

ITEL

Rail Division

Two Embarcadero Center
San Francisco, California 94111
(415) 955-9090
Telex 34234

RECORDATION NO. 13717 Filed 1425

July 23, 1982 **AUG -3 1982 -11:30 AM**
INTERSTATE COMMERCE COMMISSION

2-215A045

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

AUG 3 1982
Date
Fee \$ 60.00
ICC Washington, D. C.

Dear Ms. Mergenovich:

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 Corporation, for filing and recordation, four counterparts of the following document:

New filing -

Lease Agreement dated April 26, 1982 between Itel Corporation, Rail Division as lessor and the Atchison, Topeka and Santa Fe Railway Company.

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

1. The Atchison, Topeka & Santa Fe Railway Company
80 East Jackson Boulevard
Chicago, Illinois 60604
2. Itel Corporation, Rail Division
Two Embarcadero Center, 24th Floor
San Francisco, California 94111

→ Please cross-index the above-referenced Lease with the following document, which was filed on December 22, 1978 at 10:00 a.m. and given recordation No. 9932:

Equipment Trust Agreement 1978, Series 3 dated as of November 1, 1978 between First Security Bank of Utah, N.A. as trustee and Itel Corporation, Rail Division.

RECEIVED
AUG 3 11 20 AM '82
F.C.C.
REGISTRATION DIV.

counterpart - J. M. ...

Ms. Agatha Mergenovich, Secretary
July 26, 1982
Page Two

The equipment covered by the Lease is 219 flush deck flatcars, 70-ton, 89'4" in length, A.A.R. mechanical designation FMS. The cars have been remarked as indicated on Attachment A to this letter.

Also enclosed is a check in the amount of \$60.00 covering the appropriate recording and cross-indexing fees.

Please stamp all counterparts of the enclosed Lease 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 delivered to the bearer of this letter.

Sincerely,



Patricia Salas Pineda
Counsel

PSP:dmm
Enclosures

cc: Michael Walsh, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10020

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 84111

Doug Drummond
Itel Corporation

Linda Lawrence
Itel Corporation

ATTACHMENT ACERTIFICATE OF ACCEPTANCE

<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Remarking</u>	<u>Comments/Nature of Defect</u>
SP 105324	SFLC 105324	5/14/82	
SP 105334	SFLC 105334	5/14/82	
SP 105363	SFLC 105363	5/14/82	
SP 105366	SFLC 105366	5/14/82	
SP 105394	SFLC 105394	5/14/82	
SP 105383	SFLC 105383	5/14/82	
SP 105357	SFLC 105357	5/14/82	
SP 105390	SFLC 105390	5/14/82	
SP 105399	SFLC 105399	5/14/82	
SP 105347	SFLC 105347	5/14/82	
SP 105301	SFLC 105301	5/14/82	
SP 105405	SFLC 105405	5/14/82	
SP 105446	SFLC 105446	5/14/82	
SP 105450	SFLC 105450	5/14/82	
SP 105483	SFLC 105483	5/14/82	
SP 105444	SFLC 105444	5/14/82	
SP 105472	SFLC 105472	5/14/82	
SP 105458	SFLC 105458	5/14/82	
SP 105503	SFLC 105503	5/14/82	
SP 105534	SFLC 105534	5/14/82	
SP 105547	SFLC 105547	5/14/82	
SP 105554	SFLC 105554	5/14/82	
SP 105562	SFLC 105562	5/14/82	
SP 105509	SFLC 105509	5/14/82	
SP 105568	SFLC 105568	5/14/82	
SP 105512	SFLC 105512	5/14/82	
SP 105500	SFLC 105500	5/14/82	
SP 105591	SFLC 105591	5/14/82	
SP 105571	SFLC 105571	5/14/82	
SP 105596	SFLC 105596	5/14/82	
SP 105574	SFLC 105574	5/14/82	
SP 105583	SFLC 105583	5/14/82	
SP 105708	SFLC 105708	5/14/82	
SP 105702	SFLC 105702	5/14/82	
SP 105721	SFLC 105721	5/14/82	
SP 105794	SFLC 105794	5/14/82	
SP 105718	SFLC 105718	5/14/82	
SP 105758	SFLC 105758	5/14/82	
SP 105787	SFLC 105787	5/14/82	
SP 105716	SFLC 105716	5/14/82	
SP 105707	SFLC 105707	5/14/82	
SP 105713	SFLC 105713	5/14/82	
SP 105782	SFLC 105782	5/14/82	
SP 105759	SFLC 105759	5/14/82	

