

ITEL

Istel Rail Corporation

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

RECORDATION NO. **14909** Filed 1425

January 29, 1986

FEB 25 1986 - 1 50 PM

INTERSTATE COMMERCE COMMISSION

6-058A102
NR.

Date **FEB 25 1986**

Fee \$ **10.00**

Honorable James H. Bayne, Secretary
Interstate Commerce Commission
Washington, DC 20423

ICC Washington, D.C.
\$10.00 filing fee

Dear Mr. Bayne:

On behalf of Istel Rail Corporation, I submit for filing and recording under 49 USC \$11303(a) and the regulations thereunder, the enclosed four (4) counterparts of the following document:

New Number

Sublease dated January 10, 1986 between Istel Rail Corporation and Gulf and Mississippi Railroad Corporation

The names and addresses of the parties to the aforementioned Sublease as listed below:

- (1) Istel Rail Corporation (Sublessor)
55 Francisco Street
San Francisco, California 94133
- (2) Gulf and Mississippi Railroad Corporation (Sublessee)
605 Second Avenue
Columbus, Mississippi 39701

The equipment covered by this Sublease is ninety-seven (97) sixty-foot, 100-ton, Plate C, XM boxcars bearing reporting marks GMSR 40401-40497.

Also enclosed is a check for \$10 to cover the filing fees.

Once filed, please return to the bearer the stamped counterparts not required for filing purposes together with the fee receipt and the letter from the ICC acknowledging the filings.

Very truly yours,

Denise M. Bottarini

Denise M. Bottarini
Senior Legal Assistant

DMB:ps
Enclosures

cc: Robert S. Clark
J. Michael Kelly

100 OFFICE OF
THE CLERK
FEB 25 1 45 PM '86
MOTOR CARRIER UNIT

John Bruce
Denise Bottarini

11/01/85

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FEB 25 1986 -1 50 PM

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the "Sublease") is made as of this 10th day of January, 1986, between ITEL RAIL CORPORATION, a Delaware corporation, 55 Francisco Street, San Francisco, California 94133, as the Sublessor ("Sublessor") and GULF & MISSISSIPPI RAILROAD CORPORATION, a Delaware corporation, 605 Second Avenue, Columbus, Mississippi 39701, as the Sublessee ("Sublessee").

R E C I T A L S:

- A. Pursuant to the Agreement dated September 12, 1980 between Warwick Railway Company ("WRC") and ITEL Corporation, Rail Division, as predecessor in interest to Sublessor, Sublessor has been appointed as WRC's agent with full power and authority to enter into sublease agreements with respect to certain boxcars named therein, on behalf of WRC but in the name of Sublessor.
- B. Sublessor and Sublessee desire to enter into the Sublease with respect to a portion of such boxcars.
- 1. Scope of Sublease
 - A. Sublessor agrees to lease to Sublessee, and Sublessee agrees to lease from Sublessor upon the terms and conditions set forth herein, a number of items of equipment of the number, type, construction and other description set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Sublease. The word "Schedule" as used herein includes the Equipment Schedule or Equipment Schedules executed herewith and any additional Equipment Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Sublease. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car."
 - B. It is the intent of the parties to this Sublease that Sublessor shall at all times be and remain the sublessor of all Cars. Sublessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Sublease shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Sublease with respect to each Car described on each Schedule shall commence at 12:01 a.m. on the date and at the location that such Car is remarked pursuant to Subsection 3.A., and shall expire as to all of the Cars described on each Schedule, five (5) years from the date on which the last Car on such Schedule was remarked (the "Initial Term").
- B. If this Sublease has not been terminated early and no unremedied default has occurred pursuant to Section 9, the Sublease may be extended upon mutual written agreement of the parties hereto. Any term occurring after the expiration of the Initial Term shall be an "Extended Term".

