

1-303A023

ITEL

October 29, 1991

Itel Rail Corporation

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

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

15642-N.N
RECORDATION NO. FILED NO.

OCT 30 1991 - 3 42 PM
INTERSTATE COMMERCE COMMISSION

Re: Schedule No. 36

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 \$16 recordation fee.

Please record this Schedule under the Lease Agreement dated May 5, 1988, between Itel 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:

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

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

Schedule No. 36 adds to the Lease Agreement three (3) 50'6" 70-ton, Plate C boxcars bearing reporting marks HS 5600-5602.

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

MOTOR OPERATING UNIT
OCT 30 2 55 PM '91

Interstate Commerce Commission
Washington, D.C. 20423

10/31/91

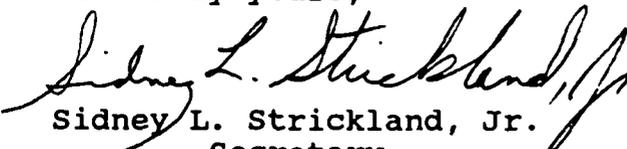
OFFICE OF THE SECRETARY

Patricia Schumacker
Legal Assistant
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 10/30/91 at 3.40pm, and assigned recordation number(s). 8298-H & 15642-*IV*

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

ICC
COPY
15642 -

OCT 30 1991 3 40 PM

SCHEDULE NO. 36

INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE No. 36 ("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 September 30, 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. 36, 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 Inside Width	Height	Door Width	No. of Cars
XP	70-Ton, Plate C, Boxcars	HS 5600-5602	50'6"	9'6"	11'	10' Sliding	3

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 3 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 Ashland Railway, Inc. ("Assignee"). After the Delivery Date of the final Car, Lessor shall provide Lessee a certificate (the "Certificate") setting forth the Delivery Date for each Car and Expiration Date. 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 October 2, 1991 ("Assignment Agreement") between Lessee and Ashland Railway, Inc., 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 _____ ("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 Schedule 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 Schedule 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.

C. Upon the expiration or early termination of the Assignment Agreement,

- 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

By: *Dwight Hanger*
Title: *Manager Sales Planning*
Date: *10/9/91*

HARTFORD AND SLOCOMB RAILROAD COMPANY

By: *C. F. Tucker III*
Title: *Pres.*
Date: *10/2/91*

AGREEMENT FOR ASSIGNED SERVICE

THIS AGREEMENT FOR ASSIGNED SERVICE ("Assignment Agreement") is made and entered into as of this ____ day of _____, 1991, between HARTFORD AND SLOCOMB RAILROAD COMPANY ("Assignor") and ASHLAND RAILWAY, INC. ("Assignee").

Assignor and Assignee agree as follows:

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

AAR Mech Desig.	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
XP	70-Ton, Plate C Boxcars	HS 5600-5602	50' 6"	9' 6"	11'	10' sliding	3

2. Upon Assignor's instruction, and not without Assignor's instruction, Assignee 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 ~~XXX~~ of the Code of Car Service Rules, AAR Circular No. OT-10. 145
3. The term ("Term") of this Assignment Agreement, with respect to each Car, shall commence on the day that such Car is first interchanged onto Assignee's lines ("Delivery") and shall expire as to all of the Cars 3 years from the earlier of (a) the date of Delivery of the last Car or (b) 120 days from the date of Delivery of the first Car ("Expiration Date"). Upon the Delivery of the final Car, Assignor will provide Assignee a "Certificate of Delivery Date" ("Certificate") setting forth the Delivery date for each Car and the Expiration Date of the Assignment Agreement. The Certificate shall be deemed accurate, final and binding unless Assignee disputes such date in writing within 15 calendar days of receipt by Assignee of such Certificate.
4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
5. Assignee shall load the Cars prior to loading any similar Cars interchanged from other railroads or leased by or assigned to Assignee from other parties. Nothing contained in this Section shall in any 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 preference 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 physical possession and use of another railroad for the entire period during which such Car is on Assignee's railroad line and had such Car traveled 80 miles per day during such period.

