

ITEL

May 10, 1988

RECORDATION NO. 5641 FILED 1988

Itel Rail Corporation

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

MAY 13 1988-11 15 AM

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

INTERSTATE COMMERCE COMMISSION

5/13/88
13.00
103 Washington, D.C.

Re: Railcar Lease Agreement dated May 2, 1988, between Itel Rail Corporation, Itel Railcar Corporation, the Missouri-Kansas-Texas Railroad and Oklahoma, Kansas and Texas Railroad

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 \$13 recordation fee.

Please record this Railcar Lease Agreement under a new recordation number.

The parties to the aforementioned instrument are listed below:

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

Missouri-Kansas-Texas Railroad Company and
Oklahoma, Kansas and Texas Railroad Company (Lessee)
701 Commerce Street
Dallas, Texas 75202

This Railcar Lease Agreement covers one hundred fifty-nine (159) 4,780 cubic foot, 100-ton covered hoppers (LO) bearing reporting marks OKKT 3150-3237 and OKKT 3279-3349.

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

PS:
Enclosures

RECORDATION NO. 1 564 FILED 1988

Lot 2203-00

MAY 13 1988 - 11 15 AM

U4/20/88

INTERSTATE COMMERCE COMMISSION

RAILCAR LEASE AGREEMENT

May THIS LEASE AGREEMENT ("Agreement") made as of this 2nd day of May, 1988, between ITEL RAIL CORPORATION, a Delaware corporation, ITEL RAILCAR CORPORATION, a Delaware corporation, both at 55 Francisco Street, San Francisco, California 94133, severally, as lessor and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and OKLAHOMA, KANSAS AND TEXAS RAILROAD COMPANY, each a corporation with its principal place of business at 701 Commerce Street, Dallas, Texas 75202, jointly and severally, as the lessee ("Lessee").

1. Scope of Agreement

- A. Itel Rail Corporation is lessor hereunder only with respect to all Cars on Equipment Schedules executed by it, and Itel Railcar Corporation is lessor hereunder only with respect to all Cars listed on Equipment Schedules executed by it. The capitalized term "Lessor" in any context shall refer either to Itel Rail Corporation or to Itel Railcar Corporation or to any subsidiary of each which executes Schedules to this Agreement, whichever is the lessor of the Cars referred to or affected by such reference or instance. The liabilities, obligations, benefits and rights of Itel Rail Corporation and Itel Railcar Corporation (and such other subsidiary, if any), shall be several, not joint, and shall only apply to each in respect of the respective Cars for which it is lessor.
- B. Lessor agrees to lease to Lessee and Lessee agrees to and does hereby lease from Lessor, upon the terms and conditions set forth herein and in the applicable Schedule(s), railroad cars of the number of units, type, construction and other description (hereinafter referred to as the "Cars") as set forth in any executed schedule(s) attached hereto. All Schedules shall be in the form of Schedule No. 1 hereto and shall contain such other terms and provisions as Lessor and Lessee may agree upon. The terms and provisions of each fully-executed Schedule shall control over any inconsistent or contrary terms and provisions in the body of this Agreement.
- C. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the owner and lessor of all Cars and no joint venture or sale or partnership is being created. Lessee's interest in the Cars shall be that of a Lessee only. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

This Agreement shall be effective as to any Car on the date of delivery by Lessor of such Car, as provided in Section 3 hereof. The lease term with respect to all Cars covered by a particular Schedule shall continue for the period specified in such Schedule unless sooner terminated in accordance with the provisions of this Agreement. Unless the expiration date is specified in the Schedule, upon the delivery of the final Car on each Schedule, Lessor shall provide written notice to Lessee of the expiration date of the Agreement with respect to the Cars on such Schedule. Unless, within fifteen (15) days of the date of such notice, Lessee demonstrates to the reasonable satisfaction of Lessor that such expiration date is wrong, Lessee shall be deemed to have concurred to such expiration date.

