

6-245A034

Date SEP 1 1976

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ICC Washington, D.



RECORDATION NO. 8355-C Filed & Recorded

SEP 1 1976 -1 50 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8355-D Filed & Recorded

SEP 1 1976 -1 50 PM

INTERSTATE COMMERCE COMMISSION

August 25, 1976

Hon. Robert L. Oswald  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20036

RECORDATION NO. 8355-E Filed & Recorded

SEP 1 1976 -1 50 PM

INTERSTATE COMMERCE COMMISSION

RE: Conditional Sale Agreement made as of June 4, 1976,  
filed with the ICC on June 7, 1976, at 1:40 p.m. and  
assigned recordation number 8355.

Dear Sir:

Enclosed for filing with and recording by the Interstate  
Commerce Commission are six (6) executed counterparts  
of a Second Amendment and Supplement dated as of July 30,  
1976, to the above referenced Conditional Sale Agreement  
between SSI Rail Corp., Two Embarcadero Center, San  
Francisco, California, 94111, Buyer, and FMC Corporation,  
200 East Randolph Drive, Chicago, Illinois, 60601, Seller,  
covering the following railroad equipment:

100 50'6", 70-ton capacity, general service, single-  
sheath boxcars built by FMC Corporation, numbered  
VSO 6100 through 6199, inclusive.

Identifying marks on all of the foregoing equipment:  
The words, "Ownership subject to a Security Agree-  
ment filed under the Interstate Commerce Act,  
Section 20c," printed on each side of each unit.

The Seller's interest was previously assigned to First  
Pennsylvania Bank, First Pennsylvania Tower, Centre Square,  
Philadelphia, Pennsylvania, 19101. The enclosed six  
(6) executed counterparts of an Agreement and Assignment  
assign such Bank's interest to Citicorp Leasing, Inc.,  
399 Park Avenue, New York, New York, 10022. The Conditional  
Sale Agreement, as amended, is guaranteed by ITEL Corporation,  
One Embarcadero Center, San Francisco, California, 94111,  
the parent company of SSI Rail Corp.

Also enclosed are six (6) executed counterparts of an  
Assignment of Lease and Agreement assigning to Citicorp

(1)

*David M. Schwartz  
Sullivan & Worcester*

*Counterparts*

RECEIVED  
SEP 1 1 46 PM '76  
I.C.C.  
FREE OPERATION BR.

Hon. Robert L. Oswald  
August 25, 1976  
Page 2.

Leasing, Inc., SSI's interest in its lease of railroad equipment with the Valdosta Southern Railroad Company dated March 26, 1976 as and only to the extent that such lease relates to the above referenced boxcars.

Also enclosed is this Company's check in the sum of \$30.00, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing documents.

Please return all copies of the enclosed counterparts with recordation data stamped thereon to the representative of the office of Sullivan and Worcester, Attorneys at Law, Washington, D. C., who will be delivering this letter on our behalf.

Very truly yours,

Martin D. Goodman  
Secretary

MDG:md  
Enc.

SEP 1 1976 1 10 PM

ASSIGNMENT OF LEASE AND AGREEMENT d ~~INTERSTATE~~ **INTERSTATE COMMERCE COMMISSION**  
as of July 30, 1976 (hereinafter called  
this Assignment), by and between SSI Rail  
Corp., a Delaware corporation, (together with  
its successors and assigns, being hereinafter  
called SSI) and Citicorp Leasing, Inc.  
(hereinafter called Citicorp).

WHEREAS SSI has entered into a conditional sale agree-  
ment made as of June 4, 1976, filed and recorded with  
the Interstate Commerce Commission and assigned Recordation  
No. 8355 providing for the construction, sale and delivery  
by FMC Corporation and the purchase by SSI of one hundred  
(100) 50' 6" 70-ton capacity, general service, single  
sheath boxcars numbered VSO 6100 through VSO 6199 inclusive  
(hereinafter called the Equipment), amended pursuant  
to a First Amendment and Supplement to Conditional Sale  
Agreement dated June 22, 1976, filed and recorded with  
the Interstate Commerce Commission and assigned Recordation  
No. 8355B (such Conditional Sale Agreement, as amended,  
hereinafter, together with amendments and supplements  
thereto, being collectively called the Agreement); and

WHEREAS SSI and Valdosta Southern Railroad Company  
(hereinafter called the Lessee) have entered into a  
lease of railroad boxcars, including the Equipment dated  
as of March 26, 1976 (hereinafter, together with any  
amendments and supplements thereto, being called the  
Lease), providing for the leasing by SSI to the Lessee of  
the Equipment; and

