

ITEL

Pullman

September 11, 1989

RECORDATION NO. 15642 FILED 1425 ITEL Rail Corporation

SEP 13 1989 - 1 10 PM

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

INTERSTATE COMMERCE COMMISSION

9-256A022

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

Re: Schedule No. 7 to Master Lease No. 2197-00 dated May 5, 1988, between ITEL Railcar 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 Rail Corporation and
ITEL Railcar Corporation (Lessors)
55 Francisco Street
San Francisco, California 94133

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

This Schedule adds to the Lease Agreement fifty (50) 89'4", TOFC/COFC flatcars bearing reporting marks HS 902050-9020660 (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

15642-8

SEP 13 1989 -1 10 PM

INTERSTATE COMMERCE COMMISSION

SCHEDULE NO. 7 TO MASTER LEASE NO. 2197-00

THIS SCHEDULE No. 7 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of May 5, 1988, between ITEL RAIL CORPORATION as successor in interest to both ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, as lessor ("Lessor"), and HARTFORD AND SLOCOMB RAILROAD COMPANY, as lessee ("Lessee") is made this 16th day of August, 1989.

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. 7, 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 of Cars	Car Reporting Mark and Number	Length	Inside Width	No. of Cars
FC	TOFC/COFC, Dual-45, 15", Ax Sp 5'8", Truck Centers, 66' flatcars	HS 902050 - 9020660 (n.s.)	89'4"	9'	50

- 3. A. 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 remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to Lessee'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.

- B. If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, the Agreement shall automatically be extended from calendar month to calendar month, for a period not to exceed twenty-four (24) calendar months (each such calendar month an "Extended Term"). Provided that the Cars are not subject to the assignment agreement dated August 3, 1989 ("MCER Assignment Agreement") between Lessee as assignor ("Assignor") and Massachusetts Central Railroad Company as assignee ("Assignee"), a copy of which is attached hereto as Exhibit B, Lessor may terminate the Agreement at any time during the Initial Term or Extended Term as to some or all of the Cars described in this schedule by providing not less than ten (10) days' prior written notice to Lessee.
4. When a Car has been remarked, it shall be moved to the railroad lines of the Assignee. 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. In order to move the Cars to Lessee's railroad line and 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 to facilitate the movement of the Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules.
 5. Lessor consents to Lessee's entering into the MCER Assignment; provided that Lessor shall perform Lessee's duties under the MCER Assignment, except the duties described in paragraph 5.B. 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 MCER Assignment, and that Lessee shall, if directed by Lessor, assign Lessee's interest in the MCER 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 C attached hereto is hereby added to the Agreement or substituted for Exhibit C 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 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 Revenues (as defined in Subsection 8.A.(iii) hereinbelow).
- (ii) "Revenues 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 March 1989 edition of The Official Railway Equipment Register, as may be updated from time to time.

(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.

B. Lessor shall receive

the term of the MCER Assignment.

C. Upon the early termination or expiration of the MCER Assignment, Lessor shall receive

Eligible Lines.

D. (i) 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.

(ii) 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.

E. Any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement (s)"), except as provided for in this schedule, shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the revenues earned by the Cars.

9. 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.

10. 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

HARTFORD AND SLOCOMB
RAILROAD COMPANY

By: 

By: 

Title: President & CEO

Title: President

Date: August 16, 1989

Date: 8-14-89

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 7 dated as of _____
to Lease Agreement dated as of May 5, 1988, by and between ITEL
RAIL CORPORATION ("Lessor") and HARTFORD AND SLOCOMB RAILROAD
COMPANY ("Lessee").

CAR REPORTING
MARK AND NUMBERS

DELIVERY DATE

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

ITEL RAIL CORPORATION

By: _____

Title: _____

Date: _____

EXHIBIT B

AGREEMENT FOR ASSIGNED SERVICE

THIS ASSIGNMENT AGREEMENT ("Assignment Agreement") is made and entered into as of this 3rd day of August, 1989, among HARTFORD AND SLOCOMB RAILROAD COMPANY ("Assignor") and MASSACHUSETTS CENTRAL RAILROAD ("Assignee").

Assignor, 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
FC	TOFC/COFC, Dual-45, 15", Ax Sp 5'8", Truck Centers 66', Flatcars	HS 902050-902660 (N.S.)	50

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 in Chicago, Illinois 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.

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* In accordance w. the paragraph 16 (b), (c), (d), and (e)

4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
5. a. 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.
- b. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, ^{as approved by FHEP} 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. WRB
6. 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 May 1, 1989. Any lines purchased by Assignee or added to the Eligible Lines or any Eligible Lines sold by Assignee 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. "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 April 1989 edition of The Official Railway Equipment Register, as may be updated from time to time.
- c. "Per Diem Revenues" is defined as the total per diem revenues, calculated at the Revenue Rates, that are earned or due for the use

or handling of the Cars on the railroad lines including the Eligible Lines, 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.

