

9-285A024

ITEL
Pullman
September 29, 1989

Itel Rail Corporation

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

RECORDATION NO. 16411-B FILED 1425

OCT 12 1989 - 12 05 PM

INTERSTATE COMMERCE COMMISSION

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

Re: Schedule No. 2 to Master Lease dated June 6, 1989, between Itel Rail Corporation, as successor by merger into and name change from Pullman Leasing Company, and Indiana Hi-Rail Corporation

Dear Ms. McGee:

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

Please record this Schedule under the Master Lease dated June 6, 1989, between Itel Rail Corporation, as successor by merger into and name change from Pullman Leasing Company, and Indiana Hi-Rail Corporation, which was filed with the ICC on July 5, 1989, under Recordation No. 16411.

The parties to the aforementioned instrument are listed below:

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

Indiana Hi-Rail Corporation (Lessee)
Rural Route 1
Connersville, Indiana 47331

This Schedule adds to the Master Lease nine (9) 100-ton, Plate B gondolas bearing reporting marks IHRC 2101-2109.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Assistant

RECORDATION NO. 16411-B FILED 143

OCT 12 1989 - 12 05 PM

SCHEDULE NO. 2 TO MASTER LEASE INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE No. 2 ("Schedule") to that certain Lease Agreement the ("Agreement") made as of June 6, 1989 between ITEL RAIL CORPORATION, as successor by name change to PULLMAN LEASING COMPANY, as lessor ("Lessor"), and INDIANA HI-RAIL CORPORATION, as lessee ("Lessee"), is made this 15 day of September 1989. 28

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 2, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
GB	100 Ton, Plate B, Steel Floor, Solid Door, Gondolas	IHRC 2101-2109	52'6"	9'6"	4'6"	N/A	9

3. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for five (5) years from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to Lessee's lines (the "Initial Term"). Upon the delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
4. When a Car has been remarked, it shall be moved to Lessee's railroad line at no initial cost to Lessee at the earliest time that is consistent with the mutual convenience and economy of the parties. Lessee agrees to pay the rent set forth in the Agreement notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereunder. In order to move the Cars to Lessee's railroad line and to ensure optimal use of the Cars, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders to facilitate the movement of the Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules.

5. A. Lessee shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee shall register each Car in UMLER placing the letters designated by Lessor in owner's field in such a manner that Lessor, or its agent, is allowed access to any required information including but not limited to Train 62 Junction Advices and the Train 65, 67, 71 and 80 Advices with regard to each Car. If Lessee fails to register or improperly registers any Car in UMLER, Lessee shall be responsible for an amount equal to the revenues that would have been earned by such Car had it been properly registered in UMLER.
- B. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor for such calendar month with respect to the maintenance of the Cars, including sums due for maintenance performed by third parties and for maintenance performed by Lessee. Lessor shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly maintenance report and bill.
6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except as set forth in Section 5 of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement or substituted for Exhibit B thereto. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessee assumes responsibility for and agrees to pay, defend, hold harmless and indemnify Lessor and its successors against all taxes, fees, levies, imposts, duties or withholdings of any nature, together with penalties, fines or interest thereon, imposed on, incurred by, asserted against or imposed upon: (1) the Cars; (2) the lease, sublease or delivery of the Cars; and (3) the revenues earned by the Cars, including, but not limited to, mileage charges and/or car hire revenues earned during the Initial Term or any extended term of the Agreement; provided, however, that Lessee shall not be responsible for taxes on income imposed on Lessor while Cars are on Lessee's lines. Lessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Initial Term or any extended term, effective on the date of such sale, are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(v) hereinbelow).
- (ii) "Revenues 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 July 1989 edition of The Official Railway Equipment Register.

- (iii) "Per Diem Revenues" is defined as that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including but not limited to whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.
- (iv) "Mileage Revenues" is defined as that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including but not limited to whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.
- (v) "Revenues" is the sum of the Per Diem Revenues and Mileage Revenues.
- (vi) The "Base Rent" is for any calendar quarter or applicable portion thereof ("Quarter") during the Initial Term.
- (vii) "Initial Loading" of a Car shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after such Car is first received on Lessee's lines.

B. Lessor shall receive

Each Car delivered pursuant to Subsection 3.A. of the Agreement shall become subject to the rental calculation under Subsection 8.C. hereinbelow upon the Initial Loading of such Car; provided, however, that Lessor shall retain and be entitled to all by such Car after such Initial Loading, including any due Lessee pursuant to Subsection 8.C.(i) ("Lessee's Revenue Share"), until the total amount of Lessee's Revenue Share by Lessor shall have become equal to Lessor's expenses for remarking and delivering such Car to Lessee ("Delivery Expense").

C. Lessee agrees to pay rent to Lessor for the Cars calculated as follows:

- (i) If, for any Quarter, total Per Diem Revenues earned by all the Cars are less than or equal to the total Base Rent for the Cars, then Lessor shall retain and Lessee, subject to Subsection 8.B. above, shall receive all
- (ii) Lessor shall retain and be entitled to one hundred percent (100%) of

D. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are

lower in amount than those specified in Subsection 8.A. (ii), Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.

(ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.

(iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

E. Any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the Revenues earned by the Cars.

F. The calculations required in Section 8 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessee shall pay to Lessor by the seventieth (70th) day after the end of each Service Month (as hereinafter defined), of the total Revenues for that Service Month. For the purposes hereof, "Service Month" shall be defined as the calendar month in which Revenues were actually earned. At the time payment of of the total Revenues is made to Lessor, Lessee shall report to Lessor for the same month the hours earned, miles traveled and dollar figure for of the Revenues. of the Revenues shall be remitted to Lessor within one hundred (100) days after the end of each Service Month and the remaining of the total Revenues shall be remitted to Lessor within one hundred thirty (130) days after the end of each Service Month. Lessor shall within three (3) months of the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that within twenty (20) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

G. If, for any Quarter, earned by the Cars in the aggregate are less than per Car (the "Minimum Amount"), then Lessor may so notify Lessee in writing. Within ten (10) days of receipt of such notice from Lessor, Lessee shall either:

(1) Pay Lessor the difference ("Difference") between the Minimum Amount and the actual for such Quarter and agree to pay for the duration of the term of the Agreement the Difference for any subsequent Quarter in which such Difference occurs with respect to the Cars in this Schedule. Lessee shall pay Lessor

such Difference not later than sixty (60) days after receiving an invoice for such Difference.

(ii) Elect not to pay Lessor such Difference for such Quarter. In such event, Lessor may terminate all or any of the Cars described in this Schedule from the Agreement upon not less than thirty (30) days' written notice to Lessee at any time during the duration of the Agreement.

H. If any Car has remained on Lessee's property because Lessee has not given preference to the Car as specified in Subsection 3.B. of the Agreement, Lessee shall be liable for and remit to Lessor which would have been generated if such Car had been in the physical possession and use of a railroad for the entire period during which such Car is on Lessee's property due to such failure, with each Car travelling miles per day.

9. A. Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, losses, damages, liabilities, costs, and expenses (including attorney's fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession or control, or would be the "handling carrier's" responsibility under the Interchange Rules, as if the Cars were not bearing Lessee's reporting marks.

B. Except as provided in Subsection 9.A. above, and except for those claims, losses, damages, liabilities and expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall indemnify and hold Lessee harmless from any and all loss, damage or destruction of or to the Cars, ordinary wear and tear excepted.

C. The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement.

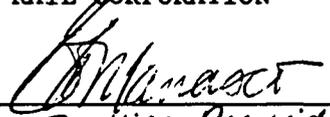
10. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, if some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to said tracks subsequent to the time of expiration of this Agreement as to the Cars. Lessee shall, at Lessor's option, provide up to one hundred twenty (120) days' free storage on its railroad tracks for any Car which is either on Lessee's railroad tracks at expiration or is subsequently returned to Lessee's railroad tracks. Said one hundred twenty (120) days shall run either from expiration or from the date such Car is returned to Lessee's railroad line subsequent to expiration, whichever date is later. If requested to do so by Lessor, Lessee shall, at Lessor's option, either move a remarked Car to an interchange point on Lessee's lines selected by Lessor or use its best efforts to load the remarked Car with freight and deliver it to a connecting carrier for shipment.

11. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

12. This Schedule may be executed by the parties hereto in any number of

counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAIL CORPORATION

By: 

Title: Sr. Vice President of Sales and Marketing

Date: 9-28-89

INDIANA HI-RAIL CORPORATION

By: 

Title: V.P. Equipment

Date: 9-15-89

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 2 dated as of 9/15/89 to the Lease Agreement dated as of June 6, 1989, by and between ITEL RAIL CORPORATION ("Lessor") and INDIANA HI-RAIL CORPORATION ("Lessee").

CAR REPORTING
MARKS AND NUMBER

DELIVERY DATE

IHRC 002101
IHRC 002102
IHRC 002103
IHRC 002104
IHRC 002105
IHRC 002106
IHRC 002107
IHRC 002108
IHRC 002109

The last day of the Initial Term for the above referenced Cars shall be

_____.

By: 
Title: V.I. Equipment
Date: 9/15/89

EXHIBIT B

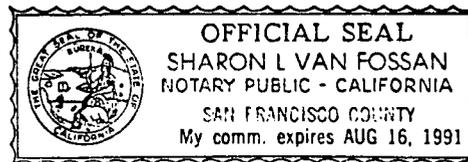
Running Repairs: Gondolas

Angle Cocks	Wheel Assemblies
Air Hose	Yoke
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	
Hand Brakes	
Brake Beams and Levers	
Truck Springs	

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

On this 28th day of September, 1989, before me personally appeared E. Loyd Manasco, to me personally known, who being by me duly sworn says that such person is SR VP Marketing of ITEL Rail Corporation, that the foregoing Schedule No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF Indiana)
) ss:
COUNTY OF Fayette)

On this 15th day of September, 1989, before me personally appeared David Booker, to me personally known, who being by me duly sworn says that such person is VP Equipment of Indiana Hi-Rail that the foregoing Schedule No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Myra Dee Falsch
Notary Public