C.A. Smalls

Itel Corporation, Rail Division
Authorized Representative

R. O. Oby

The Atchison, Topeka and Santa Fe
Railway Company
Authorized Representative

L-0302

ATTACHMENT A

CERTIFICATE OF ACCEPTANCE

<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Remarking</u>	<u>Comments/Nature of Defect</u>
SP 105314	SFLC 105314	5/16/82	
SP 105332	SFLC 105332	5/16/82	
SP 105358	SFLC 105358	5/16/82	
SP 105466	SFLC 105466	5/16/82	
SP 105421	SFLC 105421	5/16/82	
SP 105490	SFLC 105490	5/16/82	
SP 105540	SFLC 105540	5/16/82	
SP 105797	SFLC 105797	5/16/82	

C.A. Smalls
IteI Corporation, Rail Division
Authorized Representative

R. D. Luby
The Atchison, Topeka and Santa Fe
Railway Company
Authorized Representative

ATTACHMENT ACERTIFICATE OF ACCEPTANCE

<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Remarking</u>	<u>Comments/Nature of Defect</u>
SP 105331	SFLC 105331	5/17/82	
SP 105338	SFLC 105338	5/17/82	
SP 105369	SFLC 105369	5/17/82	
SP 105381	SFLC 105381	5/17/82	
SP 105328	SFLC 105328	5/17/82	
SP 105351	SFLC 105351	5/17/82	
SP 105411	SFLC 105411	5/17/82	
SP 105480	SFLC 105480	5/17/82	
SP 105471	SFLC 105471	5/17/82	
SP 105524	SFLC 105524	5/17/82	
SP 105530	SFLC 105530	5/17/82	
SP 105536	SFLC 105536	5/17/82	
SP 105541	SFLC 105541	5/17/82	
SP 105513	SFLC 105513	5/17/82	
SP 105516	SFLC 105516	5/17/82	
SP 105796	SFLC 105796	5/17/82	
SP 105710	SFLC 105710	5/17/82	
SP 105725	SFLC 105725	5/17/82	
SP 105752	SFLC 105752	5/17/82	
SP 105754	SFLC 105754	5/17/82	
SP 105701	SFLC 105701	5/17/82	
SP 105727	SFLC 105727	5/17/82	
SP 105741	SFLC 105741	5/17/82	

C.A. Smiles
 IteI Corporation, Rail Division
 Authorized Representative

R. A. H. H. H.
 The Atchison, Topeka and Santa Fe
 Railway Company
 Authorized Representative

ATTACHMENT ACERTIFICATE OF ACCEPTANCE

<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Remarking</u>	<u>Comments/Nature of Defect</u>
SP 105349	SFLC 105349	5/18/82	
SP 105350	SFLC 105350	5/18/82	
SP 105352	SFLC 105352	5/18/82	
SP 105356	SFLC 105356	5/18/82	
SP 105374	SFLC 105374	5/18/82	
SP 105309	SFLC 105309	5/18/82	
SP 105321	SFLC 105321	5/18/82	
SP 105327	SFLC 105327	5/18/82	
SP 105420	SFLC 105420	5/18/82	
SP 105442	SFLC 105442	5/18/82	
SP 105456	SFLC 105456	5/18/82	
SP 105474	SFLC 105474	5/18/82	
SP 105492	SFLC 105492	5/18/82	
SP 105430	SFLC 105430	5/18/82	
SP 105593	SFLC 105593	5/18/82	
SP 105528	SFLC 105528	5/18/82	
SP 105565	SFLC 105565	5/18/82	
SP 105729	SFLC 105729	5/18/82	
SP 105730	SFLC 105730	5/18/82	
SP 105789	SFLC 105789	5/18/82	