WHEREAS, the Lease also covers the leasing to the Lessee  
of other boxcars not included as part of the Agreement; and

WHEREAS in order to provide security for the obligations  
of SSI under the Agreement and as an inducement to Citicorp  
to purchase the Conditional Sale Indebtedness (as defined  
in the Agreement), SSI agrees to assign for security purposes  
its rights in, to and under the Lease to Citicorp as and  
only to the extent that the Lease relates to the Equipment;

NOW, THEREFORE, in consideration of the payments to be  
made and the covenants hereinafter mentioned to be kept  
and performed, the parties hereto agree as follows:

1. SSI hereby assigns, transfers and sets over unto  
Citicorp, as collateral security for the payment and  
performance of SSI's obligations under the Agreement, all  
of SSI's right, title and interest, powers, privileges  
and other benefits under the Lease as and only to the

extent that the Lease relates to the Equipment (subject to such rights Lessee may have under the Lease to elect to collect such Rental Charges [as defined in the Lease] and/or setoff against such Rental Charges and other moneys or have paid by SSI all costs, expenses, fees or charges incurred by Lessee in connection with SSI's obligations under the Lease which are assumed or paid by Lessee), including, without limitation, all rights to receive and collect all rentals, profits and other sums payable to or receivable by SSI from the Lessee under or pursuant to the provisions of the Lease to the extent the same are payable in respect to the Equipment whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payment); provided, however, that until an Event of Default under the Agreement, or any event which with notice or lapse of time or both could constitute such an Event of Default, shall occur, it is understood that SSI shall be entitled to collect and receive all such Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to apply all payments to which SSI is entitled to the payment of any and all of SSI's obligations under the Agreement. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, SSI hereby irrevocably authorizes and empowers Citicorp in its own name, or in the name of its nominee, or in the name of SSI or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which SSI is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

Whenever the Lease covers other boxcars not included as part of the Equipment and the amount of any payment due to SSI under the Lease is calculated on an aggregate basis for all boxcars leased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to the Equipment, including, without limitation, (i) to the extent aforesaid, all moneys due and to become due to SSI under or in connection with the Lease, whether as car hire payments (including both straight and incentive per diem), mileage charges or other rental revenues, payments in connection with damage to or destruction of any boxcar, claims for damages or otherwise, (ii) all rights and powers of SSI under the Lease to exercise any option, to consent or make any waiver or agreement or to take any other action with respect to any unit of the Equipment, and (iii) all rights and claims of SSI to insurance proceeds with respect to any unit of the Equipment. The term "Assigned Fraction" as used

herein shall mean a fraction the numerator of which shall be the number of boxcars comprising the Equipment and the denominator of which shall be the aggregate number of boxcars at the time leased under the Lease.

2. This Assignment is executed only as security for the obligations of SSI under the Agreement and, therefore, the execution and delivery of this Assignment shall not subject Citicorp to, or transfer, or pass, or in any way affect or modify, the liability of SSI under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of SSI to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, SSI or persons other than Citicorp.

3. To protect the security afforded by the Assignment, SSI agrees as follows:

(a) SSI will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by SSI.

(b) At SSI's sole cost and expense, SSI will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties, or liabilities of SSI under the Lease.

(c) Should SSI fail to make any payment or to do any act which this Assignment requires SSI to make or do, then Citicorp, but without obligation so to do, after first making written demand upon SSI and affording SSI a reasonable period of time within which to make such payment or do such act, but without releasing SSI from any obligation hereunder, may make or do the same in such manner and to such extent as Citicorp may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of Citicorp, and also the right to perform and discharge each and every obligation, covenant and agreement of SSI contained in the Lease; and in exercising any such powers, Citicorp may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and SSI will reimburse Citicorp for such costs, expenses and fees.

4. Upon the full discharge and satisfaction of all SSI's obligations under the Agreement, this Assignment and all rights herein assigned to Citicorp shall terminate, and all estate, right, title and interest of Citicorp in and to the Lease shall revert to SSI.

5. SSI will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Citicorp in order to confirm or further assure, the interests of Citicorp hereunder.

6. In the Event of Default under the Agreement, Citicorp may assign all or any of the rights assigned to it hereby or arising under the Lease, including without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of Citicorp hereunder. Citicorp will give written notice to SSI and the lessee of any such assignment.

7. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names, by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

SSI RAIL CORP.



