

1-220A001

ITEL

August 5, 1991

AUG 8 1991 -9 30 AM

Istel Rail Corporation

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

INTERSTATE COMMERCE COMMISSION

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

RECORDATION NO. 1564288

AUG 8 1991 -9 30 AM

INTERSTATE COMMERCE COMMISSION

Re: 1) Schedule No. 34
2) Amendment No. 1 to Schedule No. 21

Dear Mr. Strickland:

On behalf of Istel Rail Corporation, the above instruments 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 this Schedule and Amendment under the Lease Agreement dated May 5, 1988, between Istel Rail Corporation and Hartford and Slocomb Railroad Company, which was recorded with the ICC on May 13, 1988, under Recordation No. 15642.

The parties to the aforementioned instrument are listed below:

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

Hartford and Slocomb Railroad Company (Lessee)
2506 South Park
Dothan, Alabama 36301

Schedule No. 34 adds to the Lease Agreement thirty-five (35) 3,000 cubic foot, LO covered hopper cars bearing reporting marks HS 1040-1074. Amendment No. 1 to Schedule No. 21 adds to the Lease Agreement two railcars bearing reporting marks HS 403 and 1693.

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

NOTED FOR RECORD
AUG 16 1991

Interstate Commerce Commission
Washington, D.C. 20423

8/9/91

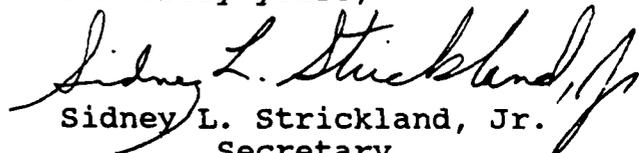
OFFICE OF THE SECRETARY

Patricia Schumacker
Itel Rail Corporation
550 California Street
San Francisco, Calif. 94104

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/9/91 at 9:30am, and assigned recordation number(s). 15642-LL & 15643-AM

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

15642

AUG 8 1991 -9 30 AM

INTERSTATE COMMERCE COMMISSION

SCHEDULE NO. 34

THIS SCHEDULE No. 34 ("Schedule") to that certain Lease Agreement made as of May 5, 1988, as amended (the "Agreement"), between ITEL RAIL CORPORATION, as lessor ("Lessor"), and HARTFORD AND SLOCOMB RAILROAD COMPANY, as lessee ("Lessee") is made as of July 16, 1991 between Lessor and Lessee.

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. 34, 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	Reporting Marks and Numbers	Capacity	No. of Cars
L0	Covered Hopper Cars	HS 1040-1074	3,000 c.f.	35

- 3. A. The term of the Agreement for each Car shall commence on the date such Car is marked with Lessee's reporting marks ("Delivery Date") and shall expire for all Cars on the date which is 2 years ("Initial Term") from the earlier of (i) the date on which the last Car described on this Schedule is marked with Lessee's reporting marks or (ii) 120 days from the date on which the first of the Cars described in this Schedule is physically interchanged onto the railroad lines of Maryland Midland Railroad Company ("Assignee"). After the Delivery Date of the final Car, Lessor shall provide Lessee a certificate (the "Certificate") setting forth the Delivery Date and Expiration Date for each Car. Each date on the Certificate shall be deemed accurate, final and binding unless Lessee disputes such date in writing within 14 calendar days of receipt by Lessee of such Certificate.
- 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 24 calendar months (each such calendar month an "Extended Term"). Provided, that the Cars are not subject to the Assignment Agreement dated July 18, 1991 ("Assignment Agreement") between Lessee and Maryland Midland Railroad Company, a copy of which is attached as Exhibit A, Lessor may terminate the Agreement at any time during the Initial Term or any Extended Term as to some or all of the Cars described in this Schedule by providing not less than 10 days prior written notice to Lessee.

