

new no

16199

9-039A038

ITEL

FEB 8 1989 11 20 AM

Istel Rail Corporation

Pullman

INTERSTATE COMMERCE COMMISSION

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

February 7, 1989

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

Date 2/8/89
Fee \$ 13.00

ICC Washington, D. C.

Re: Railcar Purchase Agreement dated as of December 28, 1988,
between Chattahoochee Industrial Railroad and Istel Railcar
Corporation

Dear Ms. McGee:

On behalf of Istel Rail Corporation, the above instrument, in
four (4) counterparts, is hereby submitted for filing and
recording pursuant to 49 U.S.C. Section 11303(a), along with the
\$13 recordation fee.

Please record this Railcar Purchase Agreement under a new
recordation number.

The parties to the aforementioned instrument are listed below:

Istel Railcar Corporation (Purchaser)
55 Francisco Street
San Francisco, California 94133

Chattahoochee Industrial Railroad (Seller)
P.O. Box 253
Cedar Springs, Georgia 31732

This Railcar Purchase Agreement covers one hundred twelve (112)
HT hopper cars bearing reporting marks CIRR 6301-6412.

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

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Department

FEB 8 11 15 AM '89
MOTOR OPERATING UNIT

Lot 2242

16199
REGISTRATION NO. _____ FILE NO. _____

FEB 8 1989 - 11 20 AM

RAILCAR PURCHASE AGREEMENT

INDEPENDENT STATE COMMERCE COMMISSION

RAILCAR PURCHASE AGREEMENT ("Agreement") between CHATTAHOOCHEE INDUSTRIAL RAILROAD, a Georgia corporation ("Seller"), and ITEL RAILCAR CORPORATION, a Delaware corporation ("Purchaser"), dated as of December 28, 1988.

WHEREAS, Seller is the owner of one hundred twelve (112) coal railcars identified on Schedule 1 hereto (the "Cars"), Purchaser desires to buy the Cars from Seller and Seller desires to sell the Cars to Purchaser; and

NOW, THEREFORE, Purchaser and Seller hereby agree as follows:

1. Agreement to Purchase

Seller agrees to sell, and Purchaser agrees to purchase, Seller's entire right, title and interest in and to the Cars, together with all parts, fixtures, equipment and appurtenances installed thereon or attached thereto and the records, files, drawings and specifications listed on Schedule 2 hereto to the extent that such records are available to Seller. Seller may, at its option and expense, retain copies of any or all of the records provided to Purchaser with respect to the Cars.

2. Purchase Price

The purchase price for the Cars shall be _____ per Car. Payment of the purchase price shall be made by wire transfer in immediately available funds on the date of Closing (as defined hereinbelow).

3. Closing

A separate Closing for the sale of groups of approximately twenty-five (25) Cars each (the "Closings") will take place at times and place as the parties may agree in writing until all one hundred twelve (112) Cars are purchased by Purchaser. Closing shall be conditioned upon delivery of the documents, instruments and funds provided for in Section 4 hereof.

4. Deliveries at Closing

A. At Closing Seller shall deliver to Purchaser the following:

- (i) a duly executed Bill of Sale (the "Bill of Sale") substantially in the form attached hereto as Exhibit A, for the Cars;
- (ii) At the time of the first Closing only, an opinion of counsel in customary form to the effects provided in Subsections 6.B. (to the best of counsel's knowledge), 6.C., 6.D., 6.E. and 6.F. hereto with respect to all Cars.

B. At Closing Purchaser shall deliver to Seller a wire transfer in immediately available funds in payment of the purchase price, as provided in Section 2 hereof.

5. Delivery of the Cars

Seller shall be deemed to have delivered the Cars to Purchaser, and Purchaser shall be deemed to have taken delivery of and accepted the Cars from Seller, immediately upon the Closing, without any further action on the part of Purchaser or Seller. The Cars shall be delivered to Purchaser and title to the Cars shall be deemed to pass in Cedar Springs, Georgia. Purchaser acknowledges that it will be purchasing the Cars as is; all warranties and representations expressed or implied, except as may be set forth herein, are specifically excluded.

