RECORDATION NO. 8610-A Filed 1425
SEP 28 1983 -9 10 AM
INTERSTATE COMMERCE COMMISSION

ITEL RAIL

RECORDATION NO. 8610-E Filed 1425
SEP 28 1983 -9 10 AM
INTERSTATE COMMERCE COMMISSION

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

August 31, 1983

No. 3-271A030
SEP 28 1983
Date.....
Fee $ 20.00
ICC Washington, D. C.

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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 Intersate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Corporation for filing and recordation as additional filings under the Equipment Lease Agreement dated November 23, 1976 between Mellon National Leasing Company ("Lessor") and SSI Rail Corp., now doing business as Itel Corporation, Rail Division ("Itel") which was filed on December 14, 1976 at 1:45 P.M. and given recordation number 8610 certain counterparts of the following two documents:

(1) Two counterparts of the Agreement dated October 1, 1982 by and between Lessor and Itel (the "Agreement").

(2) Four counterparts of the Third Amendment of Equipment Lease Agreement dated October 1, 1982 by and between Lessor and Itel (the "Amendment").

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

1. Mellon National Leasing Company
   Suite 3629, Mellon Bank Building
   Pittsburgh, PA 15219

2. Itel Corporation, Rail Division
   55 Francisco, 7th Floor
   San Francisco, California 94133

The equipment covered by the Agreement and Amendment is one hundred ninety-five (195) boxcars, more fully described as follows:

48 - 60', 100-ton boxcars with reporting marks in the series ASAB 8050-8099;

49 - 50', 70-ton boxcars with reporting marks in the series ASAB 7150-7199;

59 - 50', 70-ton boxcars with reporting marks in the series CLP 3001 - 3060; and

39 - 50', 70-ton boxcars with reporting marks in the series LEF 1000 - 1038.

Also enclosed is a check in the amount of $20.00 for the required recording fee.

Please stamp all counterparts of the enclosed Agreement and Amendment with your official recording stamp. You will wish to retain one (1) counterpart of each document for your files; it is requested that the remaining counterpart of the Agreement and the remaining three (3) counterparts of the Amendment be returned to Itel Rail, attention Ms. Linda Lawrence, at the above-listed addresss. Thank you.

Sincerely,

Paul L. Loveday

Paul L. Loveday
Senior Counsel

/ma
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

9/28/83

OFFICE OF THE SECRETARY

Paul L. Loveday

Itel Rail

55 Francisco
San Francisco, California 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 9/28/83 at 9:10am, and assigned re-recordation number(s).

8640-P 8642-E 8233-D, 8343-G & 8343-H
8669-L
8838-M
8838-N
8904-O
8904-P
9553-A
9553-B

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

RECORDATION NO. 8610-D
SEP 28 1983 -9 10 AM
INTERSTATE COMMERCE COMMISSION

AGREEMENT

This Agreement (the "Agreement") is made as of October 1, 1982 by and between **MELLON NATIONAL LEASING COMPANY ("Mellon")** and **ITEL CORPORATION, RAIL DIVISION,** debtor and debtor in possession **("Itel").**

R E C I T A L S

A. Mellon and SSI Rail Corp. ("SSI") (the predecessor in interest to Itel) entered into an Equipment Lease Agreement (the "Lease") dated as of November 23, 1976 pursuant to which 150 70-ton 50'6" single sheath Boxcars and 50 100-ton 60' 10" single sheath Boxcars (the "Boxcars") were leased by Mellon to SSI.

B. Concurrently, Itel Corporation, as debtor, executed a Guaranty (the "Guaranty") of the Lease obligations of SSI as of November 23, 1976.

C. The Lease has been amended by the First Amendment to Equipment Lease Agreement (the "First Amendment") dated as of January 3, 1977, and by the Second Amendment to Equipment Lease Agreement (the "Second Amendment") dated as of January 10, 1977.

D. SSI was merged into Itel Corporation on December 22, 1977.

E. Itel filed a Chapter 11 bankruptcy petition on January 19, 1981 in the United States Bankruptcy Court Northern District of California (the "Court").

