

ITEL
CORPORATION
RAIL DIVISION

RECORDATION NO. 9835 Filed 1425

DEC 22 1978 - 3 51 PM
INTERSTATE COMMERCE COMMISSION

8-356AC63

Date DEC 22 1978

Fee \$ 50.00

ICC Washington, D. C.

December 21, 1978

Hon. H.G. Homme, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are one original, two counterparts and three photocopies of a Lease Agreement dated as of October 5, 1978 between ITEL Corporation, acting through its Rail Division, Two Embarcadero Center, San Francisco, California, 94111 and Alabama State Docks Department, an Agency of the State of Alabama covering the following railroad equipment:

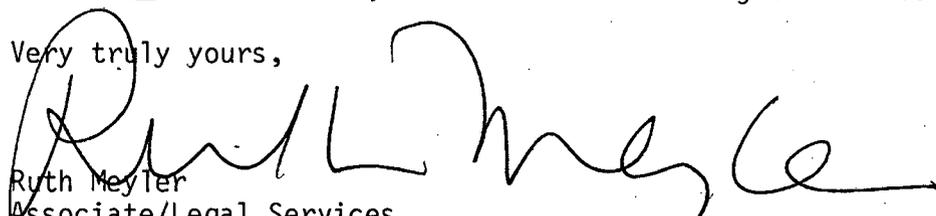
50 70-ton, 89' flush deck flatcars for trailer and container service, bearing the identifying numbers TA5D 79000 - 790049, both inclusive.

Identifying marks on all of the foregoing equipment: The words, "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE COMMISSION", printed on each side of each unit.

Also enclosed is our check in the amount of \$50, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing document.

Please return all additional copies of the enclosed counterparts not required by the Interstate Commerce Commission to ~~David Schwartz, Esq., of Sullivan and Worcester~~ *bearer*, who will be delivering this letter on our behalf.

Very truly yours,



Ruth Meyer
Associate/Legal Services
ITel Transportation Services Group

TWO EMBARCADERO CENTER
SAN FRANCISCO
CALIFORNIA 94111
(415) 955-9090
TELEX 34-234

REC'D
DEC 22 3 48 PM '78
I.C.C.
FEE OPERATION BR.

Counterpart - Thomas J. Graham

Interstate Commerce Commission
Washington, D.C. 20423

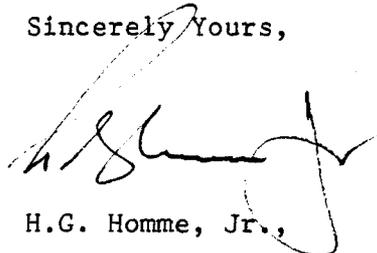
OFFICE OF THE SECRETARY

Allen B. Harrison, Jr.,
Wilmer, Cutler & Pickering
1666 K Street, N. W.
Washington, D. C. 20006

Dear Mr. Harrison:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on December 22, 1978 at 3:55 pm, and assigned recordation number(s) 9778-D, 9778-C, 9778-B and 9956 and 9955

Sincerely Yours,



H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

DEC 22 1978 4:30 PM

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 5th day of October, 1978, between **ITEL CORPORATION, RAIL-INTERMODAL DIVISION**, a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("IteI Rail"), as Lessor, and Alabama State Docks Department, an Agency of the State of Alabama, doing business as Terminal Railway, Alabama State Docks ("Lessee"), as Lessee.

1. Scope of Agreement

A. IteI Rail agrees to lease to Lessee, and Lessee agrees to lease from IteI Rail, 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 Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that IteI Rail shall at all times be and remain the lessor of all Cars. 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 it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to all of the Cars described on each Schedule shall be for fifteen (15) years (the "Initial Lease Term") commencing upon the date when all Cars on such Schedule have been delivered as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "Extended Lease Term") with respect to all of the Cars described on each Schedule, provided, however, that IteI Rail or Lessee may terminate this Agreement on or after the Initial Lease Term as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to the other not less than twelve months prior to the end of the Initial Lease Term or any Extended Lease Term.

