

#29,000  
New filing +  
cross indexing

# ITEL

## Itel Rail Corporation

55 Francisco  
San Francisco, California 94133  
(415) 984-4000  
Telex 34234

14545

JAN 14 1985 2 20 PM

INTERSTATE COMMERCE COMMISSION

January 3, 1985

5-014A041

No.  
Date JAN 14 1985  
Fee \$ 20.00

ICC Washington, D. C.

Mr. James H. Bayne, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Mr. Bayne:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Rail Corporation for filing and recordation with the I.C.C., four counterparts of the following document:

New filing -

Sublease Agreement dated November 1, 1984 between the Texas Mexican Railway Company and the Atchison, Topeka and Santa Fe Railway Company.

Please cross-reference this Sublease under the Lease Agreement dated as of March 15, 1978 between Itel Corporation, as predecessor in interest to Itel Rail Corporation, and the Texas Mexican Railway Company which was filed with the I.C.C. on October 17, 1978 and given I.C.C. Recordation No. 9778.

The names and addresses of the parties to the aforementioned are:

1. Texas Mexican Railway Company - Sub lessor  
1200 Washington Street  
Laredo, Texas 78040
2. Atchison, Topeka & Santa Fe Railway Company Sub lessee  
80 East Jackson Blvd.  
Chicago, Illinois 60604

RECORDED  
JAN 14 2 45 PM '85  
FBI

The equipment covered by this Sublease is one hundred eighty six (186) 70-ton flush deck flatcars bearing reporting marks SFLC 901295-901480, A.A.R. mechanical designation FC.

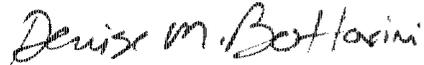
Also enclosed is a check in the amount of \$20.00 for the required recording and cross-referencing fee.

*Herbert Coomb*  
*James Bayne*

Mr. James H. Bayne, Secretary  
January 3, 1985  
Page Two

Please stamp all counterparts of the enclosed Sublease with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be returned to the bearer of this document.

Sincerely,



Denise M. Bottarini  
Legal Assistant

DMB/vdv

cc: Robert S. Clark, Esq.  
Senior Trust Officer  
First Security Bank of Utah, N.A.  
Corporate Trust Division  
79 South Main Street  
Salt Lake City, Utah 84125

Virginia Hanger  
Itel Rail Corporation.

New film  
copy made  
12/10/84

14545

9/13/84

JAN 14 1985 2 50 PM

SUBLEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS SUBLEASE AGREEMENT (the "Sublease") is made as of this 1st day of November, 1984, between THE TEXAS MEXICAN RAILWAY COMPANY, a Texas corporation, 1200 Washington Street, Laredo, Texas, 78040, as the Sublessor ("Sublessor") and THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Delaware corporation, 80 East Jackson Boulevard, Chicago, Illinois, 60604, as the Sublessee ("Sublessee").

1. Scope of Sublease

- A. Sublessor agrees to lease to Sublessee, and Sublessee agrees to lease from Sublessor upon the terms and conditions set forth herein, one hundred eighty-six (186) items of equipment of the number, type, construction and other description set forth on Equipment Schedule No. 1 attached hereto and executed by the parties concurrently herewith and any lease schedules executed by the parties hereafter and made a part of this Sublease. The word "Schedule" as used herein includes the Equipment Schedule or Equipment Schedules executed herewith and any additional Equipment Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Sublease. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car."
- B. It is the intent of the parties to this Sublease that Sublessor shall at all times be and remain the Sublessor of all Cars. Sublessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Sublease shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Sublease with respect to each Car described on each Schedule shall commence on November 1, 1984, and shall expire on October 31, 1985, as to all of the Cars described on each Schedule (the "Term").

3. Supply Provisions

- A. Sublessee hereby approves the specifications of the Cars delivered to it by Sublessor. The Cars shall be marked with the railroad markings of Sublessee in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Sublease at 12:01 a.m. on November 1, 1984 ("Delivery"). Notwithstanding that Sublessee may not have immediate physical possession of the Cars leased hereunder, Sublessee agrees to pay the rent set forth in this Sublease.

