

ITEL

RECORDATION NO. 14935-14 FILED 1988

JUN 16 1988 - 12 15 PM

Itel Rail Corporation

June 13, 1988

INTERSTATE COMMERCE COMMISSION

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

Date 6/16/88
Fee \$ 13
ICC Washington, D. C.

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

Re: Rider E dated June 9, 1988, to the Master Lease Agreement dated February 28, 1986, between Itel Rail Corporation and Iowa Interstate Railroad, Ltd.

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 \$13 recordation fee.

Please record this Rider under Master Lease No. 1100 dated February 28, 1986, between Itel Rail Corporation and Iowa Interstate Railroad, Ltd., which was filed with the ICC on April 7, 1986, under Recordation No. 14935.

The parties to the aforementioned instrument are listed below:

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

Iowa Interstate Railroad, Ltd. (Lessee)
818 Church Street
Evanston, Illinois

This Rider covers not less than thirty (30), but no more than fifty (50) 89', 70-ton flatcars to bear reporting marks from within the series IAIS 902200-902249.

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 Department

RECORDED BY 149 35-19 FILED 1988

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5/11/88

RIDER E
TO
MASTER LEASE NO. 1100 BETWEEN ITEL RAIL CORPORATION
AND IOWA INTERSTATE RAILROAD, LTD.

INTERSTATE COMMERCE COMMISSION

THIS RIDER E ("Rider E") to that certain Master Lease Agreement No. 1100, as amended, (the "Agreement") made as of February 28, 1986 between ITEL Rail Corporation ("Lessor") and Iowa Interstate Railroad, Ltd. ("Lessee") is made this 9th day of June, 1988 between Lessor and Lessee.

The parties agree as follows:

1. All terms defined in the Agreement shall have the meanings defined therein when used in Rider E.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement as supplemented by this Rider E. The terms and provisions of this Rider E shall control, as to the Cars described hereinbelow, over any inconsistent or contrary terms and provisions in the Agreement.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
FC	70-Ton, dual 45' Flatcar, Plate B, cushion underframe	IAIS 902200-902249	89'4"	9'	N/A	N/A	up to 50, not less than 30

3. The term of the Agreement shall commence with respect to each Car listed on this Rider E at 12:00 noon on the date that such Car is remarked pursuant to Subsection 3.A. of the Agreement, and shall expire as to each Car listed on Rider E seven (7) years from the date on which the first Car from within the series IAIS 902200-902249 is remarked (the "Term"). Lessor shall notify Lessee in writing of the expiration date of the Agreement with respect to the Cars on this Rider. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.

4. Lessee agrees to pay to Lessor the following rent for the use of the Cars listed on Rider E as set forth in this Section 4.

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the commencement date of this Rider. Unless otherwise agreed by Lessor and Lessee, any lines purchased by Lessee or added to the Eligible Lines during the Term are deemed to be the lines of another railroad company for the purposes of determining Per Diem and Mileage Revenues (as defined hereinbelow).

- (ii) "Per Diem Revenues" is defined as the total per diem revenues earned and collected or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to per diem computed at the hourly car hire rate specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the April 1988 edition of The Official Railway Equipment Register (the "Equipment Register") as may be updated from time to time, 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.
- (iii) "Mileage Revenues" is defined as the total mileage revenues earned and collected or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to mileage computed at the mileage car hire rate specified for each Car in the April 1988 edition of the Equipment Register, whether or not collected and received by Lessor and undiminished by any claimed abatement, reduction or offset caused by any action or failure by Lessee.
- (iv) The "Base Per Diem Rent" for each calendar quarter is defined as the amount of 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.

B. Lessor shall receive all Per Diem Revenues and Mileage Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. of the Agreement shall become subject to the rental calculation under Subsection 4.C. hereinbelow upon the Initial Loading of such Car.

C. Lessee agrees to pay the following rent to Lessor for the use of the Cars:

- (i) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof are equal to or less than the Base Per Diem Rent, Lessor shall retain a sum equal to one hundred percent (100%) 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 Per Diem Rent, Lessor shall retain an amount equal to the Base Per Diem Rent and of the Per Diem Revenues received in excess of the Base Per Diem Rent and Lessee shall receive of the Per Diem Revenues received in excess of the Base Per Diem Rent.
- (iii) Lessor shall retain one hundred percent (100%) of the total Mileage Revenues.

