

ITEL RAIL

55 Francisco
San Francisco, California 94133
(415) 955-9090
Telex 34234

13888

2-3631075

RECORDATION NO. Filed 1425

DEC 29 1982-2 10 PM

No. DEC 29 1982

Date

Fee \$.. 60.00

December 14, 1982
INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C. 20423

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

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Dear Ms. Mergenovich:

INTERSTATE COMMERCE COMMISSION INTERSTATE COMMERCE COMMISSION

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, four counterparts each of the following two documents:

Lease Agreement dated October 14, 1982 (the "Lease")
between Itel Corporation, Rail Division and the
Hartford & Slocomb Railroad Company.

Amendment Number 1 dated October 14, 1982 to the
Lease.

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

1. Hartford and Slocomb Railroad Company
P.O. Box 2243
Dothan, Alabama 36301
2. Itel Corporation, Rail Division
55 Francisco, 7th Floor
San Francisco, California 94133

The equipment covered by the Lease and Amendment Number 1 is one
hundred thirty (130) 60'10" 100-ton boxcars, bearing reporting marks HS60001-
60130.

Also enclosed is a check in the amount of \$60.00 for the required recording
fees.

RECEIVED

DEC 29 2 43 PM '82

INTERSTATE COMMERCE BR.
60130

Ms. Agatha Mergenovich, Secretary
December 14, 1982
Page Two

Please stamp all counterparts of the enclosed Lease and Amendment Number 1 with your official recording stamp. You will wish to retain one (1) counterpart of each document for your files; it is requested that the remaining three (3) counterparts of each be returned to me by mail.

Sincerely,



Patricia Salas Pineda
Counsel

PSP:dmm
Enclosures

cc: Doug Drummond
Itel Corporation

L-0379
11/5/82

DEC 29 1982 -2 50 PM

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT (the "Agreement") made as of this 14th day of October, 1982, between ITEL CORPORATION, RAIL DIVISION, a Delaware corporation, Two Embarcadero Center, San Francisco, 94111, as the lessor ("Lessor") and HARTFORD AND SLOCOMB RAILROAD COMPANY, a Alabama corporation, P.O. Box 2243, Dothan, Alabama, 36301, as the lessee ("Lessee").

W I T N E S S E T H:

WHEREAS, Lessor has leased to Providence and Worcester Company ("P&W") under a lease (the "Lease") dated March 13, 1978, six hundred (600) freight cars; and

WHEREAS, by an Assignment dated April 24, 1980, P&W assigned said Lease to Warwick Railroad Company ("WRWK"); and

WHEREAS, by supplemental agreement entered into between Lessor and WRWK, WRWK has (a) appointed Lessor as its agent with full power and authority and in the name of Lessor (but on behalf of WRWK) to enter into one or more sublease agreements with third parties covering some or all of such freight cars, (b) empowered Lessor to deliver possession of such freight cars to such third parties, and (c) granted Lessor the right to negotiate such subleases with any terms and conditions which are satisfactory to Lessor; and

WHEREAS, Lessee desires to lease a portion of such freight cars from Lessor upon the terms and conditions hereunder.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree as follows:

I. Scope of Agreement

- A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from the Lessor 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 Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car".
- B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Agreement with respect to each Car described on each Schedule shall commence at 12:00 P.M. on the date and at the location that such Car is repainted and remarked pursuant to Section 3.A., and shall expire as to all of the Cars described on each Schedule six (6) years from the date of Initial Loading (as hereinafter defined).
- B. If this Agreement has not been terminated prior to the Initial Term and no default has occurred, which is continuing, this Agreement, upon the expiration of the Initial Term, shall automatically be extended for an additional period of one (1) year ("Extended Term") provided, however, that either Lessor or Lessee may terminate this Agreement effective at the end of the Initial Term, upon written notice delivered to the other party not less than sixty (60) days prior to the end of the Initial Term.