3. Supply Provisions

A. IteI Rail will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to IteI-Rail that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment

agreed to by Lessee. Upon such approval by Lessee and Itel Rail's determination that the Car conforms to the specifications ordered by Itel Rail and to all applicable governmental regulatory specifications, and provided this Agreement has not been terminated, Itel Rail will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by Itel Rail. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by Itel Rail as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, Itel Rail can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay Itel Rail the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee Itel Rail agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Itel Rail, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules. Whenever Cars are used or loaded prior to the Initial Loading, or whenever Lessee notifies Itel Rail that it requires the use of a designated quantity of Cars, Itel Rail shall not route such Cars away from Lessee. For purposes of this Agreement, "Initial Loading" shall mean the first loading of freight on or off the railroad line of Lessee, provided, however, if the Initial Loading has not occurred within ninety days of the date such Cars have been delivered to Itel Rail at the manufacturer's facility, Initial Loading shall be deemed to have occurred effective on the ninety-first day following delivery to Itel Rail.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease Cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. Once Cars have been delivered to Lessee, it shall then not lease Cars from any other party until it shall have given Itel Rail at least three (3) months' prior written notice of its desire to lease Cars similar to the type on lease and Itel Rail shall then have the opportunity to procure and lease such Cars to Lessee subject to the terms and conditions of this Agreement and manufacturers' delivery schedules and at terms not less favorable to Lessee than those offered by such other parties. The foregoing, however, shall not be deemed to prohibit Lessee from leasing from other parties if Itel Rail does not offer lease terms equal to or better than those offered by such other parties. Lessee shall give preference to Itel Rail and shall load the Cars leased from Itel Rail prior to loading Cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease any such freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. Additional Cars shall be leased from Itel Rail by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by Itel Rail and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to

manufacturers' delivery schedules, financing satisfactory to Itel Rail and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce Utilization (as defined in Section 6) of all Cars on lease to Lessee to less than 92 percent and mileage at 250 miles per day in any calendar quarter. If, due to the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the lease term shall be deemed to have commenced on the date the final Car of the most recent group of Cars was delivered to Lessee.

4. Railroad Markings and Record Keeping

A. Itel Rail and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. Such name and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessee, Itel Rail 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; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Itel Rail shall at no cost to Lessee, on behalf of Lessee, perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as Itel Rail shall select.

D. All record keeping performed by Itel Rail hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Itel Rail at no cost to Lessee, in a form suitable for reasonable inspection by Lessee from time to time during regular Itel Rail business hours. Lessee shall supply Itel Rail 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 Itel Rail may reasonably request at no cost to Lessee.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, Itel Rail will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee while such Car is in the physical possession of Lessee. 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 Itel Rail for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to Itel Rail for and during the lease term of each Car all of its right, title and interest in any warranty in respect to the Cars. All claims or actions shall have no obligation to make any claim

on such warranty. Any recovery under such warranty shall be payable solely to Itel Rail.

B. Except as provided above, Itel Rail shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of Itel Rail, Lessee shall, if able to do so, perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by Itel Rail. Itel Rail shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the lease term of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Itel Rail's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Itel Rail's prior written consent, Lessee shall be liable to Itel Rail for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with Itel Rail.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Code of Car Service Rules-Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall also maintain bodily injury and property damage liability insurance*~~in such sum as may be specified by Itel Rail~~. Lessee shall furnish Itel Rail concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months with certificates of insurance with respect to the insurance required as aforesaid signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and Itel Rail (or its assignee if requested by Itel Rail) as their interests may appear. If Lessee defaults in paying any insurance premium Itel Rail may pay such premium for Lessee's account.

D. Itel Rail agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character 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 of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. Itel Rail shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. Itel Rail and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. Itel Rail shall review all applicable tax returns prior to filing.

6. Lease Rental

A. Lessee agrees to pay the following rent to Itel Rail for the use of the Cars:

(i) Itel Rail shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments, and incentive car hire payments, (all of which payments made to Lessee are hereinafter collectively referred to as "Payments") if the Utilization (as defined below) of all of the Cars delivered

QMN *by either obtaining insurance or maintaining a self-insurance program which conforms to sound actuarial principles. If Lessee elects to carry insurance,

to Lessee on an aggregate basis for each calendar year shall be equal to or less than 92 percent and 250 miles per day. For the purpose of this Agreement, Utilization of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Cars, commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars are on lease to Lessee, commencing from the Initial Loading. In addition, Itel Rail will receive, as additional rental, all monies earned by the Cars prior to their Initial Loading.

(ii) In the event Utilization exceeds 92 percent and 250 miles per day in any calendar year, Itel Rail shall receive an amount equal to the Itel Rail Base Rental plus an amount equal to one-half of the Payments earned in excess of the Itel Rail Base Rental. For the purpose hereof, Itel Rail Base Rental shall be an amount equal to the total Payments for the calendar year which is the equivalent of the sum derived from Utilization at 92 percent and mileage at 250 miles per day. (The above determination of Itel Rail Base Rental insures that Lessee will, if the combination of Utilization and mileage is greater than 92 percent and 250 miles per day in any calendar year, receive one-half of all the Payments made by other railroads for use or handling of the Cars in excess of the Itel Rail Base Rental.) Formula example as set out in Attachment "A" hereto and made a part hereof.