- d. "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 the railroad lines including the Eligible Lines, whether or not collected and received by Assignor and undiminished by any claimed abatement, reduction or offset caused by any action or inaction Assignee.
 - e. "Revenues" is defined as the sum of Per Diem and Mileage Revenues.
 - f. The "Base Rent" is defined as the amount payable for each calendar quarter ("Quarter"). (Such amount approximates the total Per Diem Revenues which the Cars would have earned in the aggregate if the Cars had been on railroad lines other than Eligible Lines for the entire quarter during which such Cars were subject to the Assignment Agreement during such Quarter. The Base Rent for any Car which is not subject to the Assignment Agreement for an entire calendar quarter shall be prorated at the rate of one-third of the Base Rent for such Car during such Quarter.
7. 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.
 8. Assignor shall receive all Revenues earned by each Car prior to its Delivery. Each Car shall become subject to the rental calculation under Section 9. hereinbelow upon the Delivery.
 9.
 - a. In the event Per Diem Revenues earned in any Quarter or applicable portion thereof are less than the total Base Rent, then Assignor shall retain the total Base Rent and Assignee shall receive the amount of the total Per Diem Revenues.
 - b. If, for any Quarter, total Per Diem Revenues earned by all the Cars are less than the total Base Rent, then Assignor shall retain an amount equal to the total Base Rent and Assignee shall receive all Per Diem Revenues in excess of the Base Rent.
 - c. Assignor shall retain the total Base Rent and Assignee shall receive the amount of the total Per Diem Revenues.
 10. In the event that as a result of any action or inaction by Assignee, Assignor shall receive or earn for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified the Hourly and Mileage Car Hire Rate Table published in the April 1989 edition of The Official Railway Equipment Register ("Revenue Rates"),

to another railroad any abatement, reduction or offset in car hire on the Cars, which has the effect of reducing that portion of the Revenues due Assignor under Subsection 6.f. herein, Assignee shall within thirty (30) days of Assignor's request pay Assignor such abatement, reduction or offset.

Assignee shall pay to Assignor, within ten (10) days of Assignor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.

11. ~~Upon any abatement, reduction or offset, as set forth in Subsections 6.c. and 6.e. hereinabove, Assignee shall, within ten (10) days of Assignor's request, reimburse Assignor for such amount.~~

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BY

12. If, with respect to any Quarter, Revenues received by Assignor for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines are less than the total Base Rent for the Cars described in this Assignment Agreement, then Assignor may so notify Assignee. Within ten (10) days of receipt of such notice from Assignor, Assignee shall either:

(i) Pay Lessor the difference ("Difference") between the Base Rent and the actual Per Diem Revenues for such Quarter and agree to pay the Difference for any subsequent Quarter for the duration of the term of the Agreement with respect to the Cars in this Schedule in which such Difference occurs. Lessee shall pay Lessor such Difference not later than sixty (60) days after receiving an invoice for such Difference.

(ii) Elect not to pay Lessor such Difference for such quarter. In such event, Lessor may terminate all or any of the Cars described in this Assignment Agreement upon not less than ten (10) days' written notice to Lessee at any time during the duration of the Agreement.

13. Within three (3) calendar months after the end of each Quarter, Assignor shall calculate the amount due either party for such Quarter pursuant to this Assignment Agreement. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation; provided, however, that if, following the final calculation (to be made within five (5) calendar months after the end of each calendar year that this Assignment Agreement is in effect), either Assignor or Assignee determines and demonstrates to the reasonable satisfaction of the other that any calculation required herein was incorrect, then any amount paid to either party in excess of the amounts required shall be refunded to the proper party.

14. During the Term, Assignor may, at its expense, replace ^{at Palmer MA.} any or all of the Cars with similar cars upon not less than ten (10) days' prior written notice to Assignee.

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BY

15. a. 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 ^{Assignee's} 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, 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.

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- b. Should Assignee elect to place any logo's and/or any other mark ("Identifying Marks") on the Car(s), Assignee may do so; provided, however that any and all cost related to such Identifying Marks shall be for the account of Assignee, including the removal of the Identifying Marks.

16. 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 or move Cars to an interchange point in Chicago, Illinois to be determined by Assignor.

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17. Assignee's rights shall be subject and subordinate to the rights 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.

* based upon mutually acceptable guidelines to be attached here to an Exhibit B within thirty (30) days of execution hereof

18. 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:

Director of Car Hire
Hartford and Slocomb Railroad
Company
55 Francisco Street
San Francisco, California 94133

If to Assignee:

~~Vice President, General Manager~~
Massachusetts Central Railroad
One Wilbraham Street
Palmer, Massachusetts 01069

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19. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.

20. 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

MASSACHUSETTS CENTRAL RAILROAD COMPANY

By: *C. J. ...*
Title: *President*
Date: *8-3-89*

By: *W. R. Bentley*
Title: *Pres*
Date: *6/23/89*

EXHIBIT A

Certificate of Delivery

Assignment Agreement dated _____, 1989

Assignor's
Reporting
Marks and Numbers

Date Delivered
to Assignee

The Initial Term of the Assignment Agreement dated _____,
1989 between _____ and _____
_____ shall expire on _____, 19____

HARTFORD AND SLOCOMB RAILROAD
COMPANY

By: _____

Title: _____

Date: _____

EXHIBIT C

Running Repairs: TOFC/COFC Flatcars

Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Pedestal Locks
Grab Irons	Couplers
Brake Shoes	Draft Gears
Brake Shoe Keys	Coupler Carriers
Brake Connecting Pin	Center Plate Repair (Not Replacement of Center Plate)
Brake Head Wear Plates	Lube of Hitches
Air Brakes	Cotter Keys
Hand Brakes	Roller Bearing Adapters
Brake Beams and Levers	Air Hose Supports
Truck Springs	

