

ITEL

Pullman

July 28, 1989

RECORDATION NO. 15642-F

FILED 1425

AUG 2 1989 - 12 45 PM

INTERSTATE COMMERCE COMMISSION

Itel Rail Corporation

55 Francisco Street
San Francisco, California 94133

(415) 984-4000
(415) 781-1035 Fax

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

9-214A023

Re: Schedule No. 4 to Master Lease No. 2197-00 dated May 5, 1988, between Itel Rail Corporation and Hartford and Slocomb 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 under Master Lease No. 2197-00 dated May 5, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Hartford and Slocomb Railroad Company, which was filed with the ICC on May 13, 1988, under Recordation No. 15642.

The parties to the aforementioned instrument are listed below:

Itel Railcar Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Hartford and Slocomb Railroad Company (Lessee)
P.O. Box 2243
Dothan, Alabama 36302

This Schedule covers twenty (2) 5,150 cubic foot, 70-ton, Plate C RBL boxcars bearing reporting marks HS 11289-11308.

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

AUG 2 1989 12 45 PM

Lot No. 2197-06

INTERSTATE COMMERCE COMMISSION

SCHEDULE NO. 4

THIS SCHEDULE No. 4 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of May 5, 1988 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and HARTFORD AND SLOCOMB RAILROAD COMPANY, as lessee ("Lessee") is made this 31st day of May, 1989, 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. 4, except that the term "Cars" as used herein 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 Desig	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
RBL	5150 Cubic Feet 70-Ton, Plate C Dual Air-Pak Bulkheads Insulated Boxcar	HS <u>11289</u> - <u>11300</u>	52'5"	9'4"	10'5"	16'	20

3. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for three (3) years from the earlier of (i) the date on which the last Car described in this Schedule was interchanged to the lines of Gettysburg Railroad Company or (ii) sixty (60) days from the date the first Car described in this Schedule was interchanged to Gettysburg Railroad Company's lines (the "Term"). Upon the Delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
4. After each Car has been remarked, such Car shall be moved to the railroad lines of the Gettysburg Railroad Company ("Assignee") pursuant to the Assignment Agreement dated March 24, 1989 ("Gettysburg Assignment") between Lessee ("Assignor") and Assignee, a copy of which

attached hereto as Exhibit C. To ensure optimal use of the Cars, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders with respect to such Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules.

5. Lessor consents to Lessee's entering in to the Gettysburg Assignment; provided that Lessor shall perform Lessee's duties under the Gettysburg Assignment, except the duties described in paragraph 6 therein, which shall be performed by Lessee; that Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the Gettysburg Assignment; and that Lessee shall, if directed by Lessor, assign Lessee's interest in the Gettysburg Assignment to any party designated by Lessor.
6. 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.
7. 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.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated 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 or any Eligible Lines sold by Lessee to another party, effective on the date of such sale, during

the Initial Term or any Extended Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(iii) hereinbelow).

(ii) "Revenue Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the July 1988 edition of The Official Railway Equipment Register.

(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, per diem and 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.

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- B. Lessor shall receive all Revenues earned by each Car prior to and during the term of the Gettysburg Assignment.
- C. Upon the early termination or expiration of the Gettysburg Assignment, Lessor shall receive all Revenues earned by the Cars while such Cars are off Eligible Lines.
- D. Upon any abatement, reduction or offset as described in Subsection 8. A. (iii), Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount.
- E. 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.
- F. The calculations required in Section 8 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessor shall, prior to making such Final Calculations, retain the Revenues and other payments received by it on behalf of Lessee.

Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under this Section 8, Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amounts due both parties pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

G. If, with respect to any calendar quarter or quarters, revenues received by Lessor for the Cars on this Schedule are less than the 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 such Cars as Lessor shall determine.

H. If, prior to and after the Term of the Gettysburg Assignment, 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 due to such failure, with each Car travelling seventy-four (74) miles per day.

9. Except as expressly modified by this Schedule No. 4 all terms and provisions of the Agreement shall remain in full force and effect.

10. This Schedule No. 4 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 RAILCAR CORPORATION

HARTFORD AND SLOCOMB RAILROAD COMPANY

By: *[Signature]*

By: *[Signature]*

Title: *President*

Title: *President*

Date: *May 31, 1989*

Date: *3-24-89*

EXHIBIT A

CERTIFICATE OF DELIVERY

Exhibit A to Schedule No. 4 dated as of _____ to Lease Agreement dated as of May 5, 1988, by and between ITEL RAILCAR CORPORATION ("Lessor") and HARTFORD AND SLOCOMB RAILROAD COMPANY ("Lessee").

