

ITEL

RECORDATION NO. **1 5824** FILED YEAR

September 8, 1988

SEP 15 1988-3 02 PM

Itel Rail Corporation

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

INTERSTATE COMMERCE COMMISSION

Date 9/13/88
Fee \$ 13
ICC Washington, D. C.

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

Re: Lease Agreement dated as of September 1, 1988, among Itel Rail Corporation, Texas Oklahoma & Eastern Railroad Company and Weyerhaeuser Company

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 \$13 recordation fee.

Please record this Lease Agreement under a new recordation number.

The parties to the aforementioned instrument are listed below:

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

Texas Oklahoma & Eastern Railroad Company (Lessee)
412 E. Lockesburg
De Queen, Arkansas 71832

Weyerhaeuser Company
Weyerhaeuser Corporate Headquarters
Tacoma, Washington 98477

This Lease Agreement covers seventy-five (75) 73' centerbeam flatcars bearing reporting marks TOE 8000-8074.

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

SEP 15 1988-3 05 PM

LEASE AGREEMENT INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this 1st day of September, 1988, ("Agreement") among ITEL RAIL CORPORATION, a Delaware corporation, 55 Francisco Street, San Francisco, California 94133 ("Lessor"), as lessor, and TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY, an Oklahoma corporation, 412 E. Lockesburg Street, DeQueen, Arkansas 71832 ("Lessee"), as lessee, and WEYERHAEUSER COMPANY, a Washington corporation, Tacoma, Washington 98477 ("Weyco").

R E C I T A L S :

- A. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the centerbeam flatcars described herein subject to the terms and conditions of the Agreement.
- B. The parties desire to maximize the utilization of the centerbeam flatcars by making such flatcars available for loading by shippers located on the lines of Burlington Northern Railroad Company ("BN"), including Weyco.
- C. Lessor agrees to allow Lessee to enter into a Use Agreement with BN and Weyco (in the form attached hereto as Exhibit A) which enables BN to place the centerbeam flatcars into a pool of 73' centerbeam flatcars on its lines for distribution to various shippers, including Weyco.
- D. The Use Agreement shall include terms that if BN is unable to use the centerbeam flatcars or does not supply Weyco with centerbeam flatcars, the centerbeam flatcars may be placed in assignment at particular Weyco facilities.
- E. The rent due to Lessor from Lessee for the centerbeam flatcars subject to this Agreement and certain equipment subject to subsequent Agreements is set forth in a separate Master Rent Agreement among Lessor, Lessee and Weyco.

NOW, THEREFORE, the parties agree as follows:

1. Scope of Agreement

- A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the schedules executed herewith and any schedules and amendments which are subsequently executed by both parties, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter individually called the "Car" and collectively called the "Cars."
- B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain owner and the lessor of all Cars and that no joint venture or partnership is being created. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, AND THE EQUIPMENT LEASED HEREUNDER IS OWNED BY, THE CIT GROUP/EQUIPMENT FINANCING, INC. ("CIT") AND IS LEASED TO LESSOR UNDER THE MASTER RAILROAD EQUIPMENT LEASE BETWEEN CIT AND ITEL RAIL CORPORATION DATED AS OF AUGUST 30, 1988.

2. Term

- A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of the lease with respect to each Car described on each Schedule shall commence at 12 noon on the date such Car is Delivered (as defined in Subsection 3.A. hereinbelow) and shall continue through October 1, 1993 (the "Initial Term").
- B. If this Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, Lessee shall have two (2) options to extend the Agreement, each for a period of three (3) years (each such period an "Extended Term"). Lessee may exercise its first option by giving Lessor twelve (12) months' written notice prior to the end of the Initial Term and may exercise its second option by giving Lessor twelve (12) months' written notice prior to the end of the first Extended Term; provided, however, Lessor may, at its option, void either option if the Per Diem Revenues earned by the Cars, in the aggregate, for the twelve (12) month period immediately prior to its receipt of such notice are less than the Minimum Rent, as defined in Subsection 3.A.(x) of the Master Rent Agreement.

3. Supply Provisions

- A. Lessor will inspect each Car tendered by the manufacturer for delivery to Lessee. If the Car conforms to the specifications ordered by Lessor and to all applicable governmental regulatory specifications, Lessor will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each Car shall be deemed delivered to Lessee and subject to the terms of this Agreement upon acceptance by Lessor ("Delivered"). The Cars shall be moved to the lines of BN at no cost to Lessee as soon after acceptance of delivery by Lessor as is consistent with mutual convenience and economy.
- B. (i) For each Car assigned to any Weyco facility pursuant to the Use Agreement (as defined in Subsection 3.D.), Weyco shall load such Car at such facility prior to loading substantially similar equipment. This provision shall not apply to the Cars while in a pool on BN.
- (ii) Subsection 3.B.(i) above shall not prevent or prohibit Weyco from providing its customers with equipment of dimensions and configuration that meet the physical and economic requirements of its customers; provided, however, that customer's economic requirements are to be determined without regard to the lease structure, rental rates, car hire rates or specific car marks of the equipment.
- C. During the term of this Agreement, Lessor may, at its expense, replace any or all Cars with similar centerbeam flatcars upon not less than ten (10) days' prior written notice from Lessor to Lessee; provided, however, that the per diem and mileage rates for

such replacement cars are not more than the rates for the Cars being replaced.