Vice President

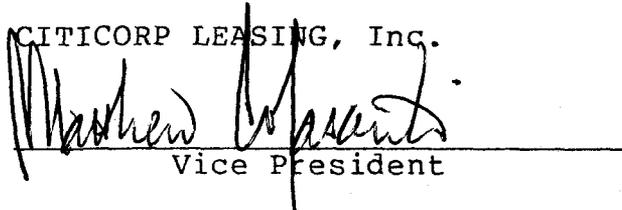
[Corporate Seal]

Attest:



Assistant Secretary

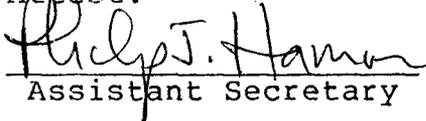
CITICORP LEASING, Inc.



Vice President

[Corporate Seal]

Attest:



Assistant Secretary

(4)

STATE OF CALIFORNIA)
)
CITY AND COUNTY OF )
SAN FRANCISCO )

On this 17th day of August, 1976, before me personally appeared Patrick B. McManus, to me personally known, who, being by me duly sworn, says that he is Vice President of SSI RAIL CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Terry L. Russell
Notary Public

My Commission expires: May 10, 1980

STATE OF New York )
)
COUNTY OF New York )

On this 26th day of August, 1976, before me personally appeared Matthew Colasanti, to me personally known, who, being by me duly sworn, says that he is Vice President of CITICORP LEASING, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Claudean Williams
Notary Public

[Notarial Seal]

CLAUDEAN WILLIAMS
Notary Public, State of New York
No. 4511613 Qualified in Bronx Co.
Cert. Filed in New York County
Commission Expires March 31, 1977

My Commission expires:

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 26 day of March, 1976, among ITEL CORPORATION, a Delaware corporation, One Embarcadero Center, San Francisco, California 94111 ("Itel"), SSI RAIL CORP., a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("SSI") as Lessor and VALDOSTA SOUTHERN RAILROAD COMPANY, a Georgia corporation (the "Lessee"), as Lessee.

1. Scope of Agreement

A. SSI agrees to lease to Lessee, and Lessee agrees to lease from SSI, a minimum of one hundred (100) boxcars of the types and descriptions as set forth in any lease schedules executed by the parties concurrently herewith or from time to time hereafter and made a part of this Lease Agreement. The scheduled items of equipment are hereinafter called collectively the "Boxcars." The word "Schedule" as used herein includes the Schedule executed concurrently herewith and all additional Schedules and amendments thereto for Boxcars, each of which when signed by both parties shall be a part of this Lease Agreement.

B. It is the intent of the parties to this Lease Agreement that SSI shall at all times be and remain the lessor of all the Boxcars. 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 Lease Agreement shall remain in full force until it shall have been terminated as to all of the Boxcars. The term of a lease with respect to each Boxcar shall be for ten (10) years commencing upon the date of delivery of such Boxcar as set forth in Section 3A hereof.

B. If this Lease Agreement has not been earlier terminated and no default has occurred and is continuing, the lease term with respect to each Boxcar shall be automatically extended for up to ten (10) consecutive periods of twelve months subsequent to the initial ten (10) year period; provided, however, that SSI or Lessee may terminate this Lease Agreement, after expiration of such initial period or any extension thereof, by twelve (12) months notice in writing delivered to the other.

3. Supply Provisions

A. SSI will arrange for the purchase of Boxcars conforming to the specifications set forth in the Schedule and to all applicable governmental regulatory specifications. During and after manufacture

## LEASE AGREEMENT

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### 3. Supply Provisions

A. SSI will arrange for the purchase of Boxcars conforming to the specifications set forth in the Schedule and to all applicable governmental regulatory specifications. During and after manufacture of the Boxcars, SSI will at its own cost and expense, cause the Boxcars to be inspected in accordance with applicable government and AAR regulations. SSI shall certify in writing to Lessee that each Boxcar conforms to the specifications set forth in the Schedule and to all applicable governmental regulatory specifications. SSI will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. The Boxcars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance by SSI as is consistent with mutual convenience and

