

ITEL

July 1, 1988

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RECORDED FILED
JUL 5 1988-1:30 AM
IteI Rail Corporation
INTERSTATE COMMERCE COMMISSION
55 Francisco Street
San Francisco, California 94133
(415) 984-4000

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

8-187A032

No.
Date JUL 5 1988
Fee \$ 13.00

Re: Locomotive Lease Agreement dated as of March 21, 1988,
between IteI Railcar Corporation and McCormick, Ashland
City & Nashville Railroad, Inc.

Dear Ms. McGee:

On behalf of IteI 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 Locomotive Lease Agreement under a new
recordation number.

The parties to the aforementioned instrument are listed below:

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

McCormick, Ashland City & Nashville Railroad, Inc. (Lessee)
750 Old Hickory Blvd.
2 Brentwood Commons, Suite 150
Brentwood, Tennessee 37027

This Lease covers one (1) GP1800 locomotive bearing reporting
mark NACR 0009.

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

PS:
Enclosures

JUL 5 11 23 AM '88
RECORDED

LOCOMOTIVE LEASE AGREEMENT JUL 5 1988 11 32 AM

INTERSTATE COMMERCE COMMISSION

THIS LEASE made and entered into as of this 21st day of March 1988, by and between ITEL Railcar Corporation, a Delaware corporation, hereinafter called "Lessor", and McCormick, Ashland City & Nashville Railroad, Inc. a Tennessee corporation, hereinafter called "Lessee."

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lease: Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the Locomotive described in Schedule A attached hereto and made a part thereof, "as is", together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto, hereinafter called "Locomotive", upon the terms and conditions herein set forth. This lease shall be binding only on Locomotive described in Schedule A. Locomotive presently bears Nashville & Ashland City Railroad Inc. reporting remarks.

2. Inspection Upon Termination: Lessee acknowledges that the Locomotive is on its lines at the commencement of this Lease and hereby accepts the Locomotive "as is, where is." Upon termination of this agreement, Locomotive is being returned to Lessor "in equal to" condition less normal wear and tear. The representatives of the parties will make a joint inspection of the Locomotive and will make joint written reports of their condition, counterparts of which, signed by the representatives of both parties, shall be furnished to each party. Lessee shall be responsible for and will bear the expense of repairing all defects noted on return joint written inspection reports. Except as otherwise determined by joint inspection, Locomotive shall be considered to be in good repair and operating condition at the time the Locomotive is returned to Lessor.

3. Rental:

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupment or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as otherwise provided herein; nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of any defect in the condition,

design, operation or fitness for use of any Locomotive or damage to our loss of possession, or use or destruction of all or any of such Locomotive from whatever cause and of whatever duration, except as otherwise provided herein. Lessee acknowledges that Lessor is in no way connected to the Locomotive manufacturer; Lessor has no knowledge or information as to the condition or suitability for Lessee's purposes of the Locomotive(s); and Lessor's decision to enter into this Lease is made in reliance on Lessee's undertakings herein, including Lessee's express agreement not to assert against Lessor any claims, defenses, set-offs or counterclaims it may now or hereafter have against the Locomotive manufacturer.

4. Use and Term: The term of this Lease shall be from the Rent Commencement Date to May 31, 1988 and thereafter may be subject to renegotiation. At termination of the Lease the Locomotive will be delivered by the Lessee in accordance with instructions furnished by Lessor and Lessee will assume all transportation and storage charges or costs incidental thereto and will provide free storage on its lines for a period of five days after termination.

Lessee agrees to use the Locomotive only on its lines and shall not interchange the Locomotive off its lines. The foregoing agreement by Lessee is the essence of this Lease.

5. Warranties and Representations: LESSOR MAKES NO REPRESENTATION OR WARRANTIES, EXCEPT AS PROVIDED IN SECTION 9 AND SECTION 15 BELOW, OF ANY KIND RESPECTING THE LOCOMOTIVE(S), WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE LOCOMOTIVE(S), PURSUANT TO THIS AGREEMENT TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN THE LOCOMOTIVES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY Locomotives. Lessee accordingly agrees not to assess any claim whatsoever against Lessor based thereon, except that this shall not limit the Lessee's rights against the manufacturer as stated in Section 5. Lessee further agrees, regardless of cause, not to assess any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

6. Place of Payment of Rent: Lessee shall direct payment of the monthly rent to the following address:

Itel Railcar Corporation
55 Francisco
San Francisco, CA 94133

7. Recordkeeping, Inspection: Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of each Locomotive while in it's possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee. Lessor agrees that it's agents will sign a disclaimer or release of liability (except for liability due to Lessee's negligence) as a precondition to having access to Lessee's property.

8. Insurance: The Lessee will at all times during the term of this Lease, at it's own expense cause to be carried and maintained property and third party liability insurance in types and amounts satisfactory to Lessor, and Lessor shall be named an additional insured and Loss Payee on such policies. Lessee shall provide Lessor with a certificate of insurance evidencing such insurance. Such insurance policies shall provide that Lessor shall receive at least 30 days notice of cancellation or material changes.

9. Mechanical: Lessee will, at it's sole expense, perform all running repair maintenance work, lubrication and inspection on Locomotive units in accordance with manufacturer's recommendation and all components changed will be replaced with like kind and quality components. No further modification is permitted without the Lessor's concurrence in writing.

