

ITEL RAIL

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8770-A Filed 1423

JUL 20 1983 12 15 PM

55 Francisco
San Francisco, California 94133
(415) 955-9090
Telex 34234

3-201A039

No. _____
Date JUL. 20 1983

Fee \$10.00

ICC Washington, D. C.

July 14, 1983

RECEIVED
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I. C. C.
FEE OPERATION BR.

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

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 under the Lease Agreement dated February 14, 1977 (the "Lease") between Itel Corporation, Rail Division ("Itel") and the Chattahoochee Industrial Railroad (the "Lessee"), which was filed on April 1, 1977 at 11:20 a.m. and assigned recordation No. 8770-A, four counterparts of the following document:

Amendment No. 2 dated May 27, 1983 (the "Amendment") to the Lease between Itel and Lessee.

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

1. Chattahoochee Industrial Railroad
P.O. Box 253
Cedar Springs, Georgia 31772
2. Itel Corporation, Rail Division
55 Francisco, 7th Floor
San Francisco, California 94133

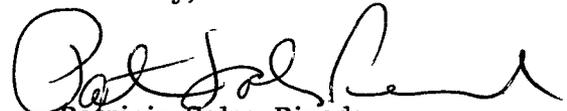
The equipment covered by this Amendment is sixteen (16) 60 foot, 100-ton boxcars, A.A.R. mechanical designation XM, bearing reporting marks CIRR 94000 through CIRR 94015, inclusive.

Also enclosed is a check in the amount of \$10.00 for the required recording fee.

Ms. Agatha Mergenovich, Secretary
July , 1983
Page Two

Please stamp all counterparts of the enclosed Amendment 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 me by mail.

Sincerely,



Patricia Salas Pineda
Counsel

PSP:dmm
Enclosures

cc: Doug Drummond
Itel Corporation

Interstate Commerce Commission
Washington, D.C. 20423

7/20/83

OFFICE OF THE SECRETARY

Patricia Salas Pineda
Itel Rail Corp.
55 Francisco
San Francisco, Calif. 94133

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **7/20/83** at **12:15pm**, and assigned re-
recording number(s). **8770-G**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

L-0493
6/8/83

RECORDATION NO. 8770-18
Filed 1425

JUL 20 1983 12 15 PM

AMENDMENT NO. 2 INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 2 (the "Amendment") to that certain Lease Agreement (the "Agreement") dated as of February 14, 1977, between ITEL CORPORATION, RAIL DIVISION, successor in interest to SSI Rail Corp., as lessor ("Iitel Rail") and CHATTAHOOCHEE INDUSTRIAL RAILROAD as lessee ("Lessee") is made this 27th day of May, 1983 by and between Itel Rail and Lessee.

W I T N E S S E T H :

WHEREAS, Itel Rail and Lessee are parties to the Agreement pursuant to which one hundred (100) boxcars bearing the reporting marks CIRR 90001-90100 have been delivered by Itel Rail to Lessee;

WHEREAS, Itel Rail and Lessee executed Amendment No. 1 dated as of May 1, 1979 to the Lease and, pursuant to mutual mistake, also executed Equipment Schedule No. 2 attached thereto with respect to an additional one hundred (100) boxcars bearing the reporting marks CIRR 90201-90300 (the "Group 2 Cars"). It was not intended that the Group 2 Cars be leased to Lessee by Itel Rail; and

WHEREAS, Lessee desires to lease from Itel Rail sixteen (16) additional boxcars.

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

1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
2. Equipment Schedule No. 2, with respect to the Group 2 Cars, is hereby deleted in its entirety, is null and void, and shall be deemed never to have been executed.
3. Equipment Schedule No. 3, attached hereto, which references sixteen (16) Boxcars bearing the reporting marks CIRR 94000-94015, is hereby added to and made a part of the Agreement.
4. With respect to the Boxcars bearing the reporting marks CIRR 94000-94015 only, Subsection 2.A. of the Agreement shall be replaced by the following:

"2.A. This Agreement shall remain in full force until it is terminated as to all of the Boxcars as provided herein. The term of the Agreement with respect to each Boxcar described on Equipment Schedule No. 3 shall commence at 12:01 P.M. on the date and at the location that such Boxcar is restencilled pursuant to Subsection 3.A., and shall expire as to all of the Boxcars described on Equipment Schedule No. 3 on December 11, 1993."
5. With respect to the Boxcars bearing the reporting marks CIRR 94000-94015 only, Subsections 3.A. and 3.B. of the Agreement shall be replaced by the following:

"3.A. Lessee hereby approves the specifications of the Boxcars delivered to it by Itel Rail. The Boxcars shall be moved to Lessee's railroad line at no cost to Lessee as soon as is consistent with mutual convenience and economy. Lessee shall, at its expense, restencil the Boxcars with the railroad markings of Lessee in compliance with all applicable regulations before the Boxcars are to be deemed delivered and subject to the terms and provisions of this Agreement. Lessee shall supply the stencils for restencilling the Boxcars. Each Boxcar shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:01 P.M. on the date and at the location such Boxcar is restencilled. Subsequent to the delivery of the Boxcars to Lessee and during 1983, Lessee shall, at Itel Rail's expense, repaint and restencil the Boxcars with the railroad markings of Lessee in compliance with all applicable regulations, provided, however, that the Boxcars are available to Lessee for such repainting and restencilling. After the Initial Loading (as hereinafter defined), Itel Rail agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee and Itel Rail, to assist in the issuance of movement orders with respect to such Boxcars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules. If Itel Rail incurs expenses in having other railroads move Boxcars in accordance with this Section with Lessee's approval, except for any expenses incurred in the initial delivery of such Boxcars to Lessee's railroad line pursuant to this Section, Lessee shall reimburse Itel Rail for such expenses only from and out of the monies retained by Lessee pursuant to Subsection 6.C. For the purposes hereof, the term "Initial Loading" as to each Boxcar, shall be the earlier to occur of either (1) the date such Boxcar shall have been loaded off Lessee's railroad line with the first load of freight, or (2) the thirty-first (31st) day after such Boxcar is delivered pursuant to this Section.

3.B. Lessee shall load the Boxcars leased from Itel Rail prior to loading any similar boxcars leased by or assigned to Lessee from other parties subsequent to the date of Amendment No. 2 to the Agreement, purchased by Lessee subsequent to the date of Amendment No. 2 to the Agreement, or interchanged from other railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor."

6. With respect to the Boxcars bearing the reporting marks CIRR 94000-94015 only, Section 6 of the Agreement shall be replaced by the following:

"6.A. Definitions

- (i) "Revenues" shall be the total revenues earned and due from other railroad companies for the use or handling of the Boxcars, including but not limited to, per diem and mileage, whether or not collected and received by Lessee and without regard to any claimed abatement, reduction or offset caused by any action of Lessee, provided, however, that upon the occurrence of any such abatement, reduction or offset, Lessee shall, within ten (10) days of Itel Rail's request, reimburse Itel Rail for such amounts. This physical interchange of the Boxcars to a connecting carrier in the normal course of business shall not be construed as an "action" of Lessee as referenced in the preceeding sentence.
- (ii) The "Utilization Rate" of the Boxcars shall be determined by a fraction the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Boxcars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Boxcars are on lease to Lessee, commencing from the Initial Loading.

B. Each Boxcar delivered pursuant to Subsection 3.A. shall become subject to such rental calculations under Subsection 6.C. upon the Initial Loading of such Boxcar.

C. Lessee agrees to pay the following rent to Itel Rail for the use of the Boxcars, provided, however, that Lessee shall not pay any rent to Itel Rail for the use of the Boxcars during the First Period (to be hereinafter defined):

- (i) For the period commencing as of the Initial Loading through and including December 31, 1983 ("First Period"), Lessee shall retain all Revenues.
- (ii) If, in any calendar quarter or applicable portion thereof during the period commencing January 1, 1984 through and including December 31, 1984 ("Second Period"), Revenues earned exceed an amount equal to the Revenues which such Boxcars would have earned in the aggregate at a Utilization Rate of sixty-five (65) percent ("Second Period Base Rental"), Lessee shall pay to Itel Rail an amount equal to the Second Period Base Rental and Lessee shall retain all Revenues received in excess of the Second Period Base Rental. If, in any calendar quarter or applicable portion thereof during the Second Period, Revenues are equal to or less than the Second Period Base Rental, Lessee shall pay to Itel Rail one hundred (100) percent of the total Revenues.
- (iii) If, in any calendar quarter or applicable portion thereof during the period commencing January 1, 1985 through and including December 31, 1985 ("Third Period"), Revenues earned exceed an amount equal to the Revenues which such