- D. (i) Lessor consents to a Use Agreement ("Use Agreement") among Lessee, Weyco and BN in the form of Exhibit A attached hereto with respect to the Cars listed in the Use Agreement ("Assigned Cars"); provided that Lessee shall exercise its option to remove Cars pursuant to Section 5 of the Use Agreement or to place Cars into an assignment at the Weyco facility pursuant to Section 9 or substitute Cars pursuant to Section 13 of the Use Agreement only upon receiving prior written consent from Lessor. Lessee shall notify Lessor promptly upon receiving notice from BN to move Cars into an assignment at a Weyco facility pursuant to Sections 8 or 10 of the Use Agreement or to move Cars to storage under Subsection 12.b. of the Use Agreement or reporting damage to any Car pursuant to Section 7 of the Use Agreement, including all pertinent facts supplied by BN, and further provided that Lessor shall authorize approval for any repair work and shall supervise repairs made by BN pursuant to Section 7 of the Use Agreement. Lessee shall notify Lessor promptly if Lessee makes an election under Section 11 of the Use Agreement to move the Cars into assignment.
- (ii) If any Assigned Car returns to Lessee's lines or is stored under the provisions of Subsection 12.B. of the Use Agreement, Lessee shall pay any costs associated with returning the Assigned Cars to the lines of BN, if subject to the BN Pool; or to Weyco's facility, if subject to an assignment. Lessee shall use its best efforts to prevent any Assigned Car from being interchanged onto its lines, including advising Lessee's connecting carriers that the Assigned Cars have been placed into an assignment pool on BN's lines and that the connecting carrier should not return such Assigned Cars to Lessee while such Assigned Cars are subject to the Use Agreement.

4. Railroad Markings and Record Keeping

- A. Lessor and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee. Such markings shall comply with all applicable regulations. Except for renewal and maintenance of the aforesaid markings or lettering indicating that a Car is leased to Lessee or is assigned in accordance with demurrage tariffs, no lettering or marking shall be placed upon any Car by Lessee and Lessee will not remove or change any reporting mark or number indicated on the applicable Schedule except upon the written direction or consent of Lessor. Lessee shall be responsible for all costs associated with any marking changes made at its request.
- B. At no cost to Lessee, Lessor shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are

not limited to the following: (i) appropriate AAR documents; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) such reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and other regulatory agencies.

- C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and UMLER. Lessor shall, on behalf of Lessee, perform all record keeping functions related to the use by Lessee and other railroads of the Cars in accordance with the Interchange Rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as Lessor shall select. Immediately upon receipt from any railroad of any revenues that Lessor is entitled to retain under this Agreement in the form of a draft, check or other instrument payable to Lessee, Lessor shall be entitled to endorse and deposit such draft, check or other instrument into Lessor's account and to retain such revenues as set forth in the rental section of this Agreement.
- D. All record keeping performed by Lessor hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessor in a form suitable for reasonable inspection by Lessee from time to time during Lessor's regular business hours. Lessee shall supply Lessor with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as Lessor may reasonably request.

5. Maintenance, Taxes and Insurance

- A. Except as otherwise provided herein, Lessor will pay all costs, expenses, fees and charges incurred in connection with the maintenance, repair and servicing of each of the Cars during the term of the Agreement and any extension thereof, unless Lessee is responsible for such maintenance as set forth herein. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to Lessor for any repairs required for damage not noted at the time of interchange.
- B. Except as provided in Subsection 5.A. hereinabove, Lessor shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as shall be necessary to maintain the Cars as specified in the Interchange Rules, provided, however, that such repairs and maintenance ("Maintenance") shall be performed at Lessee's expense in the event that such Maintenance (a) was occasioned by the fault of Lessee; (b) results from loading or unloading by Weyco or use by Weyco other than permitted under this Agreement; (c) is for the purpose of repairing, replacing or maintaining lading devices; (d) relates to damage resulting from any commodity or material loaded in any Car by Weyco; or (e) arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such Maintenance for similar equipment not

bearing the reporting marks of Lessee. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any Maintenance required including, when available, the time, place and nature of any accident. Upon request of Lessor, Lessee shall perform, at Lessor's expense, any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by Lessor. Lessee may make the running repairs specified on Exhibit B attached hereto to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvement or additions to the Cars without Lessor's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with Lessor.

- C. Except as provided in Subsection 5.D. hereinbelow, 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 and damage insurance in the amount of one million dollars 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 the amount of five million dollars. 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 insureds and as loss-payees. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive thirty (30) days prior written notice of any material change in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or that said insurance expires, the 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. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, which 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, 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.
- D. Lessee may self-insure the Cars, provided that Lessee places Lessor in the same position it would have been in had Lessee obtained insurance pursuant to Subsection 5.C. hereinabove.