C.A. Smiles
 Itef Corporation, Rail Division
 Authorized Representative

R. D. Arby
 The Atchison, Topeka and Santa Fe
 Railway Company
 Authorized Representative

ATTACHMENT ACERTIFICATE OF ACCEPTANCE

<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Remarking</u>	<u>Comments/Nature of Defect</u>
SP 105310	SFLC 105310	5/19/82	
SP 105385	SFLC 105385	5/19/82	
SP 105364	SFLC 105364	5/19/82	
SP 105305	SFLC 105305	5/19/82	
SP 105346	SFLC 105346	5/19/82	
SP 105304	SFLC 105304	5/19/82	
SP 105336	SFLC 105336	5/19/82	
SP 105388	SFLC 105388	5/19/82	
SP 105418	SFLC 105418	5/19/82	
SP 105422	SFLC 105422	5/19/82	
SP 105535	SFLC 105535	5/19/82	
SP 105521	SFLC 105521	5/19/82	
SP 105553	SFLC 105553	5/19/82	
SP 105600	SFLC 105600	5/19/82	
SP 105739	SFLC 105739	5/19/82	
SP 105737	SFLC 105737	5/19/82	
SP 105704	SFLC 105704	5/19/82	
SP 105709	SFLC 105709	5/19/82	
SP 105746	SFLC 105746	5/19/82	
SP 105747	SFLC 105747	5/19/82	
SP 105755	SFLC 105755	5/19/82	
SP 105717	SFLC 105717	5/19/82	
SP 105766	SFLC 105766	5/19/82	

C.A. Smailis
 Itel Corporation, Rail Division
 Authorized Representative

R. D. Lohy
 The Atchison, Topeka and Santa Fe
 Railway Company
 Authorized Representative

ATTACHMENT ACERTIFICATE OF ACCEPTANCE

<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Remarking</u>	<u>Comments/Nature of Defect</u>
SP 105387	SFLC 105387	5/21/82	
SP 105302	SFLC 105302	5/21/82	
SP 105315	SFLC 105315	5/21/82	
SP 105316	SFLC 105316	5/21/82	
SP 105340	SFLC 105340	5/21/82	
SP 105348	SFLC 105348	5/21/82	
SP 105368	SFLC 105368	5/21/82	
SP 105330	SFLC 105330	5/21/82	
SP 105403	SFLC 105403	5/21/82	
SP 105415	SFLC 105415	5/21/82	
SP 105423	SFLC 105423	5/21/82	
SP 105435	SFLC 105435	5/21/82	
SP 105440	SFLC 105440	5/21/82	
SP 105453	SFLC 105453	5/21/82	
SP 105498	SFLC 105498	5/21/82	
SP 105432	SFLC 105432	5/21/82	
SP 105414	SFLC 105414	5/21/82	
SP 105465	SFLC 105465	5/21/82	
SP 105486	SFLC 105486	5/21/82	
SP 105508	SFLC 105508	5/21/82	
SP 105522	SFLC 105522	5/21/82	
SP 105523	SFLC 105523	5/21/82	
SP 105552	SFLC 105552	5/21/82	
SP 105573	SFLC 105573	5/21/82	
SP 105579	SFLC 105579	5/21/82	
SP 105586	SFLC 105586	5/21/82	
SP 105589	SFLC 105589	5/21/82	
SP 105595	SFLC 105595	5/21/82	
SP 105550	SFLC 105550	5/21/82	
SP 105577	SFLC 105577	5/21/82	
SP 105703	SFLC 105703	5/21/82	
SP 105705	SFLC 105705	5/21/82	
SP 105734	SFLC 105734	5/21/82	
SP 105749	SFLC 105749	5/21/82	
SP 105771	SFLC 105771	5/21/82	
SP 105772	SFLC 105772	5/21/82	
SP 105711	SFLC 105711	5/21/82	
SP 105714	SFLC 105714	5/21/82	

