$30

ITEL

Itel Rail Corporation
550 California Street
San Francisco, CA 94104
(415) 984-4200

December 13, 1990

0-348A007

Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

17120 A
RECORDATION NO. ____ FILED 1425
DEC 14 1990 -10 — AM
INTERSTATE COMMERCE COMMISSION

17120
RECORDATION NO. ____ FILED 1425
DEC 14 1990 -10 — AM
INTERSTATE COMMERCE COMMISSION

Re: **1) Lease Agreement**
2) Schedule No. 1

Dear Mr. Strickland:

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 $30 recordation fee.

Please record the Lease Agreement dated July 18, 1990, between Itel Rail Corporation and Golden Triangle Railroad, under a new recordation number.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessor)
550 California Street
San Francisco, California 94104

Golden Triangle Railroad (Lessee)
P. O. Box 2210
Columbus, Mississippi 39701

This Lease terminates the existing lease between the parties and provides a new agreement by which two hundred (200) 50'6", 70-ton, Plate C boxcars bearing reporting marks GTRA 1000-1199 are leased.

Please record Schedule No. 1 under the same recordation number assigned to the Lease Agreement.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessor)
550 California Street
San Francisco, California 94104

Golden Triangle Railroad (Lessee)
P. O. Box 2210
Columbus, Mississippi 39701

This Schedule adds to the Lease one hundred (100) 50'6", 100-ton, Plate C, XM boxcars bearing reporting marks GTRA 2000-2099.

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

17120
RECORDATION NO. FILED 1425
DEC 14 1990 -10 35 AM
INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 18th day of July, 1990, ("Agreement") between ITEL RAIL CORPORATION, a Delaware corporation, 55 Francisco Street, San Francisco, California 94133 ("Lessor"), as lessor and GOLDEN TRIANGLE RAILROAD, a Mississippi corporation, located at P.O. Box 2210, Columbus, Mississippi 39701 ("Lessee"), as lessee.

R E C I T A L S:

A. Lessor and Lessee are parties to the Lease Agreement dated as of August 8, 1989 ("Old Lease") pursuant to which fifty (50) boxcars currently bearing the reporting marks and numbers GTRA 1000-1049 ("Existing Cars") were leased by Lessor to Lessee.

B. The parties desire to terminate the Old Lease with respect to the Existing Cars and enter into a new agreement, as provided herein, with respect to the Existing Cars and one hundred fifty (150) additional boxcars ("Additional Cars").

Lessor and Lessee agree as follow

1. Scope of Agreement

A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein, two hundred (200) boxcars as set forth in Equipment Schedule No. 1, attached hereto and executed by the parties concurrently herewith and made a part of this Agreement. The word "Schedule" as used herein includes Equipment Schedule No. 1, and any amendments which are subsequently executed by both parties, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter individually called a "Car" and collectively called the "Cars."

B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain owner and the lessor of all Cars and that no joint venture or partnership is being created. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. Each Existing Car shall become subject to the terms and provisions of the Agreement on January 1, 1990 and each Additional Car shall be deemed delivered and subject to the terms and provisions of the Agreement on the date such Additional Car is remarked ("Delivery"). The term of the Agreement with respect to each Car described in the Schedule shall be deemed to have commenced on January 1, 1990 and shall continue through June 30, 1996 (the "Initial Term")

B. If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, Lessee shall have two (2) options to extend the Agreement, each for a period of two (2) years (each such period an "Extended Term"). Lessee shall exercise its first option by giving Lessor six (6) months written notice prior to the end of the Initial Term and shall exercise its second option by giving Lessor six (6) months written notice prior to the end of the first Extended Term; provided, however, that Lessor may refuse to grant either of Lessee's options if the Utilization (as defined in Subsection 6.A.(vii) hereinbelow) of the Cars is less than sixty percent (60%) during the three (3) month period preceding Lessee's notification to Lessor.

3. <u>Supply Provisions</u>

A. Lessee hereby approves the specifications of the Cars described on the Schedule attached hereto. Lessor shall, at its expense, remark each Additional Car to the designated reporting marks in compliance with all applicable regulations. When a Car has been remarked, it shall be moved to Lessee's railroad line at no initial cost to Lessee at the earliest time that is consistent with the mutual convenience and economy of the parties. 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. Commencing upon Delivery (as defined in Subsection 2.A. hereinabove), Lessee shall be liable for all costs, charges and expenses on account of or relating to transportation or movement of any Car; provided, however, that the transportation or movement of any such Car is at the direction of Lessee. 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.

