

**ITEL**

11701 ✓

RECORDATION NO. .... Filed 1425

APR 21 1980 - 2 05 PM

INTERSTATE COMMERCE COMMISSION

**Rail Division**

Two Embarcadero Center  
San Francisco, California 94111  
(415) 955-9090  
Telex 34234

RECEIVED  
APR 21 1 57 PM '80  
I.C.C. OPERATION BR.

April 18, 1980

Ms. Agatha Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

No. **0-112A107**  
Date **APR 21 1980**  
Fee \$ **50.00**

Dear Ms. Mergenovich:

ICC Washington, D. C.

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith, on behalf of Itel Corporation, for filing and recordation, one (1) original, three (3) counterparts and two (2) photocopies of the following document:

Lease Agreement, made as of March 27, 1980, between Itel Corporation, Rail Division and South Central Tennessee Railroad Company, Inc., with attached Equipment Schedule No. 1.

The names and addresses of the parties to the aforementioned document are:

- (1) Itel Corporation, Rail Division  
Two Embarcadero Center, 23rd Floor  
San Francisco, California 94111
- (2) South Central Tennessee Railroad Company, Inc.  
c/o Kyle Railways, Inc.  
World Trade Center  
Room 221  
San Francisco, California 94111

The equipment covered by the enclosed Lease Agreement with attached Equipment Schedule No. 1 is twenty-five (25) gondola railcars (A.A.R. mechanical designation GB; each 52' 6" in length, 9' 6" in inside width and 3' 8" in height) marked SCTR 45001 to and including SCTR 45025.

Enclosed also is a check for \$50.00 for the required recordation fee.

Please stamp the original, all counterparts and all photocopies of the enclosed document with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the original, remaining counterparts and the photocopies be delivered to the bearer of this letter.

Sincerely,

*David V. Biesemeyer*  
David V. Biesemeyer  
Senior Counsel

DVB:jmz  
encls.

*Michael J. Brieseman*

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David V. Biesemeyer  
Senior Counsel

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**Interstate Commerce Commission**  
Washington, D.C. 20423

4/21/80

OFFICE OF THE SECRETARY

**David V. Biesemeyer**

**Intl Rail Division**

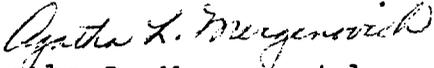
**Two Embarcadero Center**

**San Francisco, Calif. 94111**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **4/21/80** at **2:05pm**, and assigned re-  
recording number(s). **11701 & 11701-A**

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

3/25/80  
L-0006

RECORDATION NO. 11701 1425

APR 21 1980 -2 05 PM

LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

*JR*  
*CNT*

THIS LEASE AGREEMENT ("Lease"), made as of this 27<sup>th</sup> day of MARCH, 1980, between ITEL CORPORATION, RAIL DIVISION, a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("Lessor"), as Lessor, and SOUTH CENTRAL TENNESSEE RAILROAD COMPANY, INC., a California corporation ("Lessee"), as Lessee.

**1. Scope of Agreement**

A. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, all railroad rolling stock and other property (collectively the "Cars" and individually a "Car") described in each and every schedule now and hereafter executed by the parties hereto and made a part of this Lease (collectively the "Schedules" and individually a "Schedule").

B. It is the intent of the parties hereto that, as between Lessor and Lessee, Lessor or its assignee shall at all times be and remain the lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with this intent and that it will take such action and execute such documents as may be necessary to evidence this intent.

**2. Term**

A. This Lease shall remain in full force and effect until it has been terminated, as provided herein as to all of the Cars. The term of this Lease with respect to each Car described on any Schedule shall be fifteen (15) years (the "Initial Term") commencing upon the earlier of the thirtieth (30th) day after Lessee receives written notice from Lessor of such commencement or the date on which all Cars on such Schedule have been delivered as set forth in Section 3A hereof.

B. If this Lease has not been earlier terminated and no default by Lessee has occurred and is continuing, the term of this Lease shall automatically be extended for not more than five (5) consecutive periods of one (1) year each (collectively the "Extended Terms" and individually an "Extended Term") with respect to all of the Cars described on each Schedule, provided, however, that Lessor or Lessee may terminate this Lease upon expiration of the Initial Term or any Extended Term as to all, but not fewer than all, the Cars on any such Schedule by written notice delivered to the other party not less than three hundred sixty-five (365) days prior to the end of the Initial Term or not less than one hundred eighty (180) days prior to the end of any Extended Term, as applicable.