ASSIGNED TO FIRST SECURITY BANK  
OF TAMPA, FLA., TRUSTEE UNDER  
ALLIANCE AGREEMENT DATED  
December 1, 1984  
LESSOR'S INTEREST ASSIGNED TO  
FIRST SECURITY BANK OF  
TAMPA, FLA., TRUSTEE RESPECT TO  
CARS, N.A. WITH RESPECT TO  
CARS NUMBERED SF/C 901285-901480

- B. Additional Cars shall be leased from Sublessor by Sublessee only upon the mutual agreement of the parties. During the term of this Sublease, Sublessor may, at its expense, replace any or all of the Cars with similar flatcars upon prior written notice from Sublessor to Sublessee; provided, however, that any such replacement shall not prevent or prohibit Sublessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

#### **4. Record Keeping**

- A. Sublessee shall, at its expense, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Sublease. Such matters shall include, but are not limited to: (i) preparation of appropriate Association of American Railroads ("AAR") interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and any other regulatory agencies with respect to the Cars. Sublessee shall register each Car in the UMLER in such a manner that Sublessor is allowed access to any information required by Sublessor with regard to each Car. In addition, Sublessee shall be responsible for any expenses incurred and rent lost as the result of any improper UMLER registration.
- B. Sublessee shall perform all record keeping functions relating to the use of the Cars by Sublessee and other railroads, including but not limited to, records pertaining to maintenance and repair, and billing in accordance with the AAR Interchange Rules as adopted by the AAR Mechanical Division, Operation and Maintenance Department ("Interchange Rules"). All record keeping performed by Sublessee hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Sublessor in a form suitable for reasonable inspection by Sublessee from time to time during Sublessor's regular business hours.

#### **5. Maintenance, Tax and Insurance**

- A. Except as otherwise provided herein, Sublessor shall, at its expense, perform or have performed all inspections, other than interchange inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Sublessee's expense in the event it was occasioned by the fault of Sublessee, or arises in those instances in which the Interchange Rules would assign responsibility to Sublessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Sublessee shall, at its

expense, inspect all Cars interchanged to Sublessee to ensure that such Cars are in good working order and condition and Sublessee shall be liable to Sublessor for any repairs required for damage not noted at the time of interchange. Sublessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper on Sublessee's railroad line. With respect to the Cars, any repairs performed by Sublessee at Sublessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties hereto.

- B. Sublessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Sublessee may make only running repairs to those parts specified in Exhibit A attached hereto to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Sublessor's prior written consent. Sublessee shall be liable to Sublessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Sublessor. Sublessor shall have the right to perform certain Repairs, as hereinafter defined, to the Cars at a location on Sublessee's property which is mutually agreeable to Sublessor and Sublessee. Repairs ("Repairs") shall be of the type that Sublessor determines Sublessee would not normally perform or of the type that Sublessor determines would normally precipitate movement of such Cars to a repair facility. Sublessor shall notify Sublessee at least twenty-four (24) hours in advance of performing such Repairs.
- C. As long as this Sublease shall remain in effect, Sublessee shall be responsible for the Cars: (i) while in Sublessee's possession or control; and (ii) in the same manner that Sublessee is responsible under the Interchange Rules for similar equipment not owned by Sublessee. Sublessee shall, at all times while this Sublease is in effect, at its own expense, cause to be carried and maintained: (i) physical loss or damage insurance with respect to the Cars while on Sublessee's tracks provided, however, that the Sublessee may self-insure such Cars to the extent it self-insures equipment similar to the Cars and to the extent such self-insurance is consistent with prudent industry practice, and (b) public liability insurance with respect to third party personal injury and property damage, in each case said insurance shall be in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice, but in any event such insurance shall be at least comparable in amount, risk coverage and insurer, to insurance coverage carried by the Sublessee with respect to similar equipment owned or leased by it. Sublessee shall furnish to Lessor, concurrently with the execution hereof, certificates evidencing the aforesaid insurance. All insurance shall be taken

out in the name of Sublessee and shall name Sublessor and Itel Rail Corporation ("Itel Rail") as additional named insured, and shall also list Sublessor and Itel Rail as loss-payee on the property insurance policies. Said policies shall provide that Sublessor and Itel Rail shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. Sublessor and/or Itel Rail may, at its option, re-evaluate the insurance coverage provided by Sublessee and require additional coverage as deemed necessary.