3. Supply Provisions

- A. Lessee hereby approves the specifications for the Cars listed on Equipment Schedule No. 1, all of which Cars are presently in Lessee's possession. For Cars set forth in each other fully-executed Schedule, if any such Cars are to be remarked, Lessor shall, at its initial expense and subject to recovery of such expense as allowed for on such Schedule, remark such Cars with the reporting marks shown on the applicable Schedule in compliance with all applicable regulations. After the Cars have been remarked, Lessor shall deliver the Cars as promptly as is reasonably possible to the Initial Delivery Point specified in the applicable Schedule. From and after acceptance of any Car, Lessee shall be liable for, and shall within ten (10) days of receipt of an invoice from Lessor, reimburse Lessor for the payment of all expenses, of any kind whatsoever, on account of or relating to transportation or movement of a Car.
- B. Lessor and Lessee agree that Cars on Equipment Schedule No. 1, all of which are presently in the possession of Lessee as of the effective date of this Agreement, shall be conclusively deemed delivered to and accepted by Lessee. All other Cars delivered under this Agreement shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and specifications contained in the applicable Schedule; but Lessee shall be solely responsible for determining that such Cars are in proper condition for shipment and use. Within five (5) days after Lessor has given Lessee notice that any Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point specified in the notice. Each Car so inspected and accepted and any Car(s) which Lessee does not elect to inspect within such five (5) days shall, upon delivery thereof to Lessee as above provided, be conclusively deemed to be accepted and subject to this Agreement and to meet all requirements of this Agreement.
- C. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Cars with similar railcars upon prior written notice from Lessor to Lessee.

4. Record Keeping

- A.** Lessee shall, at its expense, 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 AAR 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") showing "USLX" in the "OWNER" field; and (iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars. Lessee shall register each Car in UMLER in such a manner that Lessor, or its agent, is allowed access to any required information with regard to each Car.
- B.** Lessee 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, records pertaining to maintenance and repair, and billing in accordance with the Interchange Rules. All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during Lessor's regular business hours. Upon Lessor's request, Lessee shall supply Lessor with telephone reports of the number of Cars in its possession or control.

5. Maintenance, Tax and Insurance

- A.** Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned (i) by damage or other condition caused by negligence of Lessee or anyone other than Lessor; (ii) by damage or other condition caused by loading, unloading or use other than as permitted under this Agreement; (iii) to repair, replace or maintain interior lading equipment, special interiors and linings and removable parts in good, safe operating condition; (iv) by loss or damage resulting from any commodity or other material loaded in or on any Car. Any transportation costs incurred by reason of movement of the Cars for any maintenance provided for in this paragraph shall be at Lessee's sole expense. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not

noted at the time of interchange. Lessee shall use its best efforts to minimize any damage to the Cars which may be caused by any shipper. Lessee shall not place any Car into a 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 in writing by the parties hereto.

- B. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Lessee may make running repairs to those parts of the Cars specified in the applicable exhibit attached hereto or to the pertinent Equipment Schedule, so as to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car 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 alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor. Should the AAR Mechanical Department inspect or investigate Lessee's facilities and determine that restitution is due owners of railcars repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all railcars owned or managed by Lessor, including the Cars, that were repaired at Lessee's facilities. Lessor shall have the right to perform certain Repairs, as hereinafter defined, to the Cars at a location on Lessee's property 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 Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Repairs.
- C. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor for such calendar month with respect to the maintenance of the Cars. Such report shall include all repair charges received by Lessee during the previous month. Lessor shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly maintenance report and bill.
- D. Lessee shall notify Lessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- E. Lessee shall be responsible for the Cars (i) while in Lessee's possession or control; and (ii) in the same manner and under the

same circumstances that Lessee is responsible under the Interchange Rules for similar equipment not owned by Lessee.

F. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control to the same extent as Lessee insures similar equipment owned or leased by it; and (ii) public liability insurance with respect to third party personal injury and property damage, with a minimum of twenty-five million dollars (\$25,000,000) and subject to such reasonable deductions as are customary for a Class I railroad of Lessee's size, and with such insurance companies as are satisfactory to Lessor or as secured through Lloyd's of London. All insurance shall be taken out in the name of Lessee and shall name Lessor, any financing party designated by Lessor by written notice to Lessee ("Financing Party") and any assignee of Lessor as additional named insureds and shall also list Lessor, Financing Party and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance.

G. Lessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify Lessor and its successors against taxes, fees, levies, impost, duties or withholdings of any nature together with penalties, fines or interest thereon imposed on, incurred by or asserted against: (1) the Cars; (2) the lease, sublease or delivery of the Cars; (3) revenues earned by the Cars, including but not limited to mileage charges and/or car hire revenues, during the term of this Agreement, except taxes on income imposed on Lessor while Cars are on Lessee's lines.