**3. Supply Provisions**

A. Lessor will inspect each of the units of railroad rolling stock or other property tendered by the manufacturer or other supplier thereof, for delivery to Lessee and intended by the parties hereto to be a Car hereunder. Prior to such inspection, however, Lessee shall confirm in writing to Lessor that the sample unit of such railroad rolling stock or other property intended by the parties hereto to be Cars hereunder, which will be made available for the Lessee's inspection prior to the commencement

of deliveries, conforms to the specifications of the railroad rolling stock or other property, previously agreed to by Lessee. Upon such approval of the sample unit by Lessee and upon Lessor's determination that the sample unit conforms to such specifications and to all applicable governmental regulatory specifications, and provided this Lease has not been terminated, Lessor will accept delivery of the sample unit, which shall thereupon become a Car hereunder and of other units provided such other units conform to such specifications, which shall then become Cars hereunder, at the manufacturer's or other supplier's facility and shall not notify Lessee in writing of such delivery. Each of the Cars shall be deemed delivered to Lessee upon such delivery to Lessor. The Cars shall be moved to Lessee's railroad line (the phrase "Lessee's railroad line" or similar phrases when used herein shall be deemed to include property owned by Lessee or with respect to which Lessee has a right of use or possession) at no cost to Lessee as soon after such delivery as is consistent with mutual convenience and economy of Lessor and Lessee. Due to the nature of railroad operations in the United States, Lessor can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay to Lessor the rent set forth in this Lease. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the Initial Loading (as hereinafter defined) of freight for each Car on the railroad line of Lessee, Lessor agrees to assist in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules. For purposes of this Lease, "Initial Loading" with respect to a Car shall be deemed to occur on the earlier of the actual first loading of such Car on the railroad tracks of Lessee or on the thirty-first (31st) day following delivery of such Car to Lessee in accordance with the above procedure.

B. Lessee shall give preference to Lessor and shall place for loading the Cars prior to placing for loading substantially similar units of railroad rolling stock leased by Lessee from other parties or purchased by Lessee subsequent to the date of this Lease or interchanged with railroads; provided, however, that this provision shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Lessee agrees that, until all Cars have been delivered to Lessee, Lessee will not lease any substantially similar units of railroad rolling stock or other property from any other party. Additional Cars shall be leased from Lessor by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be described in Schedules to this Lease and shall benefit from and be subject to this Lease upon execution of the Schedules by Lessor and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturer's or other supplier's delivery schedules, the arrangement of and compliance with financing satisfactory to Lessor and the mutual acknowledgement of the parties that the addition of such Car is not likely to reduce the Utilization Rate (as defined in Section 6) of all Cars leased to Lessee to less than .84 plus an average mileage of fifty (50) miles each day per diem payments and incentive per diem payments were earned by the Cars in any full calendar quarter during the Lease Term or any Extended Term. Due to the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule may be delivered to Lessee.

#### **4. Railroad Markings and Record Keeping**

**A.** Lessor and Lessee agree that on or before delivery to Lessee of any units or railroad rolling stock or other property and their identification as Cars hereunder, said units will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee and with such other markings as may be required by Lessor or Lessor's financing sources. Such name and/or insignia and other markings shall comply with all applicable regulations.

**B.** At no cost to Lessee, Lessor shall during the term of this Lease prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record-keeping functions involving the Cars. Such documents shall include, but not be limited to, the following: (i) appropriate AAR documents, including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

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

**D.** All record-keeping performed by Lessor hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessor in a form suitable for reasonable inspection by Lessee from time to time upon reasonable advance notice during Lessor's regular business hours. Lessee shall supply Lessor with such reports and records, including but not limited to, daily telephone reports to be initiated by and at the expense of Lessor of the number of Cars on Lessee's tracks, reports and records regarding the use of the Cars by Lessee on its railroad line and other reports and records related to the Cars, such as those related to maintenance or repair or those prepared by or for any relevant regulatory agency, as Lessor may reasonably request and in such form as Lessor shall reasonably request.