C.A. Smailis
 Itel Corporation, Rail Division
 Authorized Representative

R. D. [Signature]
 The Atchison, Topeka and Santa Fe
 Railway Company
 Authorized Representative

ATTACHMENT ACERTIFICATE OF ACCEPTANCE

<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Remarking</u>	<u>Comments/Nature of Defect</u>
SP 105359	SFLC 105359	5/24/82	
SP 105311	SFLC 105311	5/24/82	
SP 105333	SFLC 105333	5/24/82	
SP 105391	SFLC 105391	5/24/82	
SP 105362	SFLC 105362	5/24/82	
SP 105499	SFLC 105499	5/24/82	
SP 105406	SFLC 105406	5/24/82	
SP 105409	SFLC 105409	5/24/82	
SP 105449	SFLC 105449	5/24/82	
SP 105493	SFLC 105493	5/24/82	
SP 105502	SFLC 105502	5/24/82	
SP 105510	SFLC 105510	5/24/82	
SP 105558	SFLC 105558	5/24/82	
SP 105575	SFLC 105575	5/24/82	
SP 105723	SFLC 105723	5/24/82	
SP 105767	SFLC 105767	5/24/82	
SP 105778	SFLC 105778	5/24/82	
SP 105790	SFLC 105790	5/24/82	
SP 105434	SFLC 105434	5/26/82	

CA. Smalls
 Itel Corporation, Rail Division
 Authorized Representative

R. D. Ashby
 The Atchison, Topeka and Santa Fe
 Railway Company
 Authorized Representative

L-0302

ATTACHMENT A

CERTIFICATE OF ACCEPTANCE

<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Remarking</u>	<u>Comments/Nature of Defect</u>
SP 105793	SFLC 105793	6/2/82	
SP 105372	SFLC 105372	6/8/82	
SP 105783	SFLC 105783	6/8/82	
SP 105467	SFLC 105467	6/8/82	
SP 105354	SFLC 105354	6/7/82	
SP 105519	SFLC 105519	6/17/82	

C.A. Smalls
Itel Corporation, Rail Division
Authorized Representative

R. H. H. H.
The Atchison, Topeka and Santa Fe
Railway Company
Authorized Representative

L-0302
4/23/82

13717
RECORDATION NO. _____ Filed 1425

AUG -3 1982 -11 30 AM

LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT ("Agreement") made this 26th day of April, 1982, between ITEL CORPORATION, RAIL DIVISION, a Delaware corporation, Two Embarcadero Center, San Francisco, California, 94111, as the lessor and agent ("Lessor") and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation, 80 East Jackson Boulevard, Chicago, Illinois 60604, as the lessee ("Lessee").

RECITALS:

Lessor has leased to Providence and Worcester Company ("P&W") under a lease dated as of September 1, 1978, seven hundred (700) freight cars. By supplemental agreement entered into between Lessor and P&W, P&W has (a) appointed Lessor as its agent with full power and authority and in the name of Lessor (but on behalf of P&W) to enter into one or more sublease agreements with third parties covering some or all of such freight cars, (b) empowered Lessor to deliver possession of such freight cars to such third parties, and (c) granted Lessor the right to negotiate such subleases with any terms and conditions which are satisfactory to Lessor.

Lessee desires to lease a portion of such freight cars from Lessor upon the terms and conditions hereunder.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree as follows:

1. Lease of Equipment

- A. Lessor agrees to furnish and lease to Lessee and Lessee agrees to lease from Lessor upon the terms and conditions set forth herein a number of items of equipment of the number, type, construction and description set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional schedules and amendments thereto each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively "Cars" and each individual scheduled item of equipment is hereinafter called "Car."
- B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of this Agreement with respect to each Car described on each Schedule shall commence at 12:00 P.M.

on the date and at the location that such Car is restencilled pursuant to Section 3.A., and shall expire as to all of the Cars described on each Schedule, six (6) months from the date on which the last Car on such Schedule was restencilled (the "Initial Term").

