

RECORDATION NO. 97039 Filed 4/25

ITEL

APR 19 1988 - 10 15 AM

INTERSTATE COMMERCE COMMISSION **I**tel Rail Corporation

April 1, 1988

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

4/19/88
AB.CC

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

1000 Washington, D. C.

Re: Amendment No. 6 dated March 15, 1988, to the Lease Agreement dated May 5, 1978, between Itel Corporation, Rail Division, and Atlanta and Saint Andrews Bay Railway Company

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 \$26 recordation fee.

Please record this Amendment under the Lease Agreement dated May 5, 1978, between Itel Corporation, Rail Division, and Atlanta and Saint Andrews Bay Railway Company, which was filed with the ICC on September 22, 1978, under Recordation No. 9703. Please cross-index this Amendment to the Equipment Trust Agreement dated January 1, 1982, as amended, between Itel Rail Corporation and First Security Bank of Utah, N.A., which was filed with the ICC on September 23, 1983, under Recordation No. 14165.

The parties to the aforementioned instrument are listed below:

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

Atlanta and Saint Andrews Bay Railway Company (Lessee)
514 E. Main Street
P.O. Box 729
Dothan, Alabama 36302

This Amendment amends the Lease Agreement whereby the Lessor will be required to perform the car hire recordkeeping functions with respect to five hundred seventy-eight (578) boxcars from within the series ASAB 7000-8201 (n.s.).

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

Interstate Commerce Commission
Washington, D.C. 20423

4/21/88

OFFICE OF THE SECRETARY

Patricia Schumacker
Itel Rail Corporation
55 Francisco Street
San Francisco, Calif. 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 4/19/88 at 10:15am, and assigned recordation number(s). 9703-J & 15578

Sincerely yours,

Narita L. McLee
Secretary

Enclosure(s)

RECORDATION NO. 9703.9 FILED

01/20/88

APR 19 1988 - 10 15 AM

INTERSTATE COMMERCE COMMISSION
AMENDMENT NO. 6

ASSIGNED TO FIRST SECURITY BANK
OF UTAH, N.A., TRUSTEE, UNDER
A LEASE ASSIGNMENT.

THIS AMENDMENT NO. 6 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of May 5, 1978, as amended, between ITEL Corporation, Rail Division and ATLANTA AND SAINT ANDREWS BAY RAILWAY COMPANY ("Lessee") is made this 15th day of March 1988, by and between ITEL RAIL CORPORATION, as successor in interest to ITEL Corporation, Rail Division ("Lessor") and Lessee.

RECITALS:

- A. Lessor and Lessee are parties to the Agreement, pursuant to which five hundred seventy-eight (578) boxcars have been leased by Lessor to Lessee.
- B. Lessee has requested Lessor and Lessor has agreed to perform car nire record-keeping functions which Lessee has been doing with respect to the use of the Cars by Lessee and other railroads.

NOW, THEREFORE, 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 the Amendment.
- 2. This Amendment shall be effective January 1, 1988.
- 3. Section 4 of the Agreement shall be deleted and replaced by new Section 4, as follows:

"4. Record Keeping

- A. Lessor shall, at its expense and with Lessee's assistance, 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 Agreement. Such matters shall include, but are not limited to: (i) preparation of appropriate AAK 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 ICC and any other regulatory

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN
OF HELLER FINANCIAL, INC. UNDER THE HELLER
FINANCIAL, INC. LOAN AND SECURITY AGREEMENT WITH ITEL
CORPORATION DATED AS OF SEPTEMBER 30, 1986.

agencies with respect to the Cars. Lessee hereby authorizes Lessor to be the subscriber to the car hire exchange tape, Train 62 Junction Advices, and the Train 11 (65, 67 and 80) Location Advices with respect to the Cars and agrees to execute any documents necessary for such authorization.

- B.** Lessor shall perform all record keeping functions relating to the use of the Cars by Lessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of revenues from other railroad companies, and billing in accordance with the Interchange Rules. Immediately upon receipt from other railroads of any revenues in the form of a draft, check or other instrument payable to Lessee, Lessor shall be entitled to endorse and deposit such draft, check or other instrument into Lessor's account and to retain such revenues as set forth in Subsection 6.B. All record keeping performed by Lessor hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessor in a form suitable for reasonable inspection by Lessee from time to time during Lessor's regular business hours.
- C.** Upon Lessor's reasonable request, Lessee shall supply Lessor with daily telephone reports of the number of Cars in Lessee's possession or control. Lessee shall, within ten (10) days after the close of each calendar month, supply Lessor with copies of Lessee's interchange records with respect to the Cars interchanged to and from Lessee's railroad line. Upon Lessor's reasonable request, Lessee shall promptly provide Lessor with records of Lessee's car hire payables. In the event Lessee fails to provide Lessor with records of car hire payables, and as a result, a user or handling railroad refuses to pay any revenues owed, Lessee shall, within ten (10) days after Lessor's request, pay to Lessor such unpaid revenues. Lessor has the right to offset against Lessee's revenue sharing portion set forth in Subsection 6.A., any sums arising out of this Agreement which are owed by Lessee to Lessor but which remain unpaid.
- D.** If Lessee acquires or leases or has acquired or leased additional equipment bearing the reporting marks of Lessee from a party other than Lessor ('Other Equipment'), Lessor shall perform car hire accounting for the Other Equipment. Lessor and Lessee shall enter into a car hire service agreement ('Car Hire Agreement') governing Lessor's

performance of car hire accounting for the Other Equipment. Under such Car Hire Agreement, Lessor shall, on behalf of Lessee, receive car hire rental and other payments relating to the use and handling of the Other Equipment by other railroads ('Funds') and shall deposit the Funds into an Agency Bank Account for the purpose of segregating the Funds from the Revenues (as defined in Section 6 hereinbelow) relating to the Cars so as to ensure that the interests of both Lessor and Lessee are protected. Upon entering into such Car Hire Agreement, Lessee shall pay Lessor on a monthly basis a fee which is mutually agreeable to Lessor and Lessee."

4. The following sentences shall be added to Subsection 5.A.:

"Lessee shall not place any Car into any private contract repair facility or have any Car repaired by a private contractor on Lessee's lines unless Lessee has received prior approval from Lessor and all such repairs are performed under the direction and control of Lessor. With respect to the Cars, any repairs performed by Lessee at Lessor'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."

5. The following sentence shall be added to Subsection 5.B.:

"Should the AAR Mechanical Department inspect or investigate Lessee's facilities and determine that restitution is due owners of boxcars repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all boxcars owned or managed by Lessor, including the Cars, that were repaired at Lessee's facilities."

6. Subsection 6.B. shall be deleted and replaced by the following:

"6.B. The calculations required in Subsection 6.A. shall be made within five (5) months after the end of each calendar year ('Final Calculations'). However, Lessor shall, prior to making such calculations, retain the Revenues and other payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under Subsection 6.A., Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due both parties pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, 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."

7. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.
8. 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

Name: D. W. Hayes
Title: President
Date: 3/15/88

ATLANTA AND SAINT ANDREWS BAY RAILWAY COMPANY

Name: Alan Stone
Title: President
Date: 3/8/88

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

On this 15th day of March, 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 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 Illinois)
) ss:
COUNTY OF Cook)

On this 2th day of March, 1988, before me personally appeared Alan Stone, to me personally known, who being by me duly sworn says that such person is President of Atlanta and Saint Andrews Bay Railway 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.

Lucy B. Fleri
Notary Public 6/14/90