#### **5. Maintenance, Taxes and Insurance**

**A.** Except as otherwise provided herein, Lessor will pay all costs, expenses, fees and charges incurred by Lessor or Lessee in connection with the use and operation of the Cars during the Initial Term or any Extended Term, including, but not limited to, repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessor shall 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 AAR interchange rules throughout the Initial Term or any Extended Term. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and in conformance with AAR interchange rules and shall be liable to Lessor for any required repairs attributable to damage not noted at the time of interchange inspection.

B. Except as provided above, Lessor shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of Lessor, and at the expense of Lessor, except as provided below, Lessee shall perform or cause to be performed any necessary maintenance and repairs to Cars on Lessee's railroad tracks. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Lessor's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration and, at the option of Lessor, for the cost to return such Car to conformance with its original specifications. Title to any such alteration, improvement or addition shall be and remain Lessor's.

C. Lessee will at all times while this Lease is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining physical loss and damage insurance or, at the option of Lessee, and upon not less than 30 days prior written notice by Lessee to Lessor, Lessor will provide physical loss and damage insurance coverage to protect against the consequences of an event of loss involving the Cars while on Lessee's tracks. The cost for said coverage will be paid by Lessee. Such charges shall be deducted by Lessor from amounts payable to Lessee pursuant to subsection 6.A(ii) hereunder. Lessee shall also maintain bodily injury and property damage liability insurance to protect against any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee and/or Lessor with respect to the Cars while on the Lessee's railroad tracks. Lessee shall furnish Lessor, concurrently with the execution hereof, and thereafter at intervals of not more than twelve (12) calendar months, with certificates of insurance acceptable to Lessor with respect to the insurance required as aforesaid, signed by an independent insurance broker with binding authority. All physical loss and damage insurance shall be taken out in the name of Lessee and shall name Lessor (or its assignee) as loss-payee as their interests may appear. All such bodily injury and property damage insurance shall name Lessor as an additional insured. All such insurance shall be with appropriate insurance carriers and in such amounts as is reasonably prudent for a company such as Lessee. All such coverage shall state that Lessor shall receive thirty (30) days prior written notice of material modification, change in coverage, or cancellation of the same. Upon receipt of such notification, Lessor and/or its assignee may, at its option, re-evaluate the insurance coverage provided by Lessee, and mutual agreement, request additional coverage as deemed necessary.

D. (i) Lessor agrees to reimburse Lessee, within 30 days from date Lessor is notified by Lessee of tax due, for all taxes paid by Lessee resulting from ad valorem tax assessments on the Cars as referenced in schedule(s); or for any assessment, levy or impost paid by the Lessee relating to each Car and on the lease or delivery thereof which remains unpaid as of the date of delivery of such Cars to Lessee or which may be accrued, levied, imposed or assessed during the terms of this Lease, except taxes on income imposed on Lessee, gross receipts or sales and use tax imposed on the mileage charges and/or car hire revenue or sale or lease of the Cars. Lessor and Lessee 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, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any city, county, state or other taxing or assessing authority.

(ii) Lessee shall direct to Lessor to approve for filing, not later than 10 working days prior to filing, any tax return including, but not limited to, sales, use, property, gross receipts or rental tax returns, with relevant information from Lessee regarding the proposed tax returns. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses including legal fees resulting from such contest.

## 6. Lease Rental

A. Lessee agrees to cause to be paid or promptly pay Rent (as hereinafter defined) as follows:

(i) Lessor shall be entitled to receive all payments due from other railroad companies for their use and handling of the Cars for mileage payments, per diem payments and incentive per diem payments (such payments due from other railroad companies, whether or not received by Lessor, and without respect to any claimed abatement, reduction or offset, are hereinafter collectively referred to as "Payments"). Lessee shall owe to Lessor as Rent an amount equal to the per diem payments and incentive per diem payments that the Cars would have earned in the aggregate at a Utilization Rate (as defined below) of .84 plus an amount equal to the mileage payments that the Cars would have earned if the Cars had traveled an average of fifty (50) miles each day per diem payments and incentive per diem payments were earned by the Cars. For the purposes of this Lease, Utilization Rate shall be the quotient reached by dividing the aggregate number of days in each calendar year, or applicable portion thereof, during the Initial Term or any Extended Term hereof, that Payments were earned on the Cars by the aggregate number of days in each calendar year, or applicable portion thereof, during the Initial Term or any Extended Term hereof, that the Cars were leased to Lessee hereunder.