- B. If this Agreement has not been terminated prior to the expiration of the Initial Term, and no default has occurred, the Agreement shall automatically be extended for an additional period of six (6) months (the "Extended Term").
- C. During the Initial Term or Extended Term, either Lessor or Lessee may terminate this Agreement upon thirty (30) days prior written notice delivered to the other party.
- D. For purposes of determining the rent as provided in Section 6 herein, the Termination Date (hereinafter "Termination Date") shall be defined as the date this Agreement is finally terminated as to ~~all~~ each the Cars, whether pursuant to the expiration of the Initial Term or Extended Term or any early termination hereof.

UPW
EACH OF
the Cars
ED

3. Restencilling and Delivery

- A. Lessee hereby approves the specifications of the Cars delivered to it by Lessor. Lessee shall, at Lessee's expense, restencil the Cars with the railroad markings of Lessee in compliance with all applicable regulations. Concurrent with any restencilling at the commencement of this Agreement, Lessor and Lessee shall execute a Certificate of Acceptance (in the form of Exhibit A attached hereto) specifying the previous and current reporting marks and the condition with respect to each Car subject to this Agreement. Such Certificates of Acceptance shall become attached to and incorporated into this Agreement. Delivery with respect to a Car shall be deemed to have taken place on the date that such Car is interchanged to any point on the railroad line of Lessee and accepted by Lessee in accordance with the Association of American Railroad's (AAR) rules ("Delivery Date").
- B. For purposes of determining the rent as provided in Section 6 herein, the Commencement Date (hereinafter "Commencement Date"), with respect to each Car, shall be the day such Car is placed for its initial loading on Lessee's railroad lines.
- C. Additional Cars shall be leased from Lessor by Lessee only upon the mutual agreement of the parties. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Cars with similar equipment upon prior written notice from Lessor to Lessee.

4. Record Keeping

- A. Lessee shall, at its expense, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions as normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to the following: (i) preparation of AAR

documents 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/or any other regulatory agencies with respect to the Cars. In addition, Lessee shall be responsible for any expenses incurred and rent lost as the result of any improper UMLER registration.

- B. Lessee shall perform all record keeping functions relating to the use of the Cars by Lessee and other railroads, including but not limited to, maintenance and repair, and billing in accordance with the AAR Interchange Rules. All record keeping performed by Lessee hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during Lessee's regular business hours.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Lessee shall, at its sole expense, perform or have performed all Running Repairs ("Running Repairs") as defined in Exhibit B attached hereto, subsequent to the Delivery Date of the Cars to facilitate the continued immediate use of the Cars. Lessor shall have the right to inspect any or all of the Cars to ensure that they are in compliance with AAR regulations. Lessee shall maintain appropriate records of all Running Repairs in a form suitable for inspection by Lessor.
- B. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed, all program maintenance ("Program Maintenance"), as defined in Exhibit B attached hereto, as shall be necessary to maintain the Cars in good operating condition as specified in the AAR Interchange Rules, unless the same was occasioned by the fault of Lessee, or in those instances in which the AAR Interchange Rules would assign responsibility for such loss, damage, destruction or liability to Lessee. Lessee shall inspect the Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable for any repairs required for damage not noted at the time of interchange, provided, however, that Lessor shall be responsible for any interchange damage sustained in the delivery of the Cars as set forth in Section 3.A. Lessee shall forward to Lessor immediately upon receipt all correspondence relating to maintenance and repair of the Cars, including invoices for repair and requests for disposition. Lessor shall reimburse Lessee for the invoices Lessee has paid for Program Maintenance which Lessee or a third party has performed after receiving Lessor's prior written consent as permitted by AAR Rules or this Agreement. Lessee shall also, as may be required, upon having knowledge thereof, immediately notify Lessor of any accident or damage relating to the Cars. Lessee shall not make any other repairs, alterations, improvements or additions, except Running Repairs and such Program Maintenance as it is permitted to make after receiving Lessor's prior written consent. If Lessee makes such repair, alteration, improvement

or addition to any Car without Lessor's prior written consent, Lessee shall be liable to Lessor for the cost to return such Car to conformance with its original specifications. As between Lessee and Lessor, title to any such alteration, improvement or addition shall be and remain with Lessor.