3. Supply Provisions

- A. Sublessee hereby approves the specifications of the Cars delivered to it by Sublessor. Sublessor shall, at its expense, repaint and remark the Cars with the railroad markings of Sublessee in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Sublease at 12:01 a.m. on the date and at the location such Car is repainted and remarked ("Delivery"). After the Cars have been repainted and remarked, the Cars shall be moved to Sublessee's railroad line at no cost to Sublessee as soon as is consistent with mutual convenience and economy. Notwithstanding that Sublessee may not have immediate physical possession of the Cars leased hereunder, Sublessee agrees to pay the rent set forth in this Sublease. To move the Cars to Sublessee's railroad line and to ensure optimal use of the Cars after the Initial Loading (as hereinafter defined), Sublessor agrees to assist Sublessee in monitoring Car movements and, when deemed necessary by Sublessee and Sublessor, to assist in the issuance of movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") rules and Association of American Railroads ("AAR") interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules"). If Sublessor incurs expenses in having other railroads move Cars in accordance with this Section with Sublessee's request or approval, except for any expenses incurred in the initial delivery of such Cars to Sublessee's railroad line pursuant to this Section, Sublessee shall reimburse Sublessor for such expenses within ten (10) days of receipt of an invoice from Sublessor. The ~~twenty-five (25)~~ ²⁰ Cars on Equipment Schedule No. 1 shall be delivered to Sublessee and subject to the Sublease after the full execution of the Sublease. The Cars on Equipment Schedule No. 2 shall be delivered to Sublessee and become subject to the Sublease only upon the mutual agreement of the parties hereto. For the purposes hereof, the term "Initial Loading" as to each Car, shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Sublessee's railroad line with

the first load of freight; or 2) the thirty-first (31st) day after such Car is delivered pursuant to this Section.

- B. Sublessee shall at no time discriminate against the Cars in the provision of off-line loads, operation, use and maintenance as compared with any comparable boxcars; including boxcars owned, leased or managed by Sublessee or assigned or interchanged to Sublessee.
- C. Sublessee shall not lease boxcars from any party other than Sublessor unless it shall have given to Sublessor at least ninety (90) days' prior written notice of its desire to lease boxcars similar to the type on lease and Sublessor shall then have the opportunity to lease such boxcars to Sublessee at terms not less favorable to Sublessee than that offered by any other party. The foregoing, however, shall not be deemed to prohibit Sublessee from leasing from other parties if Sublessor cannot equal the lease terms offered by such other parties.
- D. Additional Cars shall be leased from Sublessor by Sublessee only upon the mutual agreement of the parties. During the term of this Sublease, Sublessor may, at its expense, replace any or all of the Cars with similar boxcars upon prior written notice from Sublessor to Sublessee; provided, however, that any such replacement shall not prevent or prohibit Sublessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

4. Record Keeping

- A. Sublessee shall, at its expense, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Sublease. Such matters shall include, but are not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars. Sublessee shall register each Car in UMLER in such a manner that Sublessor, or its agent, is allowed access to any required information with regard to each Car. In addition, Sublessee shall be responsible for any expenses incurred and rent lost as the result of any improper UMLER registration.
- B. Sublessee shall perform all record keeping functions relating to the use of the Cars including but not limited to, car hire reconciliation, collection and receipt of revenues from other railroad companies, record keeping associated with maintenance and repair, and billing in accordance with the Interchange Rules. All record keeping performed by Sublessee hereunder and all records of payments, charges and correspondence related to the

Cars shall be separately recorded and maintained by Sublessee in a form suitable for reasonable inspection by Sublessor from time to time during Sublessee's regular business hours. Upon Sublessor's reasonable request, Sublessee shall supply Sublessor with daily telephone reports of the number of Cars in Sublessee's possession or control. Sublessee hereby authorizes Sublessor to subscribe to the Train ~~65, 67,~~ 80 and 86 Advices for the Cars.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Sublessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Sublessee's expense in the event it was occasioned by the fault of Sublessee, or arises in those instances in which the Interchange Rules would assign responsibility to Sublessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Sublessee shall, at its expense, inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and Sublessee shall be liable to Sublessor for any repairs required for damage not noted at the time of interchange. Sublessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper on Sublessee's railroad line. With respect to the Cars, any repairs performed by Sublessee at Sublessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties hereto.
- B. Sublessor 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 as specified in the Interchange Rules. Sublessee may only make running repairs to those parts of the Cars specified in Exhibit A attached hereto to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Sublessor's prior written consent. Sublessee shall be liable to Sublessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Sublessor. Sublessor shall have the right to perform certain Repairs, as hereinafter defined, to the Cars at a location on Sublessee's property which is mutually agreeable to Sublessor and Sublessee or at an independent repair facility. Repairs ("Repairs") shall be of the type that Sublessor determines Sublessee would not normally perform or of the type that Sublessor determines would normally precipitate movement of such Cars to a repair facility. Sublessor shall notify Sublessee at least twenty-four (24) hours in advance of performing such Repairs.

