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ITEL

FEB 8 1989 11 00 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

2/8/89
Date 2/8/89
Fee \$ 13.00
ICC Washington, D. C.

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

Re: Loading 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 Loading Agreement under the Railcar Purchase
Agreement dated as of December 28, 1988, between Chattahoochee
Industrial Railroad and Istel Railcar Corporation, which is being
filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

Istel Railcar Corporation
55 Francisco Street
San Francisco, California 94133

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

This Loading 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

16199-A

RECORDATION NO. _____ FILE NO.

FEB 8 1989 - 11 20 AM

Lot 2242-01

INTERSTATE COMMERCE COMMISSION
LOADING AGREEMENT

THIS LOADING AGREEMENT ("Agreement") is made as of this 28th day of December, 1988, by and between ITEL RAILCAR CORPORATION, a Delaware corporation located at 55 Francisco Street, San Francisco, California 94133, ("Itel") and CHATTAHOOCHEE INDUSTRIAL RAILROAD, a Georgia corporation, located at P.O. Box 253, Cedar Springs, Georgia 31732, ("CIRR or Railroad").

RECITALS:

- A. Pursuant to a Purchase Agreement dated as of December 28, 1988 the Railroad sold to Itel one hundred twelve (112) hopper coal railcars.
- B. Itel has agreed to rehabilitate such railcars as set forth herein.
- C. Pursuant to this Agreement, Itel shall furnish such Cars to the Railroad for a period of time, subject to the terms set forth herein.
- D. It is intended that, at the commencement of the term hereof, the Cars will be used in bulk service to transport coal to the Great Southern Paper Company facility located on the Railroad's lines; provided, however, that the Cars may be used in any manner as determined in the sole discretion of the Railroad consistent with the terms of the Agreement and for which the Cars were designed.

1. Scope of the Agreement

- A. Itel agrees to furnish and the Railroad agrees to accept, upon the terms and conditions set forth herein and in the Schedule(s) attached hereto, a number of items of equipment bearing the reporting marks and of the type, construction and other description set forth in any Schedules attached hereto and executed by the parties concurrently herewith or hereafter. The word "Schedule" includes the schedules executed herewith and any schedules and amendments which are subsequently executed by both parties. When any such Schedule or amendment is so executed it shall become part of this Agreement. "Cars" shall mean all items of equipment subject to this Agreement and "Car" shall mean an individual item of equipment. The terms and provisions of each Schedule shall control, as to the Cars listed on such Schedule, over any inconsistent or contrary terms and provisions in the body of this Agreement.
- B. It is the intent of the parties to this Agreement that Itel shall at all times be and remain the owner of all Cars and that no joint venture or partnership is being created. The Railroad's interest in the Cars shall be that of a user only. The Railroad agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

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 in each Schedule shall commence at 12 noon on the date such Car is delivered as set forth in Subsection 3.A. hereinbelow and shall continue as to all of the Cars described in such Schedule for ten (10) years from the earlier of (i) the date on which the last Car described in such Schedule was delivered or (ii) sixty (60) days from the date the first Car described in such Schedule was delivered to the CIRR's lines (the "Initial Term"). Upon the delivery of the final Car, Itel shall provide the Railroad with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the date of delivery for each Car and the expiration date of the Agreement with respect to the Cars described in such Schedule. Unless the Railroad, within fifteen (15) days of such notice, demonstrates to the satisfaction of Itel that such date is incorrect, then the Railroad shall be deemed to have concurred with such date.

3. Supply Provisions

A. The Railroad hereby approves the specifications described in Exhibit B attached hereto. The parties recognize that the Railroad previously owned the Cars described on Equipment Schedule No. 1 and that the Cars will be in the Railroad's possession prior to the rehabilitation to be performed at the direction and expense of Itel pursuant to this Agreement. If, as a result of the Railroad failing to deliver the Cars for movement in a timely manner to the maintenance facility(ies) designated by Itel, Itel is assessed with a surcharge or incurs any additional costs for interrupting the flow of Cars through such maintenance facility, then the Railroad shall, within ten (10) days of receiving notice and evidence of such surcharge or costs, pay to Itel the amount thereof; provided, however, such cost shall not exceed

If the Car conforms to such specifications and to all applicable governmental regulatory specifications, each Car shall be deemed delivered to the Railroad and subject to the terms of this Agreement upon release from the maintenance facility(ies) following rehabilitation of such Car ("Delivery"). The Cars shall be moved to the CIRR's railroad line at no cost to the Railroad at the earliest time that is consistent with mutual convenience and economy. The charges set forth in Section 8 of the Agreement shall commence notwithstanding the fact that the Railroad may not have immediate physical possession of the cars furnished hereunder. Commencing upon the earlier of (i) the first date each Car is interchanged to the CIRR's lines after Delivery or (ii) the first date such Car is received by a coal loading facility after Delivery, the Railroad shall be liable for all costs, charges and expenses on account of or relating to transportation or movement of such Car. If Itel is required to pay any such amount, the Railroad shall reimburse Itel within thirty (30) days of receiving an invoice from Itel for such amount. The Railroad covenants that it shall subscribe to the Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") Interchange Rules adopted by the AAR Mechanical

Department, Operations and Maintenance Department ("Interchange Rules") for the duration of this Agreement.

