0-106A000

**ITEL**
**Pullman**

April 12, 1990

**Itel Rail Corporation**
55 Francisco Street
San Francisco, CA 94133
(415) 984-4000
(415) 781-1035 Fax

RECORDATION NO. 10707-m FILED 1425

APR 16 1990 -11 30 AM

INTERSTATE COMMERCE COMMISSION

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

**Re: Supplemental Agreement No. 12 between Itel Rail Corporation and Harris Trust and Savings Bank**

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the $15 recordation fee.

Please record this Supplemental Agreement under the Equipment Trust Agreement (Series 7) dated as of August 1, 1979, between Itel Rail Corporation, as successor to Pullman Leasing Company, and Harris Trust and Savings Bank, which was filed with the ICC on August 9, 1979, under Recordation No. 10707.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Obligor)
55 Francisco Street
San Francisco, California 94133

Harris Trust and Savings Bank (Trustee)
111 West Monroe Street
Chicago, Illinois 60690

This Supplement covers the substitution of units of equipment for units of Trust Equipment which have been worn out, unsuitable for use, lost or destroyed.

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

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Assistant

RECORDATION NO. 10702-A FILED 1425

APR 16 1990 -11 30 AM

INTERSTATE COMMERCE COMMISSION

SUPPLEMENTAL AGREEMENT NO. 12

by and between

ITEL RAIL CORPORATION

and

HARRIS TRUST AND SAVINGS BANK

Dated as of January 1, 1990

Supplementing the Equipment Trust Agreement (Series 7), dated as of August 1, 1979, between Harris Trust and Savings Bank and Pullman Leasing Company as amended and supplemented by a Supplemental Agreement, dated as of February 26, 1981, by and among Harris Trust and Savings Bank, Pullman Rail Leasing Inc. and Pullman Leasing Company; Supplemental Agreement No. 1, dated as of May 15, 1981, by and among Harris Trust and Savings Bank, Pullman Rail Leasing Inc. and Pullman Leasing Company; Supplemental Agreement No. 2, dated as of August 15, 1983, by and among Harris Trust and Savings Bank, Pullman Rail Leasing Inc. and Pullman Leasing Company; Supplemental Agreement No. 3, dated as of April 2, 1984, by and among Harris Trust and Savings Bank, Pullman Rail Leasing Inc. and Pullman Leasing Company; Supplemental Agreement No. 4, dated as of September 13, 1985, by and among Harris Trust and Savings Bank, Pullman Rail Leasing Inc. and Pullman Leasing Company; Supplemental Agreement No. 5, dated as of September 30, 1986, by and among Harris Trust and Savings Bank, Pullman Rail Leasing Inc. and Signal Capital Corporation; Supplemental Agreement No. 6, dated as of December 15, 1986 between Harris Trust and Savings Bank and Signal Capital Corporation; Supplemental Agreement No. 7, dated as of October 1, 1987, between Harris Trust and Savings Bank and Signal Capital Corporation; Supplemental Agreement No. 8, dated as of June 15, 1988, between Harris Trust and Savings Bank and Signal Capital Corporation; Supplemental Agreement No. 9, dated as of August 25, 1988, between Harris Trust and Savings Bank and Signal Capital Corporation; Supplemental Agreement No. 10, dated as of March 27, 1989, between Harris Trust and Savings Bank and Pullman Leasing Company; and Supplemental Agreement No. 11, dated as of October 17, 1989, between Harris Trust and Savings Bank and Itel Rail Corporation.

# SUPPLEMENTAL AGREEMENT NO. 12

SUPPLEMENTAL AGREEMENT NO. 12, dated as of January 1, 1990, by and between ITEL RAIL CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware, and HARRIS TRUST AND SAVINGS BANK, an Illinois banking association, as trustee (hereinafter called the "Trustee").

