

ITEL

Pullman

September 11, 1989

IteI Rail Corporation

55 Francisco Street
San Francisco, CA 94133

(415) 984-4000
(415) 781-1035 Fax

RECORDATION NO. 14594-N

FILED 14594-N

SEP 13 1989 - 1 10 PM

INTERSTATE COMMERCE COMMISSION

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

9-256A020

Re: **Amendment No. 6 to lease Agreement dated October 15, 1984,
between IteI Rail Corporation and Apalachicola Northern
Railroad Company**

Dear Ms. McGee:

On behalf of IteI 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 \$13 recordation fee.

Please record this Amendment under the Lease Agreement dated October 15, 1984, between IteI Rail Corporation and Apalachicola Northern Railroad Company, which was filed with the ICC on March 13, 1985, under Recordation No. 14594.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Apalachicola Northern Railroad Company (Lessee)
200 First Street
Port St. Joe, Florida 32456

This Amendment extends the term of the Lease Agreement with respect to forty-seven (47) boxcars identified on Equipment Schedule No. 2.A. thereto.

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

Interstate Commerce Commission
Washington, D.C. 20423

9/14/89

OFFICE OF THE SECRETARY

Patricia Schumacker
Legal Department
IteI Rail Corporation
55 Francisco Street
San Francisco, California 94133

Dear Ms. Schumacker:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/13/89 at 1:10pm and assigned recordation number(s).

14594-N
15642-L
15642-M
15782-F
15879-C
16060-C
16060--D
16422-B

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

SEP 13 1989 - 1 10 PM

AMENDMENT NO. 6

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 6 (the "Amendment") to the Lease Agreement dated as of October 15, 1984, as amended, (the "Agreement") between ITEL RAIL CORPORATION ("Lessor") and APALACHICOLA NORTHERN RAILROAD COMPANY ("Lessee") is made as of this 16th day of August, 1989, between Lessor and Lessee.

RECITALS:

- A. Lessor and Lessee are parties to the Agreement pursuant to which Lessor has leased to Lessee one hundred forty-six (146) boxcars bearing the reporting marks AN 2153-2189, AN 2191-2199, AN 2201-2240 and AN 5815-5861 and AN 5863-5875 (the "Cars").
- B. Lessor and Lessee desire to extend the term of the Agreement with respect to the forty-seven (47) Cars bearing the reporting marks AN 2153-2189, AN 2191-2199 and AN 2201 which are described on Equipment Schedule No. 2.A. of the Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have the meanings defined therein when used in this Amendment.
- 2. With respect to the Cars described on Equipment Schedule No. 2.A., Section 2 of the Agreement is replaced by the following:

"2. Term

The term of the Agreement with respect to each Car described on Equipment Schedule No. 2.A. shall commence on the date such Car was delivered pursuant to Subsection 3.A. of the Agreement and shall continue for all of the Cars described on Equipment Schedule No. 2.A. through the close of business on August 31, 1992."

- 3. Effective as of September 1, 1989, with respect only to the Cars described on Equipment Schedule No. 2.A., the following shall apply instead of Subsection 7.A.(iii) of the Agreement, and new Subsections 7.A. (iv), 7.A.(v), and 7.A. (vi) shall be added to the Agreement:

"7.A.(iii) 'Per Diem Revenues' is defined as the total per diem revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

(iv) 'Mileage Revenues' is defined as the total mileage revenues,

calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

(v) 'Revenues' is defined as the sum of Per Diem Revenues and Mileage Revenues.

(vi) The 'Base Rent' is defined as _____ per Car per calendar quarter. (Such amount equals the Per Diem Revenues, which the Cars would have earned in the aggregate if the Cars had been on railroad lines other than Eligible Lines for _____ of the hours that such Cars were subject to the Agreement during such calendar quarter.) The Base Rent for any Car which is not subject to the Agreement for an entire calendar quarter shall be prorated at _____ per day for such Car during such calendar quarter."

5. Effective as of September 1, 1989, with respect only to the Cars described on Equipment Schedule No. 2.A., the following shall apply instead of entire Subsection 7.C. of the Agreement:

"7.C. Lessee agrees to pay rent to Lessor for the Cars calculated as follows:

(i) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof are equal to or less than the Base Rent, Lessor shall retain a sum equal to _____ of the total Per Diem Revenues.

(ii) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof exceed the Base Rent, Lessor shall retain an amount equal to _____ of all Per Diem Revenues in excess of the Base Rent and Lessee shall receive _____ Revenues received in excess of the Base Rent.

(iii) Lessor shall be entitled to and retain one hundred percent (100%) of Mileage Revenues."

6. Effective as of September 1, 1989, with respect to the Cars described on Equipment Schedule No. 2.A. only, the following shall apply instead of Subsection 7.F. of the Agreement:

"7.F. If, with respect to any calendar quarter, Revenues received by Lessor for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines are less than _____

per Car [the 'Minimum Amount', which equals _____

for such calendar quarter], then Lessor may so notify Lessee. Within ten (10) days of receipt of such notice from Lessor, Lessee shall either:

- (i) Pay Lessor the difference ('Difference') between the Minimum Amount and the actual Revenues for such calendar quarter and agree to pay the Difference for any subsequent calendar quarter for the duration of the term of the Agreement with respect to the Cars in this Schedule in which such Difference occurs. Lessee shall pay Lessor such Difference not later than sixty (60) days after receiving an invoice for such Difference.
- (ii) Elect not to pay Lessor such Difference for such quarter. In such event, Lessor may terminate all or any of the Cars described in this Schedule from the Agreement upon not less than thirty (30) days' written notice to Lessee at any time during the duration of the Agreement."

7. Effective as of September 1, 1989, with respect only to the Cars described on Equipment Schedule No. 2.A., a new Subsection 7.H. shall be added to the Agreement as follows:

"7.H. Any agreement between Lessee and any other party with respect to the Cars ('Third Party Agreement(s)') shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the Revenues earned by the Cars."

8. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all of the Cars subject to the Agreement.

9. This Amendment may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

APALACHICOLA NORTHERN RAILROAD
COMPANY

By: *[Signature]*
Title: President & CEO
Date: August 16, 1989

By: *[Signature]*
Title: Vice President
Date: 8/10/89

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

On this 11th day of August, 1989, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President and Chief Executive Officer of ITEL Rail Corporation, that the foregoing Amendment No. 6 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.

Sharon L. Van Fossan
Notary Public



STATE OF FLORIDA)
) ss:
COUNTY OF GULF)

On this 10th day of AUGUST, 1989, before me personally appeared T. E. Johnston, Jr., to me personally known, who being by me duly sworn says that such person is Vice President of Apalachicola Northern Railroad Company that the foregoing Amendment No. 6 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.

Allyson K. Stutz
Notary Public

NOTARY PUBLIC STATE OF FLORIDA
BY COMMISSION EXP. FEB 18, 1991
BONDED THRU GENERAL INS. UND.