- D. Sublessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify Sublessor and its successors against taxes, fees, levies, imposts, duties or withholdings of any nature together with penalties, fines or interest thereof imposed on, incurred by or asserted against: (1) the Cars, (2) the lease, sublease or delivery of the Cars, and (3) revenues earned by the Cars, including but not limited to mileage charges and/or car hire revenues, during the term of this Sublease, except taxes on income and franchise taxes imposed on Sublessor. Sublessee shall comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars and shall provide Sublessor with a photostatic copy of the receipted ad valorem tax bill within thirty (30) days after receipt.

## 6. Storage

As long as there is sufficient room on Sublessee's railroad tracks, Sublessee shall, at its expense and if deemed necessary by Sublessor, store the Cars on its railroad tracks. In the event that Sublessee's capacity to store any or all of the Cars on Sublessee's railroad tracks is impaired at any time, then Sublessee shall be responsible for the following: (i) all reasonable transportation costs incurred to move the Cars to a storage location; (ii) all reasonable transportation costs incurred in removing the Cars from the storage location; and (iii) the actual costs incurred for the storage of any or all of the Cars. If Sublessor pays for any costs referred to in this Section, Sublessee shall reimburse Sublessor for such cost within ten (10) days from Sublessee's receipt of Sublessor's invoice. Sublessor shall assist Sublessee so as to minimize Sublessee's exposure under this Section.

## 7. Rent

- A. The fixed rent ("Fixed Rent") shall be twenty-three dollars and eighteen cents (\$23.18) per Car per day for each day during the Term.
- B. On the first (1st) day of each month during the Term, Sublessee shall pay the Fixed Rent, as set forth herein, to Sublessor for each Car.
- C. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed

from the rental calculations of this Sublease on the date car hire ceased as set forth in the aforementioned Rule 7. Sublessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Sublessor to Sublessee. If any Car, while in the possession of Sublessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Sublessee shall notify Sublessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Sublessee fails to notify Sublessor within sixty (60) days of the Damage Date, Sublessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Sublessee shall remit to Sublessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Sublessor.

- D. Any agreement between Sublessee and other parties with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Sublessor's prior written approval of the conditions contained therein if such Third Party Agreement affects the Revenues earned by the Cars, provided, however, that this shall in no event prevent or prohibit Sublessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.
- E. Sublessor and Sublessee agree to cooperate with and assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 7.

**8. Possession and Use**

- A. So long as Sublessee shall not be in default under this Sublease, Sublessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Sublease and in the manner and to the extent the Cars are customarily used in the railroad freight business as set forth in Subsection 8.C. However, Sublessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by ITEL Rail in connection with the acquisition of the Cars which are the subject of this Sublease. Accordingly, following notice to Sublessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Sublease), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
- B. Sublessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same

may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Sublessor or Sublessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.

- C. The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of a rail common carrier. During the term of this Sublease, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.
- D. Sublessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars, or any interest therein or in this Sublease or Schedule thereto. Sublessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

## 9. Default

- A. The occurrence of any of the following events shall be an event of default:
  - (i) The nonpayment by Sublessee of any sum required herein to be paid by Sublessee within thirty (30) days after the date any such payment is due;
  - (ii) The breach by Sublessee of any other term, covenant, or condition of this Sublease, which is not cured within thirty (30) days thereafter;
  - (iii) The filing by or against the Sublessee of any petition or the initiation by or against the Sublessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of the Sublessee hereunder; or b) under any bankruptcy, reorganization, insolvency, receivership, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness.
  - (iv) The subjection of any of Sublessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

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

- (i) Proceed by any lawful means to enforce performance by Sublessee of this Sublease or to recover damages for a breach thereof, and/or
- (ii) By notice in writing to Sublessee, terminate Sublessee's right of possession and use of the Cars, whereupon all right and interest of Sublessee in the Cars shall terminate; and thereupon Sublessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Sublessee. Sublessor shall, in addition, have the right to recover from Sublessee any and all rental amounts which under the terms of this Sublease may then be due or which may have accrued to that date, together with Sublessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

## 10. Expiration or Early Termination

### A. Expiration

Upon the expiration of this Sublease with respect to any Car, Sublessee shall promptly return such Car to Sublessor as follows:

- (i) If some or all of the Cars are to be delivered to Sublessor at a designated point on Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of expiration. Sublessee shall, at Sublessor's option, provide, with respect to any Car described on each Schedule which is either on the Sublessee's railroad tracks at the time of expiration or is subsequently returned to Sublessee's railroad, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of expiration, whichever date is later.