CAR REPORTING
MARKS AND NUMBER

DELIVERY DATE

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

_____.

ITEL RAILCAR CORPORATION

By: _____

Title: _____

Date: _____

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

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

On this 31st day of May, 1989, 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. 4 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 ALABAMA)
) ss:
COUNTY OF HOUSTON)

On this 24 day of March, 1989, before me personally appeared C. F. Fischer, III, to me personally known, who being by me duly sworn says that such person is President of Hartford and Slocomb Railroad Company, that the foregoing Schedule No. 4 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.

Joan Thompson
Notary Public

EXHIBIT C
AGREEMENT FOR ASSIGNED SERVICE

THIS ASSIGNMENT AGREEMENT ("Assignment Agreement") is made and entered into as of this 24th day of March, 1989, between HARTFORD AND SLOCOMB RAILROAD COMPANY ("Assignor") and GETTYSBURG RAILROAD COMPANY ("Assignee").

Assignor and Assignee agree as follows:

1. Assignor shall supply Assignee with the following equipment (the "Cars") subject to the terms and conditions of this Assignment Agreement:

AAR Mechanical Designation	Description	Reporting Marks and Numbers	No. of Cars
RBL	52'5", 5150 Cubic Feet, 70-Ton, Plate C, Dual Air-Pak Bulkheads, Insulated Boxcar	HS <u>11289</u> - <u>11300</u>	20

2. Upon Assignor's instruction, and not without Assignor's instruction, Assignee shall place the Cars into an assignment pool on Assignee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10.
3. The term ("Term") of this Assignment Agreement, with respect to each Car, shall commence on the day that such Car is first interchanged onto Assignee's lines after the full execution of this Assignment Agreement ("Delivery") and shall expire as to all of the Cars three (3) years from the earlier of (i) the date that the last Car was delivered or (ii) the sixtieth (60th) day after the date that the first Car was delivered. Upon the Delivery of the final Car, Assignor shall issue to Assignee a fully-executed Certificate of Delivery in the form of Exhibit A hereto that shall contain the expiration date of the Assignment Agreement with respect to all the Cars as determined by Assignor. Unless, within fifteen (15) days of the date of such Certificate of Delivery, Assignee demonstrates to the reasonable satisfaction of Assignor that such expiration date is incorrect, Assignee shall be deemed to have concurred with such expiration date.

4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
5. Assignee shall load the Cars prior to loading any similar Cars leased by or assigned to Assignee from other parties subsequent to the date of this Assignment Agreement, purchased by Assignee subsequent to the date of this Assignment Agreement, or interchanged from other railroads; provided, however, that nothing contained in this Section shall in any event prevent or prohibit Assignee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor. If any Car remains on Assignee's lines because Assignee has not given preference to the Cars as specified in this Section, Assignee shall be liable for and remit to Assignor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period during which such Car is on Assignee's railroad line and had such Car traveled seventy-four miles per day (74 mpd) during such period.
6. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Car to Assignee. Assignor shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Assignor's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Assignor during the term of the Assignment Agreement.
7. When used in this Assignment Agreement, each of the following terms shall have the definitions indicated:
 - a. "Eligible Lines" is defined as the railroad lines owned and operated by Assignee as of February 1, 1989. Unless otherwise agreed by and provided for by Assignor and Assignee, any lines purchased by Assignee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party, effective on the date of such sale, during the term of the Assignment Agreement are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined hereinbelow). If, at any time during the term of the Assignment Agreement, Assignee operates lines other than the Eligible Lines, then Assignee shall supply Assignor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on the other railroad lines operated by Assignee.
 - b. "Revenues" is defined as the total revenues earned and received or due for the use or handling of the Cars on the railroad lines other than the Eligible Lines, including but not limited to, per diem **\$0.57** computed at ~~\$0.38~~ per hour and mileage computed at \$0.058 per mile, whether or not collected and received by Assignor and undiminished by any claimed abatement, reduction or offset caused by any action

