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9-076A006

**ITEL**

**Pullman**

March 13, 1989

RECORDATION NO 16238 FILED 1425

MAR 17 1989 -11 05 AM

INTERSTATE COMMERCE COMMISSION

**Itel Rail Corporation**

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

Date \_\_\_\_\_  
Fee \$ \_\_\_\_\_  
ICC Washington, D.C.

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

Re: **Schedule No. 1 to Master Lease Agreement dated December 30, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Wisconsin & Southern Railroad Company**

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) 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 Schedule No. 1 under the Master Lease Agreement dated December 30, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Wisconsin & Southern Railroad Company, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation and  
Itel Railcar Corporation (Lessors)  
55 Francisco Street  
San Francisco, California 94133

Wisconsin & Southern Railroad Company (Lessee)  
511 Barstow Street  
Horicon, Wisconsin 53032

This Schedule covers sixty-eight (68) 52'5", 70-ton RBL boxcars bearing reporting marks USLX 10191-15069 (n.s.).

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

16238 A

RECORDATION NO \_\_\_\_\_ FILED 1425

MAR 17 1989 -11 05 AM

LOT NO. 2221-01

INTERSTATE COMMERCE COMMISSION SCHEDULE NO. 1

THIS SCHEDULE NO. 1 ("Schedule") to that certain Lease Agreement (the "Agreement") made as of 12-30, 1988 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and WISCONSIN & SOUTHERN RAILROAD COMPANY, as lessee ("Lessee") is made this 30<sup>th</sup> day of December, 1988, between ITEL RAILCAR CORPORATION ("Lessor") and Lessee.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 1, except that the term "Cars" shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Design.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
RBL	70-ton, Plate C Dual Air Pak Bulkheads Insulated Boxcar	USLX 10191, 10193, 10199-10200, 10202, 10205-10206, 10209,	52'5"	9'4"	10'5"	16'	<del>70</del> 68

10211, 10213-10215, 10227, 10229, 10231, 10239-10242, 10245-10247, 10250, 10257, 10259, 10264, 10380, 10389, 10443, 10446, ~~10449~~, 10461, 10464, 10465, 10471, 10474, 10506, 10525, 10710, 10726, 10729, 10730, ~~10801~~, 10802, 10821, 11104, 11105, 11108, 11112, 11113, 11117, ~~11125~~-11127, 11130, 11205-11208, 11287, 15060-15069.

per 11126-  
JMM

ADM

3. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on November 1, 1988 ("Commencement Date") and shall continue as to all of the Cars described in this Schedule through and including October 31, 1991 (the Term").
4. Lessor shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement.
5. A. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except as set forth in Section 5 of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby substituted for Exhibit B to

the Agreement, if any. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.

B. The Interior Maintenance Amount (as defined in Section 5.B. of the Agreement) shall be \_\_\_\_\_ per Car per calendar year, for the Cars in the aggregate, prorated for each Car not subject to the Agreement for an entire calendar year at \_\_\_\_\_ per Car per month.

6. Lessor shall at all times be liable for, and shall pay all federal, state, or other governmental property taxes assessed against or levied upon the Cars. Lessee shall be liable for and shall pay all sales, use or gross receipts taxes imposed upon the Cars or upon mileage payments for the use or handling of the Cars during the term of this Schedule.

7. Rent

A. Definitions

(i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee and the section of railroad line on the Muskego cutoff (located near Milwaukee, Wisconsin) from milepost 87.1 to milepost 93.7 which is leased from the Soo Line Railroad Company by Lessee as of the date this Schedule is executed by the parties. Unless Lessor and Lessee agree otherwise, any lines purchased by Lessee or added to the Eligible Lines during the Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 7.A.(iii) hereinbelow).

(ii) "Revenue Rates" is defined as the applicable mileage published in PHJ tariff 6007 series (ICC PHJ 6007, Items 195 and 621), supplements thereto, or successive issues thereof.

(iii) "Revenues" is defined as the total revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to, mileage, whether or not collected and received by Lessor and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

B. Lessor shall retain \_\_\_\_\_ of all Revenues and Lessee shall receive \_\_\_\_\_ of all Revenues due for the use and handling of the Cars ("Revenue Sharing").

C. Lessor shall retain the Revenues and other payments received by it on behalf of Lessee. Further, since the parties desire to determine on a monthly basis the approximate amounts owed under this Section 7, Lessor shall within one hundred twenty (120) days

after the end of each service month, calculate on a monthly basis the amounts due both parties pursuant to this Section.