C. As long as this Agreement shall remain in effect, Lessee shall be responsible for the Cars (i) while in Lessee's possession or control, and (ii) in the same manner that Lessee is responsible under Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained (a) physical loss or damage insurance with respect to the Cars while on Lessee's tracks, provided, however, that the Lessee 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; provided, however, that Lessee may self-insure against such liability to the extent such self-insurance is consistent with prudent industry practice, but in any event such insurance shall be at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it. Lessee shall furnish to Lessor concurrently with the execution hereof certificates evidencing the aforesaid insurance. All insurance shall be taken out in the name of Lessee and shall name Lessor as additional named insured, and shall also list Lessor as loss-payees on the property insurance policies. Said policies shall provide that Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. Lessor may, at its option, re-evaluate the insurance coverage provided by Lessee and request additional coverage as deemed necessary.

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

E. In the event that any or all of the Cars require storage on Lessee's railroad lines at any time, Lessee shall be responsible for the following: (1) all transportation costs incurred to move the Cars to such storage location; (2) all transportation costs incurred in removing such Cars from the storage location; and (3) the actual costs incurred for the storage of any or all of the Cars. If Lessor pays for any costs referred to in this Section, Lessee shall reimburse Lessor for such cost within ten (10) days from Lessee's receipt of Lessor's invoice.

DPW
AND FRANCHISE TAXES

DPW
REASONABLE
REASONABLE

DPW
UP TO 90 DAYS FOLLOWING DATE OF 30 DAY NOTIFICATION OF CANCELLATION.

6. Rent

A. Definitions

- (i) "Fixed Rent" shall be \$9.25 per Car per day.
- (ii) "First Rent Date" shall be the fifteenth (15th) day of the month immediately following the calendar month in which the Commencement Date (as defined in Section 3.B.) occurs.
- (iii) "Last Rent Date" shall be the fifteenth (15th) day of the month immediately following the calendar month in which the "Termination Date" (as defined in Section 2.D.) occurs.

B. Lessee shall pay to Lessor during the Term of this Agreement as rent for each Car the following:

- (i) On the First Rent Date, an amount equal to the Fixed Rent multiplied by the number of days from and including the Commencement Date to and including the last day of the month in which such Commencement Date occurs; and
- (ii) For the fifteenth (15th) day of each month thereafter, to and including the calendar month immediately prior to the calendar month in which the Termination Date occurs, an amount equal to the Fixed Rent multiplied by the number of days in the prior month.
- (iii) On the Last Rent Date, an amount equal to the Fixed Rent multiplied by the number of days from and including the first day of the month in which the Termination Date occurs to and including such Termination Date.

C. Lessee shall provide Lessor with such records as may be required to substantiate the following: (i) the date each Car is placed for loading on Lessee's railroad lines pursuant to Section 3.B. and (ii) the date each Car is returned to Lessee pursuant to Section 9.

D. In the event either damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations - Freight, said destroyed Car shall be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rule 7.

7. Possession and Use

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into

by Lessor in connection with the acquisition of the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee 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 Agreement), 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. Lessee 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 Lessor or Lessee 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.

- B. Lessee 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 Agreement or Schedule thereto. Lessee 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.