economy. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars, Lessee agrees to pay to SSI the rental charges set forth in this Lease Agreement. To move the Boxcars to Lessee's railroad line and insure optimal use of the Boxcars after the first loading of freight for each Boxcar on the railroad line of Lessee (the "initial loading"), SSI agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee and SSI, to issue movement orders to other railroad lines with respect to such Boxcars in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease one or more types of Boxcar, it shall not lease boxcars from any other party (except Owens-Illinois, Inc. or a subsidiary thereof) unless it shall have leased the minimum 100 Boxcars required by this Lease Agreement. Once the minimum 100 Boxcars shall have been leased by Lessee, it shall then not lease boxcars from any other party (except Owens-Illinois, Inc. or a subsidiary thereof) unless it shall have given SSI at least forty-five (45) days prior written notice of its desire to lease boxcars and SSI shall then have the opportunity to lease such boxcars to Lessee (subject to the terms and conditions of this Lease Agreement and manufacturer's delivery schedules) and at terms not less favorable to Lessee than that offered by such other parties. The foregoing, however, shall not be deemed to prohibit Lessee from leasing from other parties if SSI cannot equal the lease terms offered by such other parties. Notwithstanding the purchase of boxcars or the lease or direct interchange of boxcars from other parties, Lessee shall give preference to SSI and shall load the Boxcars leased from SSI prior to loading other boxcars (except (i) boxcars owned by RAILBOX where Lessee is required to give preference thereto by the action of any legislative body or regulatory or governmental agency, and except (ii) boxcars assigned to Lessee's service pursuant to existing agreements or leases); 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. Additional Boxcars may be leased from SSI by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Boxcars shall be identified in Schedules to this Lease Agreement and shall benefit from and be subject to this Lease Agreement upon execution of the Schedules by SSI and Lessee.

D. In the event during the term of this Lease Agreement any Boxcar becomes for any reason and in the sole determination of Lessee no longer available to Lessee for its intended use, then any such Boxcars shall be deleted from the Schedule.

#### 4. Railroad Markings and Record Keeping

A. SSI agrees that on or before delivery of the Boxcars to Lessee, the Boxcars will be painted in the colors designated by Lessee and lettered with, in addition to the railroad markings of Lessee, the name and/or other insignia used by Lessee. Such name or insignia shall comply with all applicable regulations and shall be affixed to the Boxcars with a width not greater than seven (7) feet.

B. Lessee shall, or if requested by Lessee, SSI shall, during the term of this Lease Agreement prepare all documents for Lessee's signature and filing relating to the registration, maintenance and record keeping functions normally performed by Lessee with respect to the Boxcars. Such matters shall include but are not limited to the preparation of the following documents: (i) appropriat

AAR interchange agreements with respect to the Boxcars including an application for relief from AAR Car Service Rules 1 and 2 (at Lessee's option); (ii) registration for each Boxcar 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 with respect to the Boxcars.

C. Lessee shall, or if requested by Lessee SSI shall, perform all record keeping functions related to the use of the Boxcars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules such as car hire reconciliation. Correspondence from railroads using such Boxcars shall be addressed to Lessee at such address as Lessee, or SSI at Lessee's request, shall select.

D. All record keeping performed by SSI or Lessee hereunder and all record of payments, charges and correspondence related to the Boxcars shall be separately recorded and maintained by SSI or Lessee in form suitable for reasonable inspection by the other party from time to time during regular business hours of the party who is maintaining the records. Lessee shall supply SSI with such reports regarding the use of Boxcars by Lessee on its railroad line as SSI may reasonably request.

#### 5. Maintenance, Taxes and Insurance

A. SSI will pay all costs, expenses, fees or charges incurred in connection with the use and operation of each Boxcar during its lease term and any extension thereof, including, but not limited to, inspection, repairs, maintenance and servicing, unless such payments were occasioned by the fault of Lessee while a Boxcar was in the physical possession of Lessee. Lessee shall be responsible to inspect all Boxcars interchanged to it to insure that such Boxcars are in good working order and condition and shall be liable to SSI for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to SSI for and during the lease term of each Boxcar any right, title and interest in any warranty it may have in respect of the Boxcars. All claims or actions on any warranty so assigned shall be made and prosecuted by SSI at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be made payable to SSI. All proceeds from such recovery shall be used by SSI to repair or replace the Boxcars.

B. Lessee may make running repairs to facilitate continued immediate use of a Boxcar, but shall not otherwise make any alterations, improvements or additions to the Boxcars without SSI's prior written consent. If Lessee makes an alteration to any Boxcar without SSI's prior written consent, Lessee shall be liable to SSI for any revenues lost due to such alteration. Title to any such alteration, improvement or addition occurring in the course of, or as a result of, normal and customary maintenance shall be and remain with SSI.

C. Upon request of and at the expense of SSI, Lessee shall perform any necessary maintenance and repairs to Boxcars on Lessee's railroad tracks as may be reasonably requested by SSI and which Lessee, in its opinion, has the capability to perform. SSI shall also make, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Boxcars in good operating condition throughout the term of the lease of such Boxcars.