4. Record Keeping

- A. The Railroad shall prepare and file all documents relating to the registration, maintenance and record keeping functions normally performed with respect to railroad equipment of the type subject to this Agreement including, but not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"), adding the appropriate OT-37 information; and (iii) preparation of any reports as may be required from time to time upon reasonable notice and by the ICC and any other regulatory agencies with respect to the Cars. The Railroad shall register each Car in UMLER, placing into owner's field the letters designated by Itel, in such a manner that Itel, or its agent, is allowed access to any required information including, but not limited to Train 62 Junction Advices and the Train 65, 67, 71 and 80 Advices with respect to each Car. If the Railroad fails to register or improperly registers any Car in UMLER, the Railroad shall be responsible for an amount equal to the revenues that would have been earned by such Car had it been properly registered in UMLER.
- B. All record keeping functions relating to the use of the Cars by the CIRR and railroads, including but not limited to car hire reconciliation, collection and receipt of revenues from other railroad companies, records pertaining to maintenance and repair, and billing in accordance with the Interchange Rules shall be performed by the CIRR with respect to the Cars described on each Schedule. All record keeping performed hereunder and all records of payments, changes and correspondence related to the Cars shall be separately recorded and maintained in a form suitable for reasonable inspection by the other party from time to time upon reasonable notice and during regular business hours. Upon Itel's request, the CIRR shall supply Itel with telephone reports of the number of Cars in the Railroad's possession and control.
- C. The Railroad shall submit to Itel a monthly report in complete AAR format for all sums due to the Railroad from Itel for such calendar month with respect to the maintenance of the Cars, including sums due for maintenance performed by third parties and for maintenance performed by the Railroad. Itel shall pay to the Railroad all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly maintenance report and bill.

5. Maintenance

- A. Except as set forth hereinbelow and subject to Subsection 5.B., Itel shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars:

(i) Except as otherwise provided herein, Itel shall, at its

expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules; provided, however, that such repairs, maintenance and servicing ("Maintenance") shall be performed at the Railroad's expense in the event that such maintenance (a) was occasioned by the fault of the Railroad or (b) arises in those instances in which the Interchange Rules would assign responsibility to the Railroad for the loss, damage, destruction or liability requiring such Maintenance for Cars not bearing the Railroad's reporting marks while such Cars are used on the Railroad's lines. The Railroad shall, at its expense, inspect all Cars interchanged to the Railroad to insure that such Cars are in good working order and condition and the Railroad shall be liable to Itel for any repairs required for damage not noted at the time of interchange. The Railroad shall use its best efforts to minimize any damage to the Cars and shall notify Itel in writing of any maintenance required, providing when available, the time, place and nature of any accident or bad order condition, and identifying the last commodity shipped in the Car. The Railroad may make running repairs to those parts of the Cars specified in Exhibit C attached hereto to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Itel's prior written consent which shall not be unreasonably withheld. The Railroad shall not place any Car into a private contract repair facility or have any Car repaired by a private contractor on the Railroad's property without prior approval from Itel which shall not be unreasonably withheld. All such repairs shall be performed within reasonable guidelines set by Itel. The Railroad shall be liable to Itel for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Any repairs performed to the Cars by the Railroad at Itel's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties. Should the AAR Mechanical Department inspect or investigate the Railroad's maintenance facilities and determine that restitution is due owners of equipment repaired at the Railroad's facilities, then Itel shall be entitled to such restitution pursuant to AAR Rule 120 for the Cars that were repaired at the Railroad's facilities.

- (ii) Itel shall have the right to perform Non-Routine Repairs, as hereinafter defined, to the Cars at a location which is mutually agreeable to Itel and the Railroad or at a contract repair facility. Non-Routine Repairs ("Non-Routine Repairs") shall be defined as repairs of the type

that Itel determines that the Railroad would not normally perform or of the type that Itel determines would normally precipitate movement of such Cars to a repair facility. Itel shall notify the Railroad at least seventy-two (72) hours in advance of performing such Non-Routine Repairs.

