

ITEL

RECORDATION NO. _____ FILED 1988

1 5768

August 1, 1988

AUG 5 1988-3 25 PM

Istel Rail Corporation55 Francisco Street
San Francisco, California 94133
(415) 984-4000**INTERSTATE COMMERCE COMMISSION**

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

Re: Amendment No. 4 to Lease Agreement dated August 23, 1983,
between Istel Railcar Corporation, as assignee of Evans
Railcar Leasing Company, and Upper Merion & Plymouth
Railroad Company (Lease and Amendment Nos. 1-3 attached)

Dear Ms. McGee:

On behalf of Istel Rail Corporation, the above instrument, in
four (4) 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 Amendment under a new recordation number.
The parties to the aforementioned instrument are listed below:

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

Upper Merion & Plymouth Railroad Company (Lessee)
P.O. Box 112
Conshohocken, Pennsylvania 19428

This Amendment covers forty (40) 52'6", 100-ton gondolas bearing
reporting marks UMP 5500-5620 (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 Department

PS:
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

8/8/88

OFFICE OF THE SECRETARY

Patricia Schumacker
Legal Department
Itel Rail Corporation
San Francisco, California 94133

Dear Ms Schumacker:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/6/88 at 3:25pm, and assigned recordation number(s) 15758, 15769, 15770, 15770-A & 15770-B, 15663-L

15664-~~1~~

13587-A

Sincerely yours,

Narita R. McEwen

Secretary

Enclosure(s)

1 5768

REGISTRATION NO. _____ FILED 1988

AUG 5 1988-3 22 PM

LOT NO. 2044-01

04/20/88

INTERSTATE COMMERCE COMMISSION AMENDMENT NO. 4

AMENDMENT NO. 4 ("Amendment") to Schedule 1 dated August 23, 1983, as amended, ("Schedule 1") to Lease Agreement dated as of August 23, 1983 ("Lease"), by and between Evans Railcar Leasing Company ("Evans") and Upper Merion & Plymouth Railroad Company ("UMP") is made as of this 3rd day of June, 1988, by and between ITEL Railcar Corporation, as assignee of Evans ("Lessor"), and UMP ("Lessee").

RECITALS:

- A. Lessor and Lessee are parties to Schedule 1 pursuant to which fifty-four (54) 52'6", 100-ton gondolas bearing reporting marks UMP 5500-5506; 5511; 5513; 5515; 5517; 5518; 5520; 5522; 5523; 5527; 5533; 5535; 5536; 5538; 5539; 5540; 5542; 5543; 5545; 5547; 5549; 5550; 5552-5555; 5557; 5560; 5562; 5565; 5570; 5572; 5574; 5581; 5582; 5587; 5591; 5592; 5595; 5596; 5598; 5602; 5609; 5611; 5620 were leased to Lessee. EF
- B. Pursuant to the Termination Letter dated as of October 20, 1987, fourteen (14) Cars bearing reporting marks UMP 5500; 5502; 5515; 5518; 5520; 5527; 5539; 5549; 5553; 5554; 5559; 5565; 5574; 5611 have been terminated from the Lease.
- C. The parties desire to amend the terms of Schedule 1.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree to amend Schedule 1 as follows:

- 1. All terms defined in Schedule 1 and the Lease shall have the meanings defined in those documents therein when used in this Amendment.
- 2. Effective as of May 1, 1988, the terms and provisions of Schedule 1 shall control, as to the Cars listed on Schedule 1, over any inconsistent or contrary terms and provisions in the body of the Lease. The terms and provisions of the Lease unmodified by this Amendment shall govern the Cars described on Schedule 1 through and including April 30, 1988.
- 3. The new extended term ("Extended Term") with respect to each Car described on Schedule 1 shall commence on May 1, 1988, and will continue through and including April 30, 1989.
- 4. Commencing on May 1, 1988, the fixed rent ("Fixed Rent") shall be hundred dollars per Car per month for each calendar month ("Month") during the Extended Term. The Fixed Rent for any Car which is not subject to the Lease for an entire Month shall be prorated at dollars and cents per day per Car during such Month. Lessee shall pay the Fixed Rent to Lessor for each Month on the first day after the last day of such Month. sixty (60)