- D. If, with respect to any calendar month or months, Lessor's Revenue Sharing is less than \_\_\_\_\_ per Car per calendar month ("Base Rent"), Lessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate the Agreement as to any or all Cars as Lessor shall determine.
  - E. If any Car has remained on Lessee's property because Lessee has not given preference to the Car as specified in Subsection 3.B. of the Agreement, 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 a railroad for the entire period during which such Car is on Lessee's property.
8. A. Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, losses, damages, liabilities, costs, and expenses (including attorney's fees) with respect to, caused by, or arising out of the Cars (collectively, "Damages") which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession or control, or would be the "handling carrier's" responsibility under the Interchange Rules, as if the Cars were not bearing Lessee's reporting marks.
- B. Except as provided in Subsection 8.A. above, and except for those claims, losses, damages, liabilities and expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall defend, indemnify and hold Lessee harmless from any and all loss, damage or destruction of or to the Cars, ordinary wear and tear excepted.
- C. The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement.
9. Upon the expiration or termination of the Agreement with respect to any Car(s) in this Schedule, Lessee shall surrender possession of said Car(s) to Lessor pursuant to Section 12 of the Agreement. If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee 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. Lessee shall, at Lessor's option, provide up to one hundred twenty (120) days free storage on its railroad tracks for any Car which is either on Lessee's railroad tracks at expiration or is subsequently returned to Lessee's railroad tracks. Said one hundred twenty (120) days shall run either from expiration or from the date such Car is returned to Lessee's railroad line subsequent to expiration, which date is later. If requested to do so by Lessor, Lessee shall, at Lessor's option, either move a remarked Car to an interchange point on Lessee's lines selected by Lessor or use its best efforts to load the

remarked Car with freight and deliver it to a connecting carrier for shipment.

- 10. If Lessee is not in default under the Agreement or this Schedule upon the expiration of the Agreement as to this Schedule, Lessor and Lessee may mutually agree that Lessee may purchase all but not fewer than all of the Cars described in this Schedule, as is, where is, without warranties or representations, upon the following terms and conditions: (a) Lessee shall provide to Lessor in writing its request to exercise the purchase option one hundred twenty (120) days prior to the end of the Term; (b) Lessor and Lessee will attempt to negotiate in good faith a purchase price, and if Lessor and Lessee have agreed upon a purchase price, Lessee shall pay to Lessor such purchase price within thirty (30) days after the expiration date; (c) Lessee shall be responsible for and shall pay all sales or use tax accruing as the result of such sale; (d) Lessor shall execute and deliver to Lessee a bill of sale upon Lessee's payment of the purchase price for the Cars. If Lessor and Lessee have not agreed to a purchase price upon the expiration date of this Schedule, then Lessor shall have no obligation under this Section 10.
- 11. Except as expressly modified by this or another Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.
- 12. This Schedule may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAILCAR CORPORATION

WISCONSIN & SOUTHERN RAILROAD COMPANY

By: *[Signature]*  
 Title: President  
 Date: January 27, 1989

By: *[Signature]*  
 Title: Exec V.P.  
 Date: 12-30-88

- 13. During the term of the Agreement with respect to the Cars described in this Schedule, Lessor may, at any time, at Lessor's expense, remark the Cars to railroad marks to be designated by Lessor, and Lessee agrees to enter into any documentation that would effect that change. *[Signature]*

EXHIBIT B

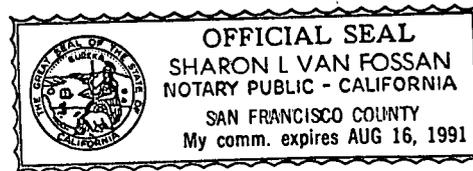
Running Repairs: RBL Boxcars

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plates (Not Replacement)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	Load Divider Repairs (Not Replacement)
Brake Beams and Levers	
Truck Springs	
Door Hardware (Not Replacement)	

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

On this 27<sup>th</sup> day of January, 1988<sup>9</sup>, 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 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 WISCONSIN )  
 ) ss:  
COUNTY OF MILWAUKEE )

On this 30<sup>th</sup> day of DECEMBER, 1988, before me personally appeared Roger Schiele, to me personally known, who being by me duly sworn says that such person is Eric V.P. of Wisconsin & Southern Railroad Company that the foregoing 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.

Eric V.P.  
Notary Public