- E. Lessor agrees to reimburse Lessee for all taxes, assessments and other governmental charges paid by Lessee relating to each Car, and on the lease, delivery or operation thereof, which may remain unpaid as of the date such Car is Delivered or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee, and franchise and capital taxes. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessor may, in good faith and by appropriate proceedings and at its expense, contest any assessment, notification of assessment or tax bill. Lessor and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. Lessor shall review all applicable ad valorem tax returns prior to filing.

6. Rent

- A. Lessee shall pay rent to Lessor for the Cars in the amounts calculated in the Master Rent Agreement dated as of the date hereof ("Master Rent Agreement") among Lessor, Lessee and Weyco in the form of Exhibit C attached hereto. The Master Rent Agreement is incorporated herein by reference.
- B. If Weyco fails to perform its obligations in Subsection 3.B. of the Agreement, Lessee shall be liable for and remit to Lessor an amount equal to the Revenues which would have been generated if such Car had been in the physical possession and use of a foreign railroad for the entire period during which such Car is on Weyco's property, with each Car travelling one hundred miles per day (100 mpd), provided, however, that such amount shall not be due for any period of time during which no loads are available at such location(s).
- C. Except for the Use Agreement and the Master Rent Agreement, Lessee and Weyco shall not enter into any agreement which diminishes the Revenues generated by the Cars unless Lessee agrees at the time of such agreement to indemnify Lessor against any such reduction in Revenues or Lessor otherwise consents in writing to such agreement.

7. Possession and Use

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that, Lessee retains on its railroad lines no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad lines. The Cars shall be used predominately within the continental United States and may be used in Canada and Mexico in incidental use only. However, Lessee's and Weyco'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; provided, however,

that Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars pursuant to the terms of this Agreement so long as Lessee is not in default hereunder or under the Master Rent Agreement and is paying (or causing to be paid) rent directly to such owner or secured party.

- B. Lessee agrees that to the extent it has physical possession of and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction 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 such property, except that either Lessor or Lessee may by appropriate proceedings, timely instituted and diligently conducted, contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.
- C. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim 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 7.A. hereinabove. Lessee shall notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall be attached to any Car. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

8. 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 or in the Master Rent Agreement to be paid by Lessee within ten (10) days after the date any such payment is due;
 - (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement or the Master Rent Agreement, which is not cured within ten (10) days after the date of Lessor's notice of breach or, as to breaches not capable of being cured within ten (10) days, which Lessee does not diligently commence to cure within ten (10) days thereafter and continue to perform;
 - (iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.
 - (iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency, or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or

the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) Any action by Lessee to discontinue rail service that would affect Lessor's ability to earn or receive revenues hereunder, such actions including, but not limited to, the withdrawal of TOE reporting marks from UMLER.

B. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Agreement (which termination shall not release Lessee from any obligation to pay any and all rent or other sums that may then be due or accrued to such date to Lessor or from the obligation to perform any duty or discharge any other liability arising hereunder) and may:

(i) Proceed by any lawful means to enforce performance by Lessee of such obligations or to recover damages for a breach thereof (and Lessee agrees to pay Lessor's costs and expenses, including reasonable attorneys' fees, in securing such enforcement); 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 such Cars shall terminate; and thereupon, Lessor may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee.

9. Expiration or Termination

A. Upon the expiration or termination of this Agreement as to any Cars, Lessee shall surrender possession of such Cars to Lessor by delivering the same to Lessor. A Car shall no longer be subject to this Agreement upon the removal of Lessee's railroad markings from the Car and the placing thereon of such markings as shall be designated by Lessor, either, at the option of Lessor, (i) by Lessee upon return of such Cars to Lessee's railroad lines or (ii) by a repair facility designated by Lessor. Lessee shall not remove its reporting marks from any Car without Lessor's direction or consent. If such Cars are not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Lessor. If such Cars are on the railroad lines of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad lines, Lessee shall at its own expense within five (5) working days remove Lessee's railroad markings from the Cars and place thereon such markings as may be designated by Lessor. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to one hundred

twenty (120) days free storage on its railroad tracks for Lessor or the subsequent lessor of any terminated Car. If any Car is terminated pursuant to Subsection 3.F. of the Master Rent Agreement or Section 8 of the Agreement prior to the end of its lease term, Lessee shall be liable to Lessor for all costs and expenses incurred by Lessor to repaint the Cars and place thereon the markings and name or other insignia of Lessor's subsequent lessee.

- B. Lessee shall insure that each Car returned to Lessor upon the expiration or termination of the Agreement shall be in the same condition as when delivered, ordinary wear excepted, and in interchange condition in accordance with AAR and FRA rules and regulations. If any Car requires repairs for which Lessee is responsible under Subsection 5.B., Lessee will pay to Lessor all costs and expenses associated with such repairs. Until the Cars are delivered to Lessor pursuant to this Section, Lessee shall continue to be liable for and shall pay all rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Agreement as though such termination or expiration had not occurred. Nothing in this Section shall give Lessee the right to retain possession of any Car after expiration or termination of this Agreement with respect to such Car.