4. **A.** Lessor agrees to pay to Lessee an annual rental fee of _____ ("Rental Fee") for the use of Lessee's reporting marks and numbers on the Cars described in the Assignment Agreement. Lessor shall pay the initial Rental Fee to Lessee within 120 days from the first day of the month following the month in which the Initial Term commences, and shall thereafter pay the Rental Fee to Lessee annually throughout the duration of the term of the Assignment Agreement.
 - B.** If any Car(s) returns to Lessee's lines prior to the expiration or termination of the Assignment Agreement, Lessor shall be responsible for all costs associated with such Car(s) being entered into and removed from a storage facility ("Storage") by Lessee, including but not limited to a switching fee of _____ per car per occurrence and a storage charge of _____ per car per day, and for all costs associated with returning such Car(s) to the Assignee's lines. Lessee shall notify Lessor upon the placement of any Car(s) into Storage. Lessee shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Lessee'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 Lessee during the term of the Assignment Agreement.
5. Lessor consents to Lessee's entering into the Assignment Agreement; provided, that Lessor shall perform Lessee's duties under the Assignment Agreement, that Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the Assignment Agreement, and that Lessee shall, if directed by Lessor, assign Lessee's interest in the Assignment Agreement 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 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.
7. Lessor agrees to reimburse Lessee, within 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.

8. Rent

A. Definitions

- (i)** "Eligible Lines" means the railroad lines owned and operated by Lessee as of the date this Agreement is executed by the parties. If Lessee's lines expand through purchase, Lessee's merger with another railroad or otherwise or if Lessee's lines are sold to and become lines of another railroad, then lines other than the Eligible Lines shall be deemed to be lines of a foreign road for purposes of determining Revenues and, for purposes of distinguishing the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee ("Distinction"), Lessee shall provide Lessor with car movement records which effect such Distinction. If Lessee sells or otherwise disposes of a part but not all of the railroad lines owned and operated by Lessee as of the date this Agreement is executed by the parties, "Eligible Lines" shall mean only that part retained by Lessee.
- (ii)** "Revenue Rates" means the hourly and mileage car hire rates prescribed by the ICC in any applicable time period of each Car.
- (iii)** "Revenues" means the total revenues, calculated at the Revenue Rates, that are earned or due in any applicable time period for the use or handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to hours ("Hourly Revenues") and mileage ("Mileage Revenues"), 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 _____ prior to and during the term of the Assignment Agreement.

C. Upon the expiration or early termination of the Assignment Agreement, Lessor shall receive _____ while such Car is off the Eligible Lines.

- 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 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 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. Except as provided in this Schedule, 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.
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.

Each party, pursuant to due corporate authority, has caused this Schedule 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

HARTFORD AND SLOCOMB RAILROAD COMPANY

By: Jimmy Hanger
Title: Manager Sales Planning
Date: July 16, 1991

By: E. J. Finck II
Title: Pres.
Date: 7/18/91

EXHIBIT B

RUNNING REPAIRS

COVERED HOPPERS

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	Outlet Gate Repair (Not Gate Replacement)
Hand Brakes	Hatch Cover Repair (Not Replacement of Hatch Cover)
Brake Beams and Levers	
Truck Springs	

ASSIGNMENT AGREEMENT

EXHIBIT A

THIS ASSIGNMENT AGREEMENT ("Assignment Agreement") is made and entered into as of _____, 1991 between **HARTFORD AND SLOCOMB RAILROAD COMPANY** ("Assignor") and **MARYLAND MIDLAND RAILROAD COMPANY** ("Assignee").

Assignor and Assignee agree as follows:

1. Assignor shall supply Assignee with the following railroad car(s) (the "Cars") subject to the terms and conditions of this Assignment Agreement:

AAR Mech Desig.	Description	Reporting Marks and Numbers	Capacity	No. of Cars
L0	Covered Hopper Cars	HS 1040-1074	3,000 c.f.	35