At the option of Sublessor, either Sublessee or a contractor chosen by Sublessor shall, at Sublessee's expense, remark the Cars as set forth in Subsection 10.C. of this Sublease.

Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor. After remarking, Sublessee shall, at Sublessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

- (ii) If some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Sublessor. Sublessee shall bear the expense of remarking such Cars.

**B. Early Termination**

Upon the early termination of this Sublease with respect to any Car, whether or not pursuant to Section 9 hereof, Sublessee shall promptly return such Car to Sublessor as follows:

- (i) If some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of early termination. Sublessee shall, at Sublessor's option, provide, with respect to any Car described on any Schedule which is either on the Sublessee's railroad tracks at the time of early termination or is subsequently returned to Sublessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of early termination or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of early termination, whichever date is later.

At the option of Sublessor, either Sublessee or a contractor chosen by Sublessor shall, at Sublessee's expense, remark the Cars as set forth in Subsection 10.C. of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor. After remarking, Sublessee shall, at Sublessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

- (ii) If some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Sublessee. Sublessee shall bear the expense of remarking such Cars.

- C.** Remarking, with respect to each Car, shall include the following:  
a) removal of existing mandatory markings of Sublessee; b) complete cleaning subsequent to the removal of markings as

designated by Sublessor; c) application of new mandatory markings; and d) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

## 11. Indemnities

- A. SUBLESSEE SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF SUBLESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN SUBLESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO SUBLESSEE.
- B. SUBJECT TO SUBSECTION 11.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH SUBLESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS SUBLEASE, SUBLESSOR SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST SUBLESSEE WITH RESPECT TO THE CARS, INCLUDING WITHOUT LIMITATION, THE LEASING OR RETURN OF THE CARS, USE, MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE CARS OR THE CONDITION OF THE CARS (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY SUBLESSOR OR SUBLESSEE).

## 12. Representations, Warranties, and Covenants

Sublessee represents, warrants and covenants that:

- A. Sublessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and, insofar as is material to Sublessor's rights under this Sublease, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Sublease.
- B. The entering into and performance of this Sublease will not violate any judgment, order, law or regulation applicable to Sublessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Sublessee or on the Cars pursuant to any instrument to which Sublessee is a party or by which it or its assets may be bound.
- C. There is no action or proceeding pending or threatened against Sublessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions,

financial or otherwise, of Sublessee such that Sublessee's ability to perform its obligations hereunder would be materially and adversely affected.

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

### 13. Inspection

Sublessor shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to ensure Sublessee's compliance with its obligations hereunder.

### 14. Conditions of Itel Rail's Consent to Sublease

Itel Rail hereby gives its written consent for Sublessor and Sublessee to enter into this Sublease for the Cars described on Equipment Schedule No. 1 attached hereto which are subject to a Lease Agreement ("Agreement") dated March 15, 1978 between Itel Rail, as Lessor and The Texas Mexican Railway Company, as Lessee. Itel Rail's consent hereunder is specifically conditioned on Sublessor's and Sublessee's agreement hereunder that: (1) ~~Sublessor shall remain primarily liable for the payment of the rent set forth in the Agreement and for the performance of all the other terms of the Agreement to be performed by the Sublessor;~~ (2) this Sublease is subject and subordinate to the rights of Itel Rail under the Agreement and to any amendment or modification thereof; and (3) during this Sublease, any reference to Sublessor under the Agreement with respect to any of Sublessor's obligations or any of Itel Rail's rights (but not Sublessor's rights) shall also include Sublessee.

*Handwritten initials: "M" and "B" with a signature.*

### 15. Miscellaneous

- A. This Sublease and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Sublessee may not without the prior written consent of Sublessor, assign this Sublease or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

- B. 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 Itel Rail ~~Sublessor~~ or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing

parties' interest in and to the Cars, this Sublease and Schedules hereto and to confirm the subordination provisions contained in Section 8 of this Sublease.

