

ITEL

Rail Division

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

RECORDATION NO. 9778 Filed 1425

OCT 1 - 1981 - 2 02 PM
September 23, 1981
INTERSTATE COMMERCE COMMISSION

No.
Date.....
Fee \$ 10.00

ICC Washington, D. C.

OCT 1 1 50 PM '81

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 as of March 15, 1978 between Itel Corporation, Rail Division ("Itel") and the Texas Mexican Railway Company ("Lessee"), which was filed on October 17, 1978 at 3:00 P.M. and given recordation No. 9778, four (4) counterparts of the following document:

Amendment No. 3 dated as of July 22, 1981 to the Lease Agreement dated as of March 15, 1978 between Itel and Lessee.

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

1. The Texas Mexican Railway Company
1200 Washington Street
P. O. Box 419
Laredo, Texas 78040
2. Itel Corporation, Rail Division
Two Embarcadero Center
San Francisco, California 94111

The equipment covered by the Amendment is three hundred (300) flatcars (A.A.R. mechanical designation FC, 89' in length), bearing the reporting marks TM 400000 through and including TM 400299.

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

PSP/C/29

*Ms. Lee -
files is under
9778. but I
do not know the
next letter -
Ms. Lee -
I would like a
separate letter
from you covering
part this filing.
Hanks*

[Handwritten signature]

Ms. Agatha Mergenovich
September 23, 1981
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 delivered to the bearer of this letter.

Sincerely,


Patricia Salas Pineda
Counsel

PSP:sc

Enclosures

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

Robert S. Clark, Esq.
First Security Bank of Utah, N.A.
79 South Main Street
Salt Lake City, Utah 84111

Doug Drummond
Iitel Corporation

Margaret MacKenzie
Iitel Corporation

9778

RECORDATION NO. 9778 Filed 1425

L-0203
8/6/81

OCT 1 - 1981 - 2 02 PM

AMENDMENT NO. 3

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 3 (the "Amendment") to that certain Lease Agreement (the "Agreement") dated as of March 15, 1978, between **ITEL CORPORATION, RAIL DIVISION** ("Itel Rail") and the **TEXAS MEXICAN RAILWAY COMPANY** ("Lessee") is made this 22nd day of July, 1981 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 certain railroad equipment, including three hundred (300) flatcars bearing the reporting marks TM 400000-400299 (hereinafter called "Flatcars"), have been leased and delivered by Lessor to Lessee;

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

1. All terms defined in the Agreement shall have the defined meanings when used in this Amendment.
2. This Amendment shall be effective as of January 1, 1981.
3. Section 6.A.(i), with respect to the Flatcars only, is hereby deleted in its entirety and replaced by the following:

"(i) Itel Rail shall receive all payments made to Lessee by other railroad companies for their use or handling of the Flatcars, including but not limited to mileage charges, and car hire payments (both of which payments made to Lessee are hereinafter collectively referred to as "Payments") if the Utilization (as defined below) of all of the Flatcars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 92 percent and 150 miles per day. For the purpose of this Agreement, Utilization of the Flatcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Flatcars, commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Flatcars are on lease to Lessee, commencing from the Initial Loading minus the number of days such equipment is undergoing servicing, repair or alteration as provided for in Section 5 unless the same was occasioned by the fault of Lessee or in instances in which the AAR Interchange Rules would assign responsibility for such servicing, repairs, alteration or liability to Lessee. In addition, Itel Rail will receive, as additional rental, all monies earned by the Flatcars prior to their Initial Loading."

4. Section 6.A.(ii), with respect to the Flatcars only, is hereby deleted in its entirety and replaced by the following:

"(ii) The car hire revenues and mileage charges earned by the Flatcars ("Payments") shall be dealt with as follows:

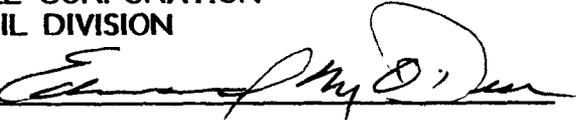
In the event that the Payments exceed the Payments the Flatcars would have earned had Utilization been 92 percent and the Average Mileage per day 150 or more, Lessee shall be entitled to such excess."

5. Section 6.C., with respect to the Flatcars only, is hereby deleted in its entirety and replaced by the following:

"C. If at any time during a calendar quarter, the number of days that the Flatcars have not earned Payments is such as to make it mathematically certain that Utilization and mileage in such calendar quarter cannot be equal to or greater than 90 percent and 150 miles per day respectively, ITEL Rail may, at its option and upon not less than 10 days prior written notice to Lessee, terminate this Agreement as to such Flatcars as ITEL Rail shall determine. Section 3.B. notwithstanding, Lessee is then at liberty to lease similar Flatcars from other parties."

6. 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 the 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.
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 CORPORATION
RAIL DIVISION

By: 

Title: President

Date: September 15, 1981

TEXAS MEXICAN RAILWAY COMPANY

By: 

Title: President and General Manager

Date: August 25, 1981

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

On this 15th day of September, 1981, 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. 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.



Jody A. Blomgren
Notary Public

STATE OF TEXAS)
) ss:
COUNTY OF WEBB)

On this 25th day of August, 1981, before me personally appeared A. R. Ramos, to me personally known, who being by me duly sworn says that such person is President and General Manager of Texas Mexican Railway Company, that the foregoing Amendment 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.

Sandra Su Webber
Notary Public