B. (i) Lessee shall load such Car prior to loading substantially similar boxcars acquired or put into service subsequent to the date of this Agreement or interchanged to Lessee from other railroads.

(ii) Subsection 3.B.(i) above shall not prevent or prohibit Lessee from providing its customers with equipment of dimensions and configuration that meet the physical and economic requirements of its customers; provided, however, that customer's economic requirements are to be determined without regard to the lease structure, rental rates, car hire rates or specific car marks of the equipment.

C. During the term of this Agreement, Lessor may, at its expense, replace any or all Cars with similar boxcars upon not less than ten (10) days prior written notice from Lessor to Lessee; provided,

however, that the per diem and mileage rates for such replacement boxcars are not more than the rates for the Cars being replaced.

4. Railroad Markings and Record Keeping

A. Lessor and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee. Such markings shall comply with all applicable regulations. Except for renewal and maintenance of the aforesaid markings or lettering indicating that a Car is leased to Lessee or is assigned in accordance with demurrage tariffs, no lettering or marking shall be placed upon any Car by Lessee and Lessee will not remove or change any reporting mark or number indicated on the applicable Schedule except upon the written direction or consent of Lessor. Lessee shall be responsible for all costs associated with any marking changes made at its request.

B. At no cost to Lessee, Lessor shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) such reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and other regulatory agencies.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and UMLER. Lessor shall, on behalf of Lessee, perform all record keeping functions related to the use by Lessee and other railroads of the Cars in accordance with the Interchange Rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as Lessor shall select. Immediately upon receipt from any railroad of any revenues that Lessor is entitled to retain under this Agreement in the form of a draft, check or other instrument payable to Lessee, Lessor shall be entitled to endorse and deposit such draft, check or other instrument into Lessor's account and to retain such revenues as set forth in the rental section of this Agreement.

D. All record keeping performed by Lessor hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessor in a form suitable for reasonable inspection by Lessee from time to time during Lessor's regular business hours. Lessee shall supply Lessor with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as Lessor may reasonably request.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, Lessor will pay all costs, expenses, fees and charges incurred in connection with the maintenance, repair and servicing of each of the Cars during the term

of the Agreement and any extension thereof, unless Lessee is responsible for such maintenance as set forth herein. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to Lessor for any repairs required for damage not noted at the time of interchange.

B. Except as provided in Subsection 5.A. hereinabove, Lessor shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as shall be necessary to maintain the Cars as specified in the Interchange Rules; provided, however, that such repairs and maintenance ("Maintenance") shall be performed at Lessee's expense in the event that such maintenance (i) was occasioned by the fault of Lessee; (ii) results from loading or unloading by Lessee or use by Lessee other than permitted under this Agreement; (iii) is for the purpose of repairing, replacing or maintaining lading devices; (d) relates to damage resulting from any commodity or material loaded in any Car by Lessee; or (iv) arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such Maintenance for similar equipment not bearing the reporting marks of Lessee. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any Maintenance required including, when available, the time, place and nature of any accident. Upon request of Lessor, Lessee shall perform, at Lessor's expense, any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by Lessor. Lessee may make the running repairs specified in Exhibit A attached hereto to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvement or additions to the Cars without Lessor's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with Lessor. Should the AAR Mechanical Department inspect or investigate Lessee's maintenance facilities and determine that restitution is due owners of equipment repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to the AAR Rule 120 for the Cars that were repaired at Lessee's facilities.

C. Except as provided in Subsection 5.D. hereinbelow, Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss and damage insurance in the amount of one million dollars with respect to the Cars while the Cars are on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage in the amount of five million dollars. All insurance policies shall be taken out in the name of Lessee and shall name Lessor, any financing party designated by Lessor by written notice to Lessee ("Financing Party"), and any assignee of Lessor as additional insureds and as loss-payees. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive thirty (30) days prior written notice of any material change in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or that

said insurance expires, then Lessor has the right to purchase the insurance described above and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, which terms and conditions shall be set forth on the Certificate of Insurance provided to Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, within thirty (30) days of receipt of a written request from Lessor and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance.

D. Lessee may self-insure the Cars, provided that Lessee places Lessor in the same position it would have been in had Lessee obtained insurance pursuant to Subsection 5.C. hereinabove.