- C. It is expressly understood and agreed by the parties hereto that this Sublease constitutes a lease of the Cars only and no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Sublessee any right, title or interest in the Cars, except as a Sublessee only.
- D. No failure or delay by Sublessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Sublessor nor shall any waiver or indulgence by Sublessor or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- E. This Sublease shall be governed by and construed according to the laws of the State of California and jurisdiction of any action with respect to this Sublease shall be in the courts located in the State of California.
- F. Sublessee shall notify Sublessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- G. Sublessee shall also notify Sublessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car.
- H. Sublessee shall furnish to Sublessor promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.
- I. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth herein or at such other address as to which any party shall notify the other party.
- J. The obligations and liabilities of Sublessor and Sublessee hereunder shall survive the expiration or earlier termination of this Sublease.
- K. This Sublease represents the entire Sublease. This Sublease shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the date first above written.

THE TEXAS MEXICAN  
RAILWAY COMPANY

By: *M. V. ...*

Title: Chairman & Chief Executive Officer

Date: December 6, 1984

THE ATCHISON, TOPEKA & SANTA FE  
RAILWAY COMPANY

By: *D. B. Rugg*

Title: Executive Vice President

Date: 11-12-84

ACKNOWLEDGEMENT AND CONSENT:

*D. D. ...*  
Iitel Rail Corporation

Date: December 27, 1984

EXHIBIT A

Running Repairs

Angle Cocks  
Air Hose  
Train Line  
Operating Levers in Brackets  
Sill Steps  
Grab Irons  
Brake Shoes  
Brake Shoe Keys  
Brake Connecting Pin  
Brake Head Wear Plates  
In-Date-Test  
Air Brakes  
Hand Brakes  
Truck Springs

Running Repairs Continued

Wheels  
Yokes  
Knuckles/pins  
Slack Adjuster  
Pedestal Locks  
Couplers  
Draft Gears  
Coupler Carriers  
Center Plates  
Lube of Hitches  
Cotter Keys  
Roller Bearing Adapters  
Air Hose Supports

STATE OF Texas )  
COUNTY OF Webb ) ss:

On this 6th day of December, 1984, before me personally appeared A. R. Ramos, to me personally known, who being by me duly sworn says that such person is Chairman + Chief Executive Officer of The Texas Mexican Railway Company, that the foregoing Sublease was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sandra Sue Webber  
Notary Public

STATE OF Ill. )  
COUNTY OF Cook ) ss:

On this 12th day of November, 1984, before me personally appeared D. G. Kuegg, to me personally known, who being by me duly sworn says that such person is Executive Vice President of The Atchison, Topeka & Santa Fe Railway Company, that the foregoing Sublease was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John Thomas  
Notary Public

My Commission Expires Feb. 3, 1988

EQUIPMENT SCHEDULE NO. 1

The Texas Mexican Railway Company hereby subleases the following Cars to The Atchison, Topeka & Santa Fe Railway Company subject to the terms and conditions of that certain Sublease Agreement dated as of November 1, 1984.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
FC	70-Ton Flush Deck Flatcar	SFLC 901295- 901480	89'4"	N/A	N/A	N/A	186

THE TEXAS MEXICAN RAILWAY COMPANY

By:   
Title: Chairman & Chief Executive Officer

Date: December 6, 1984

THE ATCHISON, TOPEKA & SANTA FE  
RAILWAY COMPANY

By:   
Title: Executive Vice President

Date: 11-12-84

ACKNOWLEDGMENT AND CONSENT:

  
IteI Rail Corporation

Date: December 27, 1984

STATE Texas )  
COUNTY OF Webb ) ss:

On this 6th day of December, 1984, before me personally appeared A. R. Ramos, to me personally known, who being by me duly sworn says that such person is Chua + Ch. Escobar of The Texas Mexican Railway Company, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sandra Su Welber  
Notary Public

STATE OF Ill. )  
COUNTY OF Cook ) ss:

On this 12th day of November, 1984, before me personally appeared D. G. Ruesch, to me personally known, who being by me duly sworn says that such person is Executive Vice President of The Atchison, Topeka & Santa Fe Railway Company, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John Thomas  
Notary Public

My Commission Expires Feb. 3, 1986