6. Storage

If storage is required during the term of the Agreement, Lessee shall be responsible for any costs associated with such storage.

7. Rent

- A. During the term of this Agreement, Lessee shall pay to Lessor for each Car, commencing on the actual date of delivery thereof, the monthly rental specified in the applicable Schedule subject to adjustment as provided hereinbelow. Lessee shall pay all sums due hereunder to Lessor in immediately available United States funds at the address provided in Section 14 hereof, or such other place as Lessor may direct. Rental payments for any calendar month shall be made on the last day of such calendar month during the term of the Agreement. All taxes or other amounts reimbursable to Lessor pursuant to this Agreement shall be additional rental hereunder.
- B. The rental provided in Subsection 7.A. is the Constant Factor specified in the applicable Schedule plus the Initial Service Factor specified in such Schedule. The Initial Service Factor is based on the AAR Labor Rate in effect on the date of the Agreement ("Original Labor Rate"). The Labor Rate in effect on each subsequent January 1 will be referred to as the Current Labor Rate. If the Current Labor Rate established and in effect upon the expiration of January 1 of each subsequent year from and after the date of such Schedule shall increase over the Original Labor Rate specified in such Schedule, the Service Factor shall be adjusted to be the product obtained by multiplying the Service Factor by a fraction, the numerator of which is the Current Labor Rate and the denominator of which is the Original Labor Rate; and the per Car rental shall be revised to be the sum of the Constant Factor and the adjusted Service Factor. Any such adjustment shall be instituted by notice from Lessor to Lessee and shall take effect with respect to rents coming due next after the date of notice.
- C. Rental payments on any Car out of service for repair work which is Lessor's responsibility under Section 5 hereof shall abate from the fifth day after such Car has been placed in a repair shop for service until such Car is delivered to Lessee, to a railroad for the account of Lessee, or is otherwise ready for or is returned to service by Lessee. In the event rental is abated, then if Lessor elects and notwithstanding anything contained in Section 2 to the contrary, the original term of this Agreement with respect to the Schedule covering such Car shall be extended for the period of time determined by dividing the sum of the number of days per Car with respect to which rental was so abated by the number of Cars subject to such Schedule on what would otherwise have been the last day of the original term.
- D. In the event destruction or damage beyond repair of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire for such Car ceased as set forth in the

aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee.

- E. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, 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 at Lessee's cost to inspect such Car 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 Car within thirty (30) days of receipt of an invoice from Lessor. Upon payment of such amount, title of such Car shall vest with Lessee.
- F. Lessor and Lessee agree to cooperate with and to 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 Cars, provided, however, that this shall not affect their respective obligations under this Section 7.

8. Use and Possession

- A. Throughout the continuance of this Agreement so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from and after delivery of such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with all Association of American Railroads ("AAR") Interchange Rules; (ii) in compliance with the terms and provisions of this Agreement; (iii) only within the continental limits of the United States of America or in temporary or incidental use in Canada; and (iv) in such service as will not constitute a train hauling predominantly a single commodity, such as coal or grain, between the same points on a regular basis, commonly referred to as a "unit train". However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require

either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party. Lessee acknowledges that there may be more than one such secured party, and that the Cars on each Equipment Schedule are severable and each Equipment Schedule constitutes a separate lease of equipment and may be subject to the security interest of separate secured parties. In the event of a default by Lessor under such financing agreement(s), Lessee agrees to take the aforesaid actions as directed by each secured party with respect to the Cars subject to such secured party's interest. For the purposes of the exercise by any secured party of any of Lessor's rights or remedies provided hereunder or otherwise arising, Lessee agrees that each secured party can exercise such rights and remedies independently and severally with respect to those Cars subject to such secured party's interest, and such exercise shall not affect or impair the rights and remedies of Lessor or any other secured party, and shall not terminate or otherwise affect the rights, duties or obligations of Lessee, with respect to any other Cars.