10. Indemnities

- A. Lessor will defend, indemnify and hold Lessee harmless from and against any claim, cause of action, damage, liability, cost or expense (including attorneys' fees) which may be asserted against Lessee with respect to or arising out of the Cars unless occurring through the negligence of Lessee or occurring while the Cars are in Lessee's possession or control.
- B. Lessee will defend, indemnify and hold Lessor harmless from and against any claim cause of action, damage, liability, cost or expense which may be asserted against Lessor with respect to or arising out of the Cars occurring through the negligence of Lessee.

11. 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 has the corporate power, authority and is duly qualified and authorized to: (i) do business wherever necessary to carry out its present business and operations; (ii) own or hold under lease its properties; and (iii) perform its obligations under this Agreement.
- B. The entering into and performance of this Agreement by Lessee 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.

- C. There is no action or proceeding pending or threatened against Lessee before any court, administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or condition, financial or otherwise, of Lessee that would adversely affect this Agreement.
- D. Except for an industry strike in the Northwestern portion of the United States and the fact that certain labor contracts with Weyco have expired, there is no fact which Lessee has not disclosed in writing to Lessor, 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 the Lessee or the ability of Lessee to perform its obligations under this Agreement.

12. Inspection

Lessor shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to ensure Lessee's compliance with its obligations hereunder.

13. Miscellaneous

- A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder or sublease or assign any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.
- B. All rights of Lessor under this Agreement may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to or consent of Lessee.
- C. 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 in connection with the acquisition 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 Section 7 and in furtherance of this Agreement.
- D. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation or rental payments, nothing herein shall be construed

as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

- E. If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to other persons or circumstances shall not be affected thereby, and each provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- F. 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.
- G. Any notices required or permitted to be given pursuant to the terms of this Agreement shall be deemed given when given by telecopy or telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor: Itel Rail Corporation
 55 Francisco Street
 San Francisco, California 94133
 Attn: President

Lessee: Texas, Oklahoma & Eastern Railroad Company
 412 E. Lockesburg
 De Queen, Arkansas 71832
 Attn: President

Weyco: Weyerhaeuser Company
Weyerhaeuser Corporate Headquarters
Tacoma, Washington 98477
Attn: Director of Transportation,
 Building Products Group

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

- H. This Agreement shall be governed by the internal laws of the State of California and jurisdiction of any action with respect to this Agreement shall be in the courts located in the City and County of San Francisco, California.
- I. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or termination of this Agreement.
- J. This Agreement, the Master Rent Agreement and the Use Agreement represent the entire agreement concerning the subject matter hereof. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

K. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ITEL RAIL CORPORATION

By: *DP Hayes*
Title: President
Date: 9/01/88

TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY

By: *John D. Kouffner*
Title: V.P.
Date: 8-26-88

WEYERHAEUSER COMPANY

By: X *John Wilkin*
Title: Vice President
Date: 8/23/88

EQUIPMENT SCHEDULE NO. 1

Itel Rail Corporation hereby leases the following Cars to Texas, Oklahoma & Eastern Company pursuant to that certain Lease Agreement dated as of September 1, 1988, 1988.

AAR Mech Design.	Description	Numbers	Length	Dimensions		No. of Cars
				Inside Width	Height	
FBS	73' centerbeam flatcars	TOE 8000-8074	73'0"	4'2-1/2"	11'2-1/2"	75

ITEL RAIL CORPORATION

By: *[Signature]*
 Title: President
 Date: 9/01/88

TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY

By: *[Signature]*
 Title: V.P.
 Date: 8-26-88

WEYERHAEUSER COMPANY

By: X *[Signature]*
 Title: Vice President
 Date: 8/23/88

EXHIBIT A

USE AGREEMENT

THIS USE AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 1988, among TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY ("TOE"), WEYERHAEUSER COMPANY ("Shipper") and BURLINGTON NORTHERN RAILROAD COMPANY ("BN").

RECITALS:

- A. TOE and BN desire to maximize the utilization of the seventy-five (75) centerbeam flatcars described herein by making such flatcars available for loading by shippers located on the lines of BN, including Shipper.
- B. TOE agrees to allow BN to place the flatcars into a BN pool of 73-foot centerbeam flatcar equipment for distribution to various shippers, including Shipper, subject to the terms set forth herein.
- C. Shipper agrees to load each calendar month a number of 73-foot centerbeam equipment supplied to it by BN, pursuant to the terms set forth herein.
- D. Under certain circumstances described hereinbelow, the flatcars shall be removed from the pool of equipment and placed in assignment with up to twenty-five (25) flatcars each assigned to Shipper's facilities at Oroville, Washington, Klamath Falls, Oregon, and a Cascade Mill Pool (serving Snoqualmie Falls, Aberdeen and Raymond, Washington), or removed from the Agreement.

NOW, THEREFORE, the parties agree as follows:

- 1. TOE shall supply BN with the following centerbeam flatcars ("Cars") subject to the terms and conditions of this Agreement:

AAR Mechanical Designation	Description	Reporting Marks and Numbers	No. of Cars
FBS	73' Centerbeam flatcars	TOE 8000-8074	75

- 2. The Term ("Term") of this Agreement shall begin when the Cars are delivered in interchange to BN and will terminate on October 1, 1993.
- 3. BN shall include the Cars in its own Pool ("Pool") of 73-foot centerbeam flatcars and will handle and distribute the Cars in the same manner as it handles and distributes its own 73' flatcar equipment.
- 4. BN shall, while Cars are on BN's lines, pay the hourly and mileage rates specified for each Car in "UMLER" (Universal Machine Language Equipment Register) as specified in the Mileage Car Hire Rate Table ("Table") published on page 1725 of the April 1988 edition of the Official Railway

Equipment Register; such page 1725 is attached hereto as Exhibit A. In no case, however, will the hourly rate exceed ninety-six cents (\$.96) per hour, or the mileage rate exceed six and one-tenth cents (\$.061) per mile for any Car.