E. Lessor agrees to reimburse Lessee for all taxes, assessments and other governmental charges paid by Lessee relating to each Car, and on the lease, delivery or operation thereof, which may remain unpaid as of the date of Delivery for such Car or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee, and franchise and capital taxes. 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. Lessor may, in good faith and by appropriate proceedings and at its expense, contest any assessment, notification of assessment or tax bill. Lessor and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. Lessor shall review all applicable ad valorem tax returns prior to filing.

6. <u>Rent</u>

A. <u>Definitions</u>

(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. Any lines purchased by Lessee or added to the Eligible Lines 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 and rent hereunder.

(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 January 1990 edition of <u>The Official Railway Equipment Register</u>.

(iii) "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.

(iv) "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 Eligible Lines.

(v) "Revenues" is defined as the sum of Per Diem Revenues and Mileage Revenues.

(vi) "Bad Order Days" is defined as the aggregate number of days during any calendar quarter or quarters in which Cars are out of service for repairs and not earning Revenues as governed by the Car Hire and Car Service Rules; provided, however, that Bad Order Days shall not include any days that any Car is out of service for any repairs for which Lessee is responsible (except repairs performed by Lessee at Lessor's request for which Lessor is responsible).

(vii) The "Utilization" of the Cars during any period is defined as a fraction, the numerator of which is the aggregate number of days in such period that the Cars were earning revenues during such period; and the denominator of which is the aggregate number of days in such period that such Cars were on lease to Lessee, minus the aggregate number of Bad Order Days in such period.

(viii) The "Base Rent" is defined as an amount equal to the Per Diem Revenues calculated at the Revenue Rates which the Cars would have earned in the aggregate at a Utilization of .

(ix) "Initial Loading" of a Car shall be the earlier to occur of either: (a) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or (b) the thirty-first (31st) day after such Car is first received on Lessee's lines.

B. Lessor shall receive all Revenues earned by each Additional Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. hereinabove shall become subject to the rental calculation under Subsection 6.C. hereinbelow upon the Initial Loading of such Car.

C. Lessee shall pay Lessor rent for the Cars as follows:

(i) In the event Per Diem Revenues are equal to or less than the Base Rent, Lessor shall retain the total Per Diem Revenues.

(ii) In the event Per Diem Revenues exceed the Base Rent, Lessor shall retain an amount equal to the Base Rent plus

of all Per Diem Revenues in excess of the Base Rent and Lessee shall receive of all Per Diem Revenues received in excess of the Base Rent.

(iii)

D. The calculations required in Section 6 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 7, 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.

E. Except as specified in Subsections 6.F.(ii) and 6.G. hereinbelow, it is understood that Lessee is not a guarantor that all revenue amounts for the use of the Cars will be collected hereunder. Lessee shall allow Lessor to collect and shall pass on to Lessor all Revenues and other amounts due under the Agreement which are received on behalf of Lessee.

F. (i) In the event that the Interstate Commerce Commission issues any order reducing or eliminating the Revenue Rates described in Subsection 6.A.(ii) hereinabove and as a result Lessor receives for the use of any Cars car hire calculated at hourly or mileage rates lower than the Revenue Rates, then Lessor may terminate the Agreement with respect to any or all Cars by providing not less than sixty (60) days prior written notice to Lessee; provided, however, Lessee shall have the right to negotiate with rail carriers for relief from such order with respect to the Cars, and if Lessor is fully compensated for all amounts of shortfall below the Revenue Rates within such sixty (60) days, the Cars shall not terminate from the Agreement as long as Lessor continues to be fully compensated.

(ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee (but not Lessee's parent Weyerhaeuser Company) 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 enlarges its railroad lines through acquisition of the lines of or merger with a railroad or acquisition of a substantial

portion thereof, 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.

G. If Lessee fails to perform its obligations in Section 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 foreign railroad for the entire period during which such Car is on Lessee's property, with each Car traveling ; provided, however, that such amount shall not be due for any period of time during which no loads are available on Lessee's lines.

H. Lessee shall not enter into any agreement which diminishes the Revenues generated by the Cars unless Lessee agrees at the time of such agreement to indemnify Lessor against any such reduction in Revenues or Lessor otherwise consents in writing to such agreement.