or inaction of Assignee. (\$1312.00) *138*

- c. "Base Revenues" with respect to each Car shall be equal to nine hundred eighty dollars (~~\$980.00~~) per Car per calendar quarter or applicable portion thereof ("Quarter"). Such Base Revenues for any partial Quarter shall be prorated at ten dollars and seventy-four cents (~~\$10.74~~) per Car per day.
(\$14.38) *138*
8. Assignee shall be entitled to full per diem and mileage relief for each Car while such Car is on the Eligible Lines and shall furnish interchange records to Assignor as requested.
9. Assignor shall receive all Revenues earned by the Cars.
10. Upon any abatement, reduction or offset, as set forth in Subsection 6.b. hereinabove, Assignee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amount.
11. If, for any Quarter, Revenues earned by the Cars in the aggregate are less than the Base Revenues for all the Cars, then Assignor may so notify Assignee in writing. Within ten (10) days of receipt of such notice from Assignor, Assignee shall exercise the following option:
- A. to pay Assignor the difference ("Difference") between the Base Revenues for the Cars in the aggregate and the actual aggregate Revenues for the applicable Quarter, and agree to pay Assignor the Difference, if any, each subsequent Quarter for the duration of this Assignment Agreement. If Assignee elects this option, Assignee shall pay Assignor such Difference not later than sixty (60) days after notification that during the Quarter such Difference has occurred; or
- B. to elect not to pay Assignor such Difference for such Quarter. In such event, Assignor may thereafter terminate all or a portion of the Cars from this Assignment Agreement upon not less than ten (10) days' written notice to Assignee at any time during the duration of the Term.
12. During the Term, Assignor may, at its expense, replace any or all of the Cars with similar cars upon not less than ten (10) days' prior written notice to Assignee.
13. Assignor is responsible for normal maintenance and repair expenses except as provided below and except for any transportation costs incurred pursuant to this paragraph, which shall be at Assignee's sole expense. Assignee shall be responsible for and shall pay all costs and expenses of all repair work or other work or materials required because of (i) damage or other conditions caused by Assignee's negligence or misuse in loading or unloading, or by use other than as permitted under this Assignment

Agreement; (ii) damage for which Assignee is responsible under applicable AAR Rules; (iii) Assignee's failure to note any damage to any Car that returns to its lines, the repair of which is the responsibility under AAR Rules of any third party railroad. Assignee shall promptly notify Assignor of any damage to, defect in, need of repair to, or destruction of any Car. For any damaged Car that requires repairs other than running repairs, as provided in Exhibit B attached hereto, car hire (time and mileage) shall be governed by applicable Car Hire and Car Service Rules. In no event shall Assignee place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor.

14. Upon expiration or termination of this Assignment Agreement with respect to any Car(s), Assignee shall surrender possession of such Car(s) to Assignor. Assignee shall insure that each Car returned to Assignor upon the expiration or termination of the Assignment Agreement shall be (a) in the same condition, order and repair as when delivered to Assignee, normal wear excepted, (b) in interchange condition in accordance with AAR and FRA rules and regulations, (c) suitable for loading of the commodities allowed under the Assignment Agreement, (d) free from all accumulations or deposits from commodities transported in or on it while in the service of Assignee, and (e) free of any and all Rule 95 damage. Assignee shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 145, and deliver the Cars to a point on the Eligible Lines to be designated by Assignor. At Assignor's option and Assignee's expense, Assignee shall remark the Cars to bear new reporting marks to be provided by Assignor and use its best efforts to provide final outbound loads for each Car.
15. Assignee's rights shall be subject and subordinate to the rights of Assignor, of any lessor, and of any owner or secured party under any financing agreement with respect to the Cars. Accordingly, following notice to Assignee from any such lessor, 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 Assignment Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
16. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:

If to Assignor:

Manager Car Hire Accounting
Hartford and Slobomb Railroad Company

55 Francisco Street
San Francisco, California 94133

If to Assignee:

President and General Manager
Gettysburg Railroad Company
P.O. Box 745
Gettysburg, Pennsylvania 19325

- 17. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
- 18. This Assignment Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

HARTFORD AND SLOCOMB RAILROAD COMPANY

GETTYSBURG RAILROAD COMPANY

By: *C. J. Gudzinski*

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

Certificate of Delivery

Assignment Agreement dated _____, 1989

Assignor's
Reporting
Marks and Numbers

Date Delivered
to Assignee

The Term of the Assignment Agreement dated _____, 1989
between HARTFORD AND SLOCOMB RAILROAD COMPANY and GETTYSBURG RAILROAD COMPANY
shall expire on _____, 19____

HARTFORD AND SLOCOMB RAILROAD COMPANY

By: 

Title: _____

Lot No. 2197-06

Date: _____

EXHIBIT B

Running Repairs: RBL Boxcars

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