5. In the event of changes in per diem rates affecting the Cars or where off-line carriers assess surcharges or reduce payments for the Cars beyond control of the TOE and TOE is unable to reach an appropriate agreement with the off-line carrier, then the Cars may be removed from the Agreement by TOE upon 60 days' notice.
6. BN shall supply Shipper a minimum of 90, 73-foot centerbeam flatcars from the Pool per month for loading of Shipper's products. All such flatcars furnished shall be subject to all applicable charges in Tariff PHJ 6004 series.
7. Except as otherwise provided herein, including transportation costs incurred pursuant to this Paragraph, TOE is responsible for normal maintenance and repair expenses including those involving maintenance and replacement of cable tie-down devices on each Car. TOE is also responsible for any maintenance or repair resulting from Shipper's negligence or misuse in loading or unloading any Car while it is in Shipper's possession or control. BN is responsible for all costs associated with damage for which BN is responsible under the Association of American Railroads Interchange Rules. BN shall promptly notify TOE of any damage to, defect in, need of repair to, or destruction of any Car while on BN. For any damaged Car that requires repairs other than running repairs car hire (time and mileage) shall be governed by applicable Car Hire and Car Service Rules. In no event shall BN place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of the BN without TOE's prior written approval. Any such repair must be performed under the direction and control of TOE.
8. If, for any reason, Shipper is unable to load the minimum number of loads specified in Section 6 in any calendar month, then BN, in the subsequent month, may continue to use the Cars on the BN's lines or, upon 30 days' written notice, return a number of the Cars to the TOE or another Shipper-owned shortline railroad equal to the number of cars supplied but not loaded. The calculation to determine the number of Cars to be returned shall be: The number of shortfall loads divided by 1.2. In no event shall the number of Cars returned to TOE be in less than 10 Car increments.
9. Should BN be unable to fully utilize the Pool, due to a shortage of loads on BN's lines, then BN may park the same percentage of Cars as it does its own 73-foot cars in the Pool and reclaim per diem for parked Cars. In this event, it will be Shipper's option to remove Cars from the Pool and put them into assignments at Shipper origins as outlined in Section 12.
10. If any connecting carrier of BN takes any unilateral action or position on rates which inhibits BN's use of the Cars in the Pool (i.e. rates are raised to make use of the Cars economically unattractive), then BN may,

at its option, move the Cars into assignment at Shipper origins as outlined in Section 12.

11. If BN is unable to supply minimum number of Cars as outlined in Section 6, then Shipper may, at its option, move the Cars into assignment as outlined in Section 12.

12. If the options contained in Section 9, 10, or 11 of the Agreement are exercised, the Cars shall remain subject to the other applicable terms of this Agreement and will be placed into assignment at Shipper origins and under conditions as outlined below:

A. Assignment origin and number of cars:

25 at Oroville Bin & Pallet reload in Oroville, Washington

25 at Klamath Falls, Oregon

25 in a pool operated by BN for Shipper's mills at Snoqualmie Falls, Raymond and Aberdeen Washington.

B. Cars will be operated in accordance with Car Service Directive 145 and will be subject to Car Hire Rule 22, reclaim procedures. Storage charges of \$10 per day will be assessed the Shipper after the first 24 hours, up to a maximum of 10 days. When the maximum number of days is attained, BN will move the Cars to a Shipper-owned shortline or rail siding and terminate storage charges.

13. During the Term of this Agreement, TOE may, at its expense, replace any or all Cars with similar centerbeam flatcars upon not less than ten (10) days' prior written notice from TOE to BN; provided, however, that the per diem and mileage rates for such replacement cars are not more than the rates for the cars being replaced.

14. BN shall insure that each Car returned to TOE upon expiration or termination of this Agreement shall be in the same condition as when delivered, ordinary wear excepted, and in interchange condition in accordance with the AAR and FRA rules and regulations.

15. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by Telex addressed as follows:

If to TOE:

Texas, Oklahoma & Eastern
Railroad Company
c/o ITEL Rail Corporation
55 Francisco Street
San Francisco, California 94133
Attn: President

If to BN:

Burlington Northern Railroad
Company
777 Main Street, Suite 3400
Fort Worth, Texas 76102
Attn: Director of Planning

If to Shipper:

Weyerhaeuser Company
Tacoma, Washington 98477
Attn: Director of Transportation
Building Products Group

or at any other address designated by the applicable party.