I. If, with respect to any calendar quarter, Per Diem Revenues received by Lessor for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines are less than the Base Rent, the Lessor may so notify Lessee. Within ten (10) days of receipt of such notice from Lessor, Lessee shall either:

(i) Pay Lessor the difference ("Difference") between the Base Rent and the actual Per Diem Revenues for such calendar quarter 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, upon not less than thirty (30) days written notice to Lessee, terminate only the number of Cars from the Agreement that would cause the Utilization for such period, after giving effect to the removal of such Cars, to be equal to or just exceed

7. <u>Possession and Use</u>

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business; provided, that, Lessee retains on its railroad lines no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad lines. The Cars shall be used predominately within the continental United States and may be used in Canada and Mexico in incidental use only. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars; provided, however, that Lessee shall be

entitled to the possession, use and quiet enjoyment of the Cars pursuant to the terms of this Agreement so long as Lessee is not in default hereunder and is paying (or causing to be paid) rent directly to such owner or secured party.

B. Lessee agrees that to the extent it has physical possession of and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers have power to regulate or supervise the use of such property, except that either Lessor or Lessee may by appropriate proceedings, timely instituted and diligently conducted, contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

C. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or Schedule thereto, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 7.A. hereinabove. Lessee shall notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall be attached to any Car. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

8. <u>Default</u>

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due;

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement which is not cured within ten (10) days after the date of Lessor's notice of breach or, as to breaches not capable of being cured within ten (10) days, which Lessee does not diligently commence to cure within ten (10) days thereafter and continue to perform;

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency, or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver

or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) Any action by Lessee to discontinue rail service that would affect Lessor's ability to earn or receive revenues hereunder, such actions including, but not limited to, the withdrawal of GTRA reporting marks from UMLER.

B. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Agreement (which termination shall not release Lessee from any obligation to pay any and all rent or other sums that may then be due or accrued to such date to Lessor or from the obligation to perform any duty or discharge any other liability arising hereunder) and may:

(i) Proceed by any lawful means to enforce performance by Lessee of such obligations or to recover damages for a breach thereof (and Lessee agrees to pay Lessor's costs and expenses, including reasonable attorneys' fees, in securing such enforcement); or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in such Cars shall terminate; and thereupon, Lessor may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee.

9. <u>Expiration or Termination</u>

A. Upon the expiration or termination of this Agreement as to any Cars, Lessee shall surrender possession of such Cars to Lessor by delivering the same to Lessor. A Car shall no longer be subject to this Agreement upon the removal of Lessee's railroad markings from the Car and the placing thereon of such markings as shall be designated by Lessor, either, at the option of Lessor, (i) by Lessee upon return of such Cars to Lessee's railroad lines or (ii) by a repair facility designated by Lessor. Lessee shall not remove its reporting marks from any Car without Lessor's direction or consent. If such Cars are not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Lessor. If such Cars are on the railroad lines of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad lines, Lessee shall at its own expense within five (5) working days remove Lessee's railroad markings from the Cars and place thereon such markings as may be designated by Lessor. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to one hundred twenty (120) days free storage on its railroad tracks for Lessor or the subsequent lessor of any terminated

Car. If any Car is terminated pursuant to Section 8 hereinabove prior to the end of its lease term, Lessee shall be liable to Lessor for all costs and expenses incurred by Lessor to repaint the Cars and place thereon the markings and name or other insignia of Lessor's subsequent lessee.

B. Lessee shall insure that each Car returned to Lessor upon the expiration or termination of the Agreement shall be in the same condition as when delivered, ordinary wear excepted, and in interchange condition in accordance with AAR and FRA rules and regulations. If any Car requires repairs for which Lessee is responsible under Subsection 5.B., Lessee will pay to Lessor all costs and expenses associated with such repairs. Until the Cars are delivered to Lessor pursuant to this Section, Lessee shall continue to be liable for and shall pay all rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Agreement as though such termination or provisions of this Agreement as though such termination or expiration had not occurred. Nothing in this Section shall give Lessee the right to retain possession of any Car after expiration or termination of this Agreement with respect to such Car.

10. <u>Indemnities</u>

A. Lessor will defend, indemnify and hold Lessee harmless from and against any claim, cause of action, damage, liability, cost or expense (including attorneys' fees) which may be asserted against Lessee with respect to or arising out of the Cars unless occurring through the negligence of Lessee or occurring while the Cars are in Lessee's possession or control.