(iii) Itel 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 Interchange Rules.

(iv) Title to any alteration, improvement or addition made, whether or not authorized, shall be and remain with Itel.

B. Itel's maximum responsibility for costs associated with the maintenance described in Subsection 5.A. for all Cars, in the aggregate, is

(such total amount the "Base Amount"). (It is understood that Cars undergoing maintenance and repairs shall be considered subject to this Agreement.) The calculation of responsibility for maintenance costs shall be determined for the Cars in the aggregate as follows:

(i) If in any calendar year, the cost of maintenance for Itel's account is under the Base Amount, an amount ("Unused Portion") equal to the Base Amount minus the actual cost of maintenance for Itel's account for such calendar year, will accrue and may be applied to any costs exceeding the Base Amount in subsequent Years, except that any amounts paid to the Railroad under Subsection 5.B.(iii) hereinbelow or designated by the Railroad to offset payments due to Itel under Subsection 5.C. hereinbelow will not be included in the Unused Portion.

(ii) If, during any calendar year ("Year"), the cost of maintenance for Itel's account exceeds the Base Amount for such Year, plus, if applicable, any unapplied Unused Portion(s) from previous Year(s) (together the "Maximum"), then the Railroad shall pay to Itel, within thirty (30) days of receiving an invoice from Itel, a sum equal to the cost of maintenance for Itel's account in excess of the Maximum ("Additional Amount").

(iii) Additional Amount(s) paid by the Railroad ("Additional Payments") shall be reimbursed to the Railroad in cash to the extent that the cost of maintenance for Itel's account in subsequent Year(s) is under the Base Amount, unless the cumulative amount of maintenance costs for Itel's account through such Year continue to exceed the Maximum. Reimbursement of the Addition Payment shall

be made to the Railroad approximately ninety (90) to one hundred twenty (120) days after Itel receives from the Railroad the final maintenance bill for the Year.

(iv) An example of the procedure used to calculate maintenance responsibility under this Subsection 5.B. is included as Exhibit D attached hereto, as an example only.

C. If, during the last thirty-six calendar months of the Initial Term, the Railroad reasonably determines that the amount and nature of major repairs are such that the cost for the Railroad's account associated with the maintenance of any Car as set forth in this Section 5 is excessive, then the Railroad may terminate such Car from the Agreement upon written notice to Itel; provided that the Railroad pays to Itel for the termination of each Car, as liquidated damages and not as a penalty, because of the impracticality of determining actual damages, an amount equal to the number of months remaining in the Initial Term, including the month in which such notice is given, multiplied by the difference between (i) the revenues that such Car would have earned had such Cars been off the lines of the Railroad for twenty-one and six tenths (21.6) days, with such Car travelling

and (ii) . If, at the time of such notice, an Unused Portion exists, then the Railroad may designate in writing to Itel that an amount equal to all or a portion of the Unused Portion (for all the Cars taken in the aggregate) shall be used to offset or reduce the Railroad's obligation to pay to Itel the amount described in the previous sentence. Such termination shall not release the Railroad from its obligations incurred with respect to such Car(s) prior to the date such payment is made to Itel or from any other obligations, including without limitation, indemnity obligations, which survive the expiration or termination of this Agreement.

6. Tax and Insurance

A. The Railroad shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss and damage insurance with respect to the Cars while the Cars are on the Railroad's tracks or in the Railroad's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are reasonably satisfactory to Itel and the Railroad, but in an amount not to exceed one million dollars combined single limit. All insurance policies shall be taken out in the name of the Railroad and shall name Itel, any financing party designated by Itel by written notice to the Railroad ("Financing Party"), and any assignee of Itel as additional named insureds and as loss-payees. Said policies shall provide that Itel, Financing Party and any assignee of Itel shall receive thirty (30) days' prior written notice of any material changes in coverage or cancellation thereof. In the event that the Railroad fails to place insurance, or that said insurance expires, Itel has the right to purchase the insurance described above and the Railroad shall pay the cost thereof. With

respect to the additional insureds, the Railroad's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. The Railroad shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by the Railroad.

