

2-097A008

ITEL

April 2, 1992

Itel Rail Corporation

550 California Street
San Francisco, CA 94104
(415) 984-4200

17766
RECORDATION NO. _____ FILED 1425

APR 6 1992 - 10 30 AM

INTERSTATE COMMERCE COMMISSION

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RECORDATION NO. _____ FILED 1425

APR 6 1992 - 10 30 AM

INTERSTATE COMMERCE COMMISSION

APR 6 10 30 AM '92
NOTAR GENERAL
17766

Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, DC 20423

Re: Lease Agreement and Schedule No. 1

Dear Mr. Strickland:

On behalf of Itel Rail Corporation, the above instruments, in three (3) counterparts each, are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$32 recordation fee.

Please record the subject Lease Agreement dated March 23, 1992 (the "Lease"), between Itel Rail Corporation and Texas, Oklahoma & Eastern Railroad Company, under a new recordation number. Please record Schedule No. 1 under the recordation number assigned to the Lease.

The parties to the aforementioned instruments are listed below:

Itel Rail Corporation (Lessor)
550 California Street
San Francisco, California 94104

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

The subject Lease sets forth the terms and conditions by which railroad equipment is leased. Schedule No. 1 adds to the Lease three hundred (300) 50 foot, 70 ton, Plate B boxcars bearing reporting marks TOE 2600-2899.

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 Assistant

APR 6 1992 - 10 30 AM

LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT ("Agreement") is made as of March 23, 1992 between ITTEL RAIL CORPORATION, a Delaware corporation ("Lessor"), and TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY, an Oklahoma corporation ("Lessee").

1. Scope of Agreement

- A.** Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein, 300 boxcars as set forth in Equipment Schedule No. 1, attached hereto and executed by the parties concurrently herewith and made a part of this Agreement. The word "Schedule" as used herein includes Equipment Schedule No. 1, and any 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 a "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.

2. Term

- A.** This Agreement shall remain in full force until terminated as to all Cars on all Schedules. The lease term with respect to any Car shall commence on the date such Car is marked with Lessee's reporting marks ("Delivery Date") and shall expire for all Cars 10 years from July 31, 1992 ("Expiration Date"). The lease term as described in the foregoing sentence shall be defined as the "Initial Term." After the final Car is delivered, Lessor shall provide Lessee a certificate (the "Certificate") setting forth the Reporting Marks and Numbers, the Delivery Date for each Car and the Expiration Date. Each date on the Certificate shall be deemed accurate, final and binding unless Lessee disputes such date in writing within 14 calendar days of receipt by Lessee of such Certificate.
- B.** If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, Lessee shall have 2 options to extend the Agreement, each for a period of 3 years (each such period an "Extended Term"). Lessee shall exercise its first option by giving Lessor 6 months written notice prior to the end of the Initial Term and shall exercise its second option by giving Lessor 6 months written notice prior to the end of the first Extended Term, provided that Lessor may refuse to grant either of Lessee's options if the Utilization (as defined in Subsection 6.A. (v) hereinbelow) of the Cars is less than 65% during the 3-month period preceding Lessee's notification to Lessor.

3. Supply Provisions

- A.** Lessee hereby approves the specifications of the Cars described on the Schedule attached hereto. Prior to delivery, Lessor shall refurbish each Car, ensure proper door operation and intact and functional cushioning devices and attend to other mechanical and operation aspects that need attention. Lessor shall, at its expense, remark each Car to the designated reporting marks in compliance with all applicable regulations. When a Car has been remarked, it shall be moved to Lessee's railroad line at no initial cost to Lessee at the earliest time that is consistent with the mutual convenience and economy of the parties. Lessee agrees to pay the rent set forth in the Agreement notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereunder. In order to move the Cars to Lessee's

railroad line and to ensure optimal use of the Cars, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders to facilitate the movement of the Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Association of American Railroads ("AAR") Interchange Rules. Commencing upon Delivery Date (as defined in Subsection 2.A. hereinabove), Lessee shall be liable for all costs, charges and expenses on account of or relating to transportation or movement of any Car, provided that the transportation or movement of any such Car is at the direction of Lessee. If Lessor is required to pay any such amount, Lessee shall reimburse Lessor within 30 days of receiving an invoice from Lessor for such amount.