(iii) If Itel Rail pays other railroads to move Cars in accordance with Section 3A, except for any expenses incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse Itel Rail for such expenses only from and out of monies received by Lessee pursuant to subsection 6A(ii).

(iv) The rental charges payable to Itel Rail by Lessee shall be paid from the Payments received by Lessee in the following order until Itel Rail receives the amounts due it pursuant to this Section: (1) incentive car hire payments; (2) car hire payments; (3) mileage charges and (4) other, with the exception of demurrage and other shipper related charges.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight and the appropriate amount due as a result thereof is received by Itel Rail, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within five (5) months after the end of each calendar year. However, to enable Itel Rail to meet its financial commitments, Itel Rail shall prior to making such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due Itel Rail, Itel Rail shall within three (3) months after the end of each calendar quarter, calculate on a quarterly basis the amount due it pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

GM
A

C. If at any time during a calendar quarter the number of days that the Cars have not earned Payments is such as to make it mathematically certain that Utilization and mileage in such calendar quarter cannot be equal to or greater than 90 percent and 200 miles per day respectively, Itel Rail may, at its option and upon not less than 10 days prior written notice to Lessee, terminate this Agreement as to such Cars as Itel Rail shall determine. Lessee shall, (i) within 5 days of Itel Rail's written notice notify Itel Rail of its intent to pay Itel Rail an amount equal to the difference between rent Itel Rail received for each calendar quarter and the rent Itel Rail would have received had the Utilization for each calendar quarter been 90 percent and the average mileage for each of the Cars had been 200 miles per day, and (ii) make such payment within 15 days of receipt of such notice.

D. Itel Rail may, at its option, terminate this Agreement if the ICC shall, at any time, require that Lessee spend funds not earned by the Cars in order for Lessee to continue to meet its obligations set forth in this section.

E. Subsequent to the Initial Loading, if any Car remains on Lessee's railroad tracks for more than seven (7) consecutive days, Itel Rail may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven (7) consecutive days because Lessee has not given preference to the Cars as specified in Section 3B, Lessee shall be liable for and remit to Itel Rail an amount equal to the Payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period.

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 tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefore to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Itel Rail in connection with the acquisition of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the cars be returned to such party. Lessee agrees that to the extent it has physical possession 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 Itel Rail or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. 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. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, 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 ten 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 thirty (30) days following notification of the existence of such breach.

(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) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state. This section not applicable to the Department's Theodore, Alabama property.

B. Upon the occurrence of any event of default, Itel Rail may, at its option, terminate this Agreement 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 bear Itel Rail'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 the Cars shall terminate; and thereupon Itel Rail 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. Termination

Upon the termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to Itel Rail by delivering at Lessee's railroad line or at such location that is mutually agreeable to both parties the same to Itel Rail. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Car and the placing thereon of such markings as may be designated by Itel Rail, either, at the option of Itel Rail, (1) by Lessee upon return of such Cars to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. 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 Itel Rail. If such Cars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from the Cars and place thereon such markings as may be designated by Itel Rail. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver such Cars to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days free storage on its railroad tracks for Itel Rail or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to subsection 6C or 6E or section 8 prior to the end of its lease term, Lessee shall be liable to Itel Rail for all costs and expenses incurred by Itel Rail to repaint the Cars and place thereon the markings and name or other insignia of Itel Rail's subsequent lessee.

10. Indemnities

Itel Rail will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while Lessee has physical possession of Cars and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars other than loss or physical damage of or to the Cars (unless occurring through the fault of Lessee,) including without limitation the construction, purchase and delivery of the Cars to Lessee's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by Itel Rail or Lessee).

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is an Agency of the State of Alabama, 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 do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement 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.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to Itel Rail in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the 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 the Lessee to perform its obligations under this Agreement.

12. Inspection

Itel Rail 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 insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Itel Rail of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify Itel Rail in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to Itel Rail promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

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 Itel Rail assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents providing these documents do not incur any financial obligation on the Lessee or conflict with the laws and statutes of the State of Alabama as may be required in furtherance of this Agreement and in furtherance of any financing agreement entered into by Itel Rail in connection with the acquisition of the Cars in order to confirm the financing party's 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.

C. 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 of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a Lessee only.

D. No failure or delay by Itel Rail shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Itel Rail nor shall any waiver or indulgence by Itel Rail or any partial or single exercise of a right, power or remedy preclude any other further exercise thereof or the exercise of any other right, power or remedy, except as otherwise provided for herein.