F. Mellon has not filed a proof of claim with the Court with respect to the Lease as amended or with respect to the Boxcars.

NOW, THEREFORE, the parties agree as follows:

1. Termination of Guaranty

The parties acknowledge that since SSI has merged into Itel Corporation, the Lease has become a direct obligation of Itel Corporation and thus the Guaranty is terminated and of no force or effect.

2. Amendment of Lease

Itel and Mellon hereby agree to execute concurrently herewith the Third Amendment to Equipment Lease Agreement (the "Third Amendment") in the form attached as Exhibit A hereto.

3. Assumption of the Lease as Amended

Effective upon the approval of the Court, Itel hereby assumes and accepts the Lease as amended by the First Amendment, the Second Amendment and the Third Amendment pursuant to Section 365(a) of the Bankruptcy Code.

4. **Integration**

The parties agree that this Agreement and the Lease as amended are the sole agreements setting forth the rights and obligations of the parties hereto with respect to the Boxcars.

5. **Waiver of Defaults**

Mellon hereby waives any defaults by Itel under the Lease or under the Guaranty which defaults occurred prior to the effective date (the "Effective Date") of the Court's approval of this Agreement and the Court's approval of the assumption of the Lease as amended by the Third Amendment, including without limitation, any consequence of the present Itel bankruptcy proceedings.

6. **Release of Itel's Claim**

Effective upon the Effective Date, Itel hereby releases Mellon from all claims Itel may have against Mellon with respect to any overpayments of rent made by Itel to Mellon with respect to the Boxcars from January 19, 1981 through and including the date of the Court's approval of Itel's assumption.

7. **Acknowledgment of Rental Paid**

Mellon acknowledges that Itel has paid $87,642.61 with respect to the rental payment due pursuant to the Lease as amended for the quarterly rent payment due March 31, 1982. Promptly after the Effective Date, Itel shall pay the balance due under the Lease for such quarterly rent payment and the full quarterly rent payments due June 30, 1982 and September 30, 1982.

8. **Approval of Court**

The provisions of this Agreement are subject to and conditioned upon the Court's approval of this Agreement and upon the Court's approval of Itel's assumption of the Lease as amended. If such approvals are not obtained on or before ~~November 30,~~ December 1, 1982, this Agreement shall be null and void and of no force or effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Mellon National Leasing Company

By _____

Title Senior Vice President

Date 10/20/82

Itel Corporation, Rail Division
as debtor and debtor in possession

By _____

Title President

Date 11/30/82

EXHIBIT A

The Third Amendment of Equipment Lease Agreement

This Third Amendment of Equipment Lease Agreement (the "Third Amendment") to the original Equipment Lease Agreement (the "Lease"), dated as of November 23, 1976 between Mellon National Leasing Company, as Lessor, and SSI Rail Corp., as Lessee, is made and entered into as of October 1, 1982, by and between Itel Corporation, Rail Division, debtor and debtor in possession ("Itel") and Mellon National Leasing Company ("Mellon").

R E C I T A L S

A. The First Amendment to the Lease was made as of January 3, 1977.

B. The Second Amendment to the Lease was made as of January 10, 1977.

C. All 200 boxcars described in the Lease and the First and Second Amendments thereto, (the "Cars") were delivered and accepted. Five of the 200 Cars have been destroyed and are no longer subject to the Lease leaving 195 Cars subject to the Lease.

D. SSI Rail Corp. was merged into Itel Corporation on December 22, 1977 and accordingly, (i) Itel is the sole obligor under the Lease and (ii) the Guaranty (as defined in the Lease) is of no force or effect.

E. Upon confirmation of a plan of reorganization for Itel (the "Plan of Reorganization") by the United States Bankruptcy Court, Northern District of California (the "Court"), all assets, rights, obligations and liabilities of the Rail Division of Itel Corporation will be transferred to Itel Rail Corporation.

