (v) free from all accumulations or deposits from commodities transported in or on it while in the service of Lessee. Any item that is damaged or worn beyond what is considered to be normal by the original component manufacturer shall be deemed to have been damaged beyond normal wear and tear and shall be Lessee's responsibility.

C. **Condition Upon Return - Lessor Responsible for Maintenance**: If Lessor is responsible for Maintenance of any Car on any Schedule, each such Car shall be returned to Lessor (i) free of Rule 95 damage and (ii) free from all accumulations or deposits from commodities transported in or on it while in the service of Lessee.

D. **Storage**: Lessee shall, at Lessor's option, provide up to 120 days free storage on its lines for any Car which is either on Lessee's lines at expiration or other termination or is subsequently returned to Lessee's lines.

E. **Holdover Rent**: Until any Car is returned to Lessor, Lessee shall continue to pay rent for such Car. If Lessor requests in writing the return of any Car and Lessee fails to use best efforts to return such Car, Lessee upon written notice from Lessor shall pay rent on a monthly basis in an amount equal to the amount which would be earned by such Car if it were off the Eligible Lines 100% of the time and earning Hourly Revenues and Mileage Revenues at the Revenue Rates and Lessee shall in addition make all other payments

and keep all obligations required of Lessee under this Agreement as though such expiration or other termination had not occurred. Nothing in this Section shall give Lessee the right to retain possession of any Car after expiration or other termination of this Agreement with respect to such Car.

F. **Remarking:** Lessee shall bear all reasonable costs associated with remarking each Car at a facility mutually selected by Lessor and Lessee. Remarking shall include: (i) removal of existing reporting marks and all company logos of Lessee; (ii) complete cleaning of the area where new marks are to be placed as designated by Lessor; (iii) application of new mandatory reporting marks; and (iv) any transportation involved in moving each Car to and from the remarking facility.

G. **Return of Records:** If a party other than Lessor is Record Keeper, Lessee shall return to Lessor all Record Keeping records including the then current AAR UMLER format for hard copy records. Lessee shall continue to allow (at no burden or expense to Lessee) the Cars to be registered in UMLER until the Cars are remarked.

H. **Inspection:** Lessor may inspect any Car which is returned to it, within a reasonable time after such return. Lessee shall be entitled to participate in any such inspection. Lessee agrees to pay Lessor within 30 days of receipt of an invoice for repairs, replacements and cleaning for which Lessee is responsible. Lessor may invoice Lessee before having such work performed.

17. INDEMNITIES

Lessee agrees to defend, indemnify and hold harmless Lessor from any and all claims, losses, damages, liabilities, costs, and expenses (including attorneys' fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession, custody or control, or would be the Lessee's responsibility as the "handling carrier" under the Interchange Rules and Car Hire Rules if the Cars were not bearing Lessee's reporting marks. The indemnities contained in this Agreement shall survive the expiration or termination of this Agreement.

18. MISCELLANEOUS

A. **No Assignment or Sublease Without Lessor Consent:** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; PROVIDED, HOWEVER, THAT LESSEE MAY NOT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR PLEDGE OR ASSIGN THIS AGREEMENT OR ANY OF ITS RIGHTS OR OBLIGATIONS HEREUNDER OR SUBLEASE OR ASSIGN ANY CARS TO ANY PARTY. Any purported assignment or sublease in violation hereof shall be void. This Section shall not prohibit Lessee from engaging in the practice commonly known in the railroad industry as assigning Cars to a shipper on Lessee's lines.

B. **Assignment by Lessor:** All rights and obligations of Lessor under this Agreement, and Lessor's interest in the Cars and in the rents, may be assigned, pledged or transferred in whole or in part without notice to or consent by Lessee.

C. **Additional Documents:** Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition, financing or use of the Cars.

D. **No Waiver:** No delay, waiver, indulgence or partial exercise by Lessor of any right, power, or remedy shall preclude any further exercise thereof or the exercise of any additional right, power or remedy.

E. **Financial Information:** Upon request of Lessor, Lessee shall promptly furnish to Lessor an annual report or audited financial statements, or unaudited financial statements with the audited financial statements of its parent company, and any other financial information reasonably requested.

F. **No Warranties:** Lessor's obligations with respect to the Cars are expressly limited to those set forth in this Agreement, and LESSOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED.

LESSOR MAKES NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, NOR SHALL LESSOR HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR IN CONNECTION WITH ANY CAR.

G. **Notices:** Any notices required or permitted to be given hereunder shall be deemed given when sent by telecopy or telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor: Itel Rail Corporation
Attn.: Contract Administration
550 California Street
San Francisco, CA 94104

Lessee: TennRail Corporation
Attn.: Director, Car Accounting
111 East Capitol Street
Jackson, MS 39201

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

H. **Applicable Law:** The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of California without regard to California's choice of law doctrine.

I. **Survival:** The obligations of Lessor and Lessee hereunder shall survive the expiration or other termination of this Agreement.

J. **Entire Agreement:** This Agreement represents the entire agreement. This Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.

K. **Counterparts:** This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute one contract.

L. **Days:** All references to days herein shall mean calendar days and not business days.

Each party, pursuant to due corporate authority, has caused this Agreement to be executed by its authorized officer or other employee, and each of the undersigned declares under penalty of perjury that he or she holds the title indicated below, that the execution of this Agreement was the free act and deed of the corporation, the foregoing is true and correct and that this Agreement was executed on the date indicated below.

ITEL RAIL CORPORATION, Lessor

By: Robert Kehule
Title: Vice President, Finance
Date: 3/6/92

TENNRAIL CORPORATION, Lessee

By: [illegible]
Title: VP-Chief Marketing Officer
Date: 3/3/92