E. This Agreement shall be governed by and construed according to the laws of the State of California, provided the laws of California do not conflict with the laws of Alabama, and if they do conflict, the laws of Alabama shall prevail.

F. 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, addressed to the president or Chief Executive Officer of the other party at the address set forth above.

G. Lessee shall not be liable for any financing obligations to any lending or financing institution or any other entity incurred by Itel Rail or Itel Rail's parent company or any subsidiary of Itel Rail's parent company pursuant to the acquisition of Cars and shall in no way be considered as a guarantor of any financing concerning the acquisition of the Cars. Itel Rail agrees to indemnify and hold harmless Lessee from any legal action which may be brought against Lessee due to non-performance by Itel Rail in completing its financial obligations to any lending or funding institution or any other entity which may be involved in financing the Cars.

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

ITEL CORPORATION, RAIL-INTERMODAL
DIVISION

ALABAMA STATE DOCKS DEPARTMENT,
AN AGENCY OF THE STATE OF ALABAMA,
DOING BUSINESS AS TERMINAL RAILWAY,
ALABAMA STATE DOCKS

By: 
Allen S. Peterson

By: 
Robert M. Hope

Title: President

Title: Director

Date: November 28, 1978

Date: October 13, 1978

ATTACHMENT A
FORMULA EXAMPLE

98% UTILIZATION & 300 MILES PER DAY

TOTAL PAYMENTS = \$556,581.20

ITEL'S BASE = $.92(365 \times \$14.11) + .92(365 \times 250 \times .0567)$
= \$236,906.90 + \$237,998.25
= \$474,905.15

ANNUAL REVENUE = Total Payments - ITEL'S BASE
= \$556,581.20 - \$474,905.15
= \$81,676.05

ITEL PAYMENTS = ITEL'S BASE + $\frac{1}{2}$ (ANNUAL REVENUE)
= \$474,905.15 + \$40,838.03
= \$515,743.18

TASD REVENUE PARTICIPATION = TOTAL PAYMENTS - ITEL PAYMENTS
= \$556,581.20 - \$515,743.18
= \$40,838.02

Based upon a fleet of 50 cars with per diem (\$14.11) and mileage (5.67¢/mile) currently specified as of October 1, 1978.

ITEL CORPORATION, RAIL-INTERMODAL
DIVISION

By: _____

Title: _____

Date: _____

TERMINAL RAILWAY, ALABAMA
STATE DOCKS

By: _____

Title: _____

Date: _____

Allen S. Peters

President

November 28, 1978

R. M. Hoke

Manager

October 13, 1978

EQUIPMENT SCHEDULE No. 1

Istel Corporation, Rail Division hereby leases the following Cars to Terminal Railway, Alabama State Docks subject to the terms and conditions of that certain Lease Agreement dated as of _____, 1978.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
FC	70-ton flush deck flatcars for trailer and container service	TASD 790000 - 790049 <i>R. Whit</i>	Approx. 89'	N/A	N/A	N/A	50

ITEL RAIL-INTERMODAL DIVISION

TERMINAL RAILWAY, ALABAMA STATE DOCKS

BY:

Allen S. Peterson

BY:

R. Whit

TITLE:

President

TITLE:

General

DATE:

November 28, 1978

DATE:

October 13, 1978

STATE OF Michigan
COUNTY OF Washtenaw

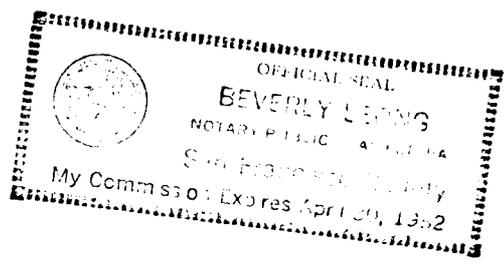
On this 13th day of Oct 1972, before me personally appeared Wm. H. Hays, to me personally known, who being by me duly sworn says that such person is President of Western State Telephone Co., that the foregoing Equipment Schedule No. was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Henry A. Kottler
Notary Public
My Commission Expires Jan. 6, 1973

STATE OF California
COUNTY OF San Francisco

On this 25th day of Nov 1972, before me personally appeared Alfred D. Peterson to me personally known, who being by me duly sworn says that such person is President of Istel Corporation, Rail Division, that the foregoing Equipment Schedule No. 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 such corporation.

Beverly Leong
Notary Public



I, Beverly Leong, being a notary public, do hereby certify that I have compared this copy with the original document and that it is a true and correct copy in all respects.