F. "Lessee" shall mean Itel Corporation as debtor and debtor in possession from the date that this Third Amendment and the assumption of the Lease are approved by the Court until the date that the Plan of Reorganization is confirmed by the Court. Subject to the provisions of Section 6 hereof, upon confirmation of the Plan of Reorganization by the Court, Lessee shall thereafter mean Itel Rail Corporation.

G. All capitalized terms used herein, defined in the Lease, and not otherwise defined herein, have the meanings ascribed to such terms in the Lease.

NOW, THEREFORE, the parties agree as follows:

1. Amendment of Rental Section of Lease

Section 3 of the Lease is hereby amended by deleting the first and second paragraphs of such Section 3 and replacing such deleted paragraphs with the following:

"3. Rent, Net Lease

(a) The quarterly rent for the Cars shall be in an amount equal

to a percentage of the invoice purchase price of the Cars (the "Purchase Price") plus, with respect to some quarters, Additional Rent (as defined below).

(b) Lessor acknowledges that Lessee has paid to Lessor all sums due under the Lease from the period of inception of the Lease through and including December 31, 1981.

(c) Commencing with the quarterly rent payment which is due on March 31, 1982 and continuing through and including the quarterly rent payment which is due on December 31, 1985, the quarterly rental for the Cars shall be an amount equal to 2.1002% of the Purchase Price of the Cars plus the applicable Additional Rental (as defined below).

(d) Commencing with the quarterly rent payment which is due March 31, 1986 and continuing through the quarterly rent payment due June 30, 1987, the quarterly rental for the Cars shall be an amount equal to 2.70534% of the Purchase Price of the Cars plus the applicable Additional Rental (as defined below).

(e) Commencing with the quarterly rent payment which is due September 30, 1987 and continuing through the remaining term of the Lease the quarterly rental for the Cars shall be an amount equal to 2.70534% of the Purchase Price of the Cars.

(f) For each quarterly rent payment for which Additional Rental (as defined below) is due under this Lease, the amount of such Additional Rental shall be calculated with respect to the Utilization (as defined below) achieved by Lessee for particular quarterly periods (the "Related Periods") prior to the due date of such quarterly rent payment as decribed below.

Rent Payment Due Date	"Related Period" for Such Rent Payment Date
March 31	July 1 through September 30 of the prior calendar year
June 30	October 1 of the prior calendar year through December 31 of the prior calendar year.
September 30	January 1 through March 31 of the same calendar year
December 31	April 1 through June 30 of the same calendar year

(g) "Additional Rental" shall be defined as the amount of additional payments which lessee may be obligated to pay in addition to payments of regular rental upon achieving a specified level of Utilization (as defined below).

(i) For each quarterly rent payment, if Utilization (as defined below) of all Cars subleased by Lessee to any sublessee is less than 70% for the Related Period, no Additional Rental shall be owed by Lessee in conjunction with the quarterly rent payment.

(ii) If Utilization of the Cars for the Related Period exceeds 70%, subject to the exception set forth in subsection (g) (iii) below, Lessee shall pay Lessor Additional Rental in an amount equal to fifty percent (50%) of the net rental charges actually and irrevocably paid by the sublessee thereof, pursuant to Paragraph 6 of the current form of subleases between Lessee and Lessee's current sublessees of the Boxcars (or any equivalent clause in any subsequent sublease) solely with respect to the sublease of the Cars during the Related Period and solely with respect to rental charges paid to Lessee by its sublessees as a result of Utilization in excess of 70%, as and when received.

(iii) In no event shall Lessee pay to Lessor Additional Rent in an aggregate amount in excess of $627,330.

(h) "Utilization" of the Cars for each Related Period shall be equal to the average utilization of each of the Cars for such Related Period. The Utilization of each Car shall be equal to a fraction, (i) the numerator of which is the number of hours in such Related Period for which net revenues are paid and retained on such Car to Lessee, and (ii) the denominator of which is the aggregate number of hours in such Period; provided, however, that in the event that less than the maximum per diem revenues are received with respect to any Car during all or any portion of such Related Period, the numerator of such fraction shall be proportionately reduced for such period.