B. Lessee will defend, indemnify and hold Lessor harmless from and against any claim, cause of action damage, liability, cost or expense (including attorneys' fees) which may be asserted against Lessor with respect to or arising out of the Cars occurring through the negligence of Lessee.

11. <u>Representations, Warranties, and Covenants</u>

Lessee represents, warrants and covenants that:

A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated, and has the corporate power, authority and is duly qualified and authorized to: (i) do business wherever necessary to carry out its present business and operations; (ii) own or hold under lease its properties; and (iii) perform its obligations under this Agreement.

B. The entering into and performance of this Agreement by Lessee will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant

to any instrument to which Lessee is a party or by which it or its assets may be bound.

C. There is no action or proceeding pending or threatened against Lessee before any court, administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or condition, financial or otherwise, of Lessee that would adversely affect this Agreement.

D. There is no fact which Lessee has not disclosed in writing to Lessor, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition, or any material portion of the properties of the Lessee or the ability of Lessee to perform its obligations under this Agreement.

12. <u>Inspection</u>

Lessor shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to ensure Lessee's compliance with its obligations hereunder.

13. <u>Miscellaneous</u>

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder or sublease or assign any Cars to any party, and any purported assignment or sublease in violation thereof shall be void.

B. All rights of Lessor under this Agreement may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to or consent of Lessee.

C. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor in connection with the acquisition of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto, and to confirm the subordination provisions contained in Section 7 and in furtherance of this Agreement.

D. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation or rental payments, nothing herein shall be construed as conveying to lessee any right, title or interest in the Cars except as lessee only.

E. If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement or the

application of such term or provision to other persons or circumstances shall not be affected thereby, and each provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

F. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

G. Any notices required or permitted to be given pursuant to the terms of this Agreement shall be deemed given when given by telecopy or telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor:	Itel Rail Corporation 55 Francisco Street San Francisco, California 94133 Attn: President
Lessee:	Golden Triangle Railroad P.O. Box 2210 Columbus, Mississippi 39701 Attn: President

or to such other addresses as Lessor or Lessee may from time to time designate.

H. This Agreement shall be governed by the internal laws of the State of California and jurisdiction of any action with respect to this Agreement shall be in the courts located in the City and County of San Francisco, California.

I. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or termination of this Agreement.

J. This Agreement represent the entire agreement concerning the subject matter hereof. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

K. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract.

Each party, pursuant to due corporate authority, has caused this Agreement to be executed by its authorized officer, and each of the undersigned declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

ITEL RAIL CORPORATION

By: [signature]

Title: PRESIDENT

Date: 7/18/90

GOLDEN TRIANGLE RAILROAD

By: Steven L Van Asselt

Title: V.P. & General Mgr.

Date: 6-25-90

EQUIPMENT SCHEDULE NO. 1

Itel Rail Corporation hereby leases the following Cars to Golden Triangle Railroad pursuant to that certain Lease Agreement dated as of July 18, 1990.

AAR Mech Desig	Description	Numbers	Dimensions Length	Inside Width	Height	Doors Width	No. of Cars
XP	70-Ton, Plate C, Paper Quality Boxcars	GTRA 1000-1074	50'6"	9'6"	11'1"	10'	75
XP ~~XM~~ SVA DEH	70-Ton, Plate C, Paper Quality Boxcars	GTRA 1075-1199	50'6"	9'6"	11'1"	10'	125

ITEL RAIL CORPORATION

By: [signature]

Title: PRESIDENT

Date: 7/18/90

GOLDEN TRIANGLE RAILROAD

By: Steven L Van Ausdell

Title: V.P. & General Mgr.

Date: 6-25-90

EXHIBIT A

Running Repairs: Boxcars

Angle Cocks

Air Hose

Train Line

Operating Levers and Brackets

Sill Steps

Grab Irons

Brake Shoes

Brake Shoe Keys

Brake Connecting Pin

Brake Head Wear Plates

Hand Brakes

Brake Beams and Levers

Truck Springs

Door Hardware (Not Replacement of Door)

Wheel Assemblies

Yokes

Knuckles/Pins

Slack Adjuster

Couplers

Draft Gears

Coupler Carriers

Center Plate Repair (Not Replacement of Center Plate)

Cotter Keys

Roller Bearing Adapters

Air Hose Supports