(ii) For each calendar year or portion thereof during the Initial Term or any Extended Term hereof, Lessor shall be entitled to retain from the Payments an amount equal to Rent. All Payments received in excess of Rent shall be paid by Lessor to Lessee.

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

(iv) The Rent payable to Lessor hereunder shall be paid from Payments in the following order until Lessor receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges; (4) excess demurrage; and (5) other.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, and the appropriate amounts due as a result thereof are received by Lessor, said damaged or destroyed Car will be removed from the coverage of this Lease as of the date that Payments ceased.

B. The calculations required to determine the amounts above, and the payment by Lessor of any amount due Lessee, shall be made by Lessor within one hundred and five (105) days after the end of each calendar year or portion hereof. However, to enable Lessor to meet its financial commitments with respect to the Cars, Lessor shall, prior to making such calculations and payment, retain the Payments received by it. Further, since the parties desire to determine on a calendar quarterly basis the approximate amount of the Rent due Lessor, Lessor shall, within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis rather than a yearly basis the amounts due it pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid by Lessor to Lessee 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. If at any time during a calendar quarter or portion thereof, during the Initial Term or any Extended Terms hereof, the number of days that the Cars have earned Payments is such as to make it mathematically certain that the Payments in such calendar quarter cannot be equal to or greater than Rent, Lessor may, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Lease as to such Cars as Lessor shall determine; provided, however, that prior to such termination, Lessee may, at its option within ten (10) days of receipt of such notice from Lessor, pay Lessor an amount equal to the difference between the amounts Lessor would otherwise have received for such calendar quarter and Rent for such calendar quarter.

D. If at any time during the Initial Term or any Extended Terms of this Lease, the ICC shall enter any order or stay which has the effect of eliminating or decreasing Payments, Lessor shall be entitled to make a monetary equivalent change in the Rent so as to maintain Lessor's anticipated cash flows hereunder.

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

## **7. Possession and Use**

A. So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession, use and enjoyment of the Cars in accordance with the terms of this Lease and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor in connection with the Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all amounts due Lessor hereunder shall be paid

directly to such party and/or that the Cars be returned to such party and Lessee agrees to so pay all such amounts and to so return the Cars. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Lease or any Schedule. 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.

## 8. Default

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

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

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days after notice to Lessee of such breach.

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which might have a material adverse effect on the Cars.

(vi) Any action by Lessee to discontinue rail service on all or a substantial portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state, if such action would substantially decrease the Utilization Rate.

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

(i) Proceed by any lawful means to enforce performance by Lessee of such obligations or to recover damages for a breach thereof (and Lessee agrees to bear Lessor's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), and/or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessor may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall in addition have the right to recover from Lessee any and all rental amounts which under the terms of this Lease may then be due or which may have accrued to that date, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

## **9. Expiration or Termination**

At the expiration or termination of this Lease as to any Car, Lessee will surrender possession of such Car to Lessor by delivering the same to Lessor at such place reasonably convenient to Lessee as Lessor shall designate. A Car shall be no longer subject to this Lease upon the removal of Lessee's railroad markings from such Car and the placing thereon of such markings as may be designated by Lessor, either, at the option of Lessor, (1) by Lessee upon return of such Car to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Car is not on the railroad line of Lessee upon termination or expiration, any cost of assembling, delivering, storing, and transporting such Car to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Lessor. If such Car is on the railroad line of Lessee upon such expiration or termination or is subsequently returned to Lessee's railroad line, Lessee shall at its own expense, as promptly as practicable remove Lessee's railroad markings (Note: only railroad initials and number) from such Car (only those Cars on Lessee's tracks) and place thereon such markings as may be designated by Lessor. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days' free storage on its railroad tracks to the extent track is available for Lessor or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to Section 8A(i), 8A(ii) or Lessee does not give preference in loading as outlined in 3B, Sections 6C, 6E, or 8 hereof prior to the end of its lease term, Lessee shall be liable to Lessor for all costs and expenses incurred by Lessor to repaint such Car and place thereon the markings and name or other insignia of Lessor's subsequent Lessee.