(i) As an illustration of the foregoing, assume that during a hypothetical Related Period the Utilization of the Cars is 95%, that as a result of such Utilization $950 of net rentals are paid to the Lessee, and that the Cars are subleased with revenue sharing terms whereby sublessees received 50% of earnings in excess of 90% Utilization. The sublessees would received $25 of the payments. Net rental charges paid to Lessee as a result of Utilization in excess of 70% would be $225. The Additional Rent for such Related Period would be one-half of such amount, namely $112.50.

(j) As a further illustration of the foregoing, assume that during a hypothetical 90 day Related Period all Cars are used off the lines of the sublessees 100% of the hours in such Related Period and that per diem revenues are paid and retained on such Cars to Lessee on behalf of such sublessees with respect to 100% of such hours, that the amount paid by the users of such Cars to Lessee on behalf of the sublessees is only 75% of the ICC prescribed rate. Utilization for such Related Period would be 75%.

(k) If the date on which the quarterly rent for the Cars is due under this Paragraph is not a day during which Lessor is regularly open for business, such quarterly rent for the Cars payment shall be due on the next succeeding business day."

2. <u>Amendment of Default and Remedies Section of Lease</u>

(a) Section 14 of the Lease is hereby amended by deleting the word

"Guarantor" from each place that such word appears.

(b) Section 14 of the Lease is further amended by adding the following proviso at the end of subsection 14(c) and at the end of subsection 14(d):

> "; provided, however, that the foregoing shall not be applicable to the extent that the foregoing conflicts with the Bankruptcy Code; and provided further that none of the foregoing events shall be deemed to be Events of Default if such events relate to or are connected with that certain case under Chapter 11 of the Bankruptcy Code pending as of the date of execution of this Third Amendment as Case No. 3-81-00111 in the Court."

3. Amendment of Assignment Section of Lease

Section 16 of the Lease is hereby amended by adding the following thereto:

> "Notwithstanding any other provision of the Lease no consent or approval shall be required for an assignment of the Lease to Itel Rail Corporation and an assumption by Itel Rail Corporation of all of Lessee's obligations hereunder upon the confirmation of a Plan or Reorganization for Itel Corporation, debtor-in-possession, and such consent shall not be required for any sale, assignment, or transfer of Itel Rail Corporation's interests in the Lease if such sale, assignment or transfer arises pursuant to a merger into, consolidation with or transfer of all or substantially all of Itel Rail Corporation's assets to a purchaser, assignee or transferee which is a wholly owned subsidiary of Itel Rail Corporation, provided further, however, that such subsidiary shall have fully assumed the Lessee's obligations under this Lease and provided further that Itel Rail Corporation shall have guaranteed (or otherwise have remained liable) for the obligations of such subsidiary under this Lease. Effective upon assignment of the Lease and the rights thereunder to Itel Rail Corporation and the assumption of the obligations under the Lease by Itel Rail Corporation, Itel Corporation is hereby released from all obligations hereunder."

4. Amendment of Renewal Purchase Option and Appraisal Section of Lease

Section 19 of the Lease is hereby amended to read in full as follows:

> "(a) If the aggregate of Additional Rent received by Lessor is less than $627,330, Lessor may at its option, upon written notice to Lessee at least 120 days prior to March 31, 1992 (the expiration date of the original term of the Lease), elect to extend the term of this Lease with respect to the then existing Cars subject to this Lease for a period (the "Put Period") described in Subsection 19(b) below. The quarterly rent for the Cars during the Put Period shall be in an amount equal to 1.352670% of the Purchase Price of the Cars subject to the Lease and shall be paid quarterly in arrears, the first of such payments to be made on June 30, 1992.

(b) The "Put Period" shall be the lesser of (i) five years or (ii) the period extending from April 1, 1992 to the date on which the sum of (x) the aggregate of the Additional Rent received by Lessor and (y) rent accrued during the Put Period equals $627,330.