6. Representations and Warranties of Seller

Seller hereby represents and warrants to Purchaser as follows:

- A. The Cars were originally built in 1975-77 by Pullman at a cost to Seller of _____ per Car, with a _____ betterment made by Seller upon delivery of Car to Seller by the manufacturer.
- B. Seller has good, valid and marketable title to the Cars free and clear of all liens, pledges, security interests, charges, encumbrances or other defects of title of any nature whatsoever, and there is no contract or restriction which prevents Seller from conveying or transferring to Purchaser unencumbered title to the Cars, or giving possession of the Cars, to Purchaser.
- C. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia, and has all requisite corporate power and authority necessary to enter into this Agreement and the Bill of Sale and all other documents contemplated hereby or thereby, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby.
- D. The execution, delivery and performance of this Agreement and the Bill of Sale and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action on the part of Seller; and this Agreement and the Bill of Sale are valid and binding obligations of Seller, enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally or by equitable limitations on the availability of remedies. The execution, delivery and performance of this Agreement and the Bill of Sale by Seller and the consummation by Seller of the transactions contemplated hereby or thereby, will not (i) conflict with or result in a breach of any provisions of the Certificate of Incorporation or bylaws of the Seller; (ii) violate the provisions of any agreement or contract binding upon Seller or affecting the Cars or (iii) violate any statute, rule, regulation, judgment, order, writ, injunction or decree of any court, administrative agency or governmental body applicable to Seller or the Cars.

- E. No filing with, or permit, authorization, consent or approval of, any authority or agency or third party is necessary for the consummation by Seller of the transactions contemplated by this Agreement and the Bill of Sale.
- F. The sale to Purchaser of the Cars pursuant to this Agreement neither constitutes nor forms a part of a "bulk transfer" within the meaning of Article (or Division) Six of the Uniform Commercial Code of any jurisdiction having authority over the Seller or the Cars.
- G. Seller has not employed any broker or finder or incurred any liability for brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.
- H. Except for a freight rate contract with CSX Transportation, Inc., the terms of which do not adversely affect ^{Purchaser's} ~~Lessor's~~ interest in the Cars or its ability to earn revenues with respect to the Cars, Seller is not a party to any contracts, arrangements or commitments respecting the Cars or which affect the Cars except this Agreement. adl
SM
- I. Except for the betterment made by Seller upon the delivery of the Cars to it (addition of a snubber package), no design specified by Seller has been used in or in connection with the construction, maintenance or operation of the Cars.

All of the foregoing warranties shall survive the Closing and shall be assignable by Purchaser.

7. Representations and Warranties of Purchaser

Purchaser hereby represents and warrants to Seller as follows:

- A. Purchaser is a corporation duly organized, validly existing and in good standing of the laws of the State of Delaware, and has all requisite corporate power and authority necessary to enter into this Agreement, and all other documents contemplated hereby to perform its obligations hereunder and to consummate the transactions contemplated hereby.
- B. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Purchaser; and this Agreement is valid and binding obligations of Purchaser, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally or by equitable limitations on the availability of remedies. The execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby or thereby, will not (i) conflict with or result in a breach of any provisions of the Certificate of Incorporation or bylaws of Purchaser; (ii) violate the provisions of any agreement or contract binding upon

Purchaser; or (iii) violate any statute, rule, regulation, judgment, order, writ, injunction or decree of any court, administrative agency or governmental body applicable to Purchaser or its property.

- C. No filing with, or permit, authorization, consent or approval of, any authority or agency or third party is necessary for the consummation by Purchaser of the transactions contemplated by this Agreement.
- D. Purchaser has not employed any broker or finder or incurred any liability for brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.

All of the foregoing warranties shall survive the Closing.

8. Destruction of Cars before Closing

Seller and Purchaser acknowledge that the Cars are, at any time, travelling in interstate commerce, that a Car or Cars might be destroyed before the Closing, and that it may not be possible for either Purchaser or Seller to learn of such destruction before the Closing. Seller and Purchaser agree that in the event either of them learns that any Car or Cars have been destroyed before the Closing, the party so learning shall provide to the other party reasonably satisfactory evidence of such destruction and such Car or Cars shall be removed from this Agreement and the Bill of Sale and Seller shall promptly refund to Purchaser the purchase price for such Car. Seller shall be entitled to any railroad or lessee indemnity and any proceeds of insurance received by either Purchaser or Seller in respect of such destroyed Car.

9. Operations Prior to Closing

All revenues earned by or with respect to the Cars, and all costs, charges and expenses incurred on or with respect to the Cars, for all periods through and including the Closing are for the account of Seller, in each case regardless of when revenues and expense invoices are actually received (with a daily pro ration for the month during which the Closing occurs, if actual revenues and expenses cannot be traced).