- C. As long as this Sublease shall remain in effect, Sublessee shall be responsible for the Cars: (i) while in Sublessee's possession or control; and (ii) in the same manner that Sublessee is responsible under the Interchange Rules for similar equipment not owned by Sublessee. Sublessee shall, at all times while this Sublease is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to the Cars while on Sublessee's tracks or in Sublessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to the Sublessor. All insurance shall be taken out in the name of Sublessee and shall name Sublessor and any assignee of Sublessor as additional named insureds and shall also list Sublessor and any assignee of Sublessor as loss-payees on the insurance policies. Said policies shall provide that Sublessor and any assignee of Sublessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Sublessee fails to place insurance, or said insurance expires, Sublessor has the right to purchase insurance to protect all interested parties and Sublessee shall pay the cost thereof. With respect to the additional insureds, Sublessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Sublessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by the Sublessee.
- D. Each policy obtained by Sublessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to the Sublessor pursuant to this Subsection. Sublessee shall furnish to Sublessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Sublessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance. Sublessee shall provide Sublessor a Certified Copy of each insurance policy upon written request. In the event that, and only with Sublessor's written approval, Sublessee shall be permitted to self-insure on any specified interests, the Sublessee hereby warrants to place the Sublessor in the same position as if the relating insurance had been effected.
- E. Sublessor agrees to reimburse Sublessee, within thirty (30) days from Sublessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by the Sublessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to each Car, the Sublease or the delivery of the Cars which remained unpaid as of the date of the delivery of the Cars to Sublessee or which are assessed, levied or imposed during the term of this Sublease, except taxes

on income imposed on Sublessee, gross receipts or sales and use tax imposed on the mileage charges and car hire revenue or sale or lease of the Cars. Sublessor and Sublessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars. Notwithstanding any portion of this Section, Sublessor shall not be responsible for penalty or interest assessments resulting from Sublessee's failure to comply with any regulation or statute of any city, county, state or other taxing or assessing authority. Sublessee shall forward to Sublessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Sublessor. Sublessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Sublessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

6. Storage

As long as there is sufficient room on Sublessee's railroad tracks, Sublessee shall, at its expense and if deemed necessary by Sublessor, store the Cars on its railroad tracks. In the event that Sublessee's capacity to store any or all of the Cars on Sublessee's railroad tracks is impaired at any time, then Sublessee shall be responsible for all costs associated with storing the Cars at a location not on Sublessee's property.

7. Rent

A. Definitions

- (i) "Per Diem Revenues" is defined as the total per diem revenues earned and due from other railroad companies for the use or handling of the Cars, including but not limited to, per diem, whether or not collected and received by Sublessor and undiminished by any claimed abatement, reduction or offset caused by any action of Sublessee. Upon any such abatement, reduction or offset, Sublessee shall, within ten (10) days of Sublessor's request, reimburse Sublessor for such amounts.
- (ii) "Mileage Revenues" is defined as the total revenues earned and due from other railroad companies for the use or handling of the Cars, including but not limited to, mileage, whether or not collected and received by Sublessor and without regard to any claimed abatement, reduction or offset caused by any action of Sublessee. Upon any such abatement, reduction or offset Sublessee shall, within ten (10) days of Sublessor's request, reimburse Sublessor for such amounts.
- (iii) "Revenues" is defined as the sum of Per Diem Revenues and Mileage Revenues.