(c) If Lessor elects to extend the term of the Lease for the Put Period pursuant to Subsection 19(a) hereof, Lessor shall give Lessee written notice of the anticipated expiration of the Put Period not less than 100 days prior to such anticipated expiration. Lessee may at its option, upon written notice to Lessor within 30 days of the receipt of Lessor's notice, elect to extend the term of this Lease with respect to the then existing Cars subject to the Lease for a period (the "Option Period") which, when added to the Put Period, equals five years. The quarterly rent for the Cars during the Option Period shall be the lower of (i) an amount equal to 1.352670% of the Purchase Price of the Cars subject to the Lease or (ii) the then Fair Rental Value (as defined below) for such quarterly payments.

(d) Provided that (i) Lessee is not in default hereunder and (ii) Lessor does not exercise its put option described in subsection 19(a) above or has no right to exercise such put option, Lessee may at its option, upon written notice to Lessor not more than 30 days after receiving notice from Lessor that it will not exercise or does not have the right to exercise such put option, elect to extend the term of this Lease in respect of all of the then existing Cars then covered by this Lease on an annual basis at the then Fair Rental Value (as defined below).

(e) If no Event of Default (or other event which after the lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing and this Lease shall not have been earlier terminated, Lessee shall be entitled, at its option, upon written notice to Lessor at least 120 days prior to the expiration of the term (as defined in Section 2 hereof) of this Lease, to purchase all but not less than all of the Cars leased hereunder at the end of the term of this Lease at a price equal to the Fair Market Value (as defined below) of the Cars at the end of such term. On the date of such purchase, Lessee shall pay Lessor the purchase price of all such Cars in cash and Lessor shall transfer title to all such Cars to Lessee WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, ON THE PART OF LESSOR, together with such documents evidencing transfer of title as Lessee shall reasonably request. The parties acknowledge that if the term of this Lease is extended for the Put Period and/or the Option Period, the term (as defined in Section 2 hereof) of this Lease will not expire until the expiration of the Put Period (or, if the Lease is extended for the Option Period, until the expiration of the Option Period) and that Lessee may not purchase the Cars pursuant to its purchase option set forth in this subsection until the expiration of the Put Period (or, if the Lease is extended for the Option Period, until the expiration of the Option Period).

(f) The "Fair Rental Value" or "Fair Market Value" of such Cars shall be determined by an appraiser selected by mutual agreement between the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser by a date within 60 days prior to the end of the term, the Fair Rental Value or Fair Market Value, as the case may be, shall be determined by American Appraisal Company. In the event of a purchase, the Fair Market Value as finally determined shall bear interest for the period, if any, from the date of expiration of this Lease to the date of payment at the rate of 10% per annum. Unless the notices required in connection with exercise of the foregoing options are given, the Cars shall be returned to the Lessor at the end of the original term or at the end of a period for which the required notice was given, as the case may be."

5. Full Force and Effect

Except as amended hereby and by the provisions of the First and Second Amendments, all provisions of the Lease shall remain in full force and effect.

6. Approval of Court

The provisions of this Amendment are subject to and conditioned upon the Court's approval of this Third Amendment of Equipment Lease Agreement, and the Court's approval of Lessee's assumption of the Lease. If such approvals are not given on or before November 30, 1982, this Third Amendment of Equipment Lease Agreement shall become null and void and of no force or effect.

IN WITNESS WHEREOF, the parties have caused this Third Amendment to Equipment Lease Agreement to be executed by duly authorized officers.

Mellon National Leasing Company	**Itel Corporation, Rail Division**
By_____	**By**_____
Title_____	**Title**_____
Date_____	**Date**_____

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

On this _____ day of _____, 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 Third Amendment of Equipment 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.

_____
Notary Public

My Commission Expires:

STATE OF)
) ss:
COUNTY OF)

On this _____ day of _____, 1982, before me personally appeared _____ to me personally known, who being by me duly sworn says that such person is _____ of Mellon National Leasing Company, that the foregoing Third Amendment of Equipment 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.

_____
Notary Public

My Commission Expires: