ITEL

RECORDATION NO. 16198-F FILED DATE

JAN 17 1991 -2 40 PM

INTERSTATE COMMERCE COMMISSION

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

January 15, 1991

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

RECORDATION NO. 16198-B FILED DATE

JAN 17 1991 -2 40 PM

INTERSTATE COMMERCE COMMISSION

1-017A019

Re: **1) Schedule No. 8**
2) Schedule No. 9

Dear Mr. Strickland:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts each, are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the $30 recordation fee.

Please record both Schedules under the Lease Agreement dated January 16, 1989, between Itel Rail Corporation and Columbus and Greenville Railway Company, which was filed with the ICC on February 8, 1989 under Recordation No. 16198.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessor)
550 California Street
San Francisco, California 94133

Columbus and Greenville Railway Company (Lessee)
201 19th Street North (P.O. Box 6000)
Columbus, Mississippi 39703

Schedule No. 8 adds to the Lease Agreement twenty (20) 2,244 cubic foot, 100-ton, Plate B gondolas bearing reporting marks CAGY 1801-1820. Schedule No. 9 adds to the Lease Agreement fifty (50) 50'6", 70-ton, Plate C boxcars bearing reporting marks CAGY 950-999.

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

MOTOR CARRIER UNIT

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INTERSTATE COMMERCE COMMISSION

SCHEDULE NO. 9

THIS SCHEDULE No. 9 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of January 16, 1989, between **ITEL RAIL CORPORATION** as successor in interest to Itel Rail Corporation and Itel Railcar Corporation ("Lessor"), and **COLUMBUS AND GREENVILLE RAILWAY COMPANY** ("Lessee") is made this 3rd day of January, 1990.

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. 9, 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	Dimensions Inside Length	Width	Height	Doors	No. of Cars
XM	70-ton, Plate C Boxcars	CAGY 950 - 999	50'6"	9'6"	11'	10' Sliding	50

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 to Lessee's reporting marks ("Delivery Date") and shall expire as to all of the Cars described in this Schedule on the date which is five (5) years from the earlier of (a) the Delivery Date of the last Car described in this Schedule or (b) sixty (60) days from the Delivery Date of the first Car described in this Schedule (the "Term"). Lessor shall provide Lessee with a Certificate of Delivery to be attached hereto as Exhibit A, which shall provide the Delivery Date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Each date on such Certificate shall be deemed accurate, final and binding unless Lessee disputes such date in writing within fourteen (14) calendar days of receipt by Lessee of such Certificate.

4. A. Lessor shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement except for car hire reconciliation, collection and receipt which shall be performed by Lessee and remitted to Lessor in accordance with Subsection 7.F. hereinbelow.

   B. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor for such calendar month with respect to the maintenance of the Cars, including sums due for

maintenance performed by third parties and for maintenance performed by Lessee. Lessor shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly maintenance report and bill.

5. 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 those delegated to Lessee in Subsection 5.B. of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.

6. 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: a) ad valorem tax assessments on the Cars; and b) 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.

7. <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. 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 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 7.A.(v) hereinbelow).

(ii) "Revenue Rates" is defined as the specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the October 1990 edition of <u>The Official Railway Equipment Register</u>, as may

be updated from time to time.

(iii) "Per Diem Revenues" is defined as the total 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 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.

(iv) "Mileage Revenues" is defined as the total 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, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

(v) "Revenues" is defined as the sum of

(vi) The "Base Rent" is defined as ~~per Car per calendar quarter~~ ~~(such amount approximates~~ the 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 percent of the hours that such Cars were subject to the Agreement for any calendar quarter or applicable portion thereof during the Term. ~~The Base Rent for any Car which is not subject to the Agreement for an entire calendar quarter shall be prorated at~~ ~~per day for such Car during such calendar quarter~~.

(vii) "Initial Loading" of a Car shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after such Car is first received on Lessee's lines.

B. Lessor shall receive all Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. of the Agreement shall become subject to the rental calculation under Subsection 7.C. hereinbelow upon the Initial Loading of such Car.

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

(i) In the event Per Diem Revenues earned in any calendar

quarter or applicable portion thereof are equal to or less than the Base Rent, Lessor shall retain a sum equal to of the Per Diem Revenues.

(ii) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof exceed the Base Rent, Lessor shall retain an amount equal to of the Per Diem Revenue earned in excess of the Base Rent and Lessee, subject to Subsection 7.B., shall receive of the Per Diem Revenues received in excess of the Base Rent.

(iii) Lessor shall receive of all Mileage Revenues.

D. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 7.A. (ii), Lessee shall pay to Lessor, within ten (10) days of Lessor'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.

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

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

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

F. The calculations required in Section 7 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessee shall pay to Lessor by the sixtieth (60th) day after the end of each Service Month (as hereinafter defined), eighty percent (80%) of the total Revenues for that Service Month. For the purposes hereof, "Service Month" shall be defined as the calendar month in which Revenues were actually earned. At the time payment of eighty percent (80%) of the total Revenues is made to Lessor, Lessee shall report to Lessor for the same month the hours earned, miles traveled

and dollar figure for one hundred percent (100%) of the Revenues. Ten percent (10%) of the Revenues shall be remitted to Lessor within ninety (90) days after the end of each Service Month and the remaining ten percent (10%) of the total Revenues shall be remitted to Lessor within one hundred twenty (120) days after the end of each Service Month. Lessor shall within three (3) months of the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, 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, 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 then 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 and agree to pay any Difference for any subsequent calendar quarter in which such Difference occurs for the duration of the term of the Agreement with respect to the Cars in this Schedule. Lessee shall pay Lessor such Difference not later than sixty (60) days after the calendar quarter in which such Difference occurs.

(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 Schedule from the Agreement upon not less than thirty (30) days' written notice to Lessee at any time during the duration of the Agreement.

H. If any Car has remained on Lessee's property because Lessee has not given preference to the Car as specified in Subsection 2.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 traveling seventy (70) miles per day.

8. A. Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, losses, damages, liabilities, costs, and expenses (including attorney's fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession or control, or would be the "handling carrier's" responsibility under the Interchange Rules, as if the Cars were not bearing Lessee's reporting marks.

B. Except as provided in Subsection 8.A. above, and except for those claims, losses, damages, liabilities and expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall indemnify and hold Lessee harmless from any and all loss, damage or destruction of or to the Cars, ordinary wear and tear excepted.

C. The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement.

9. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, if some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to said tracks subsequent to the time of expiration of this Agreement as to the Cars. Lessee shall, at Lessor's option, provide up to one hundred twenty (120) days' free storage on its railroad tracks for any Car which is either on Lessee's railroad tracks at expiration or is subsequently returned to Lessee's railroad tracks. Said one hundred twenty (120) days shall run either from expiration or from the date such Car is returned to Lessee's railroad line subsequent to expiration, whichever date is later. If requested to do so by Lessor, Lessee shall, at Lessor's option, either move a remarked Car to an interchange point on Lessee's lines selected by Lessor or use its best efforts to load the remarked Car with freight and deliver it to a connecting carrier for shipment.

10. 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.

11. 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.

Each party, pursuant to due corporate authority, has caused this Schedule to be executed by its authorized officer, and each of the undersigned hereto 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	COLUMBUS AND GREENVILLE RAILWAY COMPANY
By: Mike Smith	By: Roger W. Bell
Title: VP SALES	Title: President
Date: 1/3/91	Date: 12/28/90

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EXHIBIT B

Running Repairs: XM 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

Air Brakes

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

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