W I T N E S S E T H:

WHEREAS, Pullman Leasing Company, a corporation duly organized and existing under the laws of the State of Delaware ("Old Pullman"), and the Trustee entered into an Equipment Trust Agreement dated as of August 1, 1979 (such Equipment Trust Agreement, as supplemented and amended by the twelve prior supplemental agreements identified on the cover page hereof and by this supplemental agreement and as it may hereafter be supplemented and amended from time to time, being hereinafter referred to as the "Equipment Trust Agreement"), pursuant to which the Trustee issued the Pullman Leasing Company Equipment Trust Certificates (Series 7) (hereinafter called the "Trust Certificates") bearing interest at the rate of 9 5/8% per annum, the payment of which was guaranteed by Old Pullman; and

WHEREAS, on December 31, 1980, Old Pullman changed its name from Pullman Leasing Company to Pullman Rail Leasing Inc.; and

WHEREAS, pursuant to the supplemental agreement (entitled "Supplemental Agreement"), dated as of February 26, 1981, among Old Pullman, a Delaware corporation then called Pullman Leasing Company ("New Pullman") and the Trustee, such Pullman Leasing Company assumed, as a primary obligor, jointly and severally with Old Pullman, the prompt payment of the principal of and interest on the Trust Certificates in accordance with the terms of the guaranty of Old Pullman endorsed on the Trust Certificates, the Trust Certificates and the Equipment Trust Agreement, and the performance of all the covenants of the Equipment Trust Agreement to be performed by Old Pullman; and

WHEREAS, on March 21, 1985, New Pullman changed its name from Pullman Leasing Company to Signal Capital Corporation; and

WHEREAS, on September 30, 1986, Old Pullman was merged into New Pullman, and pursuant to the supplemental agreement (entitled "Supplemental Agreement No. 6"), dated as of September 30, 1986, among Old Pullman, New Pullman and the Trustee, New Pullman assumed as sole obligor the

prompt payment of the principal of and interest on the Trust Certificates, with interest on any overdue principal and interest, to the extent legally enforceable, in accordance with the terms of the guaranty of Old Pullman endorsed on the Trust Certificates, the Trust Certificates and the Equipment Trust Agreement, and the performance of all the covenants of the Equipment Trust Agreement to be performed by Old Pullman; and

WHEREAS, on November 7, 1988, New Pullman changed its name from Signal Capital Corporation back to Pullman Leasing Company; and

WHEREAS, and on August 11, 1989, New Pullman changed its name to Itel Rail Corporation; and

WHEREAS, for ease of reference, New Pullman is hereinafter referred to as the "Company"; and

WHEREAS, by Guarantee dated as of March 27, 1989, Signal Capital Holdings Corporation, a Delaware corporation and the parent of the Company, guaranteed the payment obligations of the Company pursuant to its guaranty endorsed on the Trust Certificates and the payment of all other amounts payable by the Company under the Equipment Trust Agreement; and

WHEREAS, Section 12.01 of the Equipment Trust Agreement permits the Company, when authorized by resolu-

tion or resolutions of its Board of Directors and the Trustee, to enter into agreements supplemental to the Equipment Trust Agreement to add to the covenants of the Company contained therein such further covenants, restrictions, conditions or provisions for the protection of the holders of the Trust Certificates as the Board of Directors of the Company and the Trustee shall consider to be for the protection of the holders of the Trust Certificates; and

WHEREAS, such Section 12.01 authorizes the Trustee to join with the Company in the execution of any such supplemental agreement; and

WHEREAS, such Section 12.01 expressly provides that any supplemental agreement authorized by the provisions of such Section may be executed by the Company and the Trustee without the consent of the holders of any of the Trust Certificates at the time outstanding;

NOW, THEREFORE, in consideration of the premises and of the terms and provisions herein contained, it is hereby covenanted, declared and agreed as follows:

## ARTICLE I

### Amendments to the Equipment Trust Agreement

1.1 Amendment of Section 1.01 to Add Additional Defined Terms. Section 1.01 of the Equipment Trust Agree-

ment is hereby amended by adding the following definitions at the appropriate alphabetical location in such Section.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors of the Company or the Executive Committee or any other duly authorized committee of the Board of Directors of the Company and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Consolidated Net Worth" means the consolidated stockholders' equity in the Company and its Restricted Subsidiaries determined in accordance with GAAP, after deducting therefrom any Investments by the Company or a Restricted Subsidiary in any Unrestricted Subsidiary.

"Consolidated Total Assets" means the total assets of the Company and its Restricted Subsidiaries appearing on a consolidated balance sheet of the Company and its Restricted Subsidiaries prepared in accordance with GAAP after deducting therefrom the net Investment of the Company and its Restricted Subsidiaries in Unrestricted Subsidiaries.

"GAAP" means generally accepted accounting principles in the United States of America at the date of such computation applied on a consistent basis (except

for changes in application in which the Company's independent certified public accountants concur), applied to both classification of items and amounts.