2. Assignor 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 435 of the Code of Car Service Rules, AAR Circular No. OT-10.
3. Assignor shall, at its expense, deliver each Car to Assignee at the interchange point located on the railroad lines of Assignee in Union Bridge, MD ("Delivery Location"); provided that if the transportation charges with respect to the delivery of the Cars exceed \$75.00 per Car then Assignee shall be responsible for any such excess transportation charges.
4. This Assignment Agreement shall become effective, with respect to each Car, on the date such Car is delivered to the Delivery Location and shall expire for all Cars on May 28, 1993.
5. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
6. 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 received in interchange; provided that this shall in no 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 priority 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 possession and use of a foreign road for the entire period during which such Car is on Assignee's railroad line as a result of such failure with each Car traveling

7. 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.
8. In the event that any Car is not in use while subject to this Assignment Agreement, Assignee shall be responsible for storing such Car at its expense in a secure location.
9. When used in this Assignment Agreement, each of the following terms shall have the definitions indicated:
 - A. "Eligible Lines" means the railroad lines owned and operated by Assignee as of the date this Assignment Agreement is executed by the parties. If Assignee's lines expand through purchase, Assignee's merger with another railroad or otherwise or if Assignee's lines are sold to and become lines of another railroad, then lines other than the Eligible Lines shall be deemed to be lines of a foreign road for purposes of determining Revenues and, for purposes of distinguishing the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Assignee ("Distinction"), Assignee shall provide Assignor with car movement records which effect such Distinction. If Assignee sells or otherwise disposes of a part but not all of the railroad lines owned and operated by Assignee as of the date this Assignment Agreement is executed by the parties, "Eligible Lines" shall mean only that part retained by Assignee.
 - B. "Revenue Rates" means the hourly and mileage car hire rates prescribed by the ICC in any applicable time period of each Car.
 - C. "Revenues" means the total revenues, calculated at the Revenue Rates, that are earned or due in any applicable time period for the use or handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to hours ("Hourly Revenues") and mileage ("Mileage Revenues"), whether or not collected and received by Assignor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Assignee.
 - D. "Initial Loading" of a Car shall be the date such Car is loaded off Assignee's railroad lines with the first load of freight.
 - E. "Base Rent" means the dollar amount for any calendar quarter (or applicable portion thereof) defined in Section 9.C. above) the Cars would have earned in the aggregate during such calendar quarter (or applicable portion thereof) if such Cars had been on railroad lines other than Eligible Lines for during such calendar quarter and with each Car earning Hourly Revenues at the Revenue Rates (as defined in Section 9.B. above).
 - F. "Minimum Rent" means the dollar amount for any calendar quarter (or applicable portion thereof) would have earned in the aggregate during such quarter (or applicable portion thereof) if such Cars had been on railroad lines other

than
per day and with each Car earning Revenues at the Revenue Rates.

10. Assignee shall be entitled to full hourly and mileage relief for each Car while such Car is on the Eligible Lines and shall furnish interchange records to Assignor as requested.

11. A. Rent Prior to Initial Loading

B. Rent After the Initial Loading

Assignee shall pay rent to Assignor for each Car after its Initial Loading calculated as follows:

(i) If Hourly Revenues earned from all Cars in any calendar quarter or applicable portion thereof are equal to or less than the Base Rent, Assignor shall retain a sum

(ii) If Hourly Revenues earned from all Cars in any calendar quarter or applicable portion thereof exceed the Base Rent, Assignor shall retain an amount equal to the
in excess of the Base Rent and
in excess of the

Base Rent.

(iii)

12. If, for any calendar 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 Minimum Rent, then Assignor may so notify Assignee. Within ten (10) days of receipt of such notice from Assignor, Assignee may either:

A. Notify Assignor of intent to pay Assignor the shortfall between the Minimum Rent and the Revenues received by Assignor for the Cars in such calendar quarter and agree to pay the shortfall, if any, between the Minimum Rent and the Revenues received by Assignor for the Cars in each subsequent calendar quarter for the duration of the Term. Assignee shall pay Assignor such shortfall not later than 60 days after receiving an invoice.

B. Elect in writing not to pay Assignor such shortfall for such quarter. In such event, Assignor may terminate the Assignment Agreement with respect to all or any of the Cars upon not less than 10 days written notice to Assignee at any time during the Assignment Agreement.