## **10. Termination of Operating Agreement**

In the event that the Operating Agreement ("the Agreement"), dated as of July 1, 1978, between South Central Tennessee Railroad Authority, and South Central Tennessee Railroad Company, Inc. is terminated, Lessor may, at its option, and upon not less than ten (10) days prior written notice to Lessee, terminate the Lease as to such Cars as Lessor shall determine.

## **11. Indemnities**

Lessor will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, unless such loss or damage results from the negligence of Lessee, and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars (other than loss or physical damage to the Cars as provided in (1) above) unless occurring through the fault of Lessee, including without limitation the construction, purchase and delivery of the Cars to Lessee's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by Lessor or Lessee), and except for those claims, causes of action, damages, liabilities, costs or expenses for which the Lessee shall be responsible as set forth herein, including, but not limited to Section 5C, 5D or Lessee's making any alteration, improvement or addition to any Cars in violation of Section 5B.

## **12. Representations, Warranties and Covenants**

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Lease.

(ii) The entering into and performance of this Lease will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

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

(iv) There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Lease.

### **13. Inspection**

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

### **14. Miscellaneous**

A. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. LESSOR SHALL HAVE THE RIGHT TO ASSIGN ALL OR ANY OF ITS RIGHTS, REMEDIES OR INTEREST HEREIN WITHOUT THE CONSENT OF LESSEE. Lessee may not without the prior written consent of Lessor assign this Lease or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Lease and in furtherance of any financing agreement entered into by Lessor in connection with the Cars in order to confirm any financing party's interest in and to the Cars and this Lease to confirm the subordination provisions contained in Section 7.

C. It is expressly understood and agreed by the parties hereto that this Lease constitutes a true lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor 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 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 the other party at the address set forth above.

G. If any legal action or other proceeding is brought for the enforcement of this Lease, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Lease, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

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

ITEL CORPORATION, RAIL DIVISION

SOUTH CENTRAL TENNESSEE  
RAILROAD COMPANY, INC.

BY: Carl P. Lyle

BY: [Signature]

TITLE: President

TITLE: Vice President

DATE: 3-27-80

DATE: 3/27/80

EQUIPMENT SCHEDULE NO. 1

Itel Corporation, Rail Division hereby leases the following Cars to \_\_\_\_\_  
SOUTH CENTRAL TENNESSEE RAILROAD COMPANY, INC. subject to  
 the terms and conditions of that certain Lease Agreement dated as of \_\_\_\_\_  
March 27, 1980. *ST*  
 CNT

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
GB	General Purpose Gondola Cars 100-Ton Trucks	<i>ST</i> CNT SCTR 45001- 45025	52'6"	9'6"	3'8"		25

ITEL CORPORATION, RAIL DIVISION

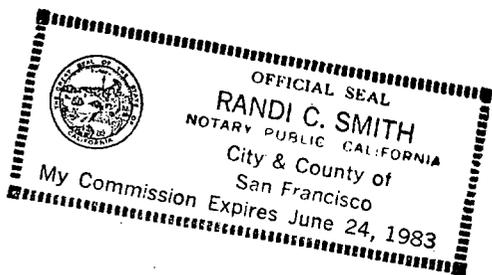
BY: Carl N. Taylor  
 TITLE: President  
 DATE: March 27, 1980

SOUTH CENTRAL TENNESSEE  
 RAILROAD COMPANY, INC.

BY: [Signature]  
 TITLE: Vice President  
 DATE: March 27, 1980

STATE OF California )  
COUNTY OF San Francisco )

On this 27<sup>th</sup> day of March, 1980, before me personally appeared Charles Taylor, to me personally known, who being by me duly sworn says that such person is President of ITEL Corporation, Rail Division, that the foregoing Lease Agreement and 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.



Randi C. Smith  
Notary Public

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO )

On this 27<sup>th</sup> day of March, 1980, before me personally appeared L. T. CECIL, to me personally known, who being by me duly sworn says that such person is VICE PRESIDENT of South Central Tennessee Railroad Company, Inc., that the foregoing Lease Agreement and 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.

Eva Baldwin  
Notary Public

