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January 18, 1990

Itel Rail Corporation

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

RECORDATION NO. 8896-5 FILED 1225

JAN 23 1990 12:30 PM

INTERSTATE COMMERCE COMMISSION

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

Re: Amendment No. 2 dated to the Lease Agreement dated April 26, 1977, between Itel Corporation and City of Prineville Railway

Dear Ms. McGee:

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

Please record this Amendment under the Lease Agreement dated April 26, 1977, between Itel Rail Corporation, successor to Itel Corporation, Rail Division, and City of Prineville Railway, which was filed with the ICC on July 20, 1977, under Recordation No. 8896.

The parties to the aforementioned instrument are listed below:

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

City of Prineville Railway (Lessee)
185 East 10th Street
Prineville, Oregon 97754

This Amendment amends the terms of the Lease Agreement with respect to thirty (30) and thirteen (13) 52', 70-ton, Plate C, XL boxcars bearing reporting marks within the series COP 2004-2059 and COP 2061-2080 listed on schedules 2.A and 2.B, respectively.

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

MOTOR OPERATING UNIT
JAN 23 12 13 PM '90

Interstate Commerce Commission
Washington, D.C. 20423

1/23/90

OFFICE OF THE SECRETARY

IteI Rail Corporation
55 Francisco Street
San Francisco, CA. 94133

Dear Sirs:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/23/90 at 12:20PM, and assigned recordation number(s). 10129-Q, 8896-J, 14605-F, 15880-B, 15880-C, 15880-D, 16198-D.

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

JAN 23 1990 - 2:11 PM

AMENDMENT NO. 2

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 2 (the "Amendment") to that certain Lease Agreement, dated as of April 26, 1977 as amended by Amendment No. 1 dated as of October 6, 1982 (the "Agreement"), between ITEL RAIL CORPORATION, as successor in interest to ITEL CORPORATION, RAIL DIVISION, as lessor ("Lessor"), and CITY OF PRINEVILLE RAILWAY as lessee ("Lessee") is made this 10th day of January, 1990.

R E C I T A L S:

- A. Lessor and Lessee are parties to the Agreement pursuant to which railroad equipment has been leased to Lessee by Lessor and under which the parties desire to add additional equipment pursuant to Sections 3.B. and 3.C. of the Agreement.
- B. Lessor and Lessee recognize ITEL Rail Corporation as successor in interest to ITEL Corporation, Rail Division.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have the meanings defined therein when used in this Amendment, unless otherwise indicated herein.
- 2. The capitalized term "Lessor" shall refer to ITEL Rail Corporation, as successor in interest to ITEL Corporation, Rail Division.
- 3. All references to "Boxcars" in this amendment shall refer to the equipment described in Schedules 2.A and 2.B attached hereto.
- 4. Sections 2.A. and 2.B. of the Agreement are hereby deleted as it pertains to the Boxcars in this Amendment and replaced with:
 - "2. The term of the Agreement with respect to each Boxcar described in this Amendment shall commence at 12 noon on the date such Boxcar is remarked at Lessor's expense ("Delivery") and shall continue as to all of the Boxcars described in this Amendment for three (3) years from the earlier of (i) the date on which the last Boxcar

described in this Amendment was remarked or (ii) sixty (60) days from the date the first Boxcar described in this Amendment was delivered to Lessee's lines (the "Term"). Upon the delivery of the final Boxcar, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Boxcar and the expiration date of the Agreement with respect to the Boxcars described in this Amendment. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date."

5. Section 3.A. of the Agreement is hereby deleted from the Agreement as it pertains to the Boxcars in this Amendment and replaced with:

"3. A. Lessee agrees to pay the rent set forth in the Agreement, notwithstanding the fact that Lessee may not have immediate physical possession of the Boxcars leased hereunder. In order to ensure optimal use of the Boxcars, Lessor agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders to facilitate the movement of the Boxcars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules."

6. Section 3. of the Agreement will also have the following subsection D. added to it:

"3. D. During the term of this Agreement, Lessor may, at Lessor's expense, replace any or all Boxcars with similar equipment bearing Lessee's reporting marks upon not less than ten (10) days prior written notice from Lessor to Lessee."

7. Section 6. of the Agreement is hereby deleted in its entirety from the Agreement as it pertains to the Boxcars in this Amendment and replaced with:

"Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Amendment is executed by the parties. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party, effective on the date

of such sale, 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 (as defined in Subsection 6.A.(iii) hereinbelow).

- (ii) "Revenues Rates" is defined as the hourly and mileage car hire rates specified for each Boxcar in the Hourly and Mileage Car Hire Rate Table published in the October 1989 edition of The Official Railway Equipment Register.
- (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 Boxcars on all railroad lines other than the Eligible Lines, 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) "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 Boxcars on all railroad lines other than the Eligible Lines, 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.
- (v) "Revenues" is defined as the sum of the Per Diem Revenues and Mileage Revenues.
- (vi) The "Base Rent" is defined as Per Diem Revenues per car per calendar quarter which the Boxcars would have earned in the aggregate if the Boxcars had been on railroad lines other than Eligible Lines for of the hours that such Boxcars were subject to the Agreement during such calendar quarter. The Base Rent for any Boxcar which is not subject to the Agreement for an entire calendar quarter shall be prorated per day for such Boxcar during such calendar quarter.
- (v) "Initial Loading" of a Boxcar shall be the earlier to occur of either: 1) the date such Boxcar shall have been loaded off Lessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after such Boxcar is first received on Lessee's lines.