- D. (i) In the event that Lessor shall receive or earn for the use of any Cars, revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 4.A (ii) and (iii) hereinabove, as a result of any action or inaction by Lessee, Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Per Diem Revenues and the Mileage Revenues such Cars would have earned for the same service and the amount of revenues actually received or earned for such Cars.
- (ii) Upon any abatement, reduction or offset as described in Subsection 4.A. (ii) and (iii) hereinabove, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (iii) If, at any time during the Agreement, 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. The calculations required in Subsections 4.C. and 4.D. of this Rider E shall be made after the end of each calendar year ("Final Calculation"). However, in order for Lessor to meet its financial commitments, Lessee shall report to Lessor by the sixtieth (60th) day after each calendar month in which Per Diem or Mileage Revenues were actually earned ("Service Month"), the total hours earned, total miles travelled off Lessee's line, total miles travelled on Lessee's line and the dollar figure equal to one hundred percent (100%) of the earned Per Diem Revenues and Mileage Revenues. Lessee shall remit to Lessor all Per Diem Revenues and Mileage Revenues within twenty (20) days after Lessee receives such Per Diem Revenues and Mileage Revenues, provided, however, that Lessee pays to Lessor one hundred percent (100%) of the earned Per Diem Revenues and Mileage Revenues for each Service Month within one hundred twenty (120) days after such Service Month. In the event that any received Per Diem Revenues or Mileage Revenues are not remitted to Lessor by Lessee within twenty (20) days after Lessee receives such Per Diem Revenues or Mileage Revenues ("Late Revenues"), Lessee shall pay to Lessor an additional amount ("Late Fee") equal to ten percent (10%) of the Late Revenues. If the car hire records relating to the Cars are maintained by a party other than Lessee, Lessee hereby grants Lessor the authority to inspect such records during such party's normal business hours, provided, however, that Lessor shall notify Lessee at least ten (10) days before such inspection occurs.
- F. If, with respect to any calendar quarter or quarters, Per Diem Revenues received by Lessor are less than ninety-four percent (94%) of the Base Per Diem Rent ("Minimum Amount"), Lessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine; provided, however, that Lessee may, at

its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by paying to Lessor for such calendar quarter or quarters, and by agreeing to pay Lessor for each subsequent calendar quarter in which Per Diem Revenues are less than the Minimum Amount, an amount equal to the difference between actual Per Diem Revenues for such calendar quarter or quarters and the Minimum Amount. If Lessee has voided any termination notice and is complying with the terms of this Subsection 4.F. and of the Agreement, Subsection 4.C.(ii) hereinabove shall be replaced by the following:

"(ii) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof exceed the Minimum Amount (as defined in Subsection 4.F. hereinbelow), Lessor shall retain an amount equal to the Minimum Amount and Lessee shall receive all Per Diem Revenues received in excess of the Minimum Amount."

- G. Lessee shall at no time discriminate against the Cars in the provision of off-line loads, operation, use and maintenance as compared with any comparable flatcars, including flatcars owned, leased or managed by Lessee or interchanged to Lessee.
5. A. Upon the expiration of the Agreement with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:
- (i) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to Lessee's railroad tracks subsequent to the time of expiration. Lessee shall, at Lessor's option, provide, with respect to any Car described on any Rider E which is either on Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad tracks, 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 Rider E is returned to Lessee's railroad line subsequent to the time of expiration, whichever date is later.
 - (ii) At the option of Lessor, either Lessee or a contractor mutually chosen by Lessor and Lessee shall, at Lessee's expense, remark the Cars as set forth in Subsection 10.C. of the Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. After remarking, Lessee shall load each Car with freight and deliver such Car to a connecting carrier for shipment.
 - (iii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Lessor. Lessee shall bear the expense of remarking such Cars.

B. Remarking, with respect to each Car, shall include the following:
a) removal of existing mandatory markings of Lessee; b) complete cleaning subsequent to the removal of markings as designated by Lessor; 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.

6. Except as expressly modified by this Rider E, all terms and provisions of the Agreement shall remain in full force and effect.

7. This Rider E 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

IOWA INTERSTATE RAILROAD, LTD.

By: *J. Hayes*

By: *Paul H. Banner*

Title: *President*

Title: _____

Date: *June 9, 1988*

Date: _____

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

On this 9th day of June, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Rail Corporation, that the foregoing Rider E 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.



Patricia Schumacker
Notary Public

STATE OF Illinois)
) ss:
COUNTY OF Cook)

On this 1st day of June, 1988, before me personally appeared Paul H. Banner, to me personally known, who being by me duly sworn says that such person is President of Iowa Interstate Railroad, Ltd., that the foregoing Rider E 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.

Marilyn Kohen
Notary Public