- F. "Initial Loading" of a Car shall be the date such Car is loaded off Eligible Lines with the first load of freight.
8. Car while such Car is on the Eligible Lines and shall furnish interchange records to Assignor as requested.
9. Assignee shall pay rent to Assignor as follows:
- A. Assignee shall pay rent to Assignor for each Car equal to all Revenues earned by such Car prior to its Initial Loading.
 - B. If Revenues earned from all Cars in any calendar Quarter are equal to or less than Base Rent, of such Revenues.
 - C. If Revenues earned from all Cars in any calendar Quarter exceed the Base Rent,
- ("Assignee's Revenue Share"); provided, however, that
10. Upon any abatement, reduction or offset, as set forth in Subsection 7.C. hereinabove, Assignee shall, within 10 days of Assignor's request, reimburse Assignor for such amount.
11. If, for any Quarter, Revenues received by Assignor are less than the Minimum Rent, then Assignor may so notify Assignee in writing. Within 10 days of receipt of such notice from Assignor, Assignee shall either:
- A. Pay Assignor the difference ("Difference") between the Minimum Rent and the actual Revenues for such Quarter, and agree to pay Assignor the Difference for any subsequent Quarter in which such Difference occurs for the duration of this Assignment Agreement. Assignee shall pay Assignor such Difference not later than 60 days after receiving an invoice for such Difference.
 - B. Elect not to pay Assignor such Difference for such Quarter. In such event, Assignor may terminate all or any of the Cars from this Assignment Agreement upon not less than 10 days written notice to Assignee at any time during the duration of the Term.
12. Within 3 calendar months after the end of each Quarter, Assignor shall calculate the amount due either party for such Quarter pursuant to this Assignment Agreement. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation; provided, however, that if, following the final calculation (to be made within 5 calendar months after the end of each calendar year that this Assignment Agreement is in effect), either Assignor or Assignee determines and demonstrates to the reasonable satisfaction of the other that any

calculation required herein was incorrect, then any amount paid to either party in excess of the amounts required shall be refunded to the proper party.

13. During the Term, Assignor may, at its expense, replace any or all of the Cars with similar cars upon not less than 10 days prior written notice to Assignee.
14. Assignor is responsible for normal maintenance and repair expenses except as provided below and except for any transportation costs incurred pursuant to this paragraph, which shall be at Assignee's sole expense. Assignee shall be responsible for and shall pay all costs and expenses of all repair work or other work or materials required because of (i) damage or other conditions caused by Assignee's negligence or misuse in loading or unloading, or by use other than as permitted under this Assignment Agreement; (ii) damage for which Assignee is responsible under applicable AAR Rules; (iii) Assignee's failure to note any damage to any Car that returns to its lines, the repair of which is the responsibility under AAR Rules of any third party railroad. Assignee shall promptly notify Assignor of any damage to, defect in, need of repair to, or destruction of any Car. For any damaged Car that requires repairs other than running repairs as provided in Exhibit A, car hire (hours and mileage) shall be governed by applicable Car Hire and Car Service Rules. In no event shall Assignee place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor.
15. Upon expiration or termination of this Assignment Agreement with respect to any Car(s), Assignee shall surrender possession of such Car(s) to Assignor. Assignee shall insure that each Car returned to Assignor upon the expiration or termination of the Assignment Agreement shall be (a) in the same condition, order and repair as when delivered to Assignee, normal wear excepted, (b) in interchange condition in accordance with AAR and FRA rules and regulations, (c) suitable for loading, (d) free from all accumulations or deposits from commodities transported in or on it while in the service of Assignee, and (e) free of any and all Rule 95 damage. Assignee shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 435, and deliver the Cars to a point on the Eligible Lines to be designated by Assignor. At Assignor's option and Assignee's expense, Assignee shall remark the Cars to bear new reporting marks to be provided by Assignor and use its best efforts to provide final outbound loads for each Car.
16. Assignee's rights shall be subject and subordinate to the rights of Assignor, of any lessor, and of any owner or secured party under any financing agreement with respect to the Cars.
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:

If to Assignee:

Hartford & Slocomb R.R. Co.
550 California St., Suite 10
San Francisco, CA 94104
Attn.: Manager, Car Hire
Accounting

Ashland Railway, Inc.
P. O. Box 479
Stockton, New Jersey 08559
Attn.: David Crane, 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.

Each party, pursuant to due corporate authority, has caused this Assignment Agreement 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.

HARTFORD AND SLOCOMB RAILROAD COMPANY

ASHLAND RAILWAY, INC.

By: _____

By:  _____

Title: _____

Title: President _____

Date: _____

Date: 7/26/91 _____

EXHIBIT A

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 Support
Hand Brakes	Door Hardware (Not Replacement of Door)
Brake Beams and Levers	
Truck Springs	

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 Support
Hand Brakes	Door Hardware (Not Replacement of Door)
Brake Beams and Levers	
Truck Springs	