10. Indemnification

Purchaser agrees to indemnify, defend and hold harmless Seller from any and all claims, liabilities, losses, damages, costs and expenses, including attorneys' fees (collectively "Damages") caused by, resulting from or arising out of the ownership, leasing, possession, operation, use or maintenance of the Cars, at any time from and after the Closing, except any Damages caused by, resulting from or arising out of (i) Seller's negligence; (ii) the untruth, inaccuracy or breach of any material representations, warranties or agreements of Seller contained herein or in the Bill of Sale or any other documents contemplated hereby or thereby; and (iii) any claims by third parties that the Cars or any designs, processes or materials incorporated or used therein infringe any patent, trademark or other right.

Seller agrees to indemnify, defend and hold harmless Purchaser against any and all Damages caused by, resulting from, or arising out of (i) the Cars, including without limitation the ownership, leasing, operation, possession, use or maintenance of the Cars, at any time prior to the Closing, except any Damages caused by, resulting from or arising out of Purchaser's negligence and except as set forth in the Loading Agreement dated as of December 28, 1988 between Purchaser and Seller; (ii) the untruth, inaccuracy or breach of any material representations, warranties or agreements of the Seller contained herein or in the Bill of Sale or any other documents contemplated hereby or thereby; and (iii) any claims by third parties that the Cars or any designs, processes or materials incorporated or used therein infringe any patent, trademark or other right. The obligations of Seller under this Section shall survive the Closing.

11. Covenants of Seller

Seller agrees that, from and after the date hereof and through and including Closing, without Purchaser's prior written consent: (i) it will not subject the Cars to, or suffer to exist thereon, any liens, pledges, security interests, charges, or encumbrances of any nature whatsoever; (ii) it will maintain the Cars in as good a condition as they are as of the date hereof, normal wear and tear excepted, and will not modify the Cars or allow them to be modified except as specifically directed by Purchaser in writing.

12. Rights of Inspection

For each Car located on Seller's premises, Seller shall allow Purchaser, upon reasonable notice to Seller and during normal business hours, to inspect such Car on such premises. For each Car located on premises other than Seller's premises, Seller shall, at no out-of-pocket cost to Seller, assist Purchaser in obtaining access to such Cars.

13. Further Assurances

Seller shall, at any time and from time to time after the Closing, at the request of Purchaser, do, execute, acknowledge or deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, assignments, conveyances or assurances as may be reasonably requested by Purchaser, including appropriate UMLER filings and AAR Rule 88 filings, as may be necessary or desirable for the better transferring, assigning, conveying, granting, assuring, vesting and confirming to Purchaser of good, valid and marketable title and right to, dominion over and possession of, the Cars.

14. Costs

Seller and Purchaser each shall bear its own costs with respect to the preparation and negotiation of this Agreement, except that Purchaser shall be responsible for any sales tax resulting from this Agreement, and unless otherwise provided herein.

15. Assignment of Claims

Seller hereby assigns to Purchaser all claims, causes of action, warranties, rights of indemnity and other rights, if any, as currently exist or will exist against third parties with respect to the Cars, to the extent that such rights are assignable.

16. Termination Date

Seller and Purchaser each agree to use their respective best efforts to consummate the Closing as soon as possible.

17. Assignability

This Agreement and Purchaser's rights and privileges hereunder are assignable by Purchaser in whole or in part; provided, however, that the assignee shall be an operating equipment leasing company that, together with its subsidiaries, has a net worth of no less than fifty million dollars.

18. Miscellaneous

This Agreement shall be governed by the laws of the State of New York, without regard to its conflict of laws doctrine, but the parties shall be entitled to all rights under 49 U.S.C. Section 11303. Jurisdiction and venue of any lawsuit with respect to this Agreement or the Bill of Sale may be had in any court of competent jurisdiction located in the City and County of San Francisco, California. This Agreement can be modified or rescinded only by a writing signed by Purchaser and Seller. This Agreement may be executed in two or more counterparts, and such counterparts taken together shall constitute one and the same instrument.