"Indebtedness" means, with respect to the Company and its Restricted Subsidiaries, (a) all obligations of the Company and its Restricted Subsidiaries for borrowed money which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a balance sheet as of the date as of which Indebtedness is to be determined, (b) all leases under which the Company or a Restricted Subsidiary is lessee that, in accordance with GAAP, are capitalized on the balance sheet of the lessee, and (c) all lease obligations and indebtedness of others of the type described in clauses (a) and (b) of this definition with respect to which the Company or a Restricted Subsidiary has become liable by way of an undertaking that under GAAP would be deemed to be a guaranty; provided, however, that "Indebtedness" shall not include (x) any obligation of the Company or a Restricted Subsidiary of the Company for borrowed money with respect to a leveraged lease transaction wherein the Company or such Restricted Subsidiary is the lessor, or an equity participant in the ownership, of leased property and the Company's or such Restricted Sub-

sidiary's liability with respect to such obligation is limited solely to such leased property, and to the rights of the Company or such Restricted Subsidiary in proceeds thereof and in agreements evidencing or relating to such transactions, or (y) any obligation of the Company or a Restricted Subsidiary for borrowed money which is secured by the real or tangible personal property of the Company or such Restricted Subsidiary so long as the Company or such Restricted Subsidiary's liability with respect to such obligation is limited solely to such real or tangible personal property, and to the rights of the Company or such Restricted Subsidiary in proceeds thereof and in agreements evidencing or relating to such transaction.

"Investment" means, as applied to any Person, any direct or indirect purchase or other acquisition by such Person of stock or other securities of any other Person, or any direct or indirect loan, advance or capital contribution by such Person to any other Person, including all indebtedness and accounts receivable from such other Person which are not current assets or did not arise from transactions with such other Person in the ordinary course of business, and any direct or indirect purchase or other acquisition by such Person of any assets other than assets used in the ordinary course of business.

"Itel" means Itel Corporation, a Delaware corporation and its successors.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Restricted Subsidiary" means any Subsidiary of the Company other than a Subsidiary which has been designated by a Board Resolution as an Unrestricted Subsidiary, provided that an Unrestricted Subsidiary may be redesignated by a Board Resolution as a Restricted Subsidiary if after giving effect thereto Consolidated Net Worth would be at least $300,000,000 and no condition shall exist which is, or after the passage of time would become, an Event of Default under subparagraph (c) of Section 6.01 of this Agreement.

"Subsidiary" means any corporation of which at the time of determination the Company and/or one or more subsidiaries of the Company owns or controls directly or indirectly more than 50% of the shares of Voting Stock of such corporation.

"Unrestricted Subsidiary" means any Subsidiary that has been designated as such by a Board Resolution if (a) at the time of such designation, such subsidiary does

not own any Voting Stock of another Subsidiary which has not yet been, or is not simultaneously being, designated an Unrestricted Subsidiary, and (b) immediately after giving effect to such designation, Consolidated Net Worth shall be at least $300,000,000.

"Voting Stock" means stock of the class or classes having general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of a corporation, provided that, for the purposes hereof, stock which carries only the right to vote conditionally on the happening of an event shall not be considered Voting Stock whether or not such event shall have happened.

1.2 Amendment of Article Seven to Add Additional Covenants. Article Seven of the Equipment Trust Agreement is hereby amended by adding immediately after Section 7.04 the following new Section 7.05:

"SECTION 7.05. Consolidated Net Worth; Receivables and Investments. The Company covenants and agrees:

(a) to maintain its Consolidated Net Worth in an amount not less than $300,000,000, and

(b) not to permit the sum of (i) the aggregate book value of all assets of the Company and its Restricted Subsidiaries that in accordance with GAAP

would be classified on the consolidated balance sheet of the Company and its Restricted Subsidiaries as receivables and that constitute liabilities or obligations of Itel or any of its Subsidiaries (other than the Company and its Subsidiaries) and (ii) without duplication of amounts described in clause (i), the aggregate amount of all Investments of the Company and its Restricted Subsidiaries in Itel or its Subsidiaries (other than the Company and its Subsidiaries) to exceed an amount equal to the sum of (x) 5% of Consolidated Total Assets of the Company and (y) the excess of the Consolidated Net Worth of the Company over $300,000,000. Prior to making the determination referred to in the preceding sentence, the aggregate amount of all receivables of or Investments by any Rail Group Member from or in any Itel Group Member shall be reduced (to an amount not less than zero) by the aggregate amount of all receivables of or Investments by such Itel Group Member from or in such Rail Group Member. For the purposes of the preceding sentence, "Rail Group Member" means the Company or any of its Restricted Subsidiaries, and "Itel Group Member" means Itel or any of its Subsidiaries other than the Company and any of its Subsidiaries."

