

ITEL

IteI Rail Corporation

55 Francisco
San Francisco, California 94133
(415) 984-4000
Telex 34234

RECORDATION NO. 9778-N Filed 1425

No. JAN 15 1985

JAN 15 1985 - 3 50 PM

Date

Fee \$ 10.00

ICC Washington, D.C.

5-015A033

January 3, 1985 INTERSTATE COMMERCE COMMISSION

Mr. James H. Bayne, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Bayne:

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 IteI Rail Corporation for filing and recordation under the Lease Agreement dated as of March 15, 1978 between IteI Corporation, Rail Division as predecessor in interest to IteI Rail Corporation and Texas Mexican Railway Company which was filed with the I.C.C. on October 17, 1978 and given I.C.C. Recordation No. 9778, four counterparts of the following document:

this may be 9778-N but not sure

Amendment No. 8 to the Lease Agreement made as of March 15, 1978 between IteI Rail Corporation, Rail Division, and the Texas Mexican Railway Company.

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

1. Texas Mexican Railway Company - LESSEE
1200 Washington Street
Laredo, Texas 78040
2. IteI Rail Corporation - LESSOR
55 Francisco, 5th Floor
San Francisco, California 94133

The equipment covered by this Amendment is one hundred eighty-six (186) flatcars bearing reporting marks TM 400000-400149 and TM 400150-400224.

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

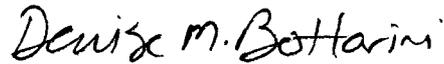
Vertical stamp: RECEIVED JAN 15 1985

Signature: James W. Cramer

Mr. James H. Bayne, Secretary
January 3, 1985
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 to the bearer of this document.

Sincerely,



Denise M. Bottarini
Legal Assistant

DMB/vdv

cc: 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 84125

Virginia Hanger
Itel Rail Corporation.

11/30/84

JAN 15 1985 - 8 10 PM

AMENDMENT NO. 8

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 8 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of March 15, 1978, between ITEL Corporation, Rail Division and the TEXAS MEXICAN RAILWAY COMPANY ("Lessee") is made as of this 30th day of September, 1984, by and between ITEL RAIL CORPORATION, as successor in interest to ITEL Corporation, Rail Division ("Lessor") and Lessee.

R E C I T A L S :

- A. Lessor and Lessee are parties to the Agreement, pursuant to which three hundred (300) flatcars, bearing reporting marks TM 400000-400299 (the "Car(s)"), have been leased by Lessor to Lessee.
- B. Twelve (12) of the Cars are no longer subject to the Agreement pursuant to a termination letter dated August 4, 1982, and the three (3) Cars bearing reporting marks TM 400220, TM 400227 and TM 400243 were destroyed on or about June 15, 1980, July 24, 1979, and July 9, 1982, respectively.
- C. One hundred eighty-six (186) of the Cars are no longer subject to that certain sublease dated as of July 30, 1982, between Lessee and the Atchison, Topeka and Santa Fe Railway Company ("Sublessee").
- D. Lessor and Lessee agree that it is to their mutual benefit for Lessee to enter into a sublease agreement with Sublessee for a certain number of the Cars for a period of time to improve utilization of and revenue from the Cars.

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

- 1. All terms in the Agreement shall have their defined meanings when used in this Amendment.
- 2. Lessor consents to Lessee's entering into the Sublease agreement dated as of November 1, 1984, as Sublessor with Sublessee for one hundred eighty-six (186) Cars (i) of which one hundred forty-eight (148) are within the series TM 400000-400149, and (ii) of which thirty-eight (38) are within the series TM 400150-400224 (the "Flatcars(s)").
- 3. The term of the Sublease with respect to each Flatcar shall commence at 12:01 a.m. on November 1, 1984, and shall continue in full force and effect until October 31, 1985, as to all of the Flatcars (the "Sublease Period").
- 4. The Flatcars shall bear the reporting marks of Sublessee in compliance with all applicable regulations.