- (iv) The "Utilization Rate" of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned 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 were on lease to Sublessee, commencing from the Initial Loading.
 - (v) The "Base Rent" is defined as the sum equal to the Per Diem Revenues which the Cars would have earned in the aggregate at
- B. Sublessor shall receive all Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 7.C. upon the Initial Loading of such Car.
- C. Sublessee agrees to pay the following rent to Sublessor for the use of the Cars:
 - (i) In the event Per Diem Revenues earned in any calendar year or applicable portion thereof ("Year") are equal to or less than the Base Rent, Sublessor shall receive
 - (ii) In the event Per Diem Revenues earned in any Year exceed the Base Rent, Sublessor shall receive an amount equal to
- D. The calculations required in Subsection 7.C shall be made within five (5) months after the end of each calendar year ("Final Calculations"). However, to enable Sublessor to meet its financial commitments, Sublessee shall pay to Sublessor, within sixty (60) days after the end of each Month an amount equal to eighty percent (80%) of the Revenues for such Month and shall report to Sublessor the total hours earned, miles travelled and dollar figure equal to one hundred percent (100%) of the Revenues for such Month. Sublessee shall remit to Sublessor ten percent (10%) of the Revenues for each Month within ninety (90) days after the end of such Month and the final ten percent (10%) of the Revenues for each Month within one hundred twenty (120) days after the end of such Month. Sublessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided,

however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

E. If, with respect to any calendar quarter, Revenues are less than

AAA
F. ~~If, subsequent to the Initial Loading, any Car remains on Sublessee's railroad lines for more than seven (7) consecutive days, excluding those days such Car is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Sublessee, Sublessor may, at its option and upon not less than twenty four (24) hours prior written notice, terminate this Sublease as to such Car and take possession of such Car on Sublessee's railroad tracks. If any such Car has remained on Sublessee's railroad tracks because Sublessee has not complied with Subsection 3.B. herein, Sublessee shall be liable for and remit to Sublessor an amount equal to the Revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period during which such Car is on Sublessee's railroad line.~~

G. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Sublease on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Sublessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Sublessor to Sublessee.

H. If any Car, while in the possession of Sublessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Sublessee shall notify Sublessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Sublessee fails to so notify Sublessor within sixty (60) days of the Damage Date, Sublessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Sublessee has notified Sublessor of the damage pursuant to this Subsection, Sublessee shall remit to Sublessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Sublessor.

I. If, at any time during the Initial Term or any Extended Term, the ICC abandons or lowers the current per diem and mileage rates as set forth in the Hourly and Mileage Car Hire Rate Table in the October 1985 edition of the ICC Official Railway Equipment

the relative positions of the parties hereto

However, if a new sublease cannot be mutually agreed upon, either party may, upon not less than thirty (30) days' prior written notice, terminate this Agreement; provided, however, in the event of termination pursuant to this Subsection, K. Sublessee shall not be required to fulfill its obligations under Subsection 10.B. (iv) hereinbelow.

Handwritten initials and a circled 'K' are present in the left margin.

Register, Sublessor and Sublessee shall negotiate a new sublease which does not diminish ~~Sublessor's expected revenue sharing return; provided, however, that if a new sublease cannot be mutually agreed upon, Sublessor may, at its option and upon not less than thirty (30) days' prior written notice to Sublessee, terminate this Agreement.~~

Any agreement between Sublessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Sublessor's prior written approval if such Third Party Agreement affects the Revenues earned by the Cars, provided, however, that this shall in no event prevent or prohibit Sublessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

Sublessor and Sublessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 7.

8. Possession and Use

- A.** So long as Sublessee shall not be in default under this Sublease, Sublessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Sublease and in the manner and to the extent the Cars are customarily used in the railroad freight business as set forth in Subsection 8.C. However, Sublessee'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 the Cars which are the subject of this Sublease. Accordingly, following notice to Sublessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Sublease), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
- B.** Sublessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and 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 Sublessor or Sublessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.
- C.** The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of a

rail common carrier. During the term of this Sublease, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.

- D. Sublessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars or any interest therein, or in this Sublease or Schedule thereto, except those created for the benefit of ITEL Rail or any owner or secured party referred to in Subsection 8.A. hereinabove. Sublessee 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.

