



RECORDATION NO. 16461 FILED 1423
AUG 2 1989 4 45 PM
INTERSTATE COMMERCE COMMISSION

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

July 28, 1989

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

9-214A017

Re: Schedule No. 1 to Master Lease dated as of July 14, 1989,
between IteI Rail Corporation and SouthRail Corporation

Dear Ms. McGee:

On behalf of IteI 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 under the Master Lease dated as of July 14, 1989, between IteI Rail Corporation and SouthRail Corporation, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

SouthRail Corporation (Lessee)
605 Second Avenue
Columbus, Mississippi 39701

This Schedule adds to the Master Lease seventy-nine (79) 60'10", 100-ton, Plate C, XM boxcars bearing reporting marks GMSR 40401-40440, GMSR 40501-40518 and GMSR 40520-40540.

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 Assistant

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF HELLER FINANCIAL, INC. UNDER THE HELLER FINANCIAL, INC. LOAN AND SECURITY AGREEMENT WITH ITEL RAIL CORPORATION DATED AS OF SEPTEMBER 30, 1986.

16461
RECORDATION #10 FILED 1425

AUG 2 1989 - 14 45 PM

SCHEDULE NO. 1

INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE No. 1 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of July 14, 1989 between ITEL RAIL CORPORATION, as lessor ("Lessor") and SOUTHRAIL CORPORATION, as lessee ("Lessee") is made this 14th day of July, 1989, between Lessor and Lessee.

R E C I T A L S :

- A. Lessor and Lessee are parties to the Lease Agreement dated July 28, 1986 ("Old Lease"), as amended, pursuant to which thirty-nine (39) boxcars currently bearing the reporting marks GMSR 40501-40518 and GMSR 40520-40540 ("Leased Cars") were leased by Lessor to Lessee.
- B. Lessor as sublessor ("Sublessor") and Lessee as sublessee ("Sublessee") are parties to the Sublease Agreement dated as of January 10, 1986 ("Sublease"), as amended, pursuant to which forty (40) boxcars currently bearing the reporting marks GMSR 40401-40440 ("Subleased Cars") were subleased by Sublessor to Sublessee.
- C. Lessor desires to provide to Lessee and Sublessor desires to provide to Sublessee the option to change the mechanical designation of the Leased Cars and the Subleased Cars, respectively.
- D. The parties desire to change the rental with respect to the Leased Cars and the Subleased Cars.
- E. The parties desire to terminate the Old Lease and Sublease and enter into a new agreement as provided herein.

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" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
- 2. The termination of the Old Lease and Sublease shall become effective on Delivery (as defined in Section No. 4 hereinbelow).
- 3. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	100-Ton, Plate C, End Of Car Cushioning, Nailable Steel Floor, Boxcars	GMSR 40401-40440	60'10"	9'6"	11'0"	12' Sliding	40

AAR Mech Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	100-Ton, Plate C, End Of Car Cushioning, Nailable Steel Floor, Boxcars	GMSR 40501-40518 40520-40540	60'10"	9'6"	11'5"	10' Sliding	39

4. The term of the Agreement with respect to each Car described in this Schedule shall commence ("Delivery") on ~~the first day of the month~~ July 1, 1989 ~~following the full execution of the Agreement by both parties~~ and will expire at the close of business on (1) June 10, 1991 with respect to the Cars bearing the reporting marks GMSR 40401-40440; and (2) September 18, 1991 with respect to the Cars bearing the reporting marks GMSR 40501-40518 and 40520-40540. (each such period a "Term"). RK
5. Lessee agrees to pay the rent set forth in the Agreement, notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereunder.
6. During the term of the Agreement with respect to the Cars described in this Schedule, Lessee may, at its option, at its expense, in accordance with the AAR Interchange Rules and upon securing AAR approval, change the mechanical designation of any Car from "XM" to "XP" or from "XP" to "XM" by remarking any such Car to bear the letters "XP" or "XM", as the case may be, ("Modification"). In the event that the AAR request information with respect to the Modification, Lessee shall be responsible for providing such information to the AAR. Upon the expiration or early termination of the Agreement with respect to any Car which has been remarked to "XP" ("XP Car"), at Lessor's option, Lessee shall, at its expense, remark any such XP Car to XM.
7. Upon the Modification of any Car, Lessee shall provide to Lessor, on a weekly basis, a Certificate of Modification in the form of Exhibit C attached hereto, which shall show the reporting marks, number and the date of Modification for each Car that underwent Modification during such week.
8. During the term of the Agreement with respect to any XP Car (as defined in Section 6 hereinabove), Lessee may, at its sole option, place into or remove from an assignment pool on the lines of another railroad or the property of a shipper ("Placement or Removal") any XP Car. Upon the Placement or Removal of any XP Car, Lessee shall provide to Lessor, within five (5) days of such Placement or Removal, written notification showing the reporting marks and number of each XP Car, name of the railroad or shipper (including the railroad line on which shipper is located) and the city and state where such railroad or shipper is located. In the event Lessor misroutes any bad order XP Car due to Lessee's failure to notify or to provide correct information to Lessor with respect to any Placement or Removal, Lessee shall be responsible for all costs, charges and expenses

relating to the misrouting of such bad order XP Car. If Lessor is required to pay any such amount, Lessee shall reimburse Lessor within thirty (30) days of receiving an invoice from Lessor for such amount.