8. Default

- A. 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 ten (10) days after the date any such payment is due;
 - (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days thereafter;
 - (iii) The filing by or against the Lessee of any petition or the initiation by or against the Lessee of any proceeding: (a) for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder; or (b) under any bankruptcy, reorganization, insolvency, 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 Lessee'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 Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate this Agreement and/or may
- (i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, and/or
 - (ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessor 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 Lessee. Lessor shall, in addition, have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

9. Termination

A. Upon the Termination Date (as defined in Section 2.D.) of this Agreement with respect to a Car, Lessee, at its expense, shall promptly return such Car to Lessor by delivering such Car to the shop specified by Lessor which shall be on Lessee's railroad tracks. Subsequent procedures, at Lessor's option, shall be one of the following:

- (i) Within thirty (30) days after receipt by Lessee from Lessor of instructions, Lessee shall, at its sole expense, remove the cradles from each Car and return each Car to the same condition as originally received by Lessee, normal wear and tear excepted, and at Lessor's sole expense, perform any other remodifications as specified by Lessor. Lessee, at its expense, shall restencil ("Restencilling" as hereinafter defined in Section 9.A.(ii)) the Cars in accordance with Lessor's instructions. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. Subsequent to the completion of any such remodifications and restencilling of the Cars, Lessee shall, upon Lessor's request and at Lessor's sole option, and at Lessee's expense, deliver the Cars to an interchange point designated by Lessor on Lessee's railroad tracks ~~and/or provide outbound loads for the Cars.~~ Prior to the delivery of the Cars and ~~the provision of outbound loads for the Cars,~~ Lessee shall provide storage for the Cars at no cost to Lessor upon the request of Lessor, *up to 90 DAYS FOLLOWING DATE OF 30 DAY WRITTEN NOTIFICATION OF CANCELLATION.*

(ii) Lessee, at its expense shall restencil the Cars in accordance with Lessor's instructions and return the Cars to the same conditions as originally received by Lessee, normal wear and tear excepted. Restencilling, with respect to each Car, shall include the following: (a) removal of existing mandatory markings and all company logos of Lessee; (b) complete cleaning subsequent to the removal of markings ~~and company logos~~; (c) application of new mandatory markings ~~and company logos~~ as designated by Lessor; and (d) any transportation involved in moving each Car to and from a suitable work area to perform the restencilling set forth in this Section. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. Subsequent to the completion of the restencilling of the Cars, Lessee shall, upon Lessor's request and at Lessor's sole option, and at Lessee's expense, deliver the Cars to an interchange point designated by Lessor on Lessee's railroad tracks. Prior to such delivery of the Cars, Lessee shall provide storage for the Cars at no cost to Lessor upon the request of Lessor, *up to 90 DAYS FOLLOWING DATE OF 30 DAY WRITTEN NOTIFICATION OF CANCELLATION.*

B. In the event that any Car is not returned to Lessor on or before the Termination Date, at Lessor's sole option, all of Lessee's obligations under this Agreement shall remain in full force and effect, with respect to all Cars which have not been returned by Lessee to Lessor, until such Cars are returned to Lessor as set forth in Section 9.A. herein.

10. Indemnities

- A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE OR WHICH OCCURS WHILE THE CARS ARE IN LESSEE'S POSSESSION OR CONTROL OR ARISES IN THOSE INSTANCES WHEN THE AAR INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY TO LESSEE FOR LOSS, DAMAGE, DESTRUCTION OR LIABILITY.
- B. SUBJECT TO SECTION 10.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH HEREIN, LESSOR WILL DEFEND, INDEMNIFY AND HOLD LESSEE 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 LESSEE 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 LESSOR OR LESSEE).

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

- A. Lessee 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 Lessor's rights under this Agreement, 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 Agreement.
- B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, 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 Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.
- C. There is no action or proceeding pending or threatened against Lessee 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 Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.
- D. There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee 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 Lessee or the ability of the Lessee to perform its obligation under this Agreement.

12. Inspection

Lessor 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 insure Lessee's compliance with its obligations hereunder.

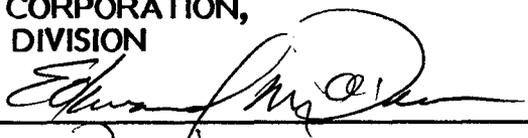
13. Miscellaneous

- A. This Agreement 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 Lessee may not without the prior written consent of Lessor, except as provided below, assign this Agreement 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 Lessor 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 Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 of this Agreement.