9. Default

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

(i) The nonpayment by Sublessee of any sum required herein to be paid by Sublessee within ten (10) days after the date any such payment is due;

(ii) The breach by Sublessee of any other term, covenant, or condition of this Sublease, which is not cured within ten (10) days thereafter;

(iii) The filing by or against the Sublessee of any petition or the initiation by or against the Sublessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of the Sublessee hereunder; or b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness;

(iv) ~~SDA~~ ^{lawful} The subjection of any of Sublessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;

~~SDA~~ (v) ~~Any action by Sublessee to discontinue rail service on all or a portion of its track or to abandon any of its rail properties.~~

- B. Upon the occurrence of any event of default hereunder, without limiting Sublessor's rights and remedies otherwise provided by law which shall be available to Sublessor in addition to the following rights and remedies (no right or remedy of Sublessor being exclusive but all such rights and remedies being available at all times to Sublessor and Sublessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by

Sublessor in enforcing its rights and remedies hereunder), Sublessor may, at its option, terminate this Sublease and/or may:

- (i) Proceed by any lawful means to enforce performance by Sublessee of this Sublease or to recover damages for a breach hereof, and/or
- (ii) By notice in writing to Sublessee, terminate Sublessee's right of possession and use of the Cars, whereupon all right and interest of Sublessee in the Cars shall terminate; and thereupon Sublessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Sublessee. Sublessor shall, in addition, have the right to recover from Sublessee any and all rental amounts which under the terms of this Sublease may then be due or which may have accrued to that date, together with Sublessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

10. Expiration or Early Termination

A. Expiration

Upon the expiration of this Sublease with respect to any Car, Sublessee shall promptly return such Car to Sublessor as follows:

- (i) If some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of expiration. Sublessee shall, at Sublessor's option, provide, with respect to any Car described on each Schedule which is either on the Sublessee's railroad tracks at the time of expiration or is subsequently returned to Sublessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of expiration, whichever date is later. DPA
- (ii) At the option of Sublessor, either Sublessee or a contractor chosen by Sublessor shall, at Sublessee's expense, remark the Cars as set forth in Subsection 10.C. of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor. After remarking, Sublessee shall load the Cars with freight and deliver them to a connecting carrier for shipment. Such cars shall be free of car hire & mileage payments for account GMSR. JOS DPA
- (iii) If some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car

to such location shall be borne by Sublessor. Sublessee shall bear the expense of remarking such Cars.

B. Early Termination

Upon the early termination of this Sublease with respect to any Car, whether pursuant to Section 9, Subsection 7.E. or Subsection 7.F. or Subsection 7.I. hereof, Sublessee shall promptly return such Car to Sublessor as follows:

- (i) If some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of early termination. Sublessee shall, at Sublessor's option, provide, with respect to any Car described on any Schedule which is either on the Sublessee's railroad tracks at the time of early termination or is subsequently returned to Sublessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of early termination or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of early termination, whichever date is later.
- (ii) At the option of Sublessor, either Sublessee or a contractor chosen by Sublessor shall, at Sublessee's expense, remark the Cars as set forth in Subsection 10.C. of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor. After remarking, Sublessee shall load the Cars with freight and deliver them to a connecting carrier for shipment.
- (iii) If some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by ~~Sublessee~~ Sublessor. Sublessee shall bear the expense of remarking such Cars. *Sublessor*
- (iv) For each Car that is terminated from the Sublease pursuant to this Subsection during the four (4) year period immediately following the Delivery of such Car, Sublessee shall pay to Sublessor a sum ("Repaint Reimbursement") with respect to such Car as set forth below.

<u>Period during which Car is terminated from Sublease</u>	<u>Repaint Reimbursement for such Car</u>
first year immediately following Delivery	80% of the repaint expense for such Car at the commencement of Sublease

second year immediately
following Delivery

60% of the repaint
expense for such Car
at the commencement
of Sublease

third year immediately
following Delivery

40% of the repaint
expense for such Car
at the commencement
of Sublease

fourth year immediately
following Delivery

20% of the repaint
expense for such Car
at the commencement
of Sublease

- C. Remarking, with respect to each Car, shall include the following:
a) removal of existing mandatory markings of Sublessee; b)
complete cleaning subsequent to the removal of markings as
designated by Sublessor; c) application of new mandatory markings;
and d) any transportation involved in moving each Car to and from
a suitable work area to perform the remarking set forth in this
Section.