3. Supply Provisions

- A. Lessee hereby approves the specifications of the Cars delivered to it by Lessor. Lessor shall, at its own expense, remark the Cars with the railroad markings of Lessee in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:00 P.M. on the date and at the location such Car is repainted and remarked. After the Cars have been repainted and remarked, the Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon as is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and to ensure optimal use of the Cars after the Initial Loading (as hereinafter defined), 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 with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules. For the purposes hereof, the term "Initial Loading" as to each Schedule, shall be the date at which fifty (50) percent of all the Cars on such Schedule have been loaded with freight and placed into revenue service.
- B. Lessee shall load the Cars leased from Lessor prior to loading any boxcars leased by or assigned to Lessee from other parties subsequent to the date of this Agreement, purchased by Lessee subsequent to the date of this Agreement, or interchanged from other railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

4. Record Keeping

- A. Lessor shall, at its expense and with Lessee's assistance, 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 Agreement. Such matters shall include, but are not limited to the following: (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 Interstate Commerce Commission ("ICC") and/or any other regulatory agencies with respect to the Cars. Lessee hereby authorizes Lessor to be the subscriber to the car hire exchange tape, Train 61 Junction Advices, and the Train 11 Location Advices with respect to the Cars and agrees to execute any other documents necessary for such authorization.
- B. Lessor shall perform all record keeping functions relating to the use of the Cars by Lessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of Revenues (as hereinafter defined in Section 7) from other railroad companies, maintenance and repair, and billing in accordance with the AAR Interchange Rules ("Interchange Rules"). Immediately upon receipt from other railroads of any Revenues in the form of a draft, check or other instrument payable to Lessee, Lessor shall be entitled to endorse and deposit such draft, check or other instrument into Lessor's account and to retain such Revenues as set forth in Section 7.D. All record keeping performed by Lessor hereunder and all records 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 during Lessor's regular business hours. Upon Lessor's reasonable request, Lessee shall supply Lessor with daily telephone reports of the number of Cars in Lessee's possession or control. Lessee shall, on a monthly basis, supply Lessor with copies of Lessee's interchange records with respect to the Cars interchanged to and from Lessee's railroad line. Upon Lessor's reasonable request, Lessee shall promptly provide Lessor with records of Lessee's car hire payables. In the event Lessee fails to provide Lessor with records of car hire payables, and as a result, a user or handling railroad refuses to pay Revenues (as hereinafter defined in Section 7) owed, Lessee shall, within ten (10) days after Lessor's request, pay to Lessor such unpaid Revenues. Without limiting Lessor's rights and remedies otherwise provided by law, Lessor has the right to offset against Lessee's revenue sharing portion set forth in Section 2 of any Schedule, any sums arising out of this Agreement which are owed by Lessee to Lessor but which remain unpaid.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Lessor 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, how-

ever, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned by the fault of Lessee, or arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessee shall, at its expense, inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper on Lessee's railroad line.

- B. Lessor 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. Lessee may make running repairs to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alterations, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Lessor.
- C. As long as this Agreement shall remain in effect, Lessee shall be responsible for the Cars **(i)** while in Lessee's possession or control, and **(ii)** in the same manner that Lessee is responsible under Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained **(a)** all risk physical loss or damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control; and **(b)** 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 which are satisfactory to the Lessor. Lessee shall furnish to Lessor concurrently with execution hereof, and thereafter at intervals of not more than twelve (12) calendar months, certificates of insurance evidencing the aforesaid insurance. Lessor shall have the right to obtain a Certified Copy of each insurance policy upon written request to the Lessee. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional named insureds and shall also list Lessor and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and bill the cost to Lessee. With respect to the additional insured, it is further agreed that the same are entitled to full protection afforded by Lessee's insurance policies, and said policies shall be primary to any other valid and available insurance effected by or for the additional insureds in respect of whom the insurers specifically agree to waive subrogation and/or claim and/or recovery. It is further agreed that each policy will be endorsed evidencing the above, and these endorsements will be evidenced on the Certificate of Insurance provided to the Lessor. In the event,

and with Lessor's written approval, Lessee shall be permitted to self-insure on any specified interests, the Lessee hereby warrants to place the Lessor in the same position as if the relating insurance had been effected. Any and all deductibles in the described policies shall be assumed by the Lessee.