PP ET
OPH

PP
S
OPH

PA 27 DPB

5. Lessor may, at its expense, replace any or all Cars described in Schedule 1 with ~~similar~~ equipment ^{upon} prior written notice from Lessor to Lessee. of like type, design, dimensions and condition, and of equal or greater hourly and mileage car hire rates

PA 27 DPB

6. A. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules; provided, however, that such repairs, maintenance and servicing ("Maintenance") shall be performed at Lessee's expense in the event such Maintenance (i) was occasioned by the fault of Lessee; (ii) results from loading, unloading or use ^{on Lessee's line and or under the control of Lessee} other than permitted under the Lease; (iii) is for the purpose of repair, replacement or maintenance of interior lading equipment, special interiors and linings or removable parts; (iv) relates to damage resulting from any commodity or material loaded in any Car, ^{while on Lessee's line and or under the control of Lessee} or (v) arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such Maintenance. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee may make running repairs to those parts of the Cars specified in the attached Exhibit A to facilitate continued immediate use of each Car, but shall not otherwise make repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any Maintenance required. Lessee shall not place any Car into a private repair facility or have any Car repaired by a private contractor on Lessee's property unless Lessee has received prior approval from Lessor and all such repairs are performed under the direction and control of Lessor.

PA 27 DPB

PA 27 DPB

B. Lessor shall also make, at its expense, all alterations, modification or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor. Lessor shall have the right to perform Nonroutine Repairs, as hereinafter ^{and at such time} defined, to the Cars at a location on Lessee's property ^{which is mutually agreeable to Lessor and Lessee} or at a contract repair facility. "Nonroutine Repairs" is defined as repairs of a type that Lessor determines Lessee would not normally perform or that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Nonroutine Repairs.

PA 27 DPB

damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks ~~and with such insurance companies~~ as are satisfactory to Lessor. All insurance shall be taken out ^{on behalf} ~~in the name~~ of Lessee and shall name Lessor, any financing party designated by Lessor by written notice to Lessee ("Financing Party") and any assignee of Lessor as additional named insureds and shall also list Lessor, Financing Party and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, ^{and is not renewed,} ~~and is not renewed,~~ Lessor has the right to purchase insurance to protect all interested parties and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. ~~Lessee shall require its insureds specifically to waive subrogation, claim and recovery with respect to any other insurance.~~ Any and all deductibles in the described policies shall be paid by Lessee.

Handwritten initials: PM, ET

Handwritten initials: PM, ET

Handwritten initials: PM, ET

Handwritten initials: PM, ET

B. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to Lessor pursuant to this Subsection. ^{if available} Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance.

Handwritten initials: PM, ET

9. In the event that any Car(s) is not in use while subject to the Lease, Lessee shall be responsible for all costs associated with storing such Car(s). If Lessor pays for any costs referred to in this Section, Lessee shall reimburse Lessor for such costs within ten (10) days after receiving an invoice from Lessor for such costs.

Handwritten initials: PM, ET

10. A. Throughout the continuance of the Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to ^{hold, possess, and enjoy} ~~possess~~ each Car from and after delivery of such Car and shall use such Car on its own property or lines or in the usual interchange of traffic, provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with all AAR Interchange Rules; (ii) in compliance with the terms and provisions of the Lease; (iii) only within the continental limits of the United States of America or in temporary or incidental use in Canada; and (iv) in such service as will not constitute a train hauling predominantly a single commodity between the same points on a regular basis, commonly referred to as a "unit train". However, Lessee's rights shall be subject and subordinate to the rights of

any owner or secured party under any financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars which are the subject of the Lease. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Amendment), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, and to confirm the subordination provisions contained in this Amendment.

11. A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due;

OPH 27 PM

(ii) The breach by Lessee of any other term, covenant, or condition of the Lease, which is not cured within ten (10) days ~~thereafter~~ after receipt of notice of default;

PM 27 OOH

(iii) The filing by or against Lessee of any petition or the initiation by or against Lessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder; or b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness;

OPH 27 PM

(iv) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which substantially impairs Lessee's capacity to perform its obligations under this Agreement;

(v) Any action by Lessee to discontinue rail service on a substantial portion of its track or to abandon any of its rail properties.