D. SSI will at all times while this Lease Agreement is in effect and at its own expense cause to be carried and maintained contingent liability insurance in amounts and coverage satisfactory to Lessee. Such insurance shall be taken out in the name of SSI and Lessee as their interests may appear. The policies or certificates shall provide that there shall be no recourse against Lessee for the payment of premiums, and shall provide for at least ten (10) business days' prior written notice to be given to Lessee by the underwriters in the event of cancellation. If SSI shall default in the payment of any premium in respect of any such insurance policies, Lessee may, but shall not be obliged to, pay such premium, and if Lessee does so, Lessee shall deduct the amount of such premium or premiums from the Rental Charges.

E. Lessee will at all times while this Lease Agreement is in effect be responsible for the Boxcars while they are on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the "AAR Car Service and Car Hire Agreement Code of Car Service Rules -- Freight" for cars not owned by Lessee which are operating on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Boxcars by either obtaining insurance or maintaining a self insurance program which conforms to sound actuarial principles. If Lessee elects to carry insurance, it shall furnish SSI concurrently with the execution hereof and thereafter at intervals of not more than twelve (12) calendar months, with a certificate of insurance signed by an independent insurance broker with respect to the insurance carried on the Boxcars. All insurance shall be taken out in the name of Lessee and SSI (or its assignee) as their interests may appear.

F. SSI agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee and by whomsoever payable on or relating to each Boxcar and on the lease, delivery or operation thereof which may be accrued, levied, assessed or imposed during the lease term or which remain unpaid as of the date of delivery of such Boxcar to Lessee, except taxes on net income imposed on Lessee and sales and use taxes imposed on the mileage charges and/or car hire revenues. SSI shall forward to Lessee all sales and use taxes received by it on behalf of Lessee. SSI and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Boxcars. SSI and Lessee shall review all tax returns prior to filing, it being understood that such review will be made in a prompt fashion in order to prevent any late filings and charges.

## 6. Rental Charges

A. Lessee agrees to pay the following Rental Charges to SSI for the use of SSI's Boxcars:

(i) SSI shall receive as rental payments amounts equal to all of the mileage charges and car hire revenues (including both straight and incentive per diem) payable to Lessee by other railroad companies if the utilization of all of the Boxcars on an aggregate basis for each calendar year shall be equal to or less than ninety (90) percent. For the purpose of this Lease Agreement, utilization of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that per diem is earned on the Boxcars, commencing from the initial loading, and the denominator of which is the aggregate number of days in each year that the

Boxcars are on lease to Lessee, commencing from the initial loading. In addition, SSI shall receive as additional rental all car hire revenues earned by the Boxcars prior to their initial loading.

(ii) In the event the utilization exceeds ninety (90) percent in any calendar year, SSI shall receive an amount equal to the SSI Base Rental plus an amount equal to one-half of the revenues earned in excess of the SSI Base Rental. For the purpose of this Lease Agreement, SSI Base Rental shall be an amount equal to the total mileage charges and car hire revenues for the calendar year multiplied by a fraction, the numerator of which is ninety (90) percent and the denominator of which is the utilization for such calendar year. (The above determination of SSI Base Rental insures that Lessee will, if the utilization is greater than ninety (90) percent in any calendar year receive one-half of the all mileage and car hire revenues earned by Lessee in excess of the SSI Base Rental.)

(iii) The Rental Charges payable to SSI by Lessee shall be paid from the monies received by Lessee in the following order until SSI receives the amounts due it pursuant to this Section 6: (1) incentive car hire payments; (2) straight car hire payments; and (3) mileage charges.

B. The calculations required above shall be made within three (3) months after the end of each calendar year. However, to enable SSI to meet its financial commitments, SSI may, prior to such calculations retain ninety-three (93) percent of the revenue received by it on behalf of Lessee. However, since the parties desire to determine on a quarterly basis the approximate amount of the rental payment due SSI, SSI shall within three (3) months after the end of each calendar quarter, calculate on a quarterly basis rather than a yearly 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.

C. In the event a fraction, the numerator of which is the aggregate number of days in the immediately preceding four (4) calendar quarters commencing with the first full four (4) calendar quarters after receipt of the last Boxcar on the Schedule executed concurrently herewith, and the denominator of which is the aggregate number of days that the Boxcars were available to the Lessee during such period less the aggregate number of days the Boxcars were out of service on foreign railroads not earning car hire revenues for any reason, is less than 87.5 percent, SSI may, at its option and upon not less than thirty (30) days prior written notice to Lessee, terminate this Lease Agreement with respect to such number of Boxcar as is necessary to bring the utilization of the Boxcars up to ninety (90) percent; provided, however, that prior to such termination Lessee may have the option of paying SSI an amount equal to the difference between the amount SSI actually received during said four (4) calendar quarters and the amount SSI would have received had a utilization rate for the Boxcars of 87.5 percent been achieved.

D. SSI may, at its option, terminate this Lease Agreement on thirty (30) days written notice to Lessee if the ICC shall, at any time, (i) issue an order reducing incentive per diem for Boxcars on an annual basis to three (3) months or less, or (ii) determine that Lessee may not apply its net credit balance from incentive per diem settlements in payment of the Rental Charges set forth in this section. Lessee may, in any event, terminate this Lease Agreement if for any reason governmental regulations or orders prohibit the payment of the Rental Charges described in this Section 6.

E. If any Boxcar suitable for loading remains on Lessee's railroad tracks for more than seven (7) days, SSI may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Lease Agreement as to such Boxcar and withdraw such Boxcar from Lessee's railroad tracks, except when such Boxcar is awaiting its initial loading. If any such Boxcar remains on Lessee's railroad tracks more than seven (7) days because Lessee has not given preference to SSI's Boxcars as specified in Section 3B, Lessee shall be liable to SSI for an amount equal to the car hire revenues Lessee would have earned if such Boxcars were in the physical possession and use of another railroad for the entire period after the expiration of seven (7) days, provided that there shall be excluded from the above, those days Lessee is required to hold the Boxcars at the direction of, or due to action taken or caused by, SSI.

#### 7. Lessee's Assumption of Record Keeping and Receipt of Rental Charges

At any time during the term of this Lease Agreement after having requested that SSI perform the record keeping referred to in Section 4.B and 4.C of this Lease Agreement, at its sole discretion Lessee may, upon prior written notice to SSI, take over and assume from SSI as soon as is practicable but in no event later than six (6) months after receipt of notice by SSI, all record-keeping functions, record of payments, charges and correspondence related to the use of the Boxcars. In addition, upon the giving of the notice provided for above, the parties will, as soon as practicable but in no event later than six (6) months, make arrangements for the receipt of Rental Charges by Lessee rather than SSI, it being understood that upon receipt of such Rental Charges by Lessee, Section 6B of the Lease Agreement will automatically be deemed to be revised to read as follows:

"B. The calculations required above shall be made within three (3) months after the end of each calendar year. However, since the parties desire that rental payments be made currently so that SSI may meet its financial commitments, Lessee shall remit to SSI on the first business day of each month, the full amount of all payments received by Lessee (less any deduction authorized to be made by Lessee under the terms of this Lease Agreement) during the next preceding calendar month from any car hire settlement with respect to any Boxcar leased hereunder. Following the yearly calculation, one-half of any amount paid to SSI in excess of the SSI Base Rental shall be deducted by Lessee from subsequent Rental Charges."

#### 8. Possession and Use

A. So long as Lessee shall not be in default under this Lease Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms

of this Lease Agreement and in the manner and to the extent Boxcars are customarily used in the railroad freight business. Lessee agrees that to the extent it has physical possession and can control use of the Boxcars, the Boxcars 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 SSI or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner and upon prior communication to the other party.

B. Lessee will not directly or indirectly create, or incur any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Boxcars or any interest therein or in this Lease 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, encumbrances, security interest, or claim if the same shall arise at any time.

#### 9. Default Remedies Upon Default

A. The occurrence of any of the following events shall be events of default:

(i) The non-payment by Lessee or SSI of any sum required hereunder to be paid by Lessee or SSI within thirty (30) days after written notice thereof;

(ii) The failure of SSI to comply with the provisions of Section 7;

(iii) The default by Lessee or SSI under any other material term, covenant, or condition of this Lease Agreement which is not cured within thirty (30) days after written notice thereof by either party to the other;

(iv) Any affirmative act of insolvency by Lessee or SSI or the filing by Lessee or SSI 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;

(v) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee or SSI 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 or SSI 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;

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

(vii) The termination of any insurance coverage required of Lessee or SSI by this Lease Agreement.

B. Upon the occurrence of any event of default, SSI or Lessee may, at its respective option, terminate this Lease Agreement and may proceed by appropriate court action to enforce performance by the defaulting party of its obligations under the terms of this Lease Agreement or to recover damages for the breach thereof. Lessee and SSI agree that the defaulting party shall bear the costs and expenses, including reasonable attorneys' fees of any such action. Upon the event of default solely of Lessee, SSI may, by notice in writing to Lessee, terminate Lessee's right of possession of the Boxcars, whereupon all right and interest of Lessee in the Boxcars shall terminate; and thereupon SSI may by its agents enter upon any premises where the Boxcars may be located and take possession of them and thenceforth hold, possess and enjoy the same free from any right of Lessee. SSI shall nevertheless have a right to recover from Lessee any and all rental amounts which under the terms of this Lease Agreement may then be due or which may have accrued to that date.

#### 10. Termination

A. At and after the expiration or termination of this Lease Agreement as to any Boxcars, Lessee will surrender possession of any Boxcars in its possession or subsequently received by Lessee by delivering the same to such destination as may be designated by SSI. All assembling, delivery, storage and transporting of the Boxcars shall be at the expense and risk of SSI. A Boxcar shall be deemed terminated and no longer subject to this Lease Agreement upon the removal of Lessee's railroad markings from the Boxcar, at the direction of, or by any of the parties hereto, and the placing thereon of such markings as may be designated by SSI. The changing of the markings shall occur as follows:

(i) If such Boxcars are on the railroad line of Lessee upon such expiration or termination, or are subsequently returned to Lessee's railroad line, Lessee shall, at Lessee's expense (except when the termination of the Lease Agreement is due to the fault of SSI, then at SSI's expense) and within ten (10) working days after written notice is received from SSI, remove Lessee's railroad markings from the Boxcars and place thereon such minimum railroad identification markings as required by the AAR and as designated by SSI. After the removal and replacement of markings, Lessee shall use its best efforts to load such Boxcars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to ten (10) days free storage on its railroad tracks for SSI or the subsequent lessee of any terminated Boxcar. For any storage after the tenth day hereunder, Lessee may charge SSI published storage charges as the reasonable cost of such storage, or may, at its option, arrange for suitable storage of such Boxcar with persons not a party to this Lease Agreement at the sole risk, cost and expense of SSI; or

(ii) If such Boxcars are not on the railroad line of Lessee upon termination, all costs of assembling, delivery, marking, storing and transporting

such Boxcars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by SSI.

B. Notwithstanding anything in this Lease Agreement to the contrary, and in consideration of Lessee entering into this Lease Agreement, Itel, upon termination of this Lease Agreement for any reason and in the event of SSI's failure to make full and prompt payment of its obligations hereunder or completely perform all of its other obligations hereunder for a period of sixty (60) days after SSI's receipt of a written request from Lessee so to do, hereby guarantees full and prompt payment and complete performance of all of SSI's obligations under this Lease Agreement. In connection with this guarantee of payment and performance, Itel represents, warrants and covenants to Lessee that Itel is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with full power to execute and deliver this Lease Agreement and the guarantee contained herein and to perform its obligations hereunder; that all such actions have been duly authorized by all necessary corporate action, are not in conflict with any provision of applicable law or regulation or the charter or by-laws of Itel or with any agreement to which Itel is a party; that Itel has complied with all applicable laws and regulations, and has obtained all necessary governmental and regulatory authority, approvals and consents to enable Itel to perform its obligations hereunder; and that this Lease Agreement and the guarantee are the legal and binding obligations of Itel.

#### 11. Indemnities

A. SSI will defend, indemnify and hold harmless Lessee from and against (i) any and all loss or damage of or to the Boxcars, unless occurring through the fault of Lessee while Lessee has physical possession of the Boxcars and (ii) any claim (patent or otherwise), cause of action, damage, liability, fines, cost or expense (including legal fees and costs) to which the Boxcars may be subject or which may be incurred in any manner by or for the account of any such Boxcar (unless occurring through the fault of Lessee) relating to the Boxcars or any part thereof, including without limitation the construction, purchase, delivery of the Boxcars to Lessee's railroad line, ownership, leasing or return of the Boxcars, 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 SSI or Lessee).

B. Any expense of any kind whatsoever incurred by Lessee, which is required under the terms of this Lease Agreement to be borne by SSI, shall be paid promptly by SSI to Lessee upon written request therefor by Lessee, including, but not limited to, costs, expenses, fees and charges relating to maintenance, repair or inspection performed on any railroad rolling stock which Lessee is required to perform or caused to have performed pursuant to governmental or AAR regulations as a result of this Lease Agreement.

#### 12. Warranties and Covenants

Lessee and SSI respectively represent, warrant and covenant to each other that:

(i) Lessee and SSI are corporations duly organized, validly existing and in good standing under the laws of the respective states where they are incorporated, and have the corporate power and authority

and are duly qualified and authorized to do business where, in the reasonable opinion of their respective management, they deem it necessary to carry out their present business and operations and to own or hold under lease their properties and to perform their obligations under this Lease Agreement.

(ii) The entering into and performance of this Lease Agreement will not violate any judgment, order, law or regulation applicable to Lessee or SSI, 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 SSI or on the Boxcars (except for equipment financing entered into by SSI for the construction of such Boxcars) pursuant to any instrument to which Lessee or SSI is a party or by which they or their assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee or SSI 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 or SSI.

(iv) Lessee is not a party to any present agreement or instrument or subject to any charter or other corporate restriction which, at the time of entering into this Lease Agreement, will individually or in the aggregate materially adversely affect Lessee's ability to perform its obligations under this Lease Agreement.

(v) Lessee has during the years 1964-1968 neither leased nor purchased any boxcars.

### 13. Inspection

SSI shall at any time during normal business hours have the right to enter Lessee's premises where a Boxcar may be located for the purpose of inspecting and examining the Boxcars to insure Lessee's compliance with its obligations hereunder. Lessee shall notify SSI of any accident of which it has knowledge connected with the malfunctioning or operation of any Boxcar, including in such report the time, place and nature of the accident and the damage caused to property, 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 SSI in writing within five (5) days of receipt of notice of any attachment, tax lien or other judicial process affecting any Boxcar. Upon SSI's written request, Lessee shall furnish a copy of its annual report submitted to the ICC and copies of any other income or balance sheet statements required to be submitted to the ICC.

### 14. Miscellaneous

A. This Lease 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 for an assignment by SSI to its parent or a subsidiary or affiliate or an assignment to a financial or banking institution for indebtedness incurred by SSI, neither SSI nor Lessee may, without the prior written consent of the other, assign, this Lease Agreement

or any of its rights hereunder or sublease the Boxcars 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 as may be required in furtherance of this Lease Agreement.

C. It is expressly understood and agreed by the parties hereto that this Lease Agreement constitutes only a lease of the Boxcars 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 Boxcars other than as a lessee.

D. No failure or delay by SSI or Lessee shall constitute a waiver or otherwise affect or impair any right, power or remedy available to SSI or Lessee, nor shall any waiver or indulgence by SSI or Lessee, or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Lease Agreement shall be governed by and construed according to the laws of the State of California.

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 of SSI or ITEL or the General Manager of Lessee at the respective address set forth above or to such other address as may be specified by any party in a notice to all other parties in accordance herewith.

G. This Lease Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any previous written or oral agreement in connection therewith.

H. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered as an original and such counterparts shall together constitute one agreement

between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement as of the day and year first above written.

ITEL CORPORATION

By Heim H. Hewerton

Title Secretary

Date 3-30-76

SSI RAIL CORP.

By [Signature]

Title [Signature]

Date 3-29-76

VALDOSTA SOUTHERN RAILROAD COMPANY

By Will Gulson

Title Vice President

Date March 26, 1976

I hereby certify that a copy of this document was filed in the Office of the Registrar General of Canada on the 26th day of April, A.D. 1976 at 9:45 a.m.

[Signature]  
Deputy Registrar General of Canada.

EQUIPMENT SCHEDULE

SSI Rail Corp. hereby leases the following Boxcars to Valdosta Southern Railroad pursuant to that certain Lease Agreement dated as of 3/26..... 1976

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	50' General Purpose Boxcar	VSO 6000-6199	50'6"	9'4"	11'3"	10'	200

SSI RAIL CORP.

*[Signature]*  
 \_\_\_\_\_  
 (TITLE)

DATE: *3-29-76*

*Mill Gilson*

*Vice President*  
 \_\_\_\_\_  
 (TITLE)

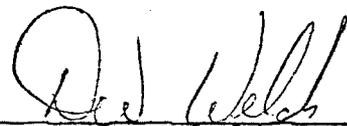
DATE: *March 26, 1976*

STATE OF OHIO )

ss

COUNTY OF LUCAS )

On this 26th day of March, 1976, before me personally appeared Mell Nelson to me personally known, who being by me duly sworn says that he is Vice President of the Valdosta Southern Railroad Company, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

**D. W. WELCH**  
**NOTARY PUBLIC, LUCAS COUNTY, OHIO**  
**My Commission Expires November 29, 1978**