- D. Within thirty (30) days from Lessor's receipt of the receipted copy of the paid tax bill, Lessor agrees to reimburse Lessee for all taxes actually paid in cash by the Lessee resulting from (1) ad valorem tax assessments on the Cars; and (2) any assessment, levy or impost relating to each Car, the Agreement or the delivery of the Cars which remained unpaid as of the date of the delivery of the Cars to Lessee or which are assessed, levied or imposed during the term of this Agreement, 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. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax 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. Storage

In the event that Lessee's capacity to handle any or all of the Cars on Lessee's railroad tracks is impaired at any time, then Lessee shall be responsible for the following: (1) all reasonable transportation costs incurred to move the Cars to storage location; (2) all reasonable transportation costs incurred in removing such Cars from the storage location; and (3) the actual costs incurred for the storage of any or all of the Cars. As long as there is sufficient room on Lessee's railroad tracks, Lessee shall store the Cars, if necessary, on its railroad tracks. If Lessor pays for any costs referred to in this Section, Lessee shall reimburse Lessor for such cost within ten (10) days from Lessee's receipt of Lessor's invoice. Lessor shall assist Lessee so as to minimize Lessee's exposure under this Section.

7. Lease Rental

A. Definitions

- (i) "Revenues" shall be the total 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 Lessor and without regard to any claimed abatement, reduction or offset caused by any action of Lessee, provided, however, that upon the occurrence of any such abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.

- (ii) 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 quarter 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 quarter that the Cars are on lease to Lessee, commencing from the Initial Loading.
- B. Lessee shall pay Lessor, with respect to each Car, the rent set forth in each applicable Schedule.
- C. Lessor shall receive all Revenues earned by the Cars prior to their Initial Loading. Each Car delivered pursuant to Section 3.A. shall become subject to the rental calculation under the applicable Schedule upon the Initial Loading of such Car.
- D. The calculations required in any Schedule shall be made within five (5) months after the end of each calendar quarter ("Final Calculations"). However, to enable Lessor to meet its financial commitments, Lessor shall, prior to making such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarter to date basis the approximate amounts owed under any Schedule, Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarter 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 the applicable Base Rental ("Base Rental" as hereinafter defined in Schedule attached to and incorporated into this Agreement), Lessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by agreeing to pay within thirty (30) days to Lessor an amount equal to the difference between actual Revenues for such calendar quarter and the applicable Base Rental for such calendar quarter.
- F. If, subsequent to the Initial Loading, any Car remains on Lessee's railroad tracks 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 Lessee, Lessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and take possession of such Car on Lessee's railroad tracks. If any such Car has remained on Lessee's railroad tracks for more than seven (7) consecutive days because Lessee has not given preference to the Cars as specified in Section 3.B., Lessee shall be liable for and remit to Lessor 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 Lessee'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 Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rule 7.

8. Possession and Use

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business as set forth in Subsection 8.B. 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 acquisition of the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee 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 Agreement), 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. Lessee 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 Lessor or Lessee 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.
- B. 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 Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.
- C. 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 arising through it, on, or with respect to the Cars, or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

9. Default

- A. The occurrence of any of the following events shall be an event of default:
- (i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) 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 ten (10) days thereafter;
 - (iii) The filing by or against the Lessee of any petition or the initiation by or against the Lessee of any proceeding: (a) for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder; or (b) under any bankruptcy, reorganization, 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) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.
 - (v) Any action by Lessee to discontinue rail service on all or a portion of its track or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.
- 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 Agreement and/or may
- (i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, 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 the Cars 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 Agreement 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.