- B. Each policy obtained by the Railroad pursuant to this Section shall be in accordance with the above terms and conditions, which terms and conditions shall be set forth on the Certificate of Insurance provided to Itel pursuant to this Subsection. The Railroad shall, at Itel's request, furnish to Itel concurrently with execution hereof, within thirty (30) days of receipt of a written request from Itel and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance.
- C. Itel shall reimburse the Railroad for all taxes actually paid by the Railroad relating to each Car and on the lease, delivery and operation thereof which may be accrued, levied, assessed or imposed during the term hereof, except taxes on income imposed on the Railroad and sales or use taxes imposed on the mileage charges and/or car hire revenues. Itel shall forward to the Railroad all sales and use tax payments received by it on behalf of the Railroad. Itel and the Railroad will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars.
- D. Notwithstanding anything to the contrary contained in this Section 6, the Railroad may self-insure in whole or in part with respect to the insurance coverage required hereunder; provided, however, that the Railroad place Itel and any Financing Party in the same position that would have been in had the Railroad obtained the insurance specified in Subsection 6.A.

7. Storage

In the event that any Car(s) is not in use while subject to this Agreement, the Railroad shall be responsible for storing any such Car(s) on its lines, at its expense, or for paying all costs associated with storing such Car(s) at another location. With respect to any storage location provided by the Railroad which is off the Railroad's lines, the Railroad shall be responsible for each Car as if it were stored on the Railroad's lines. If Itel pays any such storage-related costs, the Railroad shall reimburse Itel for such costs within ten (10) days after receiving an invoice from Itel for such costs.

8. Car Hire Earnings

- A. Except as provided in Subsection 8.B. below, Itel shall be entitled to all car hire revenues earned by the Cars while the Cars are on the lines of the Railroad or any other railroad; except as outlined below:

- (i) for each calendar quarter during the Term, the CIRR shall

receive

provided, however, that if the Cars in the aggregate are on the lines of the Railroad during any calendar quarter for more hours than the Quarterly Allowance, then in that event, the CIRR shall pay

- (a) The total number of hours of on-line per diem and mileage relief shall be _____ ; provided that if Quarterly Allowance for any calendar quarter(s) during such calendar year is increased as set forth in Subsection 8.D. hereof, the total number for such year shall increase by the same amount as the increase in the Quarterly Allowance(s) for such calendar quarter(s) ("Annual Allowance").
- (b) If the Annual Allowance is greater than the total number of hours that the Cars were on the Railroad's lines (such total number of hours the "Actual Hours"), then the Railroad shall receive _____ ("Alternate Annual Allowance").
- (c) If the Railroad has paid to ITEL car hire revenues for any calendar quarter during such calendar year and is entitled to _____
- (d) If, after the calculation of the Annual Allowance or Alternate Annual Allowance, the Railroad owes _____

- (e) For each Car not subject to the Agreement for the entire period, the calculation of hours will be prorated for the portion of the period that such Car was subject to the Agreement.

For the purposes of this Agreement, the lines of the Railroad shall include those railroad lines owned by the CIRR, Marinette, Tomahawk Railroad Company, Old Augusta Railroad Company and Valdosta Southern Railroad as of the date this Agreement is executed by the parties.

- (ii) If, during any calendar year, the Cars in the aggregate year travel more than
("Average Annual Miles"), the Railroad shall receive all mileage earnings received in excess of the Average Annual Miles.
- (iii) The calculations and payments set forth in this Subsection 8.A. shall be made in accordance with Subsection 8.H. hereof.

- B. Itel shall not be entitled to car hire revenues for any Car while such Car is in a maintenance facility designated by Itel for repairs or to the extent provided in Subsection 8.C. below.
- C. Subject to Subsection 8.E. hereinbelow, in the event of Force Majeure as defined herein, the Railroad shall not be responsible for its obligations under Subsection 8.A. hereinabove to the extent provided below. "Force Majeure" shall be defined as acts of God, riots, strikes, equipment outages resulting from an act of God, or shortages of raw material at the shipper location. If affected by a Force Majeure, the Railroad shall notify Itel in writing as promptly as possible of the nature, probable duration of such Force Majeure and of the steps being taken by the Railroad to cure such event. No event of Force Majeure shall be deemed to exist at a shipper loading point, unless an event of Force Majeure exists at all locations on the lines of CSX Transportation, Inc. listed in Exhibit E attached hereto. If an event of Force Majeure exists at all Exhibit E locations, then the Railroad shall use its best efforts to secure the use of the Cars at a loading point not listed on Exhibit E, or the CIRR shall be responsible under Subsection 8.A. as if such event of Force Majeure did not exist.
- D. Subject to Subsection 8.E. hereinbelow, if the Railroad can substantiate to Itel's reasonable satisfaction that, as a result of a reduction in the amount of coal transported by rail to the lines of the CIRR, the Cars were on the lines of the Railroad in excess of the Quarterly Allowance for any calendar quarter, then the Railroad may request that

- E. If, for any reason Itel is required to allow per diem or mileage

relief to the Railroad for any calendar quarter in excess of the unrevised Quarterly Allowance, including without limitation an event of Force Majeure that continues for more than sixty (60) days, then Itel may, upon ten (10) days' written notice to the Railroad, terminate from the Agreement a number of Cars in increments of up to (the exact number of Cars in an increment to be determined by Itel) that would cause the average number of hours the Cars were on the lines of the Railroad, after giving effect to the removal of such Cars, to be equal to or just below the Quarterly Allowance. If Itel elects to terminate Cars and the Railroad desires to retain the use of such Cars, the Railroad may, upon ten (10) days' written notice to Itel, pay to Itel all sums due for the use of the Cars on the lines of the Railroad in excess of the unrevised Quarterly Allowance.

