

ITEL

Pullman

March 30, 1989

Itel Rail Corporation

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

Date _____
Fee \$ _____

RECORDATION NO 16266 FILED 1423 *A*

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

APR 5 1989 -2 10 PM

INTERSTATE COMMERCE COMMISSION

Re: Schedule No. 1 to Master Lease Agreement dated March 16, 1989, between Itel Rail Corporation, Itel Railcar Corporation and Cyprus Mines Corporation

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 \$13 recordation fee.

Please record this Schedule under the Master Lease Agreement dated March 16, 1989, between Itel Rail Corporation, Itel Railcar Corporation and Cyprus Mines Corporation, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation and
Itel Railcar Corporation (Lessors)
55 Francisco Street
San Francisco, California 94133

Cyprus Mines Corporation (Lessee)
9100 East Mineral Circle
Englewood, Colorado 80112

This Schedule adds to the Master Lease twenty-five (25) 5100 cubic foot, 70-ton, Plate C, RBL boxcars bearing reporting marks USLX 11250-17049 (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 Department

APR 5 1989 -2 10 PM

Lot No. 2219-01

INTERSTATE COMMERCE COMMISSION SCHEDULE NO. 1

THIS SCHEDULE 1 ("Schedule") to that certain Lease Agreement (the "Agreement") made as of March 16, 1988⁹ between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and CYPRUS MINES CORPORATION, as lessee ("Lessee") is made this 16th day of March, 1988⁹, between ITEL RAILCAR CORPORATION ("Lessor") and Lessee.

Lessor and Lessee agree as follows:

1. This Schedule supersedes Schedule 2 dated April 18, 1972 and Schedule 1 dated August 23, 1978.
2. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 1, except the term "Cars" when used in this Schedule shall refer only to Cars on this Schedule unless otherwise indicated.
3. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

| AAR Mech Desi- gn. | Description | Numbers | Length | Dimensions | | Doors Width | No. of Cars |
|-----------------------------|---|--|--------|-----------------|--------|----------------|-------------------|
| | | | | Inside Width | Height | | |
| RBL | 5100 cu. ft. 70- ton, Plate C Dual Air PAK Bulkheads Insulated Boxcar | USLX 11250- 11251;11253; 11254;11255- 11260;11268- 11271;11273- 11274;17017; 17041-17043; 17045-17049 | 52'5" | 9'4" | 10'5" | 16' | 25 |

4. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on June 1, 1988 ("Commencement Date") and shall continue as to all of the Cars described in this Schedule through and including May 31, 1993 (the "Term").
5. Each Car shall be deemed delivered and subject to the terms and provisions of the Agreement at 12 noon on the Commencement Date ("Delivery").
6. Lessor shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement.

7. 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 substituted for Exhibit B to the Agreement, if any. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
8. Lessor shall at all times be liable for, and shall pay all federal, state, or other governmental property taxes assessed against or levied upon the Cars. Lessee shall be liable for all sales, use or gross receipts taxes imposed upon the Cars or upon car hire payments, including payments for time and mileage, for the use or handling of the Cars during the term of this Schedule.
9.
 - A. The fixed rent ("Fixed Rent") shall be per Car per month for each full calendar month ("Month") during the Term. The Fixed Rent for any Car which is not subject to the Agreement for an entire Month shall be prorated at per day for such Car during such Month. The Fixed Rent shall be due and payable regardless of any claimed abatement, reduction or offset.
 - B. The Fixed Rent for each Car shall be calculated by adding a constant factor of to an initial service factor of Lessor may elect to adjust the service factor as follows: The AAR Labor Rate in effect on the date that this Schedule is fully executed is termed the "Original Labor Rate." The prevailing Labor Rate in effect on each January 1 subsequent to the date that the Original Labor Rate is established will be referred to as the "Current Labor Rate." If the Current Labor Rate increases in any year over the Original Labor Rate, the service factor may be adjusted to an amount not to exceed the product obtained by multiplying the service factor by a fraction, the numerator of which is the Current Labor Rate and the denominator of which is the Original Labor Rate. If such adjustment is made, the per Car rental shall be revised to be the sum of the constant factor and the adjusted service factor. Any such adjustment shall be instituted by notice from Lessor to Lessee and shall take effect with respect to rents coming due next after the date of notice.
 - C. Lessee shall pay to Lessor the Fixed Rent and all taxes reimbursable to Lessor as additional rent hereunder on the first day of each month during the Term. Time and mileage payments paid or allowed by railroads with respect to the Cars shall be the property of Lessor, but Lessor shall credit time and mileage payments actually received by it during an Accounting Period (as defined below) (less taxes, other than income taxes, due or to become due on account of such time and mileage payments) against rent due then or thereafter under the Agreement with respect to Cars described in this Schedule during such Accounting Period ("Accounting Period" is defined as any consecutive twelve month period or, for the last months of any Term, applicable portion

thereof, from the execution date of the applicable Schedule through the date the Agreement shall expire or terminate with respect to such the Cars on such Schedule); provided, however, that in no event shall the aggregate time and mileage payments credited exceed the total rent payable by Lessee during such Accounting Period. Any credit unused at the end of such Accounting Period with respect to such Cars shall be the property of Lessor.

In the event Lessor receives time and mileage payments on the Cars in any Accounting Period or applicable portion thereof that equal less than the total Fixed Rent due on the cars for such period, then Lessee shall, within ten (10) days of receiving an invoice from Lessor, pay Lessor the difference between such payments received by Lessor and total Fixed Rent due.

10. 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 (collectively, "Damages") 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 10.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 defend, indemnify and hold Lessee harmless from any and all loss, damage or destruction of or to the Cars, ordinary wear and tear excepted.

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

11. Upon the expiration or termination of the Agreement with respect to any Car(s) in this Schedule, Lessee shall surrender possession of said Car(s) to Lessor pursuant to Section 12 of the Agreement and shall promptly return said Car(s) to Lessor by delivering the Car(s) to Lessor at such maintenance, storage or terminal facility as Lessor designates to Lessee in writing.
12. Except as expressly modified by this or another Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

13. This Schedule may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAILCAR CORPORATION

By: *DA Hayes*
Title: *President*
Date: *March 16, 1989*

CYPRUS MINES CORPORATION

By: *AM Wolf* *BCE*
Title: *VICE PRESIDENT*
Date: *2/15/89*

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

On this 16th day of March, 1988⁹, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Schedule No. 1 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 of corporation.

Sharon L. Van Fossan
Notary Public



STATE OF COLORADO)
) ss:
COUNTY OF ARAPAHOE)

On this 15th day of FEBRUARY, 1988⁹, before me personally appeared P.C. WOLF, to me personally known, who being by me duly sworn says that such person is VICE PRESIDENT of Cyprus Mines Corporation that the foregoing Schedule No. 1 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 of corporation.

Deborah K. Longhofer
Notary Public



EXHIBIT B

Running Repairs: RBL 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 Plates (Not Replacement) |
| Brake Connecting Pin | Cotter Keys |
| Brake Head Wear Plates | Roller Bearing Adapters |
| Air Brakes | Air Hose Supports |
| Hand Brakes | Load Divider Repairs (Not Replacement) |
| Brake Beams and Levers | |
| Truck Springs | |
| Door Hardware (Not Replacement) | |