- B. Lessor shall receive all Revenues earned by each Boxcar prior to its Initial Loading. Each Boxcar delivered pursuant to Subsection 3.A. of the Agreement as amended hereinabove in Section 5. shall become subject to the rental calculation under Subsection 6.C. hereinbelow upon the Initial Loading of such Boxcar.
- C. Lessee agrees to pay rent to Lessor for the Boxcars calculated as follows:
- (i) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof are equal to or less than the Base Rent, Lessor shall retain a sum equal to _____ of the _____ Revenues.
 - (ii) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof exceed the Base Rent, Lessor shall retain an amount _____ and Lessee shall receive _____ Revenues received in excess of the Base Rent.
 - (iii) Lessor shall be entitled to _____ earned by the _____ Boxcars.
- D. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn for the use of any Boxcars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 6.A. (ii), Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Boxcars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Boxcars.
- (ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, 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 operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Boxcar on the

Eligible Lines from the movement of such Boxcar on any other lines operated by Lessee.

- E. Any agreement between Lessee and any other party with respect to the Boxcars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the revenues earned by the Boxcars.
- F. The calculations required in Section 6 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessor shall, prior to making such Final Calculations, retain the Revenues and other payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under this Section 6, Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amounts due both parties pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
- G. If, with respect to any calendar quarter or quarters, Revenues received by Lessor for the Boxcars on this Amendment are less than an amount which represents the amount the Boxcars would have earned at seventy-five percent (75%) utilization, Lessor may, at any time, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate the Agreement as to such Boxcars as Lessor shall determine."
8. At the expiration or termination of this Agreement, with respect to the Boxcars in this Amendment, the remark of such Boxcars will be at Lessor's sole expense irregardless of the terms and provisions concerning the cost of remark of Boxcars in Section 9 of the Agreement.
9. Section 10. of the Agreement is hereby deleted in its entirety from the Agreement as it pertains to the Boxcars in this Amendment and replaced with:
- "10. A. Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, losses, damages, liabilities, costs, and expenses (including attorney's fees) with respect to, caused by, or arising out of the Boxcars which are occasioned by the fault of Lessee, occur while the Boxcars are in Lessee's possession or control, or would be the

"handling carrier's" responsibility under the Interchange Rules, as if the Boxcars were not bearing Lessee's reporting marks.

- B. Except as provided in Subsection 10.A. above, and except for those claims, losses, damages, liabilities and expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall indemnify and hold Lessee harmless from any and all loss, damage or destruction of or to the Boxcars, ordinary wear and tear excepted.
 - C. The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement."
10. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.
11. This Amendment may be executed by the parties hereto in multiple counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

CITY OF PRINEVILLE RAILWAY

BY: Robert Kehdy
TITLE: Vice President - Finance
DATE: January 10, 1990

BY: J. Price
TITLE: General Manager
DATE: Dec. 28, 1989

SCHEDULE 2.A

Schedule 2.A to Amendment No. 2 dated as of *January 10, 1990* to the Lease Agreement as amended, dated as April 26, 1977 of between **ITEL RAIL CORPORATION** as Lessor and **CITY OF PRINEVILLE RAILWAY** as lessee.

Thirty (30), fifty-two (52) foot, Plate C, 70 ton Boxcars with AAR mechanical designation XL which bear the reporting marks:

COP 2004
COP 2011
COP 2013
COP 2014
COP 2015
COP 2016
COP 2018
COP 2024
COP 2027
COP 2028
COP 2030
COP 2034
COP 2036
COP 2037
COP 2040
COP 2041
COP 2042
COP 2043
COP 2044
COP 2045
COP 2046
COP 2048
COP 2049
COP 2050
COP 2051
COP 2053
COP 2056
COP 2057
COP 2058
COP 2059

SCHEDULE 2.B

Schedule 2.B to Amendment No. 2 dated as of January 10, 1990 to the Lease Agreement as amended, dated as April 26, 1977 of between ITEL RAIL CORPORATION as Lessor and CITY OF PRINEVILLE RAILWAY as lessee.

Thirteen (13), fifty-two (52) foot, Plate C, 70 ton Boxcars with AAR mechanical designation XL which bear the reporting marks:

COP 2061
COP 2062
COP 2063
COP 2064
COP 2065
COP 2066
COP 2073
COP 2074
COP 2075
COP 2076
COP 2078
COP 2079
COP 2080

EXHIBIT A

CERTIFICATE OF DELIVERY

Exhibit C, Certificate of Delivery for Schedule No. 2. ___ to
Amendment No 2. dated as of _____ to the
Lease Agreement as amended, dated as April 26, 1977 of between ITEL
RAIL CORPORATION as Lessor and CITY OF PRINEVILLE RAILWAY as
lessee.

Car Reporting Mark
and Number

Date of
Delivery

The Term for the Boxcars described in Schedule No. 2. ___
shall end on _____.

ITEL RAIL CORPORATION
Authorized Representative

BY: _____

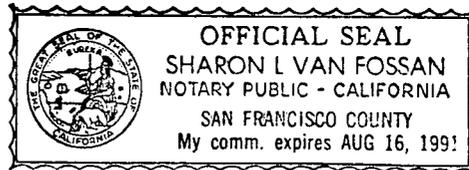
TITLE: _____

DATE: _____

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

On this 10th day of January, 198⁹⁰~~9~~, before me personally appeared Robert Kiehnle, to me personally known, who being by me duly sworn says that such person is Vice President - Finance of Itel Rail Corporation, that the foregoing Amendment No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF Oregon)
) ss:
COUNTY OF CRook)

On this 28th day of December, 1989, before me personally appeared J.L. Price, to me personally known, who being by me duly sworn says that such person is General Manager of City of Prineville Railway, that the foregoing Amendment No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Betty M. Hagen
Notary Public