- F. (i) In the event that Itel shall receive or earn for the use of any Cars, revenues calculated at hourly or mileage car hire rates that are more than lower in amount than those prescribed for the Cars in the Car Hire Rate Table of the AAR in effect in October 1988 ("1988 Rates"), Itel may, at any time and upon ten (10) days prior written notice to the Railroad, terminate from the Agreement any or all Cars; provided, however, that the Railroad may retain such Cars under the terms of this Agreement by paying to Itel within ten (10) days of receiving such notice, and continuing to pay for all subsequent periods in which such difference occurs, the difference between the amount the Cars would have earned in the same service at the 1988 Rates and the amount the Cars actually earned.
- (ii) Should any abatement, reduction or offset occur as a result of any action or inaction of the Railroad, the Railroad shall, within ten (10) days of Itel's request, reimburse Itel the amount of such abatement, reduction or offset.
- G. Any agreement between the Railroad and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Itel's prior written approval if such Third Party Agreement adversely affects the revenues earned by the Cars.
- H. The calculations required in Section 8 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). The Railroad shall pay to Itel by the sixtieth (60th) day after the end of each Service Month (as hereinafter defined), eighty percent (80%) of the total revenues for that Service Month. For the purposes hereof, "Service Month" shall be defined as the calendar month in which revenues were actually earned. At the time payment of eighty percent (80%) of the total revenues is made to Itel, the Railroad shall report to Itel for the same month the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the revenues. Within sixty (60) days after the end of each calendar quarter, the Railroad shall report to Itel the total number of hours

during such quarter that the Cars were on the lines of the Railroad, the total amount, if any, due to Itel from the Railroad pursuant to Subsections 8.A.-8.D. and shall pay to Itel such amount. Ten percent (10%) of the revenues shall be remitted to Itel within ninety (90) days after the end of each Service Month and the remaining ten percent (10%) of the total revenues shall be remitted to Itel within one hundred twenty (120) days after the end of each Service Month. Itel shall within three (3) months of the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that within twenty (20) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

9. Casualty Cars

- A. In the event destruction or damage beyond repair of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car ("Casualty Car") will be removed from the calculations of this Agreement on the date car hire ceases as set forth in the aforementioned Rules 7 and 8 and Itel shall be entitled to all casualty proceeds relating to the Casualty Car.
- B. If any Car, while in the possession of the Railroad, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car ("Casualty Car"), the Railroad shall notify Itel of the occurrence of such damage as set forth in the Interchange Rules. If the Railroad fails to notify Itel within sixty (60) days of the damage date, Itel has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage and such Car shall remain subject to the terms of this Agreement, including Section 8, until the date on which Itel receives all amounts due to it hereunder. Regardless of whether or not the Railroad has notified Itel of the damage pursuant to this Subsection and unless such damage is a result of the negligence of Itel, the Railroad shall remit to Itel an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Itel.
- C. Itel and the Railroad agree to cooperate with and to assist each other in any manner reasonably requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars; provided, however, that this shall not affect their respective obligations under this Section 9.

10. Possession and Use

- A. Throughout the term of this Agreement and so long as the Railroad shall not be in default under this Agreement, the Railroad shall be entitled to the possession, use and quiet enjoyment of the Cars (i) in accordance with the terms of this Agreement; (ii) in conformity

with all Interchange Rules; and (iii) only within the continental limits of the United States of America or in temporary or incidental use in Canada. However, the Railroad's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Itel's obligations thereunder are or become secured by the Cars. Accordingly, following notice to the Railroad 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 that amounts due and owing under Section 8 and other sums due hereunder shall be paid directly to such party and/or that the Cars immediately be returned to such party; provided that the Railroad is entitled to quiet enjoyment of the Cars unless the Railroad is in default of the terms of this Agreement.