9.
 - A. Lessee shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee shall register each Car in UMLER placing the letters designated by Lessor in owner's field in such a manner that Lessor, 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 regard to each Car. If Lessee fails to register or improperly registers any Car in UMLER, Lessee 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. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor 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 Lessee. Lessor shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly maintenance report and bill.
10. 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 added to the Agreement or substituted for Exhibit B thereto. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
11. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any 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 is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem 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 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.

12. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee, MidLouisiana Rail Corporation and MidSouth Rail Corporation as of the date this Schedule is executed by the parties. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Term, effective on the date of such sale, are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Per Diem Revenues (as defined in Subsections 12.A.(iv) hereinbelow).
- (ii) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee, as of the date this Schedule is executed by the parties. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Initial Term or any Extended Term, effective on the date of such sale, are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Mileage Revenues (as defined in Subsections 12.A.(v) hereinbelow).
- (iii) "Revenue Rates" is defined as the hourly and mileage car hire rates prescribed for excluded boxcars in the Appendix to the ICC's decision in ICC Ex Parte No. 346, Sub-No. 19, served September 12, 1986, as found at paragraph (c)(3) of 49 C.F.R. 1039.14.
- (iv) "Per Diem Revenues" is defined as the total per diem 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, per diem, 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.
- (v) "Mileage Revenues" is defined as the total mileage 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.
- (vi) "Revenues" is defined as the sum of Per Diem and Mileage Revenues.
- (vii) The "Guaranteed Base Rent" is defined as the rental per calendar month ("Month") as provided in Exhibit A attached hereto. (Such amount represents

Car per Month calculated at the hourly Revenue Rates.)
The Guaranteed Base Rent for any Car which is not subject to the Agreement for an entire Month shall be prorated at the daily rental for such Car during such Month.

B. Lessee agrees to pay rent to Lessor for the Cars calculated as follows:

(i) In the event _____ in any Month or applicable portion thereof are equal to or less than the Guaranteed Base Rent, Lessor shall

and Lessee shall pay Lessor the difference ("Difference") between the Guaranteed Base Rent and the _____ for such Month. Lessee shall pay Lessor such Difference not later than thirty (30) days after receiving an invoice from Lessor for such Difference.

(ii) In the event _____ in any Month or applicable portion thereof are equal to or exceed the Guaranteed Base Rent, Lessor shall

(iii)

C. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn for the use of any Cars, _____ hire rates that are lower in amount than those specified in _____, Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the _____ such Cars would have earned at the Revenue Rates and the amount of _____ actually received or earned for such Cars.

(ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.

(iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

D. Any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the revenues earned by the Cars.

- E. The calculations required in Section 12 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessee shall pay to Lessor 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 Lessor, Lessee shall report to Lessor for the same month the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the revenues. Ten percent (10%) of the revenues shall be remitted to Lessor 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 Lessor within one hundred twenty (120) days after the end of each Service Month. Lessor 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 not later than thirty (30) days following such calculations, provided, however, that within thirty (30) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
- F. Lessee shall not discriminate against similar boxcars leased by Lessor to Lessee, MidSouth Rail Corporation or MidLouisiana Rail Corporation that are subject to rentals based upon utilization rates ("Similar Boxcars"), in the provision of off-line loads, operations, use and maintenance, or in any other manner, vis-a-vis the Cars. In the event the utilization rate with respect to the Similar Boxcars is negatively affected as a result of any such discrimination by Lessee, then Lessor may, at Lessor's option, place such Similar Boxcars into bilateral agreements providing for the loading of any such Similar Boxcars by a third party.
13. 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 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 if the Cars were not bearing Lessee's reporting marks.
- B. Except as provided in Subsection 13.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 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.
14. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, 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, whichever 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.

15. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.
16. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAIL CORPORATION

By:

Title:

Date:

Robert Kieluck
Vice President + Treasurer
July 14, 1989

SOUTHRAIL CORPORATION

By:

Title:

Date:

H. J. Sab
VP & CTO
JUNE 30, 1989

EXHIBIT A

GUARANTEED BASE RENT

<u>Reporting Marks and Numbers</u>	<u>Per Car Per Month</u>	<u>Per Car Per Day</u>
GMSR 40401-40440		
GMSR 40501-40518, 40520-40540		

EXHIBIT B

Running Repairs: 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 Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	
Brake Beams and Levers	
Truck Springs	
Door Hardware (Not Replacement of Door)	

EXHIBIT C

CERTIFICATION OF MODIFICATION/REMARK

Car Reporting Marks
and Number

Date of Modification

SOUTHRAIL CORPORATION
Authorized Representative

By: _____

Title: _____

Date: _____

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

On this 14th day of July, 1989, before me personally appeared ~~Desmond P. Hayes~~, to me personally known, who being by me duly sworn says that such person is ^{vice} President and ~~Chief Executive Officer~~ ^{Treasurer} of ITEL Rail 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 Mississippi)
) ss:
COUNTY OF Hinds)

On this 30th day of June, 1989, before me personally appeared H I Salmon, to me personally known, who being by me duly sworn says that such person is VP & CTO of SouthRail 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.

Donna R May
Notary Public
My Commission Expires May 9, 1992