10. Indemnity: Lessee does hereby release, indemnify and save harmless, and agree to defend, Lessor, its employees, agents and successors and assigns, from and against any and all liability, loss, cost, damage, charges and expense which Lessor may incur, suffer or be in any way subjected to, resulting from or arising out of injury to or death of any person and the loss or destruction of or damage to any property whatsoever from any and all claims, demands, or actions for such loss, injury or damage, caused by, growing out of or in any way connected with the Lease, possession, use, maintenance or operation of the Locomotive by Lessee, whether attributable to the fault, failure or negligence of Lessor or otherwise. The foregoing release and

indemnification and duty to defend shall apply to matters or things occurring only between the time the Locomotive is delivered to Lessee and the time it is redelivered to Lessor (save and except while any Locomotive or Locomotives are within the Lessor's possession). The obligations of Lessee under this Section shall survive the expiration or termination of this Lease.

11. Assignment: Lessee shall not assign or sublet its interest, or any part thereof, under this Lease, or permit the use or operation of any Locomotive subject to this Lease by any other person, firm or corporation, other than wholly owned subsidiaries, without the prior written consent of Lessor. Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee and in such event Lessor's transferee as assignee shall have all rights, powers, privileges and remedies of the Lessor hereunder. Lessee shall have no obligation to pay any assignee, and shall continue to pay Lessor, until such time as notice of such assignment is given to Lessee in accordance with Section 13.

12. Notice: Unless otherwise specifically provided, any notice to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

a) Notices from Lessor or Lessee shall be sent to:

McCormick Ashland City & Nashville Railroad, Inc.
750 Old Hickory Blvd.
2 Brentwood Commons, Suite 150
Brentwood, TN 37027

or to such other address as Lessee may from time to time indicate by written notice to Lessor.

b) Notices from Lessee to Lessor shall be sent to:

Itel Railcar Corporation
55 Francisco
San Francisco, CA 94133

Attention: Vice President-Operations

or to such other address as Lessor may from time to time indicate by written notice to Lessee.

13. Compliance with Law: Repair, Maintenance and Liens: Lessee shall comply with FRA and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotive during the Lease period.

The Lessee shall use the Locomotive only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee shall, subject to Section 10, at it's own cost and expense, maintain and keep the Locomotive(s) in good order, condition and repair, ordinary wear and tear excepted. Any parts installed or replacements made by Lessee upon Locomotive shall be considered accession to the Locomotive and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor. Lessee will not permit any liens or encumbrances to be placed upon the Locomotive and will promptly take action, at it's expense, to remove and discharge any liens that may be placed on the Locomotive.

14. Quiet Enjoyment: So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotive according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

15. Authority: The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Lease and bind the respective parties to the terms and provisions hereof.

16. Late Charges: Delinquent installments of rent shall bear interest at the rate of 1 1/2 percent per month if not prohibited by law, otherwise at the highest lawful contract rate.

17. Filing and Administration: Lessee will promptly cause this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 for the protection of Lessor's title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act, and will execute, acknowledge, deliver, file, register and record (and will refile, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotive to the satisfaction of Lessor's counsel or for the purpose of carrying out the

intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filing.

18. Taxes: Lessor shall report, pay and discharge when due all license and registration fees, assessments, sales, and only as it relates to a sale to Lessee, use or property taxes, gross receipt taxes arising out of receipts from use or operation of Locomotive including without limitation amounts payable under Section 3 hereof and other taxes (excluding any tax measure by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotive and whether or not the same shall be assessed against or in the name of Lessor or Lessee. Nothing herein contained shall be construed as requiring Lessee to pay or discharge any tax on the income derived by Lessor hereunder.

19. Default: If the Lessee, after five (5) business days' notice of default, shall fail to carry out and perform any of the obligations on its part to be performed under this Agreement, or if a petition, in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessee, then, and in any of said events, Lessor shall have the rights available to it at law or in equity, including without limitation the right immediately to repossess the Locomotive, to remove the Locomotive from Lessee's service, to terminate this Agreement, and recover any and all damages sustained as a result of Lessee's default. If Lessor shall terminate this Agreement pursuant to this Section, Lessee shall remain liable for all unpaid rent and other amounts due hereunder. The rights and remedies herein given are provided by law or in equity.

Should any proceedings be instituted by Lessor for monies due to Lessor hereunder and/or for possession of any Locomotive or for any other relief, Lessee shall pay Lessor a reasonable sum as attorney's fees. In addition to any remedies provided herein, Lessor shall have all the rights provided to a Lessor under Section 1168 of Title 11 of the United States Code and any successor provision thereto.

20. Miscellaneous: All transportation charges for delivery of the Locomotive to the Lessee shall be borne by the Lessee. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations or any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof.

21. Laws Governing Lease: The Agreement shall be governed by and construed in accordance with the laws of the State of California.

MCCORMICK ASHLAND CITY &
NASHVILLE RAILROAD, INC.

Larry R. McCormick
By

President
Title

ITEL RAILCAR CORPORATION

A. Hayes
By

President
Title

SCHEDULE A

Locomotive Description: General Motors (Electro Motive Division).

The Locomotive number is as follows:

<u>LOCOMOTIVE NUMBER</u>	<u>BUILDER</u>	<u>TYPE</u>	<u>HORSEPOWER</u>	<u>DAILY RENTAL RATE</u>	<u>CASUALTY VALUE</u>
⁰⁰⁰⁹ NACR 9	EMD	GP1800	900	\$10.00	\$50,000

L.K.M.
DPA

1750
L.K.M.
DPA

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

On this 21st day of March, 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 Lease 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 TENNESSEE)
) ss:
COUNTY OF DAVIDSON)

On this 31ST day of MARCH, 1988, before me personally appeared L. K. McCormick, to me personally known, who being by me duly sworn says that such person is president of McCormick Ashland City & Nashville Railroad, Inc., that the foregoing Lease 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.

Barbara J. Boone
Notary Public

Barbara J. Boone
Notary Public at Large
State of Tennessee
My Commission Expires: 1-21-90