- B. The Railroad shall be responsible for the Cars (i) while in the Railroad's possession and control and (ii) in the same manner and under the same circumstances that the Railroad is responsible under the Interchange Rules for similar equipment not bearing the reporting marks of the CIRR.
- C. The Railroad agrees that 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, in compliance with all lawful acts, rules, regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, and in accordance with all rules established by the AAR, except that either Itel or the Railroad may by appropriate proceedings timely instituted and diligently conducted, contest the application of any such act, rule, regulation or order at the expense of the contesting party.
- D. At Itel's election Cars may be marked to indicate the rights of Itel, of an assignee, mortgagee, trustee, pledgee or security holder of Itel, or of a lessor to Itel. Except for renewal and maintenance of the aforesaid markings or lettering indicating that a Car is furnished to the Railroad for its use or is assigned in accordance with demurrage tariffs, no lettering or marking shall be placed upon any Car by the Railroad and the Railroad will not remove or change any reporting mark or number indicated on the applicable Schedule except upon the written direction or consent of Itel. The Railroad shall be responsible for all costs associated with any marking changes made at its request.
- E. The Railroad shall not, with regard to the Cars, or any interest therein, including the revenues thereon, or with regard to the Agreement or any Schedule thereto, directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising by, through, or under it, except those created for the benefit of Itel or any owner or secured party referred to in Subsection 10.A. hereinabove. The Railroad shall notify Itel in writing within two (2) days after the Railroad receives notice, knew or reasonably should have known

of any attachment, tax lien or other judicial process shall be attached to any Car. The Railroad shall 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. If the Railroad fails to take action as described in the previous sentence, Itel may, at the Railroad's expense, take such action and the Railroad shall pay the cost thereof within ten (10) days of receiving an invoice from Itel for such costs.

11. Indemnification

- A. The Railroad agrees to defend, indemnify and hold Itel harmless from any and all claims, losses, damages, liabilities, costs, and expenses (including reasonable attorney's fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of the Railroad; provided that Itel is not also at fault, in which case the Railroad's indemnity is limited to the extent to which the Railroad is at fault, occur while the Cars are in the Railroad's possession or control, or would be the "handling carrier's" responsibility under the Interchange Rules, if the Cars were not bearing the CIRR's reporting marks.
- B. Except as provided in Subsection 11.A. above, and except for those claims, losses, damages, liabilities and expenses for which the Railroad shall be responsible as set forth in this Agreement, Itel shall indemnify and hold the Railroad harmless from any and all loss, damage or destruction of or to the Cars, ordinary wear and tear excepted.

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

12. Default

- A. The occurrence of any of the following events shall be an event of default:
 - (i) The nonpayment by the Railroad of any sum required herein to be paid by the Railroad within ten (10) days after the Railroad receives written notice that any such payment is due;
 - (ii) The breach by the Railroad of any other material term, covenant, or condition of this Agreement, which is not cured within thirty (30) days after receiving notice of such breach, unless the Railroad demonstrates to the reasonable satisfaction of Itel that it is diligently curing such breach;
 - (iii) The breach by the Railroad of any representation, warranty or covenant set forth in Section 13 hereinbelow;
 - (iv) The filing against the Railroad of any petition or

proceeding which the Railroad fails to vacate within sixty (60) days or the filing by the Railroad of any petition or proceeding: a) for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder; or b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of or extensions of indebtedness;

- (v) The subjection of any of the Railroad's property which would affect the revenues generated by the Cars to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;
- (vi) Any action by the Railroad to discontinue rail service on all or a substantial portion of its track.

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

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

13. Expiration or Termination

A. Upon the expiration or termination of the Agreement with respect to the Car(s), if some or all of the Cars are to be delivered to Itel

at the CIRR's railroad tracks, the Railroad shall be responsible for any transportation costs incurred in moving such Cars to said tracks subsequent to the time of expiration of this Agreement as to the Cars. The Railroad shall, at Itel's option, provide up to sixty (60) days' free on its railroad tracks for any Car which is either on the CIRR's railroad tracks at expiration or is subsequently returned to the CIRR's railroad tracks. Said sixty (60) days shall run either from expiration or from the date such Car is returned to the CIRR's railroad line subsequent to expiration, whichever date is later. If requested to do so by Itel, the Railroad shall, at Itel's option, either move a remarked Car to an interchange point on the CIRR's lines selected by Itel or use its best efforts to load the remarked Car with freight and deliver it to a connecting carrier for shipment.

B. The Railroad shall insure that each Car returned to Itel upon the expiration or termination of the Agreement shall be in the following condition:

(i) Each such Car shall be (a) in as good condition, order and repair as when delivered to the Railroad, normal wear excepted, (b) in interchange condition in accordance with AAR and FRA rules and regulations, (c) suitable for loading of the commodities allowed in the applicable schedule, (d) reasonably free from all accumulations or deposits from commodities transported in or on it while in the service of the Railroad, and (e) free of significant Rule 95 damage.

