

**ITEL**

**Pullman**

January 4, 1990

**Itel Rail Corporation**

55 Francisco Street  
San Francisco, CA 94133  
(415) 984-4000  
(415) 781-1035 Fax

RECORDATION NO. 16060-F FILED 1425

JAN 5 1990 -12 20 PM

INTERSTATE COMMERCE COMMISSION  
0-005A005

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

**Re: Schedule No. 4 to Lease Agreement dated November 22, 1988,  
between Itel Rail Corporation and Green Bay and Western  
Railroad Company**

Dear Ms. McGee:

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 \$15 recordation fee.

Please record this Schedule under the Master Lease Agreement dated November 22, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Green Bay and Western Railroad Company, which was filed with the ICC on December 6, 1988, under Recordation No. 16060.

The parties to the aforementioned instrument are listed below:

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

Green Bay and Western Railroad Company (Lessee)  
P. O. Box 2507  
Green Bay, Wisconsin 54306

This Schedule adds to the Lease Agreement one hundred ninety-three (193) 50', 100-ton, Plate C boxcars bearing reporting marks GBW 10147-10243 and GBW 10000-10097 (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*

Patricia Schumacker  
Legal Assistant

JAN 5 1990 -12 20 PM

SCHEDULE NO. 4

INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE NO. 4 ("Schedule") to that certain Lease Agreement (the "Agreement") made as of November 22, 1988 between ITEL RAIL CORPORATION, as successor in interest to both Itel Rail Corporation and Itel Railcar Corporation, as lessor ("Lessor") and GREEN BAY AND WESTERN RAILROAD COMPANY as lessee ("Lessee") is made this 29th day of November, 1989.

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. 4, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule, including the remarked Cars and the subleased Cars, as defined hereinbelow, 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 of Cars	Reporting Marks and Numbers	No. of Cars
XP	50' Plate C, 100-ton Boxcars	GBW 10147-10243	97
XP	50' Plate C 100-ton Boxcars	GBW 10000,10001, 10003-10024, 10026-10097	96

The Cars to be marked GBW 10147-10243 (the "Remarked Cars") currently bear reporting marks from within the series GBW 8051-8197 and are in Lessee's possession pursuant to that certain Lease Agreement dated April 22, 1981, as amended, (the "1981 Lease") between Lessor and Lessee. Each such Car shall be terminated from the 1981 Lease subject to Subsections 3.A and 8.B hereinbelow.

The Cars bearing the reporting marks from within the series GBW 10000-10097 (the "Subleased Cars") currently are in Lessee's possession pursuant to two sublease agreements dated October 21, 1981 and October 6, 1983, between the East Camden & Highland Railroad Company as Sublessor and Lessee as Sublessee. Lessee shall execute documents necessary to effect the termination of each Car from the applicable sublease effective as of July 1, 1989.

3.
  - A. The term of the Agreement with respect to each Remarked Car shall commence at 12 noon on the date such Car is converted from a 70-ton boxcar to a 100-ton boxcar and is remarked ("Remark Delivery") and shall expire as to all of the Cars described in this Schedule at the close of business on December 31, 1993 (the "Initial Term"). Effective upon its Delivery, each Remarked Car shall be deemed terminated from the 1981 Lease except as provided in Subsection 8.B hereinbelow.
  - 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 until December 31, 1998 ("Extended Term") with respect to all of the Cars described in this Schedule, provided that Lessor or Lessee may terminate the Agreement at the end of the Initial Term as to all of the Cars described in this Schedule by providing not less than a one hundred eighty (180) day prior written notice to the other.
  - C. The term of the Agreement with respect to each Subleased Car shall commence on July 1, 1989, ("Sublease Delivery") and shall continue as to each Subleased Car through and including the date such Car is terminated from the Agreement as provided herein. Lessor shall terminate one Subleased Car from the Agreement for each Remarked Car that is Delivered so that at any time during the Term, only ninety-seven (97) Cars are subject to the rental terms provided in Subsection 8.C. (ii) hereinbelow.
  - D. When the final Remarked Car has been delivered, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Remark Delivery date for each Remarked Car, the reporting marks of the corresponding Subleased Car that was terminated, and the date such Subleased Car was terminated from this Schedule and the Agreement. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that any information in such notice is incorrect, then Lessee shall be deemed to have concurred to such Certificate of Delivery.
4. 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.

5.
  - A. Lessee shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee shall register each Car in UMLER placing the letters designated by Lessor in owner's field in such a manner that Lessor, or its agent, is allowed access to any required information including but not limited to Train 62 Junction Advices and the Train 65, 67, 71 and 80 Advices with regard to each Car. If Lessee fails to register or improperly registers any Car in UMLER, Lessee shall be responsible for an amount equal to the revenues that would have been earned by such Car had it been properly registered in UMLER.
  - 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 as set forth 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. 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 and up to fifty (50) miles of any railroad lines owned and/or operated by Lessee subsequent to the execution of this Schedule. Unless Lessor and Lessee agree otherwise, any line purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Initial Term or the 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 hereinbelow).
- (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 October 1989 edition of The Official Railway Equipment Register.
- (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, 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 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 the Eligible Lines, 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 the Per Diem Revenues and Mileage Revenues.
- (vi) The "Guaranteed Base Rent" is defined, for any calendar quarter or applicable portion thereof ("Quarter") during the period of the Initial or Extended Term specified below, as the amount of Per Diem Revenues the Cars would have earned in the aggregate if the Cars had been on railroad lines other than Eligible Lines for:
  - (a) of the hours that the Cars were subject to the Agreement for each Quarter between July 1, 1989, and December 31, 1989;
  - (b) of the hours that the Cars were subject to the Agreement for each Quarter between January 1, 1990 and December 31, 1990;
  - (c) of the hours that the Cars were subject to the Agreement for each Quarter between January 1, 1991 and December 31, 1993;
  - (d) of the hours that the Cars were subject to the Agreement for each Quarter between January 1, 1994 and December 31, 1998;
- (vii) The "Minimum Amount" is defined, for any Quarter during the period of the Initial or Extended Term specified below, as the amount of Per Diem Revenues the Cars would have earned in the aggregate if the Cars had been on railroad lines other than Eligible Lines for:
  - (a) of the hours that the Cars were subject to the Agreement for each Quarter between July 1, 1989 and December 31, 1991.
  - (b) of the hours that the Cars were subject to the Agreement for each Quarter between January 1, 1992 and December 31, 1992.
  - (c) of the hours that the Cars were subject to the Agreement for