B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to

Lessor and Lessor in any case being entitled to recover all/costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate the Lease and recover damages and/or may:

- (i) Proceed by any lawful means to enforce performance by Lessee of the Lease or to recover damages for a breach thereof;
- (ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall, in addition, have the right to recover from Lessee any and all rental amounts which under the terms of the Lease may then be due or which would have become due through the end of the original term of the Lease, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof;
- (iii) Without terminating the Lease repossess the Cars. Lessor may relet the same or any part hereof to others upon such terms as Lessor desires. The proceeds of any such reletting shall first be applied to the expense (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee(s) and then to the payment of rent due under Schedule 1. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Lessor shall not be obligated to do any act or exercise any diligence whatsoever in the procuring of another lessee to mitigate the damages of Lessee or otherwise. The election of Lessor to relet the Cars and the acceptance of a new lessee shall not release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

12. A. Upon the expiration or termination of the Lease with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:

- (i) Lessee shall insure that each Car returned to Lessor upon the expiration or termination of the Lease shall be (i) in the same or better condition, order and repair as when delivered to Lessee, normal wear excepted; (ii) in interchange condition in accordance with AAR and FRA regulatories; and (iii) suitable for loading and free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee.

(ii) 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 Lessee's railroad tracks subsequent to the time of expiration. Lessee shall, at Lessor's option, provide, with respect to any Car described on Schedule 1 which is either on the Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad tracks, up to ninety (90) days free storage on its railroad tracks from either the date of expiration or the date the last Car subject to Schedule 1 is returned to Lessee's railroad line subsequent to the time of expiration, whichever date is later. After remarking, at Lessor's option and expense, Lessee shall either move such Car to any interchange point(s) on Lessee's lines selected by Lessor or use ~~reasonable~~ ^{reasonable} efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

RL
ET
OPW

13. Any notices required or permitted to be given pursuant to the terms of the Lease shall be deemed given when given by telecopy or telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor: Itel Railcar Corporation
55 Francisco Street
San Francisco, CA 94133
Attn: President

Lessee: Upper Merion & Plymouth Railroad Company
P.O. Box 112
Conshohocken, PA 19428
Attn: President

or at such other addresses as Lessor or Lessee may from time to time designate.

14. The terms of the Lease and all rights and obligations hereinafter shall be governed by the internal laws of the State of ~~NEW YORK~~ Illinois.

RL *ET*
OPW

15. Except as expressly modified by this Amendment, all terms and provisions of the Lease shall remain in full force and effect.

16. Lessee shall have the right to grant full or partial car hire relief to other carriers for the use of cars.

OPW *RL* *ET*

RL *OPW*
ET

17. *pad 57 000*

LOT NO. 2044-01

~~XIV~~ This Amendment 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

UPPER MERION & PLYMOUTH RAILROAD COMPANY

BY: *AP Hayes*

BY: *Earl C. Truene*

TITLE: *President*

TITLE: *President*

DATE: *June 17, 1988*

DATE: *June 3, 1988*

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

On this 17th day of June, 1988, 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 Amendment No. 4 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 ILLINOIS)
) ss:
COUNTY OF COOK)

On this 3rd day of JUNE, 1988, before me personally appeared Earl L. Freeman, to me personally known, who being by me duly sworn says that such person is President of Upper Merion & Plymouth Railroad Company that the foregoing Amendment 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.

Carmen Montagna
Notary Public

My Commission Expires October 20, 1988

EXHIBIT A
Gondolas

Running Repairs

Angle Cocks

Air Hose

Train Line

Operating Levers and Brackets

Sill Steps

Grab Irons

Brake Shoes

Brake Shoe Keys

Brake Connecting Pin

Brake Head Wear Plates

Air Brakes

Hand Brakes

Brake Beams and Levers

Truck Springs

Running Repairs Continued

Wheels

Yokes

Knuckles/Pins

Slack Adjuster

Couplers

Draft Gears

Coupler Carriers

Center Plates (Not Replacement)

Cotter Keys

Roller Bearing Adapters

2044-01

L E A S E

AGREEMENT made and entered into this 23rd day of August, 1983 between

EVANS RAILCAR LEASING COMPANY
an Illinois corporation (hereinafter called "Evans")

and

UPPER MERION & PLYMOUTH RAILROAD COMPANY
(hereinafter called "Lessee")

RECITALS

Lessee desires to lease from Evans as Lessor certain railroad cars, hereinafter specifically designated or to be specifically designated, all upon the rentals, terms and conditions as set forth in this Lease.