10. Expiration or Earlier Termination

Upon the expiration or earlier termination of this Agreement with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:

- A. If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessor shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent

to the time of expiration or earlier termination. Lessee shall, at Lessor's option, provide, with respect to any Car described on each Schedule which is either on the Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad, up to one hundred twenty (120) days free storage on its railroad tracks from the date the last Car on such Schedule is returned to Lessee's railroad subsequent to the time of expiration or earlier termination. At the option of Lessor, either Lessee or a contractor chosen by Lessor shall, at Lessor's expense, repaint and restencil the Cars as set forth in Section 10.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. After repainting and restencilling, Lessee shall, at Lessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

- B. If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Lessor. Upon the expiration or earlier termination of this Agreement with respect to any Car, Lessor shall bear the expense of repainting and restencilling the Cars.
- C. (i) Repainting, with respect to each Car, shall include the following: (i) commercial sandblasting of the sides, ends, doors and, if originally painted the same color as the ends, the visible end portion of the underframe; (ii) application of approved primer and finish paint as according to Lessor's specifications; (iii) application of mandatory AAR markings with approved stencil paint which includes new reporting marks, car numbers and company logos; and (iv) any transportation involved in moving each Car to and from a suitable work area to perform the repainting set forth in this Section.
- (ii) Restencilling, with respect to each Car, shall include the following: (i) removal of existing mandatory markings and all company logos of Lessee; (ii) complete cleaning subsequent to the removal of markings and company logos as designated by Lessor; (iii) application of new mandatory markings and company logos; and (iv) any transportation involved in moving each Car to and from a suitable work area to perform the restencilling set forth in this Section.

II. Indemnities

- A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN LESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO LESSEE.

- B. SUBJECT TO SECTION 11.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH HEREIN, LESSOR WILL DEFEND, INDEMNIFY AND HOLD LESSEE 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 LESSEE 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 LESSOR OR LESSEE).

12. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

- A. 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, insofar as is material to Lessor's rights under this Agreement, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.
- B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.
- C. 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 such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.
- D. 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 obligation under this Agreement.

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.

14. Miscellaneous

- A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Lessee may not without the prior written consent of Lessor, assign this Agreement 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 Lessor 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 Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 8 of this Agreement.
- C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint sale or 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 Agreement shall be governed by and construed according to the laws of the State of California.
- F. Lessee shall notify Lessor 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. 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.
- H. 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 herein.

- I. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.
- J. This Agreement represents the entire Agreement. This Agreement 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 Agreement as of the date first above written.

ITEL CORPORATION,
RAIL DIVISION

By: 

Title: President

Date: 11-23-82

HARTFORD AND SLOCOMB
RAILROAD COMPANY

By: 

Title: President

Date: 11-8-82

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

On this 23rd day of November, 1982, before me personally appeared Edward M. O'Dea, 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 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.

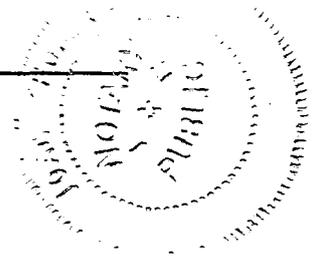


Jody A. Blomgren
Notary Public

STATE OF Alabama)
) ss:
COUNTY OF Houston)

On this 8th day of November, 1982, before me personally appeared C. J. Fischer III, to me personally known, who being by me duly sworn says that such person is President of Hartford and Slocomb Railroad Company, that the foregoing Lease Agreement 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.

Jean Thompson
Notary Public



EQUIPMENT SCHEDULE NO. 1

Itel Corporation, Rail Division hereby leases the following Cars to Hartford & Slocomb Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of October 14, 1982.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	60', 100-Ton General Boxcars With 15" End-of- Car Cushioning	HS 60001- 60130	60'10"	9'6"	11'0"	12' Sliding	130