5. During the Sublease Period, Section 4. of the Agreement, as it now reads ("Old Section 4."), shall be replaced by the following solely with respect to the Flatcars:

"A. Lessee shall, at its expense, prepare and file, with respect to the Flatcars, all documents relating to the 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 Association of American Railroads ("AAR") interchange agreements with respect to the Flatcars; (ii) registration of the Flatcars 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 any other regulatory agencies with respect to the Flatcars. Lessee shall register each Flatcar in the UMLER in such a manner that Lessor is allowed access to any information required by Lessor with regard to each Flatcar. 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 Flatcars by Lessee and other railroads, including but not limited to, records pertaining to maintenance and repair, and billing in accordance with the Interchange Rules adopted by the AAR Mechanical Division, Operation and Maintenance Department ("Interchange Rules"). All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence related to the Flatcars 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."

Upon expiration or early termination of the Sublease, Old Section 4. shall be reinstated in the Agreement as it originally appears with respect to the Flatcars.

6. During the Sublease Period, Subsection 5.A. of the Agreement, as it now reads ("Old Subsection 5.A."), shall be amended by adding at the end of the last sentence thereof, the following solely with respect to the Flatcars:

"With respect to the Flatcars, 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 in writing by the parties hereto."

Upon the expiration or early termination of the Sublease, Old Subsection 5.A. shall be reinstated in the Agreement as it originally appears with respect to the Flatcars.

7. During the Sublease Period, Subsection 5.B. of the Agreement, as it now reads ("Old Subsection 5.B."), shall be replaced by the following solely with respect to the Flatcars:

"B. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Flatcars in good operating condition as specified in the Interchange Rules. Lessee may make only running repairs to those parts specified in Exhibit A attached hereto to facilitate continued immediate use of each Flatcar, but shall not otherwise make or cause to have made, any repairs, alterations, improvements, or additions to any Flatcar without Lessor's prior written consent. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Lessor. Lessor shall have the right to perform certain Repairs, as hereinafter defined, to the Flatcars at a location on Lessee's property, or at a contract shop, which is mutually agreeable to Lessor and Lessee. Repairs ("Repairs") shall be of the type that Lessor determines Lessee would not normally perform or of the type that Lessor determines would normally precipitate movement of such Flatcars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Repairs."

Upon the expiration or early termination of the Sublease, Old Subsection 5.B. shall be reinstated in the Agreement as it originally appears with respect to the Flatcars.

8. During the Sublease Period, Subsections 5.C. and 5.D. of the Agreement, as they now read ("Old Subsections 5.C. and 5.D."), shall be replaced with the following solely with respect to the Flatcars:

"C. As long as this Agreement shall remain in effect, Lessee shall be responsible for the Flatcars: (i) while in Lessee's possession or control; and (ii) in the same manner that Lessee is responsible under the 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 Flatcars while on Lessee's tracks, provided, however, that the Lessee may self-insure such Flatcars to the extent it self-insures equipment similar to the Flatcars 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, but in any event such insurance shall be at least comparable in amount, risk coverage and insurer, to insurance coverage carried by the Lessee with respect to 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-payee 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 require 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, imposts, duties or withholdings of any nature together with penalties, fines or interest thereon imposed on, incurred by or asserted against: (1) the Flatcars, (2) lease, sublease or delivery of the Flatcars, and (3) revenues earned by the Flatcars, including but not limited to mileage charges and/or car hire revenues, during the term of this Agreement, except taxes on income and franchise taxes imposed on Lessor. Lessee shall comply with all state and local laws requiring filing of ad valorem tax returns associated with the Flatcars and shall provide Lessor with a photostatic copy of the receipted ad valorem tax bill within thirty (30) days after receipt."

Upon expiration or early termination of the Sublease, Old Subsections 5.C. and 5.D. shall be reinstated in the Agreement as they originally appear with respect to the Flatcars.