- B.**
- (i)** Each Car on Schedule No. 1 shall be delivered to Lessee by March 30, 1992, and Lessee shall have no obligation to load such Cars until April 1, 1992. Lessee shall load each Car prior to loading substantially similar boxcars acquired or put into service subsequent to the date of this Agreement or interchanged to Lessee from other railroads. The parties further acknowledge that, notwithstanding anything else provided in this Subsection 3.B.(i), Lessee may in any calendar quarter reload 150 foreign boxcars that are received loaded and made empty on Lessee's lines, provided that Lessee has on its lines less than 100 TOE-marked boxcars (excluding such TOE-marked boxcars that are spotted in Valliant, Oklahoma) during such calendar quarter.
 - (ii)** Subsection 3.B.(i) above shall not prevent or prohibit Lessee from providing its customers with equipment of dimensions and configuration that meet the physical and economic requirements of its customers, provided 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.
 - (iii)** Lessor at its expense shall repaint each Car on Schedule No. 1 by December 31, 1993.
- C.** During the term of this Agreement, Lessor may, at its expense, replace any or all Cars with similar boxcars upon not less than 10 days prior written notice from Lessor to Lessee, provided that the per diem and mileage rates for such replacement boxcars are not more than the rates for the Cars being replaced.

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. Lessee hereby authorizes Lessor on behalf of Lessee to subscribe to Lessee's Train 62, 65, 67, 71, 80 and other Car Location Movement Records ("CLM's") from the AAR and agrees to execute any documents necessary to implement such authorization. If, for

any reason, Lessor does not subscribe to Train 65 and 67 Advices, Lessee shall within 10 days after the close of each calendar month, supply Lessor with copies of Lessee's interchange records with respect to Cars interchanged to and from Lessee's railroad line.

- 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 AAR 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 that such repairs and maintenance ("Maintenance") shall be performed at Lessee's expense in the event that such maintenance (i) was occasioned by the fault of Lessee; (ii) results from loading or unloading by Lessee or use by Lessee other than permitted under this Agreement; (iii) 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 Lessee; or (iv) 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 in Exhibit A 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 any 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. Should the AAR Mechanical Department inspect or investigate Lessee's maintenance facilities and determine that restitution is due owners of equipment repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to the AAR Rule 120 for the Cars that were repaired at Lessee's facilities.

- 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 required in Subsection 5.C.(i), as loss-payees. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive 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, then 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 30 days of receipt of a written request from Lessor and at intervals of not more than 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 of Delivery for such Car 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.

6. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee (including Texas, Oklahoma & Eastern Railroad Company and De Queen and Eastern Railroad Company) as of the date this Agreement is executed by the parties. 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 unless the connecting line purchased is less than 100 miles in length in which case it will be included as an Eligible Line for the purposes of determining revenues and rent. If Lessee sells or otherwise disposes of a part but not all of the railroad lines owned and operated by Lessee as of the date such Schedule is executed by the parties, "Eligible Lines" shall mean only that part retained by Lessee.