each Quarter between January 1, 1993 and December 31, 1998.

- B. Each Remarked Car delivered pursuant to Subsection 3.A of the Agreement shall become subject to the rental calculation under Subsection 8.C hereinbelow upon the termination of a corresponding Subleased Car from the Agreement and this Schedule; provided, however, that Lessor shall receive and be entitled to all Revenues earned by such Remarked Car after Remark Delivery, including any Revenues due Lessee pursuant to Subsection 8.C ("Lessee's Revenue Share"), until the total amount of Lessee's Revenue Share retained by Lessor shall have become equal to Lessor's expenses for remarking and delivering such Car to Lessee ("Delivery Expense").
- C. Lessee agrees to pay rent to Lessor for the Cars calculated as follows:
- (i) With respect to each Remarked Car, until the provisions of Subsection 8.B hereinabove are met, the rental terms of the 1981 Lease shall apply.
  - (ii) Effective on July 1, 1989, only with respect to each Subleased Car, and, only with respect to each Remarked Car, effective on the date that a Subleased Car has been terminated for such Remarked Car, provided, however, that at no time during the Initial or Extended Term shall the number of Cars that are subject to the following exceed ninety-seven (97) Cars, the following shall apply:
    - (a) Lessor shall receive and be entitled to \_\_\_\_\_ of all Mileage Revenues.
    - (b) In any Quarter between July 1, 1989 and December 31, 1990, if the Per Diem Revenues earned by the Cars are \_\_\_\_\_, then Lessee shall pay to Lessor \_\_\_\_\_. If, for any Quarter in such period, Per Diem Revenues earned by the Cars \_\_\_\_\_, then Lessor shall receive \_\_\_\_\_, Lessee shall \_\_\_\_\_, and Lessor shall \_\_\_\_\_ Per Diem Revenues.
    - (c) In any Quarter between January 1, 1991 and December 31, 1998, if the Per Diem Revenues \_\_\_\_\_

earned by the Cars

- 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. Lessee shall pay to Lessor by the sixtieth (60th) day after the end of each Service Month (as hereinafter

defined), one hundred percent (100%) of the estimated 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 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. Within one hundred twenty (120) days after the end of each Service Month, Lessee shall report to Lessor the actual revenues earned for such Service Month, and the parties shall adjust the Revenues remitted to Lessor accordingly.

- G. 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

GREEN BAY AND WESTERN RAILROAD  
COMPANY

BY: Robert Kerkub  
TITLE: Vice President - Finance  
DATE: November 29, 1989

BY: J. J. Smiley  
TITLE: Spec. OP  
DATE: 11-21-89

**EXHIBIT A**

**CERTIFICATE OF DELIVERY DATE**

Exhibit A to Schedule No. 4 dated as of \_\_\_\_\_  
by and between ITEL RAIL CORPORATION ("Lessor") and GREEN BAY AND  
WESTERN RAILROAD COMPANY ("Lessee"), to Lease Agreement dated as  
of November 22, 1988.

<b>Reporting Marks and Number <u>(Old)</u></b>	<b>Remarked Car Reporting Marks and Number <u>(New)</u></b>	<b>R e m a r k Date for Remarkd Car</b>	<b>Termin- a t e d Subleased Car</b>	<b>Subleased Car Term- ination Date</b>
--	---	---	--	---

Each Remarked Car became subject to the rental terms of Schedule  
No. 4 on the date the corresponding Subleased Car was terminated.

The last day of the Initial Term for the above referenced Cars  
shall be December 31, 1993.

The last day of the Extended Term for the above referenced Cars  
shall be December 31, 1998.

**ITEL RAIL CORPORATION**  
Authorized Representative

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

EXHIBIT B

Running Repairs: Boxcars

Angle Cocks	Wheels
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 29th day of November, 1989, before me personally appeared Robert Kiehnle, to me personally known, who being by me duly sworn says that such person is Vice President Finance of Itel Rail Corporation, that the foregoing Schedule No. 4 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.

Sharon L. Van Fossan  
Notary Public



STATE OF Wisconsin )  
 ) ss:  
COUNTY OF Brown )

On this 21st day of November, 1989, before me personally appeared J. J. Bruley, to me personally known, who being by me duly sworn says that such person is Executive Vice President of Green Bay and Western Railroad Company that the foregoing Schedule No. 4 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.

Sandra K Child  
Notary Public

SANDRA K. CHILD, Notary Public  
State of Wisconsin  
My Commission Expires January 24, 1993