9. During the Sublease Period, a new Subsection 5.E., as it reads below shall be added to the Agreement solely with respect to the Flatcars:

"5.E As long as there is sufficient room on Lessee's railroad tracks, Lessee shall, at its expense and if deemed necessary by Lessor, store the Flatcars on its railroad tracks. In the event that Lessee's capacity to store any or all of the Flatcars on Lessee's railroad tracks is impaired at any time, then Lessee shall be responsible for the following with respect to each and every Flatcar stored: (i) all reasonable transportation costs incurred to move the Flatcars to a storage location; (ii) all reasonable transportation costs incurred in removing the Flatcars from the storage location; and (iii) the actual costs incurred for the storage of the Flatcars. 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. Lessor shall assist Lessee so as to minimize Lessee's exposure under this Section."

Upon the expiration or early termination of the Sublease, Subsection 5.E. shall be deleted from the Agreement with respect to the Flatcars.

10. During the Sublease Period, Section 6. of the Agreement, as it now reads ("Old Section 6."), shall be replaced by the following solely with respect to the Flatcars:

"6. Rent

- A. The fixed rent ("Fixed Rent") shall be twenty-three dollars and eighteen cents (\$23.18) per Flatcar per day for each day during the Sublease Period.
- B. On the first (1st) day of each month during the Sublease Period, Lessee shall pay the Fixed Rent, as set forth herein, to Lessor for each Flatcar.
- C. In the event damage beyond repair or destruction of a Flatcar has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Flatcar will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Flatcar with similar equipment upon prior written notice from Lessor to Lessee. If any Flatcar, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Flatcar Lessee shall notify Lessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Lessee fails to so notify Lessor within sixty (60) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Flatcar to determine the extent of such damage. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Flatcar within thirty (30) days of receipt of an invoice from Lessor.
- D. Any agreement between Lessee and any other party with respect to the Flatcars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval of the conditions contained therein if such Third Party Agreement affects the Revenues earned by the Flatcars, 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.
- E. Lessor and Lessee agree to cooperate with and assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Flatcars, provided however, that this shall not affect their respective obligations under this Section 6."

Upon expiration or early termination of the Sublease, Old Section 6. shall be reinstated in the Agreement as it originally appears with respect to the Flatcars.

11. During the Sublease Period only, Subsections 8.A. (i) and (ii) of the Agreement shall be amended by replacing the word "ten" with the word "thirty" each time it appears, solely with respect to the Flatcars.
12. Lessee agrees that during the Sublease Period: 1) Lessee shall remain primarily liable for the performance of all terms of the Agreement to be performed by the Lessee; 2) the Sublease is subject and subordinate to the rights of Lessor under the Agreement and; 3) Lessor is deemed to be a third party beneficiary of the Sublease and is therein granted all rights of Lessee (including all rights to collect Revenues and to enforce the terms and conditions) under the Sublease but not subject to any of the Lessee's obligations thereunder.
13. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all of the Cars subject to the Agreement including the Flatcars.
14. This Amendment may be executed by the parties hereto in any number of counterparts and all counterparts taken together shall be deemed to constitute one in the same instrument.

ITEL RAIL CORPORATION

By: 
Title: ACTING PRESIDENT
Date: 12/27/84

**THE TEXAS MEXICAN
RAILWAY COMPANY**

By: 
Title: Chairman & Chief Executive Officer
Date: December 6, 1984

EXHIBIT A

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

Running Repairs Continued

Wheels
Yokes
Knuckles/pins
Slack Adjuster
Pedestal Locks
Couplers
Draft Gears
Coupler Carriers
Center Plates
Lube of Hitches
Cotter Keys
Roller Bearing Adapters
Air Hose Supports

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

On this 27th day of December, 1984, before me personally appeared Desmond J. Hayes, to me personally known, who being by me duly sworn says that such person is Acting President of ITEL Rail Corporation, that the foregoing Amendment No. 8 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.

Vivian A. De Vera
Notary Public



STATE OF Texas)
) ss:
COUNTY OF Webb)

On this 6th day of December, 1984, before me personally appeared A. R. Ramos, to me personally known, who being by me duly sworn says that such person is Chmn & Ch Executive of The Texas Mexican Railway Company, that the foregoing Amendment No. 8 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 Sue Webber
Notary Public