Rent

- I. A. If, in any calendar quarter or applicable portion thereof during the period commencing as of the Initial Loading through and including December 31, 1982 ("First Period"), Revenues earned exceed an amount equal to the Revenues which such Cars would have earned in the aggregate at a Utilization Rate of forty (40) percent ("First Period Base Rental"), Lessee shall pay to Lessor an amount equal to the First Period Base Rental and Lessee shall receive all Revenues received in excess of the First Period Base Rental. If, in any calendar quarter or applicable portion thereof during the First Period, Revenues earned are less than the First Period Base Rental, Lessee shall pay to Lessor a sum equal to one hundred (100) percent of the total Revenues.
- B. If, in any calendar quarter or applicable portion thereof during the period commencing January 1, 1983 through and including December 31, 1983 ("Second Period"), Revenues earned exceed an amount equal to the Revenues which such Cars would have earned in the aggregate at a Utilization Rate of fifty (50) percent ("Second Period Base Rental"), Lessee shall pay to Lessor an amount equal to the Second Period Base Rental plus fifty (50) percent of all Revenues in excess of the Second Period Base Rental and Lessee shall receive the remaining fifty (50) percent of all Revenues earned in excess of the Second Period Base Rental. If, in any calendar quarter or applicable portion thereof during the Second Period, Revenues earned are less than the Second Period Base Rental, Lessee shall pay to Lessor a sum equal to one hundred (100) percent of the total Revenues.
- C. If, in any calendar quarter or applicable portion thereof during the period commencing January 1, 1984 through and including the expiration or earlier termination of this Agreement ("Final Period"), Revenues earned are equal to or greater than an amount equal to the Revenues which such Cars would have earned in the aggregate at a Utilization Rate of eighty (80) percent ("Lower Final Period Base Rental") and equal to or less than an amount equal to the Revenues which such Boxcars would have earned in the aggregate at a Utilization Rate of eighty-five (85) percent ("Greater Final Period Base Rental"), Lessee shall pay to Lessor an amount equal to the Lower Final Period Base Rental plus fifty (50) percent of all Revenues in excess of the Lower Final Period Base Rental up to an amount equal to the Greater Final Period Base Rental, provided, however, that if Revenues earned exceed an amount equal to the Greater Final Period Base Rental, Lessee shall also receive all Revenues received in excess of the Greater Final Period Base Rental. If, in any calendar quarter or applicable portion thereof during the Final Period, Revenues earned are less than the Lower Final Period Base Rental, Lessee shall pay to Lessor a sum equal to one hundred (100) percent of the total Revenues.

EQUIPMENT SCHEDULE NO. 1 (continued)

- 2. A. During the First Period and Second Period, Lessor shall receive and retain for its own account any and all mileage revenues earned and due from other railroad companies for the use or handling of the Cars.
- B. During the Final Period, Lessor shall receive and retain for its own account any and all mileage revenues earned and due for the use or handling of the Cars, provided, however, that if, in any calendar quarter or applicable portion thereof during the Final Period, Revenues earned exceed the Greater Final Base Rental, then Lessee shall receive an amount as determined by the following calculation:

$\frac{(100 \times \text{Utilization Rate in such calendar quarter or applicable portion thereof}) - 85}{(100 \times \text{Utilization Rate in such calendar quarter or applicable portion thereof})}$	x	Mileage Revenues in such calendar quarter or applicable portion thereof
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ITEL CORPORATION,
RAIL DIVISION

By: *Edward M. Dea*

Title: *President*

Date: *11-23-82*

HARTFORD AND SLOCOMB
RAILROAD COMPANY

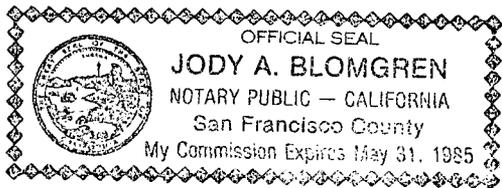
By: *G. J. Juchacz*

Title: *President*

Date: *11-8-82*

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

On this 23rd day of November, 1982, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of ITEL Corporation, Rail Division, that the foregoing Equipment Schedule No. was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Jody A. Blomgren
Notary Public

STATE OF Alabama)
) ss:
COUNTY OF Houston)

On this 8th day of November, 1982, before me personally appeared C. F. Fischer III, to me personally known, who being by me duly sworn says that such person is President of Hartford and Slocomb Railroad Company, that the foregoing Equipment Schedule No. was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jean Thompson
Notary Public