Boxcars would have earned in the aggregate at a Utilization Rate of seventy (70) percent ("Third Period Base Rental"), Lessee shall pay to Itel Rail an amount equal to the Third Period Base Rental and Lessee shall retain all Revenues received in excess of the Third Period Base Rental. If, in any calendar quarter or applicable portion thereof during the Third Period, Revenues are equal to or less than the Third Period Base Rental, Lessee shall pay to Itel Rail one hundred (100) percent of the total Revenues.

(iv) If, in any calendar quarter or applicable portion thereof during the period commencing January 1, 1986 through and including the expiration or earlier termination of this Agreement ("Final Period"), Revenues earned exceed an amount equal to the Revenues which such Boxcars would have earned in the aggregate at a Utilization Rate of seventy-three (73) percent ("Final Period Base Rental"), Lessee shall pay to Itel Rail an amount equal to the Final Period Base Rental plus fifty (50) percent of all Revenues in excess of the Final Period Base Rental and Lessee shall retain the remaining fifty (50) percent of all Revenues received in excess of the Final Period Base Rental. If, in any calendar quarter or applicable portion thereof during the Final Period, Revenues are equal to or less than the Final Period Base Rental, Lessee shall pay to Itel Rail one hundred (100) percent of the total Revenues.

D. (i) The calculations required in Section 6.C. shall be made within three (3) months after the end of each calendar year ("Final Calculations"). In order that Itel Rail may meet its financial commitments, Lessee shall pay to Itel Rail by the sixtieth (60th) day after the end of each Service Month (as hereinafter defined), eighty (80) percent of the total Revenues for that Service Month. For the purposes hereof, Service Month shall be defined as the calendar month in which Revenues were actually earned. At the time payment of eighty percent (80%) of the total Revenues is made to Itel Rail, Lessee shall report to Itel Rail for the same month, the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the Revenues. Ten percent (10%) of the Revenues shall be remitted to Itel Rail within ninety (90) days after the end of each Service Month and the remaining ten percent (10%) of the total Revenues shall be remitted to Itel Rail within one hundred twenty (120) days after the end of each Service Month. Itel Rail shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

(ii) Upon Itel Rail's request, Lessee shall provide Itel Rail with any records of Lessee, including car hire summaries and detailed reports, as Itel Rail deems necessary to substantiate Revenues earned and received by Lessee for the use and handling of the Boxcars. Further, Itel Rail shall be entitled to visit Lessee at any time during normal business hours to review any and all records required to complete the calculations outlined in Section 6.D.(i).

E. If, with respect to any calendar quarter, Revenues are less than the applicable Base Rental, Itel Rail 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 Boxcars as Itel Rail shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Itel Rail, void such termination notice by paying to Itel Rail an amount equal to the difference between actual Revenues for such calendar quarter and the applicable Base Rental for such calendar quarter.

F. If, subsequent to the Initial Loading, any Car remains (i) on Lessee's railroad tracks for more than seven (7) consecutive days, excluding those days such Car is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Lessee, or (ii) thirty (30) consecutive days if caused by a Force Majeure condition or a railroad strike, a shipper strike or shutdown, a shipper equipment outage or a shipper raw material shortage, Itel Rail may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and take possession of such Car on Lessee's railroad tracks. While a Boxcar remains on Lessee's railroad tracks because of any condition included in 6.F.(ii) herein, Lessee shall incur no liability for any payment. However, any time a Car has remained on Lessee's railroad tracks for more than seven (7) consecutive days, Lessee shall use its best efforts to assist Itel Rail in arranging to have the Car loaded on the tracks of another railroad. Itel Rail shall receive, as additional rental, all monies earned by the Cars from the date it is interchanged off the Lessee's railroad tracks, pursuant to the preceding sentence, until it is subsequently loaded on the Lessee's railroad tracks.

G. In the event damage beyond repair or destruction of a Boxcar 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 Boxcar will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rule 7."