- B.** At Lessor's election and expense all Cars may be marked to indicate the rights of Lessor, or an assignee, mortgagee, trustee, pledgee or security holder of Lessor or a lessor to Lessor. Except for renewal and maintenance of the aforesaid lettering or lettering indicating that the Car is leased to Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee.
- C.** Lessee agrees that to the extent it has physical possession and can control the use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of the Cars, except that either Lessor or Lessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party; provided, however, that in the case of a contest by Lessee, such contest will not, in the reasonable advance opinion of Lessor, jeopardize Lessor's interest in the Cars or in this Agreement.
- D.** The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of Lessee or its affiliates or subsidiaries. The reporting marks on the Cars shall not be changed without Lessor's prior written consent. During the term of this Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and UMLEK. In the event, however, that Lessee is merged with either the Union Pacific Railroad or the Missouri Pacific Railroad Company, Lessee shall have the right, upon thirty (30) days' prior written notice to Lessor, to remark the Cars at Lessee's expense to bear the reporting marks of the applicable railroad, provided, however, that Lessee shall remain liable for the rental payments

on each Car while such Car is out of service for such remarking. Lessee shall then advise Lessor in writing of the old and new reporting marks of each Car.

- E. Lessee shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars or any interest therein, or in this Agreement or Schedule thereto, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 8.A. hereinabove. Lessee shall promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

9. Default

- A. The occurrence of any of the following events shall be an event of default:
- (i) The nonpayment by Lessee of any sum required herein to be paid by it within ten (10) days after the date that such payment is due;
 - (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days after receipt of notice from Lessor or awareness by Lessee of such breach;
 - (iii) The filing by or against Lessee of any petition or the initiation by or against Lessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder; or b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness;
 - (iv) Any action by Lessee to discontinue rail service on a substantial portion of its track or to abandon any of its rail properties.
- B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law, which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by it in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate this Agreement and/or may:
- (i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, and/or

- (ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessee shall, if directed by Lessor, unload the Cars within a reasonable time from such direction and deliver the Cars within thirty (30) days thereafter to Lessor at an interchange point or points on Lessee's lines designated by Lessor, and Lessor shall henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall, in addition, have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which would have become due during the Term, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

10. Expiration or Early Termination

A. Expiration

Upon the expiration of this Agreement (whether at the end of the Initial Term or any Extended Term) with respect to any Car, Lessee shall promptly deliver such Car to Lessor, at such location as Lessor may designate, as follows:

- (i) If some or all of the Cars are to be delivered to Lessor at a location or locations on Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to Lessee's railroad tracks subsequent to the time of expiration. Lessee shall, at Lessor's option, provide, with respect to any Car described on each Schedule which is either on Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad tracks, up to ninety (90) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of expiration, whichever date is later.
- (ii) At the option of Lessor, either Lessee or a contractor chosen by Lessor shall remark the Cars as set forth in Subsection 10.C. of this Agreement. Lessee and Lessor shall each bear fifty percent (50%) of the costs associated with such remark. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. After remarking, Lessee shall, at Lessor's option, load the Cars with freight on Lessee's lines and deliver them to a connecting carrier for shipment, subject to a thirty (30) day grace period from the date of remark.
- (iii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car

to such location shall be borne by Lessor. Lessee and Lessor shall each bear fifty percent (50%) of the expense of remarking such Cars.

B. Early Termination

Upon the early termination of this Agreement with respect to any Car pursuant to Section 9 hereinabove, Lessee shall promptly deliver such Car to Lessor, at such location as Lessor may designate, as follows:

(i) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to Lessee's railroad tracks subsequent to the time of early termination. Lessee shall, at Lessor's option, provide, with respect to any Car described on any Schedule which is either on Lessee's railroad tracks at the time of early termination or is subsequently returned to Lessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of early termination or the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of early termination, whichever date is later.

(ii) Lessee shall, at its expense and to Lessor's specifications, remark the Cars as set forth in Subsection 10.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. After remarking, Lessee shall, at Lessor's option, load the Cars with freight on Lessee's lines and deliver them to a connecting carrier for shipment, subject to a thirty (30) day grace period from the date of remark.

(iii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Lessee. Lessee shall bear the expense of remarking such Cars.