13. During the term of this Assignment Agreement, Assignor may, at its expense, replace any or all of the Cars ("Replaced Cars") with similar cars upon not less than 30 days prior written notice

to Assignee. Assignee shall bear any transportation costs incurred in moving any or all Replaced Cars to the Return Location (as defined in Section 15 below).

- 14. A.** Assignor shall at its expense, except for any transportation costs incurred pursuant to this paragraph, which shall be at Assignee's sole expense, perform in a timely manner all repairs, maintenance, replacement of parts and mandated modifications as are needed to keep any Car in good working order and repair, suitable for loading and interchange and in accordance with the Field Manual of the AAR Interchange Rules and the Office Manual of the AAR Interchange Rules (collectively "Interchange Rules"), the Federal Railroad Administration ("FRA") rules and the rules of any other applicable regulatory body ("Maintenance"). However, such Maintenance shall be at Assignee's expense if it was occasioned by (i) damage (which shall not include ordinary wear) while in Assignee's possession, custody or control, (ii) damage occurring from use other than permitted under this Assignment Agreement, or (iii) damage for which Assignee would have been responsible under the Interchange Rules had the Car been a foreign car (including damage not noted at time of interchange to Assignee). Assignee shall promptly notify Assignor of any Maintenance required, providing the time, place and nature of any accident or bad order condition.

B. To facilitate continued immediate use of any Car, Assignee may make running repairs (utilizing Assignee's own employees, but not any private repair facility or any private contractor on Assignee's property) to those parts of any Car specified in Exhibit A, but Assignee shall not perform or cause to be performed any other Maintenance on any Car without Assignor's prior written consent. Assignee shall submit a monthly invoice in AAR format for running repairs performed on any Car by Assignee or by another railroad which has billed and received payment therefor from Assignee.
- 15. A.** Upon expiration or termination of this Assignment Agreement with respect to any Car, Assignor shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 435 and Assignee shall return such Car to Assignor at the interchange point on Assignee's lines designated by Assignor ("Return Location"). Assignee shall bear any transportation costs incurred in moving any Car to the Return Location. If the Return Location is on Assignee's tracks, Assignee shall use best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. At Assignor's option, Assignee shall bear all reasonable costs associated with remarking each Car at a facility mutually selected by Assignor and Assignee.

B. Assignee shall insure that each Car returned to Assignor upon the expiration or termination of the Assignment Agreement shall be (i) in the same condition, order and repair as when delivered to Assignee, normal wear excepted, (ii) in interchange condition in accordance with AAR and FRA rules and regulations, (iii) suitable for loading, (iv) free from all accumulations or deposits from commodities transported in or on it while in the service of Assignee, and (v) free of any and all Rule 95 damage.
- 16.** Assignee's rights shall be subject and subordinate to the rights and remedies of Assignor, of any lessor, lender, owner or other party which finances the Cars. Financing agreements between such parties determine whether Cars may be used in Canada or Mexico. Consequently, no use greater than temporary or incidental may be made of the Cars in Canada

and no use may be made in Mexico without Assignor's prior written consent, which may be given if financing agreements so permit. The Cars may not be used in unit train service (other than incidentally).

17. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:

If to Assignor:

Hartford & Slocomb Railroad
Company
550 California Street
San Francisco, CA 94104
Attention: Manager, Car Hire
Accounting

If to Assignee:

Maryland Midland Railroad Company
South Main Street
P.O. Box A
Union Bridge, MD 21791
Attention: President

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

By: _____

Title: _____

Date: _____

MARYLAND MIDLAND RAILWAY, INC.

By: Paul D. Juhl

Title: PRESIDENT

Date: 7/8/91

EXHIBIT A

RUNNING REPAIRS

COVERED HOPPERS

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	Outlet Gate Repair (Not Gate Replacement)
Hand Brakes	Hatch Cover Repair (Not Replacement of Hatch Cover)
Brake Beams and Levers	
Truck Springs	