- (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 October 1991 edition of The Official Railway Equipment Register.
 - (iii) **"Revenues"** means the total revenues, calculated at the Revenue Rates, that are earned or due in any applicable time period for the use or handling of the Cars on any Schedule on all railroad lines other than the Eligible Lines, including, but not limited to, hours ("Hourly Revenues") and mileage ("Mileage Revenues"), whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.
 - (iv) **"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 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).
 - (v) 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 and furthermore minus the amount of days Weyerhaeuser's Valliant paper mill is shut down and not producing finished product due to program maintenance. It will be Lessee's responsibility to provide Lessor detailed information pertaining to mill shutdowns.
 - (vi) The **"Minimum Rent"** is defined as an amount equal to the Hourly Revenues calculated at the Revenue Rates which the Cars would have earned in the aggregate at a Utilization of 65%.
 - (vii) **"Initial Loading"** of a Car shall be the earlier to occur of either: (a) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or (b) the 31st day after such Car is first received on Lessee's lines.
- B. Each Car delivered pursuant to Subsection 3.A. hereinabove shall become subject to Subsection 6.C. hereinbelow upon the Initial Loading of such Car.
 - C. Each calendar month ("Month") Lessee shall be entitled to Lessee's share ("Lessee's Share") which shall be the dollar amount equal to the product of \$_____ and a fraction the numerator of which is equal to the total hours in such Month for which Lessor has received Hourly Revenues on the Cars ~~that have had initial loading~~ and the denominator of which is 24 hours. ASJ
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 - D. Lessor shall pay to Lessee Lessee's Share for each Month within 75 days after the end of such Month.
 - E. Except as specified in Subsections 6.F.(ii) and 6.G. hereinbelow, 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.
 - F. (i) In the event that the Interstate Commerce Commission issues any order reducing or eliminating the Revenue Rates described in Subsection 6.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 the Agreement with respect to any or all Cars by providing not less than 60 days prior written notice to Lessee, provided that Lessee shall have the right to negotiate with rail carriers for relief from such order with respect to the Cars, and if Lessor is fully compensated for all amounts of shortfall below the Revenue Rates within such 60 days, the Cars shall not terminate from the 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, Lessee (but not Lessee's parent Weyerhaeuser Company) shall, within 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 another 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 except for those connecting lines less than 100 miles which are Eligible Lines pursuant to Subsection 6.A.(i).
- G. This Subsection 6.G. shall not relieve Lessee of its obligation to load the Cars under Subsection 3.B.(i). Lessor shall provide Lessee notice of any known violation of Subsection 3.B.(i). Lessee shall load the Cars as required under Subsection 3.B.(i) as soon as practicable after receipt of Lessor's notice by Lessee (but not to exceed two days). While such loading is in effect, Lessee shall, upon reasonable request by Lessor, furnish to Lessor its records with respect to loadings and shipments. If Lessee fails to meet its obligations under Subsection 3.B.(i) of the Agreement, Lessee shall be liable for and remit to Lessor an amount equal to the Revenues which would have been generated if the Cars had been in the physical possession and use of a foreign railroad for the entire period such Cars were on Lessee's property, less Lessee's Share pursuant to Subsection 6.C., with each Car traveling 50 miles per day, provided that such amount shall not be due for any period of time during which no loads are available on Lessee's lines.
- H. Lessee 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.
- I. If, with respect to any calendar quarter, Hourly Revenues received by Lessor for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines are less than the Minimum Rent, then Lessor may so notify Lessee. Within 10 days of receipt of such notice from Lessor, Lessee shall either:
 - (i) Pay Lessor the difference ("Difference") between the Minimum Rent and the actual Hourly Revenues for such calendar quarter in which such Difference occurs. Lessee shall pay Lessor such Difference not later than 60 days after receiving an invoice for such Difference; or
 - (ii) Elect not to pay Lessor such Difference for such quarter. In such event, Lessor may, upon not less than 30 days written notice to Lessee, terminate only the number of Cars from the Agreement that would cause the Utilization for such period, after giving effect to the removal of such Cars, to be equal to or just exceed 65%. Lessee shall be entitled to make the preceding elections each quarter in which utilization is less than 65%.

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 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 such Cars, provided that, with respect only to the Cars on Equipment Schedule No. 1, Lessee shall be entitled to the possession, use and quiet enjoyment of such Cars pursuant to the terms of this Agreement so long as Lessee is not in default hereunder 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 that have 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 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 to be paid by Lessee within 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 which is not cured within 10 days after the date of Lessor's notice of breach or, as to breaches not capable of being cured within 10 days, which Lessee does not diligently commence to cure within 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 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 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; provided, however, Lessee may discontinue rail service and upon 180 days prior written notice to Lessor withdraw the TOE reporting marks from UMLER in the event the Valliant, OK paper facility is closed or traffic is otherwise inadequate to support rail service to the Valliant paper facility. Such event shall not effect Lessor's rights under Section 6.I. hereto.
- 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, however, the cost of restenciling at a repair facility designated by Lessor at time of expiration or termination will not exceed the Eligible Lines cost for restenciling. 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 15 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 60 days free storage on its railroad tracks for Lessor or the subsequent lessor of any terminated Car.
- 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, and, Lessor will continue to pay to Lessee Lessee's Share per Section 6.C. until the last Car has been delivered to Lessor. 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 (including attorneys' fees) 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 a shutdown for maintenance of the Valliant paper facility in September, 1992, and except for such matters as may be disclosed in Weyerhaeuser Company filings with the Securities and Exchange Commission, 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.

- J. This 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.

Each party, pursuant to due corporate authority, has caused this Agreement to be executed by its authorized officer or other employee, and each of the undersigned declares under penalty of perjury that he or she holds the title indicated below, that the execution of this Agreement was the free act and deed of the corporation, the foregoing is true and correct and that this Agreement was executed on the date indicated below.

ITEL RAIL CORPORATION

**TEXAS, OKLAHOMA & EASTERN RAILROAD
COMPANY**

By: Robert Kelly

By: A E Sullivan

Title: Vice President Finance

Title: VP & Gen Mgr

Date: March 23, 1992

Date: 3/19/92