1.3 Amendment of Section 6.01 to Add An Additional Event of Default. Section 6.01 of the Equipment Trust Agreement is hereby amended as follows:

(a) the following new subparagraph (c) is added immediately following subparagraph (b):

"(c) the Company shall fail to comply with any of its covenants set forth in Section 7.05, and such failure shall be continuing and be unremedied for more than 30 days after the Trustee shall have demanded in writing compliance therewith, or"

and

(b) the subparagraph currently identified as subparagraph (c) of Section 6.01 is hereby redesignated as subparagraph (d).

1.4 Amendment of Section 8.03 to Add Additional Reporting Requirements. Section 8.03 of the Equipment Trust Agreement is hereby amended by deleting the word "and" at the end of subparagraph (b), replacing the period at the end of subparagraph (c) with a semicolon and immediately thereafter adding the following new subparagraphs (d) and (e):

"(d) to file with the Trustee, within 90 days after the end of each fiscal year of the Company, an Officers' Certificate stating that the signers have made, or caused to be made under their supervision, a

review in reasonable detail of the transactions and condition of the Company and its Restricted Subsidiaries and that such review has not disclosed, or the signers otherwise have no knowledge of, the existence, as at the date of such Officers' Certificate, of any condition or event which constitutes a violation of any of the covenants of the Company as set forth in Section 7.05, or, if any such event or condition shall exist, specifying the nature and period of existence thereof and what action the Company has taken or is taking or proposes to take with respect thereto; and

(e) to file with the Trustee, promptly upon obtaining knowledge of any condition or event which after the giving of notice or lapse of time or both would become an Event of Default under subparagraph (c) of Section 6.01, an Officers' Certificate specifying the nature and period of existence thereof and what action the Company has taken or is taking or proposes to take with respect thereto."

ARTICLE II

2.1 Concerning the Trustee. The Trustee assumes no duties, responsibilities or liabilities by reason of this Supplemental Agreement No. 12 other than as

set forth in the Equipment Trust Agreement. The recitals contained in this Supplemental Agreement No. 12 are made by the Company and not by the Trustee and all of the provisions contained in the Equipment Trust Agreement, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full.

2.2 Confirmation of Equipment Trust Agreement. Except as hereby supplemented and amended, the Equipment Trust Agreement is in all respects ratified and confirmed, and all of the terms and provisions thereof shall be and remain in full force and effect.

2.3 Execution in Counterparts. This Supplemental Agreement No. 12 may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, ITEL RAIL CORPORATION has caused this Supplemental Agreement No. 12 to be signed in its corporate name and acknowledged by its President or one of its Vice Presidents, and its corporate seal to be affixed hereunto or impressed hereon, duly attested by its

Secretary or one of its Assistant Secretaries; and HARRIS TRUST AND SAVINGS BANK has caused this Supplemental Agreement No. 12 to be signed and acknowledged by one of its Vice Presidents, and its corporate seal to be affixed hereunto or impressed hereon, duly attested by one of its Trust Officers, all as of the day and year first above written.

ITEL RAIL CORPORATION

Attest: _____ By _____

HARRIS TRUST AND SAVINGS BANK

Attest: _____ By _____

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

On the 21st day of February, 1990, before me personally came Robert Kiehnle, to me known, who, being duly sworn, did depose and say that he resides at 4220 Ridgemont Ct., Oakland, CA 94619, that he is a Vice President & Treasurer of ITEL RAIL CORPORATION, one of the corporations described in and which executed the above instrument; that he knows the corporate seal of said corporation; that one of the seals affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation and that he signed his name thereto by like authority.

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

[Notarial Seal]

Patricia Schumacker
Notary Public

STATE OF ILLINOIS )
: ss.:
COUNTY OF COOK )

On the 13th day of March, 1990, before me personally came J BARTOLINI, to me known, who, being duly sworn, did depose and say that she resides at _____, that she is a Vice President of HARRIS TRUST AND SAVINGS BANK, one of the corporations described in and which executed the above instrument; that he knows the corporate seal of said corporation; that one of the seals affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation and that he signed his name thereto by like authority.

"OFFICIAL SEAL"
T. Muzquiz
Notary Public, State of Illinois
My Commission Expires 7/12/93

T. Muzquiz
Notary Public

[Notarial Seal]