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**ITEL**

**Pullman**

October 11, 1989

**Itel Rail Corporation**

55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000  
(415) 781-1035 Fax

RECORDATION NO. 156771A FILED 1425

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INTERSTATE COMMERCE COMMISSION

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

Re: Amendment No. 2 to Schedule No. 1 to Lease Agreement dated as of December 29, 1979, between Itel Rail Corporation, successor in interest to Itel Railcar Corporation, and E. I. du Pont de Nemours & Co.

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$15 recordation fee.

Please record this Schedule under Amendment No. 2 (original lease attached) dated May 23, 1988, between Itel Rail Corporation, as successor in interest to Itel Railcar Corporation, and E. I. du Pont de Nemours & Co., which was filed with the ICC on June 9, 1988, under Recordation No. 15677.

The parties to the aforementioned instrument are listed below:

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

E. I. duPont de Nemours & Co. (Lessee)  
1007 Market Street  
Wilmington, Delaware 19898

This Schedule extends the term of the lease to December 31, 1992, with respect to nineteen (19) RBL boxcars bearing reporting marks ARDP 787000-787109 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker  
Legal Department

MOTOR OPERATING UNIT  
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INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 2

THIS AMENDMENT NO. 2 ("Amendment") to Schedule No. 1 dated December 29, 1979 ("Schedule No. 1") to that certain Railroad Car Lease Agreement dated as of December 29, 1979, as amended (the "Agreement"), between ITEL RAIL CORPORATION, as successor in interest to Itel Railcar Corporation, as lessor ("Lessor"), and E.I. DU PONT DE NEMOURS & CO., (INC.), as lessee ("Lessee"), is made this 9<sup>th</sup> day of October, 1989 between Lessor and Lessee.

R E C I T A L S:

- A. Lessor and Lessee are parties to Schedule No. 1 and the Agreement pursuant to which nineteen (19) RBL boxcars bearing the reporting marks ARDP 787000-787008 and ARDP 787010-787019 (the "Cars") have been leased by Lessor to Lessee.
- B. Pursuant to Section 2 of the First Amendment dated October 31, 1984 to the Agreement, the term of the Agreement was extended through December 30, 1989 ("First Extended Term") with respect to the Cars.
- C. Lessor and Lessee desire to further extend the term of the Agreement from December 30, 1989 to December 31, 1992 with respect to the Cars ("Second Extended Term").
- D. The parties desire to change the monthly rental for the Cars during the Second Extended Term.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree to amend Schedule No. 1 and the Agreement as follows:

- 1. All terms defined in Schedule No. 1 and the Agreement shall have their defined meanings when used in this Amendment.
- 2. This Amendment shall become effective on December 30, 1989.
- 3. The Second Extended Term of the Agreement with respect to the Cars described in Schedule No. 1 shall commence on December 30, 1989 and shall continue through the close of business on December 31, 1992.
- 4. During the Second Extended Term the monthly rental for each Car shall be
- 5. A. Lessee shall, at all times while the Agreement is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss and damage insurance with respect to the Cars while the Cars are on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are

satisfactory to Lessor. All insurance policies 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 as loss-payers. 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 that said insurance expires, Lessor has the right to purchase the insurance described above 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.

- B. Lessor shall allow Lessee to be self-insured as to specified interests; provided, however, that such self insurance by Lessee shall be actuarially sound and place Lessor in the same position it would have been in had Lessee obtained the insurance specified in Subsection 5.A. hereinabove.
6. 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. 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 Amendment), and is continuing under such financing agreement, such party may require that rentals and other sums due hereunder shall be paid directly to such party and/or that the Cars immediately be returned to such party.
7. Both parties agree to execute the documents contemplated by this transaction and any 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 and the Agreement and to confirm the subordination provisions contained in the Agreement.
8. In Subsection 19.(a) of the Agreement, the words "except to American Refrigerator Transit Co. (a wholly owned subsidiary of the Missouri Pacific Railroad Co.) or any of its subsidiary lines," shall be deleted.
9. With respect to the Cars described in Schedule No. 1, Lessee may, during the Second Extended Term, enter into a sublease agreement ("Sublease") with Union Pacific Fruit Express Company, (a wholly owned subsidiary of Union Pacific Railroad Company and Missouri Pacific Railroad Company, collectively). Such Sublease shall in no way relieve Lessee from any of its obligations to Lessor under the Agreement.

10. Any notice required or permitted to be given pursuant to the terms of the Agreement shall be properly given when made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor: Itel Rail Corporation  
55 Francisco Street  
San Francisco, CA 94133  
Attention: President

Lessee: E. I. duPont de Nemours & Co.  
1007 Market Street  
Wilmington, DE 19898  
Attention: Ms. Shirley Williams  
Senior Transportation Equipment Specialist

11. 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.
12. This Amendment may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

By: *[Signature]*  
Title: President & Chief Executive Officer  
Date: October 9, 1989

E. I. DU PONT DE NEMOURS & CO., (INC.)

By: *[Signature]*  
Title: Senior Transport Equipment Spec.  
Date: 9/26/89

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

On this 9th day of October, 1989, before me personally appeared Desmond P. Hayes to me personally known, who being by me duly sworn says that such person is President & Chief Executive Officer of ITEL Rail Corporation, that the foregoing Amendment No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
Notary Public



STATE OF Delaware )  
 ) ss:  
COUNTY OF New Castle )

On this 29 day of September, 1989, before me personally appeared Shirley Williams, to me personally known, who being by me duly sworn says that such person is \_\_\_\_\_ of E. I. duPont de Nemours & Co., (Inc.) that the foregoing Amendment No. 2 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.

Barbara A. Nabb  
Notary Public  
My Commission expires June 9, 1993