C. Until the Cars are delivered to Itel pursuant to this Section, the Railroad shall continue to be liable for and shall pay all amounts required under Section 8 hereinabove at the rate being paid immediately prior to termination or expiration and the Railroad shall in addition make all other payments and keep all obligations and undertakings required of the Railroad under any and all provisions of this Agreement as though such termination or expiration had not occurred. Nothing in this Section shall give the Railroad the right to retain possession of any Car after expiration or termination of this Agreement with respect to such Car.

D. Itel shall bear the costs associated with remarking each Car.

14. Representations, Warranties, and Covenants

The Railroad and Itel, each with respect to itself, represent, warrant and covenant that:

A. Such party is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated. Insofar as is material to the other party's rights and its obligations under this Agreement, it has the corporate power and authority to and is duly qualified and authorized to: (i) do business wherever necessary to carry out its present business and operations, (ii) own or hold under lease its properties, and (iii)

perform its obligations under this Agreement.

- B. The entering into and performance of this Agreement by such party has been duly authorized by all necessary corporate authority and will not violate any judgment, order, law or regulation applicable to it or result in any breach of, or constitute a default under, any agreement of it. Nor will its entering into and performance of this Agreement result in the creation of any lien, charge, security interest or other encumbrance upon any of its assets or on the Cars or this Agreement pursuant to any instrument to which it is a party or by which it or its assets may be bound, except as to ITEL, liens in favor of secured parties as provided in Section 10 hereinabove.
- C. There is no action or proceeding pending or threatened against such party before any court, administrative agency or other governmental body which might result in a material adverse effect on the business, properties and assets, or condition, financial or otherwise, of it such that its ability to perform its obligations hereunder would be materially and adversely affected.
- D. There is no fact which such party has not disclosed in writing to the other, nor is it a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as it can now reasonably foresee, would alone or in combination with other factors have a material adverse impact on its business, condition, property, holdings or the ability of it to perform its obligations under this Agreement.

15. Inspection

For each Car located on the CIRR's premises, the CIRR shall allow ITEL, upon reasonable notice to the Railroad and during normal business hours, to inspect such Car on such premises. For each Car located on premises other than the CIRR's premises, the Railroad shall at no out-of-pocket cost to the Railroad, assist ITEL in obtaining access to such Cars. The Railroad shall, upon the request of ITEL but not more frequently than once every year, furnish to ITEL a list, certified by an officer of the Railroad, of all Cars then covered by this Agreement.

16. 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 the Railroad may not without the prior written consent of ITEL, assign this Agreement or any of its rights or obligations hereunder or lease any Cars to any party or assign any Cars to any party not located on the lines of the Railroad. Any purported assignment or lease in violation hereof shall be void.
- B. All rights of ITEL under this Agreement may be assigned, pledged, mortgaged, transferred or otherwise disposed of; provided, however, that the assignee shall be an operating equipment leasing company (or a subsidiary thereof) that, together with its subsidiaries, has

a net worth of no less than fifty million dollars.

- C. If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to other persons or circumstances shall not be affected thereby, and each provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- D. 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 Itel or its assignees in connection with the acquisition, 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 this Agreement.
- E. Itel's failure to exercise or delay in exercising any right, power or remedy available to Itel shall not constitute a waiver or otherwise affect or impair its rights to the future exercise of any such right, power, or remedy. No waiver, indulgence or partial exercise by Itel of any right, power, or remedy shall preclude any further exercise thereof or the exercise of any additional right, power or remedy.
- F. The Railroad shall, if requested by Itel, promptly upon its becoming available, furnish to Itel any public document filed with the Interstate Commerce Commission related to the Railroad's finances, and any other financial information reasonably requested by Itel, including but not limited to 10K and 10Q reports of its parent company.
- G. Any notices required or permitted to be given pursuant to the terms of this Agreement shall be deemed given when given by telecopy or telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Itel: Itel Railcar Corporation
55 Francisco Street
San Francisco, California 94133
Attn: President

CIRR: Chattahoochee Industrial Railroad
State Highway 370
P.O. Box 253
Cedar Springs, Georgia 31732
Attn: ~~Vice-President and General Manager~~
Attn: President

and

ADP
ack
f

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

or to such other addresses as ITEL or the Railroad may from time to time designate.

- H. The terms of this Agreement and all rights and obligations hereunder shall be governed by the internal laws of the State of California and jurisdiction of any action with respect to this Agreement may be had in the courts located in the City and County of San Francisco, California.
- I. The obligations and liabilities of ITEL and the Railroad hereunder shall survive the expiration or 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.
- K. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract.

