

#15



January 4, 1990

RECORDATION NO. 16466L
FILED 1025
JAN 5 1990 - 12 20 PM
Istel Rail Corporation
55 Francisco Street
San Francisco, CA 94133
(415) 984-4000
(415) 781-1035 Fax

INTERSTATE COMMERCE COMMISSION

0-005A070

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

Re: **Schedule No. 3 to Master Lease dated as of July 14, 1989,
between Istel Rail Corporation and SouthRail Corporation**

Dear Ms. McGee:

On behalf of Istel 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 \$15 recordation fee.

Please record this Schedule under the Master Lease dated as of July 14, 1989, between Istel Rail Corporation and SouthRail Corporation, which was filed with the ICC on August 2, 1989, under Recordation No. 16461.

The parties to the aforementioned instrument are listed below:

Istel Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

SouthRail Corporation (Lessee)
605 Second Avenue
Columbus, Mississippi 39701

This Schedule adds to the Master Lease thirty-two (32) 50', 70-ton, Plate B, boxcars bearing reporting marks GMSR 49501-49569 (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
Legal Assistant

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SCHEDULE NO. 3

INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE NO. 3 ("Schedule") to that certain Master Lease Agreement made as of July 14, 1989 (the "Agreement") between ITEL RAIL CORPORATION, as lessor ("Lessor"), and SOUTHRAIL CORPORATION, as lessee ("Lessee"), is made this 30th day of November, 1989 between Lessor and Lessee.

R E C I T A L S:

- A. Lessor and Lessee are parties to Schedule No. 2 dated August 27, 1987 ("Schedule No 2") to the Lease Agreement dated as of August 15, 1985, as amended (the "Lease"), between Lessor, as successor in interest to ITEL Railcar Corporation, and Lessee, as successor in interest to Gulf and Mississippi Railroad Corporation, pursuant to which thirty-two (32) boxcars bearing reporting marks from within the series GMSR 49501-49569 (the "Cars") described in Schedule No. 2 were leased by Lessor to Lessee.
- B. The term of the Lease expired August 27, 1988 with respect to the Cars.
- C. The Cars are currently operating under the expired Lease, and pursuant to Section 10 of the Lease, Lessee is paying to Lessor the Rental, as provided in Schedule No. 2 of the Lease.
- D. The parties desire to enter into a new agreement with respect to the Cars, and on the first day of the month following the full execution of such new agreement, the Cars will no longer be subject to the Lease.

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. 3, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
- 2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description	Numbers	Length	Dimensions			No. of Cars
				Inside Width	Height	Doors Width	
XM	4800 Cubic Feet, 70-Ton, Plate B, Boxcars	GMSR 49501, 49502,49504, 49505,49507, 49509,49514, 49518-49520, 49524-49527, 49529-49534, 49537,49542, 49545,49548, 49549,49552, 49554,49556, 49561,49563, 49565,49569	50'7"	9'2"	10'2"	8'	32

3. The term of the Agreement with respect to each Car described in this Schedule shall commence ("Delivery") on the first day of the month following the full execution of this Schedule by both parties and shall continue as to all of the Cars described in this Schedule for three (3) years (the "Initial Term").
4. 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.
5.
 - A. Lessee shall perform the record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement.
 - 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.
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 those delegated to Lessee in Section 5 of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement or substituted for Exhibit B thereto. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

8. Rent

A. Definitions

(i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. 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) "Revenue Rates" is defined as the hourly and mileage car hire rates prescribed for excluded boxcars in the Appendix to the ICC's decision in ICC Ex Parte No. 346, Sub-No. 19, served September 12, 1986, as found at paragraph (c)(3) of 49 C.F.R. 1039.14.

(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.

(iv) The "Base Rent" is defined as
perCar
per calendar quarter. (Such amount approximates the Revenues which the Cars would have earned in the aggregate if the Cars had been on railroad lines other than Eligible Lines for of the hours that such Cars were subject to the Agreement during such calendar quarter, with each Car traveling miles per day.)
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.

B. Each Car shall become subject to the rental calculations under Subsection 8.C. hereinbelow upon Delivery as defined in Section 3 hereinabove.

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

(i) In the event Revenues earned in any calendar quarter or applicable portion thereof are equal to or less than the Base Rent,

- (ii) In the event Revenues earned in any calendar quarter or applicable portion thereof exceed the Base Rent, Lessor shall retain an amount equal to the Base Rent

- 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 8.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 8 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, 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 for the Cars described in this Schedule, 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 Revenues and the actual Revenues for such calendar quarter and agree to pay for the duration of the term of the Agreement the Difference for any subsequent calendar quarter 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 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 3.B. of the Agreement, Lessee shall be liable for and remit to Lessor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of a railroad for the entire period during which such Car is on Lessee's property due to such failure, with each Car traveling _____ miles per day.
9. 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 9.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.
10. 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.

11. 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.
12. 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

By: *A. J. Hayes*
Title: *President & Chief Executive Officer*
Date: *November 30, 1989*

SOUTHRAIL CORPORATION

By: *H. J. Selman*
Title: *VP & CTO*
Date: *11/21/89*

EXHIBIT B

Running Repairs: Boxcars

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

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

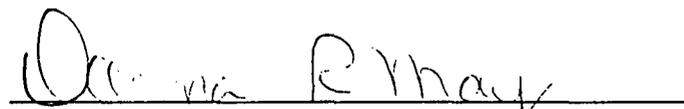
On this 30th day of November, 1989, before me personally appeared Desmond P. HAYES, to me personally known, who being by me duly sworn says that such person is President & Chief Executive Officer of ITEL Rail Corporation, that the foregoing Schedule No. 3 was signed on behalf of said corporation by authority 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.


Notary Public



STATE OF MISSISSIPPI)
) ss:
COUNTY OF HINDS)

On this 21st day of November, 1989, before me personally appeared H. F. Salinas, to me personally known, who being by me duly sworn says that such person is V.P. & C.T.O. of SouthRail Corporation, that the foregoing Schedule No. 3 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.


Notary Public
My Commission Expires May 9, 1992