11. Indemnities

- A. SUBLESSEE SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF SUBLESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN SUBLESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO SUBLESSEE.
- B. SUBJECT TO SUBSECTION 11.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH SUBLESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS SUBLEASE, SUBLESSOR SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST SUBLESSEE WITH RESPECT TO THE CARS, INCLUDING WITHOUT LIMITATION, THE LEASING OR RETURN OF THE CARS, USE, MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE CARS OR THE CONDITION OF THE CARS (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY SUBLESSOR OR SUBLESSEE).

12. Representations, Warranties, and Covenants

Sublessee represents, warrants and covenants that:

- A. Sublessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and, insofar as is material to Sublessor's rights under this Sublease, 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 Sublease.
- B. The entering into and performance of this Sublease will not violate any judgment, order, law or regulation applicable to Sublessee, 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 Sublessee or on the Cars pursuant to any instrument to which Sublessee is a party or by which it or its assets may be bound, except as provided in Section 8 hereinabove.
- C. There is no action or proceeding pending or threatened against Sublessee 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 Sublessee such that Sublessee's ability to perform its obligations hereunder would be materially and adversely affected.
- D. There is no fact which Sublessee has not disclosed to Sublessor in writing, nor is Sublessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Sublessee 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 Sublessee or the ability of the Sublessee to perform its obligation under this Sublease.

13. Inspection

Sublessor shall have the right to enter the premises where the Cars may be located at any time during normal business hours for the purpose of inspecting and examining the Cars to ensure Sublessee's compliance with its obligations hereunder.

14. Miscellaneous

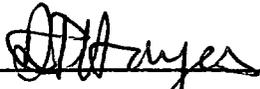
- A. This Sublease and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Sublessee may not without the prior written consent of Sublessor, assign this Sublease or any of its rights hereunder or sublease any 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 as may be required in furtherance of any financing agreement entered into by Sublessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Sublease and Schedules hereto and to confirm the subordination provisions contained in Section 8 of this Sublease.
- C.** It is expressly understood and agreed by the parties hereto that this Sublease constitutes a lease of the Cars only and no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Sublessee any right, title or interest in the Cars, except as a Sublessee only.
- D.** No failure or delay by Sublessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Sublessor nor shall any waiver or indulgence by Sublessor 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 Sublease shall be governed by and construed according to the laws of the State of California.
- F.** Sublessee shall notify Sublessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- G.** Sublessee shall also notify Sublessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car.
- H.** Sublessee shall furnish to Sublessor promptly upon its becoming available, a copy of its annual report and, when requested, copies of any income or balance sheet statements required to be submitted to the ICC.
- I.** 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, or when transmitted and received by telex, addressed to the president of the other party at the address set forth herein or at such other address as to which any party shall notify the other party.
- J.** The obligations and liabilities of Sublessor and Sublessee hereunder shall survive the expiration or earlier termination of this Sublease.

K. This Sublease represents the entire Sublease. This Sublease shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

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

ITEL RAIL CORPORATION

By: 
Title: President
Date: January 10, 1986

**GULF & MISSISSIPPI RAILROAD
COMPANY**

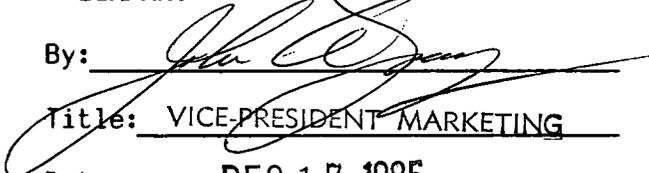
By: 
Title: VICE-PRESIDENT MARKETING
Date: DEC 17 1985

EXHIBIT A

Running Repairs

Angle Cocks
Air Hose
Train Line
Operating Levers in Brackets
Sill Steps
Grab Irons
Brake Shoes
Brake Shoe Keys
Brake Connecting Pin
Brake Head Wear Plates
Air Brakes
Hand Brakes
Truck Springs

Running Repairs Continued

Wheels
Yokes
Knuckles/Pins
Slack Adjuster
Couplers
Draft Gears
Coupler Carriers
Center Plates
Cotter Keys
Roller Bearing Adapters
Air Hose Supports

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

On this 10th day of January, 198~~5~~⁶, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Rail Corporation that the foregoing Sublease 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.