- 16. BN's and TOE's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement applicable to the Cars and to the rights of Itel Rail Corporation, as lessor, under the Lease dated as of _____, 1988 ("Lease") among Itel Rail Corporation and TOE and Shipper; provided, however, that BN shall be entitled to the possession, use and quiet enjoyment of the Cars pursuant to the terms of this Agreement so long as BN is not in default of this Agreement and TOE is not in default under the Lease and TOE is paying (or causing to be paid) the amounts specified in Section 4 of this Agreement directly to such owner or secured party.
- 17. This Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
- 18. This Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

TEXAS, OKLAHOMA & EASTERN RAILROAD
COMPANY

BURLINGTON NORTHERN RAILROAD
COMPANY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

WEYERHAEUSER COMPANY

CONCURRENCE BY
ITEL RAIL CORPORATION

By: X _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B
Running Repairs: Centerbeam Flatcars

Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plates (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	
Brake Beams and Levers	
Truck Springs	

EXHIBIT C
MASTER RENT AGREEMENT

THIS MASTER RENT AGREEMENT, made as of this _____ day of _____, 1988, ("Master Rent Agreement") among **ITEL RAIL CORPORATION**, a Delaware corporation, 55 Francisco Street, San Francisco, California 94133 ("Lessor"), as lessor, and **TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY**, an Oklahoma corporation, 412 E. Lockesburg Street, DeQueen, Arkansas 71832 ("Lessee"), as lessee, and **WEYERHAEUSER COMPANY**, a Washington corporation, Tacoma, Washington 98477 ("Weyco").

R E C I T A L S :

- A. Lessor, Lessee and Weyco entered into the Lease Agreement dated as of the date hereof ("Agreement 1") wherein Lessor leased to Lessee seventy-five (75) centerbeam flatcars bearing the reporting marks TOE 8000-8074 and Lessor allowed Lessee to enter into a Use agreement among Lessee, Weyco and Burlington Northern Railroad Company ("BN") with respect to the Cars.
- B. Lessor and Lessee entered into the Lease Agreement dated as of _____, 1988 ("Agreement 2"), wherein Lessor leased to Lessee twenty-five (25) centerbeam flatcars bearing the reporting marks TOE 4500-4524 for use by Lessee.
- C. The rent due to Lessor from Lessee under Agreement 1 and Agreement 2 shall be calculated based on the utilization of the railcars subject to Agreement 1 and Agreement 2 as set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. As to the Cars bearing reporting marks TOE 8000-8074 and TOE 4500-4524, Agreement 1 and Agreement 2 are incorporated into this Master Rent Agreement by reference.
2. All terms defined in Agreement 1 and Agreement 2 shall have the meanings defined therein when used in this Master Rent Agreement, unless otherwise defined herein.

3. **Rent**

A. **Definitions**

- (i) "Eligible Lines" with respect to the Cars bearing the reporting marks TOE 8000-8074 is defined as the railroad lines owned and operated by Weyco as of the date this Agreement is executed by the parties ("Execution Date") and with respect to the Cars bearing the reporting marks TOE 4500-4524 is defined as the railroad lines owned and operated by Lessee as of the Execution Date. Any lines purchased by Lessee or added to the Eligible Lines during the Initial Term or any Extended Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining revenues and rent hereunder.

- (ii) "Revenue Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the April 1988 edition of The Official Railway Equipment Register, a copy of which is attached hereto as Schedule C.
- (iii) "Per Diem Revenues" is defined as the total per diem revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines.
- (iv) "Mileage Revenues" is defined as the total mileage revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines.
- (v) "Revenues" is defined as the sum of Per Diem Revenues and Mileage Revenues.
- (vi) The first "Annual Period" for the Cars is defined as the period commencing from the date on which the first Car is Delivered, through and including October 1, 1989. Thereafter the "Annual Period" shall be each consecutive twelve (12) month period commencing on the day following the expiration of the first "Annual Period".
- (vii) "Bad Order Days" is defined as the aggregate number of days during any calendar quarter or quarters in which Cars are out of service for repairs and not earning Revenues as governed by the Car Hire and Car Service Rules; provided, however, that Bad Order Days shall not include any days that any Car is out of service for any repairs for which Lessee is responsible (except repairs performed by Lessee at Lessor's request for which Lessor is responsible).
- (viii) The "Utilization" of the Cars during any period is defined as a fraction, the numerator of which is the aggregate number of days in such period that the Cars were earning revenues during such period; and the denominator of which is the aggregate number of days in such period that such Cars were on lease to Lessee, minus the aggregate number of Bad Order Days in such period.
- (ix) The "Base Rent" is defined as an amount equal to the Per Diem Revenues calculated at the Revenue Rates which the Cars would have earned in the aggregate at a Utilization of seventy-eight percent (78%).
- (x) "Minimum Rent" for the Cars during any period is defined as an amount equal to the Per Diem Revenues calculated at the Revenue Rates which the Cars would have earned in the aggregate at a Utilization of seventy-five percent (75%).