C. Remarking, with respect to each Car, shall include the following: i) removal of existing mandatory markings and all company logos of Lessee; ii) complete cleaning of the area where new marks are to be placed subsequent to the removal of markings and company logos as designated by Lessor; iii) application of new mandatory markings; and iv) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

D. Upon the expiration or termination of the Agreement with respect to any Car, Lessee shall ensure that each Car is in the same or

better condition, order and repair as when delivered to Lessee, normal wear and tear excepted, and free of all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. Lessee shall likewise ensure that each Car is free of any and all Rule 95 damage and damage or other condition caused by Lessee's negligence or by Lessee's shipper.

11. Indemnities

- A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY ARISING OUT OF OR RELATED WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, OR ARISING OUT OF LESSEE'S POSSESSION OR CONTROL OF THE CARS, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO LESSEE.
- B. SUBJECT TO SUBSECTION 11.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS AGREEMENT, LESSOR SHALL DEFEND, INDEMNIFY AND HOLD LESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS.

12. Representations, Warranties, and Covenants

Lessee represents, warrants and covenants that:

- A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and, insofar as is material to Lessor's rights under this Agreement, has the corporate power, authority and, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.
- B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in Section 8 hereinabove.
- C. There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.

- D. There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Lessee or the ability of Lessee to perform its obligation under this Agreement.

13. Inspection

Lessor shall have the right, upon forty-eight (48) hours' prior notice to Lessee, to enter any premises where the Cars may be located at any time during normal business hours for the purpose of inspecting and examining the Cars to ensure Lessee's compliance with its obligations hereunder.

14. Miscellaneous

- A. Lessee shall not assign or sublease or loan any of the Cars without the prior written consent of Lessor. Lessor, however, acknowledges that Lessee may merge with either the Union Pacific Railroad or the Missouri Pacific Railroad Company and shall not unreasonably withhold its consent in such event.
- B. All rights of Lessor under this Agreement may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part.
- C. Subject to the restrictions against assignment contained hereinabove, this Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.
- D. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in this Agreement.
- E. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- F. The terms of this Agreement and all rights and obligations hereinunder shall be governed by the internal laws of the State of California and exclusive jurisdiction of any action with respect to the Agreement shall be in the courts located in the City and County of San Francisco, California.
- G. Any notice required or permitted to be given pursuant to the terms of this Agreement shall be properly given when made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor: Itel Railcar Corporation
55 Francisco Street
San Francisco, CA 94133
Attn: President

or Itel Rail Corporation
55 Francisco Street
San Francisco, CA 94133
Attn: President

Lessee: Oklahoma, Kansas and Texas Railroad Company
701 Commerce Street
Dallas, Texas 75202
Attn: President

or Missouri-Kansas-Texas Railroad Company
701 Commerce Street
Dallas, Texas 75202
Attn: President

or at such other addresses as Lessor or Lessee may from time to time designate.

- H. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.
- I. This Agreement represents the entire Agreement. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.
- J. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Agreement as of the day and year first above written.

ITEL RAIL CORPORATION

By: *D. Hayes*
Title: *President*
Date: *May 2, 1988*

OKLAHOMA, KANSAS AND TEXAS
RAILROAD COMPANY

By: *Thomas D. Ford*
Title: *Vice President-Operation*
Date: *April 25, 1988*

ITEL RAILCAR CORPORATION

By: *D. Hayes*
Title: *President*
Date: *May 2, 1988*

MISSOURI-KANSAS-TEXAS
RAILROAD COMPANY

By: *Thomas D. Ford*
Title: *Vice President-Operation*
Date: *April 25, 1988*

EXHIBIT A
Covered Hoppers

Running Repairs

Angle Cocks
Air Hose
Train Line
Operating Levers and Brackets
Sill Steps
Grab Irons
Brake Shoes
Brake Shoe Keys
Brake Connecting Pin
Brake Head Wear Plates
Air Brakes
Hand Brakes
Brake Beams and Levers
Truck Springs

Running Repairs Continued

Wheels
Yokes
Knuckles/Pins
Slack Adjuster
Couplers
Draft Gears
Coupler Carriers
Center Plates (Not Replacement)
Cotter Keys
Roller Bearing Adapters
Outlet Gate Repair (Not Replacement)
Hatch Cover Repair (Not Replacement)

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

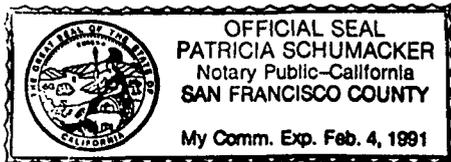
On this 2nd day of May, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn, says that such person is President of Itel Rail Corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia Schumacker
Notary Public