- C. It is expressly understood and agreed by the parties hereto that this Agreement 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 Lessee any right, title or interest in the Cars, except as a Lessee only.
- D. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor 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 Agreement shall be governed by and construed according to the laws of the State of California.
- F. Lessee shall notify Lessor 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. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to Lessor 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.
- H. 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.
- I. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.
- J. This Agreement represents the entire Agreement. This Agreement 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 Agreement as of the date first above written.

ITEL CORPORATION,
RAIL DIVISION

By: 

Title: President

Date: May 13, 1982

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY

By: 

Title: General Supt Transportation

Date: May 5, 1982

L-0302

EXHIBIT A

CERTIFICATE OF ACCEPTANCE

<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Remarking</u>	<u>Comments/Nature of Defect</u>
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**Itel Corporation, Rail Division
Authorized Representative**

**The Atchison, Topeka and Santa Fe
Railway Company
Authorized Representative**

L-0302

EXHIBIT B

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
Lube of Hitches
Cotter Keys
Roller Bearing Adapters
Air Hose Supports

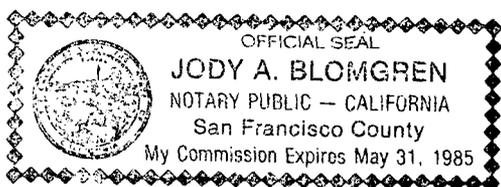
Program Maintenance

Trucks - i.e.: Bolsters, Truck Sides and Brake Beams.
Wheels - except those wheels changed due to slid flat and derailments.
Center Sills*
Side Sills*
Under Frame Component Parts*
Car Body*
Cushion Units - i.e. those leaking or inoperative, except when unit is damaged by impact, passed couplers or derailments.
Couplers - except when damaged by impact, passed couplers or derailments.
Bridge Plates - Lessor and Lessee to ascertain if Cars are equipped with bridge plates in good condition when Cars are delivered to Lessee. Lessee to return Cars which were equipped with bridge plates at initial inspection at termination with bridge plates in good condition.
Trailer Hitches - Lessor to be responsible for failure of hitches except when damaged by impact, derailments or damages not associated with normal wear and tear.
Container Pedestals - Lessor to deliver Cars to Lessee with container pedestals in good condition. Lessee to return Cars to Lessor at termination of Agreement with all container pedestals in good condition.
Roller Bearings - Lessor to be responsible for roller bearings except where involved in accidents or derailments.

* Except when damaged in accidents, derailments, etc.

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

On this 13th day of May, 1982, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of ITEL Corporation, Rail Division, that the foregoing Lease Agreement 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.



Jody A. Blomgren
Notary Public

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On this fifth day of May, 1982, before me personally appeared D. P. Valentine, to me personally known, who being by me duly sworn says that such person is General Superintendent of Transportation of The Achison, Topeka and Santa Fe Railway Company, that the foregoing Lease Agreement was signed on behalf of said corporation and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ella Lee Miller
Notary Public

My Commission Expires August 24, 1982

L-0302

EQUIPMENT SCHEDULE NO. 1

Itel Corporation, Rail Division hereby leases the following Cars to The Atchison, Topeka and Santa Fe Railway Company subject to the terms and conditions of that certain Lease Agreement dated as of April 26, 1982.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
FMS	70-Ton Flush Deck Flatcar	ATSF 105301- 105800 (N.S.)	89'4"	N/A	N/A	N/A	287 219 <i>[Handwritten initials]</i>

ITEL CORPORATION,
RAIL DIVISION

BY: *[Signature]*
TITLE: President
DATE: May 3, 1982

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

BY: *[Signature]*
TITLE: General Supt Transportation
DATE: May 5, 1982

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

On this 13th day of May, 1982, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of ITEL Corporation, Rail Division, 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.



Jody A. Blomgren
Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK) ss:

On this Fifth day of May, 1982, before me personally appeared D. P. Valentine, to me personally known, who being by me duly sworn says that such person is Gen. Supt. of Transportation of The Atchison, Topeka and Santa Fe Railway Company, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ella Lee Miller
Notary Public

My Commission Expires August 24, 1982