- B. Rent for the Cars is calculated as follows:
- (i) In the event Per Diem Revenues are equal to or less than the Base Rent, Lessor shall retain the total Per Diem Revenues.
 - (ii) In the event Per Diem Revenues exceed the Base Rent, Lessee shall receive the excess Per Diem Revenues ("Lessee's Revenue Share"), plus the interest on Lessee's Revenue Share, as specified in Subsection 3.C. hereinbelow, and Lessor shall retain the Base Rent.
 - (iii) Lessor shall retain one hundred percent (100%) of the total Mileage Revenues.
- C. Any payment of Lessee's Revenue Share shall be made within five (5) months of the end the Initial Term and any Extended Terms ("Final Payment"). Lessor shall, prior to making such Final Payment, retain the Revenues and other payments received by it on behalf of Lessee. At the end of the Initial Term and any Extended Term(s), the calculations of the Final Payment shall be made as follows:
- (i) If, at the end of the first Annual Period, Per Diem Revenues exceeded the Base Rent, the Per Diem Revenues in excess of the Base Rent are defined as the "Excess Amount" for the first Annual Period, (the "Excess Amount" for subsequent Annual Periods is defined as set forth below). If, at the end of the first Annual Period, Per Diem Revenues are less than the Base Rent, the amount by which the Base Rent exceed the Per Diem Revenues is defined as the "Deficit" for the first Annual Period, (the "Deficit" for any subsequent Annual Periods is defined as set forth below).
 - (ii) The calculation of Per Diem Revenues for the end of each subsequent Annual Period will be made as follows:
 - a. If an Excess Amount exists for the previous Annual Period, interest at the rate of two percent (2%) above the prime rate in effect on the last day of the Annual Period at Chemical Bank, New York ("Interest Amount") will be added to the Excess Amount. The Per Diem Revenues in excess of the Base Rent for the current Annual Period, will be added to, or the amount by which the Base Rent exceed the Per Diem Revenues for the current Annual Period, if any, will be subtracted from, the total of the previous Excess Amount and the Interest Amount, if any. The resulting amount will become the Excess Amount or Deficit as of the end of the current Annual Period and will replace the previous Excess Amount or Deficit.
 - b. If a Deficit Amount exists for the previous Annual Period, such amount shall be (i) reduced by the Per Diem Revenues in excess of the Base Rent for the current Annual Period, if any, or (ii) increased by the amount, if any, by which the Base Rent exceeds the Per

Diem Revenues for the current Annual Period. The resulting amount will become the Excess Amount or Deficit as of the end of the current Annual Period and will replace the previous Excess Amount or Deficit.

- c. If no Excess Amount exists or if a Deficit Amount exists at the end of the final Annual Period, no payment will be made to Lessee. If either party determines and demonstrates to the reasonable satisfaction of the other that the calculations of the Final Payment were made incorrectly after any amounts have been paid, any amounts paid to or withheld from either party in error will be restored to the correct party by the other within twenty (20) days after agreement on the recalculation.
- d. Schedule A attached hereto is provided as an example of how the Final Payment will be calculated and is provided as a sample only. In the event of any discrepancy between the language set forth in this Section 3 and the example on Schedule A, the language set forth in this Section 3 shall prevail.

(iii) Within five (5) months after each Annual Period, Lessor shall perform the calculations described in this Section 3 through the end of such Annual Period. Lessor shall submit the calculations to Lessee for its written concurrence.

D. Except as specified in Subsection 3.E.(iii) hereinbelow and Subsection 6.C. of the Agreement, it is understood that Lessee is not a guarantor that all revenue amounts for the use of the Cars will be collected hereunder. Lessee shall allow Lessor to collect and shall pass on to Lessor all Revenues and other amounts due under the Agreement which are received on behalf of Lessee.

E. (i) In the event that the Interstate Commerce Commission issues any order reducing or eliminating the Revenue Rates described in Subsection 3.A.(ii) hereinabove and as a result Lessor receives for the use of any Cars car hire calculated at hourly or mileage rates lower than the Revenue Rates, then Lessor may terminate Agreement 1 or Agreement 2 or both with respect to any or all Cars by providing not less than sixty (60) days' prior written notice to Lessee; provided, however, Lessee shall have the exclusive right to negotiate with rail carriers for relief from such order, and if Lessor is fully compensated for all amounts of shortfall below the Revenue Rates within such sixty (60) days, the Cars shall not terminate from the applicable Agreement as long as Lessor continues to be fully compensated.

- (ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee (not including Weyerhaeuser), Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.
 - (iii) If, at any time during the Agreement, Lessee enlarges its railroad lines through acquisition of the lines of or merger with a railroad or acquisition of a substantial portion thereof, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.
- F. If, at any time during the Initial Term or any Extended Term, the cumulative Per Diem Revenues earned by the Cars, commencing from the beginning of such Initial Term or Extended Term through the end of any calendar quarter, are less than the Minimum Rent, then Lessor may, at any time, at its option and upon not less than fifteen (15) days' prior written notice to Lessee, terminate from Agreement 1 or Agreement 2 or both Cars in increments of at least ten (10) Cars each (the exact number of Cars in an increment to be determined by Lessor) that would cause the Utilization for such period, after giving effect to the removal of such Cars, to be equal to or just exceed seventy-five percent (75%), provided, however, if removal of less than ten (10) Cars cause the Utilization to equal seventy-five percent (75%), then Lessor may terminate up to ten (10) Cars, and further provided that Lessee may retain the Cars by paying to Lessor within ten (10) days of receiving such notice an amount equal to the difference between the Minimum Rent for such period and the cumulative Per Diem Revenues received by Lessor. In the event the Cumulative Per Diem Revenues are less than the Minimum Rent for any subsequent calendar quarter(s), Lessee shall have the same option to retain the Cars by paying to Lessor such difference. Schedule B attached hereto is provided as an example of how the Utilization will be calculated and is provided as a sample only. In the event of any discrepancy between the language set forth in this Section 3 and the example on Schedule B, the language set forth in this Section 3 shall prevail.