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

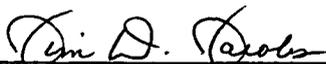
On this 2nd day of May, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn, says that such person is President of Itel Railcar Corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia Schumacker
Notary Public

STATE OF TEXAS)
) ss:
COUNTY OF GRAYSON)

On this 25 day of April, 1988, before me personally appeared Thomas G. Todd, to me personally known, who being by me duly sworn, says that such person is Vice President-Operation of Oklahoma, Kansas and Texas Railroad Company, that the foregoing instrument 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 TEXAS)
) ss:
COUNTY OF GRAYSON)

On this 25 day of April, 1988, before me personally appeared Thomas G. Todd, to me personally known, who being by me duly sworn, says that such person is Vice President-Operation of Missouri-Kansas-Texas Railroad Company, that the foregoing instrument 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

SCHEDULE NO. 1

Page 1 of Schedule No. 1 dated as of May 2, 1988 to Lease Agreement dated as of May 2, 1988 by and between ITEL RAILCAR CORPORATION ("Lessor") and ~~MISSOURI-KANSAS-TEXAS RAILROAD COMPANY~~ and OKLAHOMA, KANSAS AND TEXAS RAILROAD COMPANY ("Lessee").

TYPE AND DESCRIPTION OF CAR: 4,780 cubic feet, 100-ton covered hoppers (LO)

NUMBER OF CARS: one hundred fifty-nine (159)

INTERIOR EQUIPMENT: None

SPECIAL LININGS: None

PERMITTED LADING USE: Non Corrosive Commodities

REPORTING MARKS AND NUMBERS: OKKT 3150-3237
OKKT 3279-3349

RESPONSIBILITY FOR INITIAL REMARK: Not applicable: Cars already bear Lessee's reporting marks.

SPECIFICATIONS DESIGNATED BY LESSEE: None

INITIAL DELIVERY POINT: Cars are on Lessee's line

Page 2 of Schedule No. 1 dated as of May 2, 1988 to Lease Agreement dated as of May 2, 1988 by and between ITEL RAILCAR CORPORATION ("Lessor") and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and OKLAHOMA, KANSAS AND TEXAS RAILROAD COMPANY ("Lessee").

LEASE TERM: Five (5) years effective as of May 1, 1988

MONTHLY RENTAL PER CAR: For each Car, the sum of the Constant Factor plus the Service Factor, as adjusted each January 1 according to Subsection 7.B. and hereinbelow.
Constant Factor: \$ per Car
Initial Service Factor: \$ per Car
In addition, on May 1, 1991, eight dollars (\$8.00) shall be added to the Service Factor in effect on April 30, 1991. Effective on May 1, 1991, the Monthly Rental for each Car shall be the sum of the Constant Factor and such adjusted Service Factor until such adjusted Service Factor is further modified pursuant to Subsection 7.B.

MINIMUM AVERAGE MONTHLY RENTAL PER CAR: N/A

SPECIAL TERMS: None

ITEL RAILCAR CORPORATION

OKLAHOMA, KANSAS AND TEXAS RAILROAD COMPANY

By: [Signature]
Title: President
Date: May 2, 1988

By: [Signature]
Title: Vice President-Operation
Date: April 25, 1988

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By: [Signature]
Title: Vice President-Operation
Date: April 25, 1988

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

On this 2nd day of May, 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 Railcar Corporation, that the foregoing Schedule No. 1 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.



Patricia Schumacker
Notary Public

STATE OF TEXAS)
) ss:
COUNTY OF GRAYSON)

On this 25 day of April, 1988, before me personally appeared Thomas G. Todd, to me personally known, who being by me duly sworn says that such person is Vice President-Operation of Oklahoma, Kansas and Texas Railroad Company, that the foregoing Schedule No. 1 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.

Tom D. Todd
Notary Public

STATE OF TEXAS)
) ss:
COUNTY OF GRAYSON)

On this 25 day of April, 1988, before me personally appeared Thomas G. Todd, to me personally known, who being by me duly sworn says that such person is Vice President-Operation of Missouri-Kansas-Texas Railroad Company, that the foregoing Schedule No. 1 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.

Tom D. Todd
Notary Public