Ginny E. Hanger
Notary Public



STATE OF Mississippi)
) ss:
COUNTY OF Lowndes)

On this 17 day of December, 1985, before me personally appeared John Young, to me personally known, who being by me duly sworn says that such person is John Young of Gulf & Mississippi Railroad Corporation, that the foregoing Sublease 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.

LINDA J. WEBBER
NOTARY PUBLIC
LOWNDES COUNTY, MISSISSIPPI
My Commission Expires November 4, 1989

Linda J. Webber
Notary Public

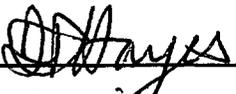
EQUIPMENT SCHEDULE NO. 1

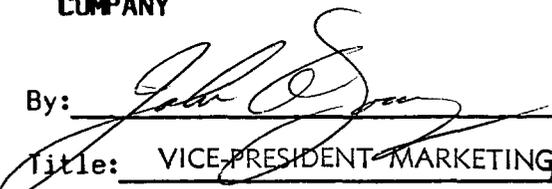
Itel Rail Corporation hereby subleases the following Cars to Gulf & Mississippi Railroad Corporation subject to the terms and conditions of that certain Sublease Agreement dated as of January 10, 1986.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	60', 100-ton, Plate C boxcars, 15" end of car cushioning, nailable steel floor	GMSR 40401-40439	60'10"	9'6"	11'0"	12' Sliding	40 25 

ITEL RAIL CORPORATION

GULF & MISSISSIPPI RAILROAD
COMPANY

By: 

By: 

Title: President

Title: VICE-PRESIDENT-MARKETING

Date: January 10, 1986

Date: DEC 17 1985

EQUIPMENT SCHEDULE NO. 2

Itel Rail Corporation hereby subleases the following Cars to Gulf & Mississippi Railroad Corporation subject to the terms and conditions of that certain Sublease Agreement dated as of January 10, 1986.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	60', 100-ton, Plate C boxcars, 15" end of car cushioning, nailable steel floor	GMSR 40440-40497	60'10"	9'6"	11'0"	12' Sliding	57 72

Handwritten initials and a checkmark.

ITEL RAIL CORPORATION

GULF & MISSISSIPPI RAILROAD COMPANY

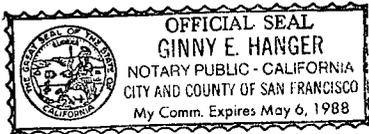
By: *[Signature]*
Title: President
Date: January 10, 1986

By: *[Signature]*
Title: VICE-PRESIDENT MARKETING
Date: DEC 17 1985

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

On this 10th day of January, 198~~5~~⁶, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Rail Corporation, that the foregoing Equipment Schedule No. 1 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.

Bunny E Hanger
Notary Public



STATE OF Mississippi)
) ss:
COUNTY OF Loveland)

On this 17 day of December, 1985, before me personally appeared John Young, to me personally known, who being by me duly sworn says that such person is John Young of Gulf & Mississippi Railroad Corporation, that the foregoing Equipment Schedule No. 1 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.

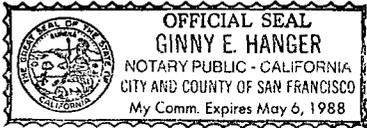
LINDA J. WEBBER
NOTARY PUBLIC
LOWNDES COUNTY, MISSISSIPPI
My Commission Expires November 4, 1989

Linda J. Webber
Notary Public

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

On this 10th day of January, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Rail Corporation, that the foregoing Equipment 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.

6 Sent



Ginny E. Hanger
Notary Public

STATE OF Mississippi)
) ss:
COUNTY OF Lowndes)

On this 17 day of December, 1985, before me personally appeared John Hayes, to me personally known, who being by me duly sworn says that such person is John Hayes of Gulf & Mississippi Railroad Corporation, that the foregoing Equipment 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.

LINDA J. WEBBER
NOTARY PUBLIC
LOWNDES COUNTY, MISSISSIPPI
My Commission Expires November 4, 1989

Linda J. Webber
Notary Public