4. This Master Rent Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract.

IN WITNESS WHEREOF, the parties hereto have executed this Master Agreement as of the date first above written.

ITEL RAIL CORPORATION

TEXAS, OKLAHOMA & EASTERN RAILROAD
COMPANY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

WEYERHAEUSER COMPANY

By: X _____

Title: _____

Date: _____

SCHEDULE A

THIS IS AN EXAMPLE ONLY

Revenue Sharing Calculations:

Assumptions:

- * Based on the per diem rate applicable as of June 1, 1988.
- * Based on 175 cars.
- * Computed over five-year period.
- * 100% of per diem over 78% to Lessee.
- * Prime rate is at 8% for each year.

EXAMPLE

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Utilization	90%	80%	70%	82%	80%
Minimum Utilization	78%	78%	78%	78%	78%
% Over/Under	12.0%	2.0%	(8.0%)	4.0%	2.0%
Each 1% in Per Diem ¹	\$14,700	\$14,700	\$14,700	\$14,700	\$14,700
Lessee Revenue Account	\$176,400	\$29,400	(\$117,600) ²	\$58,800	\$29,300
Interest Accrual Account	<u>0</u>	<u>\$17,640</u>	<u>\$22,344</u>	<u>\$12,818</u>	<u>\$19,980</u>
Amount Due/Owed Lessee	\$176,400	\$223,440	\$128,184	\$199,802	\$249,183 ³

- 1 Based on .96/hour on per diem for 365 days for 175 cars. Interest compounded annually at 10%.
- 2 Amount due Lessor because of utilization below 78%.
- 3 Overall Lessee receives \$249M revenue sharing and accrued interest over the five-year period.

SCHEDULE B

THIS IS AN EXAMPLE ONLY

Pull Point Economics:

Assumptions:

- * Calculations made quarterly.
- * Based on 75% pull point.
- * Based on 175 cars.
- * Lessor may remove up to 10 cars if utilization drops below 75%.
- * An example is detailed below.

EXAMPLE

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 (Quart 1)</u>	<u>Year 3 (Quart 2)</u>	<u>Year 3 (Quart 3)</u>
365 days/year x 175 Cars =	63,875 (Days)	63,875 (Days)	15,968 (Days)	15,968 (Days)	15,968 (Days)
Bad Order Days as defined in Subsection 6.A.(vii)	2,625 (Days)	2,625 (Days)	656 (Days)	656 (Days)	656 (Days)
Potential Earnings Days =	61,250 (Days)	61,250 (Days)	15,312 (Days)	15,312 (Days)	15,312 (Days)
Utilization:	80%	76%	70%	58%	50%
Net Days: (Less Utilization)	49,000	46,550	10,718	8,881	7,656
Total Earning Days:		168,436			

* * *

Days w/Utilization factored in: 122,805

Cumulative Utilization thru 3rd year 3rd Quarter: 72.9%

* * *

Number of Cars removed to achieve 75% Utilization = 5

Total days required to achieve 75% = 126327 (168436 x .75)

Average days per car @ 75% utilization = 722 days (126327/175 Cars)

Actual average days per car = 702 days (122805/175 Cars)

Cars to be removed to equal 75% $175/722 \times X/702 = 170$

175 - 170 = 5 Cars (up to 10)

2:wp\m\75\983-gh 8/22/88 (8)

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

On this _____ day of _____, 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 Master Rent 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

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 1988, before me personally appeared _____, to me personally known, who being by me duly sworn says that such person is _____ of Texas, Oklahoma & Eastern Railroad Company, that the foregoing Master Rent 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.

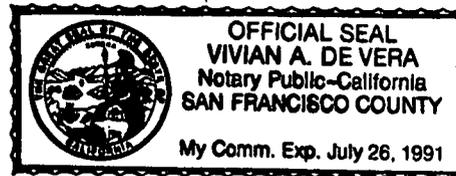
Notary Public

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

On this 1st day of September, 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 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.

Vivian A. De Vera

Notary Public



STATE OF Washington)
) ss:
COUNTY OF King)

On this 26th day of August, 1988, before me personally appeared John Kauffman, to me personally known, who being by me duly sworn says that such person is Vice President of Texas, Oklahoma & Eastern Railroad Company, that the foregoing 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.

Kim N. Johnson

Notary Public

My Commission expires 2-1-90

STATE OF Washington)
) ss:
COUNTY OF King)

On this 23rd day of August, 1988, before me personally appeared John Wilkinson, to me personally known, who being by me duly sworn says that such person is Vice President of Weyerhaeuser Company, that the foregoing 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.

Kim A. Johnson

Notary Public

My commission expires 2-1-90.