

ITEL

April 2, 1992

Istel Rail Corporation

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

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

RECORDATION NO. 8983-C FILED 1425

APR 6 1992 10 32 AM

INTERSTATE COMMERCE COMMISSION

MOTOR OPERATING UNIT
APR 6 10 11 AM '92

Re: Amendment No. 1

Dear Mr. Strickland:

On behalf of Istel 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 \$16 recordation fee.

Please record the subject Amendment under the Lease Agreement dated July 11, 1977, between Istel Rail Corporation and Texas, Oklahoma & Eastern Railroad Company, which was filed with the ICC on September 8, 1977, under Recordation No. 8983.

The parties to the aforementioned instrument are listed below:

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

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

The subject Amendment extends the term for the Cars subject to Equipment Schedule No. 1, which expired on March 31, 1992, to July 31, 2002.

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

ICC

COPY

8983 -

REGISTRATION NO. 8983-C FILED 1992

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AMENDMENT NO. 1 TO LEASE AGREEMENT STATE COMMERCE COMMISSION

THIS AMENDMENT NO. 1 to the Lease Agreement made as of July 11, 1977 (the "Agreement"), between ITEL RAIL CORPORATION, as successor in interest to SSI Rail Corp. ("Lessor"), and TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY ("Lessee"), is made as of this 23rd day of MARCH, 1991 between Lessor and Lessee.

RECITALS:

- A. Lessor and Lessee are parties to the Agreement pursuant to which Lessor leased and delivered to Lessee 100 Plate C, 50'6" boxcars bearing the reporting marks and numbers TOE 2500-2599 (the "Cars") as described on Equipment Schedule No. 1 to the Agreement.
B. The Cars bearing the reporting marks and numbers TOE 2518, TOE 2553, TOE 2581 and TOE 2589 were destroyed on or about March 14, 1986, August 29, 1988, February 19, 1985 and February 13, 1980, respectively, and ceased to be subject to the Agreement on such dates.
C. The term of the Agreement with respect to the Cars on Equipment Schedule No. 1 expires on March 31, 1992.
D. Lessor and Lessee desire to extend the Agreement and amend its terms with respect to the 96 Cars that remain subject to the Agreement.

Now, therefore, Lessor and Lessee agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have their defined meaning when used herein.
2. Equipment Schedule No. 1 is deleted and replaced by Equipment Schedule No. 1.A. attached hereto effective upon the full execution of such Equipment Schedule No. 1.A., and all references to Equipment Schedule No. 1 in the Agreement shall be deemed to refer to Equipment Schedule No. 1.A.
3. With respect to the Cars on Equipment Schedule No. 1.A., Section 2 of the Agreement is deleted and replaced by the following:

"2. Term

- A. The term of the Agreement with respect to the Cars described on Equipment Schedule No. 1.A. shall be deemed to have commenced on the date each such Car was remarked to Lessee's reporting marks, and shall continue through and include July 31, 2002."
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 Lease 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 during the 3-month period preceding Lessee's notification to Lessor."

4. At any time prior to December 30, 1994, Lessor may replace any or all of the Cars with similar plug-door boxcars ("Replacement Cars") upon prior written notice to Lessee.
5. Lessor agrees to repaint, at its expense, each Car on Equipment Schedule No. 1.A. and each Replacement Car, if any, by such time during the term of the Agreement that is mutually agreed by the parties, but no later than December 31, 1994.
6. The Agreement as amended hereby shall apply to each Car on Equipment Schedule No. 1.A. and to each Replacement Car.
7. Effective April 1, 1992, Section 6 of the Agreement is deleted and replaced by the following:

"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 Amendment No. 1 to the 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, then 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
- B. Lessor shall receive as rent all Revenues earned by each 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.
 - 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) hereinabove.
- G. This Subsection 6.G. shall not relieve Lessee of its obligation to load the Cars under Subsection 3.B. Lessor shall provide Lessee notice of any known violation of Subsection 3.B. Lessee shall load the Cars as required under Subsection 3.B. 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. 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
- (iii) Upon receipt of such notice, Lessee shall be entitled to make the preceding elections each quarter in which utilization is less than "

8. Effective April 1, 1992, Section 9 of the Agreement is deleted and replaced by the following:

"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 shall not exceed the Lessee's 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 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."

9. Effective April 1, 1992, Subsection 11.(v) of the Agreement is deleted and Subsection 11.(iv) is replaced by the following:

"(iv) 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 & 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."

10. All other terms of the Agreement shall remain in full force and effect.

Each party, pursuant to due corporate authority, has caused this Amendment 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 Amendment was the free act and deed of the corporation, the foregoing is true and correct and that this Amendment was executed on the date indicated below.

ITEL RAIL CORPORATION

TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY

By: Robert Keelby

By: A. E. Tillman

Title: Vice President Finance

Title: V P & Gen Mgr

Date: March 23, 1992

Date: 3/19/92

EQUIPMENT SCHEDULE NO. 1.A.

Itel Rail Corporation hereby leases the following Cars to Texas, Oklahoma & Eastern Railroad Company pursuant to that certain Lease Agreement dated as of July 11, 1977.

AAR Mech Desig	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	Plate C, 100-ton Truck, 20" sliding sill cushioning	TOE 2500-2517, 2519-2552, 2554-2580, 2582-2588, 2590-2599	50'6"	9'6"	11'2"	16'0"	96

THIS EQUIPMENT SCHEDULE REPLACES EQUIPMENT SCHEDULE NO. 1 TO THE AGREEMENT.

Each party, pursuant to due corporate authority, has caused this Schedule 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 Schedule 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 Kichule*

By: *A. J. Williams*

Title: *Vice President Finance*

Title: *VP & Gen Mgr*

Date: *March 23, 1992*

Date: *3/19/92*