ITEL RAILCAR CORPORATION

CHATTAHOOCHEE INDUSTRIAL RAILROAD

By: <u><i>D. Hayes</i></u>	By: <u><i>Arthur D. Fuller</i></u>
Title: <u>President</u>	Title: <u>PRESIDENT</u>
Date: <u>12-20-88</u>	Date: <u>12-19-88</u>

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 1 dated as of _____ to Loading Agreement dated as of _____, by and between ITEL RAILCAR CORPORATION ("Itel") and CHATTAHOOCHEE INDUSTRIAL RAILROAD ("the CIRRR" or "the Railroad").

CAR REPORTING
MARKS AND NUMBER

DELIVERY DATE

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

ITEL RAILCAR CORPORATION

By: _____

Title: _____

Date: _____

EXHIBIT B

GENERAL SCOPE OF WORK FOR
CIRR 6000 - 6149 COAL CARS

1. Complete replacement of Side Sheets due to corrosion damage.
2. Repair or replace bent or torn Side Posts, as required.
3. Splice and reinforce Side Sills.
4. Repair or replace Corner Posts.
5. Repair or replace End and Side Ladder Stiles, as required.
6. Repair or replace End Posts.
7. Straighten End Sills, as required.
8. Reinforce Slope Sheets at Center Sill Hoods.
9. Reinforce End Sheets at Floor Sheet connection.
10. Straighten End Sheets, as required.
11. Remove, repair, and replace or renew Safety Appliances, as required.
12. Inspect Couplers, Draft Gears, Yokes, Truck, Wheel Sets, Air Brake Components and other running gear for excessive or condemnable wear, repair or replace as necessary.
13. Replace compression brake pipe fittings with welded, as per Rule 88, Sec C.
14. Blast, prime, paint, and stencil (AAR Standard stenciling) exterior of the car.
15. Replace Slope Sheets whenever original Sheets have deteriorated 50% or more.
16. Turn and/or replace all Wheels which Exceed a Two (2) Finger Reading.

EXHIBIT C

Running Repairs: Open Top Hoppers

Angle Cocks	Wheels Assemblies
Air Hose	Yokes
Air Brake Hoses (within Brake System)	Knuckles/Pins
Train Line	Slack Adjuster
Operating Levers and Brackets	Couplers
Sill Steps	Coupler Wear Plates
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Cross Keys
Air Brakes	Roller Bearing Adapters
Hand Brakes	Outlet Gates Repair (Not Gate Replacement)
Brake Beams and Levers	
Brake Step	
Bottom Rod Safety Step	
Truck Springs	

EXHIBIT D

Assumptions Used in this example:

- o Cars are subject to loading agreement for entire year
- o all numbers represent annual amounts

	Year 1	Year 2	Year 3	Year 4
total cost of maint. for Itel's account				
Base Amount				
cost for Itel				
repayment to the CIRR				
offset against Addit Amount payments				
cost for the CIRR (Additional Amount)				
Cumulative Additional Amount				
Unused Portion				

EXHIBIT E

LOADING POINTS ON THE LINES OF CSX TRANSPORTATION, INC.

Coal Loading facilities in the following locations:

Bennett, Kentucky	Lily, Kentucky
Berea, Kentucky	Mullins, Kentucky
Brenda, Kentucky	NRG, Kentucky
Claymont, Kentucky	Rhea, Kentucky
Deby, Kentucky	Totz, Kentucky
East Bernstadt, Kentucky	

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 Loading 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 Loading 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 Odom
Notary Public

MY COMMISSION EXPIRES MARCH 21, 1992

EQUIPMENT SCHEDULE NO. 1

IteI Railcar Corporation hereby furnishes the following Cars to CHATTAHOOCHEE INDUSTRIAL RAILROAD subject to the terms and conditions of that certain Loading Agreement dated as of December 28, 1988.

AAR Mech	Design. Description	Numbers	Length	Dimensions Inside Width	Height	No. of Cars
HT	4,000 cubic foot, 100 ton, triple hopper coal cars built in 1975-1977 by Pullman	CIRR 6301-6412	48'11"	9'9"	N/A	112

all
[Signature]

ITEL RAILCAR CORPORATION

CHATTAHOOCHEE INDUSTRIAL RAILROAD

By: [Signature]
Title: President
Date: 12-28-88

By: [Signature]
Title: PRESIDENT
Date: 12/19/88

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 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.

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 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.

Arthur D. Fuller
Notary Public

MY COMMISSION EXPIRES MARCH 21, 1992