7. With respect to the Boxcars bearing the reporting marks CIRR 94000-94015 only, the last sentence of Section 9 of the Agreement is hereby deleted and replaced by the following:

"If any Boxcar is terminated pursuant to Subsections 6.E. or 6.F. or Section 8 hereof prior to the end of its lease term, Lessee shall be liable to Itel Rail for all costs and expenses incurred by Itel Rail to repaint the Boxcars and place thereon the markings and name or other insignia of Itel Rail's subsequent lessee."

8. Nothing set forth in this Amendment with respect to the Agreement represents a waiver by the parties hereto of any rights under the Agreement or the Bankruptcy Code and is not an assumption of the Agreement under the Bankruptcy Code, and in the event of rejection of the Agreement by order of the Bankruptcy Court under the Bankruptcy Code, Lessee may claim pre-petition damages, if any, with respect to such rejection of the Agreement.
9. The parties agree that all rights and obligations of Itel Rail may be assigned to Itel Rail Corporation upon confirmation and effectiveness of a Plan of Reorganization for Itel Corporation by the United States Bankruptcy Court Northern District of California or by another court of competent jurisdiction, and that upon such assignment and upon the assumption by Itel Rail Corporation of all of Itel Corporation's obligations hereunder, Itel Corporation is hereby released from all liabilities hereunder without further action by the parties and Itel Rail Corporation shall assume all such obligations without further action by the parties.
10. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.
11. 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 CORPORATION,
RAIL DIVISION

By: 

Title: President

Date: 6-17-83

CHATTAHOOCHEE INDUSTRIAL
RAILROAD

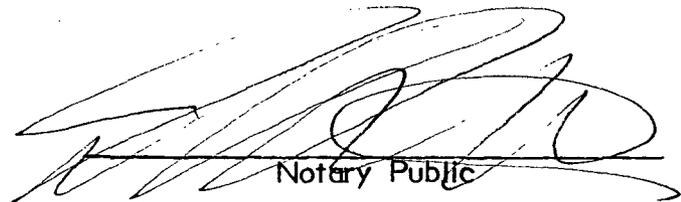
By: 

Title: Vice President & Genl Mgr.

Date: June 13, 1983

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

On this 17 day of June, 1983, 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 Amendment No. 2 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.


Notary Public



STATE OF GEORGIA)
)
COUNTY OF EARLY) ss:

On this 13TH day of JUNE, 1983, before me personally appeared PAUL ANGELOFF, to me personally known, who being by me duly sworn says that such person is VICE PRESIDENT & GEN. MGR. of Chattahoochee Industrial Railroad, that the foregoing Amendment No. 2 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.


Notary Public

MY COMMISSION EXPIRES MARCH 24, 1984



L-0493

EQUIPMENT SCHEDULE NO. 3

Itel Corporation, Rail Division hereby leases the following Boxcars to Chattahoochee Industrial Railroad subject to the terms and conditions of that certain Lease Agreement dated as of February 14, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	60 ft., 100-Ton Plate E	CIRR 94000- 94015	60'10"	9'6"	11'5"	10' Sliding	16

ITEL CORPORATION,
RAIL DIVISION

By: 

Title: President

Date: 6-17-83

CHATTAHOOCHEE INDUSTRIAL
RAILROAD

By: 

Title: Vice President & Gen. Mgr.

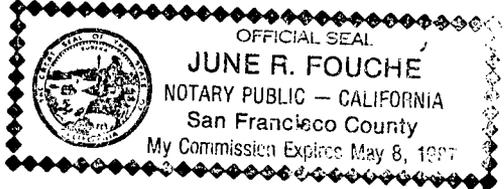
Date: June 13, 1983

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

On this 17 day of June, 1983, 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. 3 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.

[Handwritten Signature]

Notary Public



STATE OF GEORGIA)
)
) ss:
COUNTY OF EARLY)

On this 13TH day of JUNE, 1983, before me personally appeared PAUL ANGELOFF, to me personally known, who being by me duly sworn says that such person is VICE PRESIDENT & GEN. MGR. of Chattahoochee Industrial Railroad, that the foregoing Equipment Schedule No. 3 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.

[Handwritten Signature]

Notary Public

MY COMMISSION EXPIRES MARCH 24, 1984