19. Notice

Any notices required or permitted hereunder shall be in writing, addressed to the other party as set forth below and shall be valid when delivered personally or by telex or three days after having been dispatched by United States mail, first class, postage prepaid, as follows:

If to Purchaser: Itel Railcar Corp.
 55 Francisco Street
 San Francisco, California 94133
 Attn: Jeffrey Corbett, Assistant Vice
 President

If to Seller: Chattahoochee Industrial Railroad
 P.O. Box 253
 Cedar Springs, Georgia 31732
 Attn: ~~Paul Angeleff~~, ~~Vice-President~~
 ~~and General-Manager~~
 Attn: President
 and



Great Northern Nekoosa Corporation
401 Merritt 7
P.O. Box 5120
Norwalk, Connecticut 06856
Attn: General Counsel

Either party may, by written notice to the other, change the address to which notices are to be sent.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

CHATTAHOOCHEE INDUSTRIAL RAILROAD

By: Arthur J. Fuller

Title: President

Attest:

Paul Sawday
Asst. Secretary

ITEL RAILCAR CORPORATION

By: D. A. Hayes

Title: President

Attest:

Paul Sawday
Secretary

SCHEDULE 1

IDENTIFICATION OF CARS

Reporting Mark

CIRR-6301-6412
CIRR 6000-6149

adp
adh

Description

112 HT hopper cars

SCHEDULE 2

RECORDS, FILES, DRAWINGS AND SPECIFICATIONS

1. Drawing list, to include a microfilm copy of all drawings, including specialty items.
2. Builder's specifications.
3. Maintenance history for the past two years and history of all projects performed since each Car was built.
4. List of month and year each Car was built.
5. Original equipment cost.
6. Cost of any additions and betterments and date added.
7. Form 88-A-4 for each Car.

BILL OF SALE

KNOW ALL PERSONS BY THESE PRESENTS THAT, in Cedar Springs, Georgia, in consideration of the payment of \$10 (ten dollars) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CHATTAHOOCHEE INDUSTRIAL RAILROAD ("Seller") does hereby grant, bargain, sell, convey, transfer and deliver to IteI Rail Corporation ("Purchaser"), its successors and assigns forever, all right, title and interest of Seller in and to all of the one hundred thirty-seven (137) triple hopper coal railcars identified on Schedule 1 hereto ("the Cars"), together with all additions, parts, fittings, appurtenances, equipment, accessories, attachments, fixtures, and accessions installed thereon or attached thereto, and the records, files, drawings and specifications specified in Schedule 2 hereto (to the extent that such records are available to Seller), TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns forever. Seller reserves the right to retain a copy of any or all records provided Purchaser with respect to the Cars.

Seller does hereby assign, grant, bargain, sell, convey, transfer and deliver to Purchaser, its successors and assigns forever, all right, title interest, powers and privileges of Seller in and to such warranties, claims, causes of action, rights of indemnity and other rights, if any, as currently exist or will exist against third parties with respect to the Cars, to the extent that such rights are assignable.

Seller represents and warrants to Purchaser as follows:

- (a) The Cars were originally built in 1975-77 by Pullman at a cost of \$26,510 per Car, with a \$491 betterment made by Seller upon delivery of Car to Seller by the manufacturer.
- (b) Seller has good, valid and marketable title to the Cars free and clear of all liens, pledges, security interests, charges, encumbrances or other defects of title of any nature whatsoever, and there is no contract or restriction which prevents Seller from conveying or transferring to Purchaser unencumbered title to the Cars, or giving possession of the Cars, to Purchaser.

IN WITNESS WHEREOF, Seller has executed this instrument in _____, this _____ day of _____, 1988.

CHATTAHOOCHEE INDUSTRIAL RAILROAD

By _____

Title _____

Signed in the presence of:

SCHEDULE 1

IDENTIFICATION OF CARS

Reporting Mark

Description

CIRR 6301-6412
(specific numbers
to be added)

112 HT hopper cars

SCHEDULE 2

RECORDS, FILES, DRAWINGS AND SPECIFICATIONS

1. Drawing list, to include a microfilm copy of all drawings, including specialty items.
2. Builder's specifications.
3. Maintenance history for the past two years and history of all projects performed since each Car was built.
4. List of month and year each Car was built.
5. Original equipment cost.
6. Cost of any additions and betterments and date added.
7. Form 88-A-4 for each Car.

STATE OF)
) ss.
COUNTY OF)

On this _____ day of _____, 1988, before me personally appeared _____, to me personally known, who being by me duly sworn says that such person is _____ of _____, that the foregoing Bill of Sale 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.

Notary Public

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

On this 28th day of December, 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 Railcar Corporation, that the foregoing Purchase 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.

Sharon L. Van Fossan
Notary Public



STATE OF GEORGIA)
) ss:
COUNTY OF EARLY)

On this 19th day of December, 1988, before me personally appeared Arthur D. Fuller, to me personally known, who being by me duly sworn says that such person is President of Chattahoochee Industrial Railroad, that the foregoing Purchase 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.

Martha Olsen
Notary Public

MY COMMISSION EXPIRES MARCH 21, 1992