AGREEMENT

It is agreed:

1. Lease of Cars. Evans agrees to lease to Lessee and Lessee agrees to and hereby lease from Evans that number of railroad cars, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 of this Lease and as is set forth in Schedules which may from time to time be added to this Lease. The Cars covered by this Lease are those which shall be delivered to and accepted by or on behalf of Lessee pursuant to the terms hereof. This Lease shall become effective with respect to any Car as of the date of its delivery and acceptance hereunder and shall continue with respect to such Car for the term provided in the Schedule covering such Car unless sooner terminated as hereinafter provided. Evans shall deliver Cars f.o.t., at the delivery point specified in the Schedule covering such Cars. From and after such delivery, if any action by Lessee either oral or written cause cars to be routed in such a manner as to incur transportation cost, Lessee shall pay all costs and expenses on account of transportation or movement of the Cars to and from any place and for any reason whatsoever; except that Evans agrees to pay all transportation costs when the cars are moved to and/or from an Evans maintenance facility or a facility designated by Evans.

2. Rental. Rental shall be equivalent to the Actual Car Hire multiplied by the percentage stated in the applicable Schedule. For the purpose of this Lease, Actual Car Hire shall be defined as all sums collected on account of the use of the Cars for a given calendar year, including but not limited to mileage earnings, straight car hire and incentive car hire, without reduction for car hire reclaims by railroads or shippers, except when mutually agreed between Evans and Lessee. Lessee will not be required to make car hire payments while the cars are on the Lessee's railroad.

Although rental is based on a calendar year, Lessee shall perform the foregoing calculations for each individual month during the Lease Term and shall pay rental to Evans based on such calculations. It is understood, however, that the information which is necessary to perform such calculations is customarily unavailable for use until approximately 90 days following the end of the month in question; therefore, it is agreed that the calculation for each month shall be performed within the 90 day period following the close of each month and payment shall be made to Evans within 30 days thereafter. In addition to the monthly calculation, rental shall be reconciled quarterly and annually. If such reconciliations indicate that an adjustment is necessary to conform rental payments to the calendar year rental basis, then the Lessee or Evans, as the case may be, shall pay the other the adjustment amount within 30 days after such amount is determined. As with the monthly calculation, it is understood that the information necessary to perform the quarterly and annual reconciliations will be available approximately 90 days after the close of the applicable quarter or month.

3. Acceptance of Cars. Within three (3) days after Evans shall give Lessee notice that some or all Cars covered by a Schedule are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point of delivery and accept or reject them as being or failing to be in compliance with the terms hereof. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall be conclusively deemed to meet all requirements of this Lease and shall be conclusively deemed delivered to and accepted by Lessee.

4. Records. Lessee shall keep records of and monitor the use and movements of all Cars and shall provide to Evans all information and copies of all records and reports, pertaining to the Cars received by Lessee or available to it during normal business hours. Evans shall have the right at any time and from time to time to audit and verify any such information, records and reports and other data pertinent hereto and Lessee shall cooperate with and assist Evans in any such audit or verification. Lessee will at Evans' expense take all appropriate action to record and register the Cars as Evans may request. In addition, if Lessee knows of the initial loading of any of the Cars, Lessee shall promptly thereafter notify Evans of the date, handling railroad and destination of such initial loading.

5. Use - Lettering. Lessee shall use the Cars in a careful and prudent manner in compliance with all Interchange Rules and solely for the uses for which they were designed. From and after the delivery of a Car to Lessee, so long as Lessee shall not be in default hereunder, Lessee shall be entitled to the use of the Car for the full term of this Lease, within the continental limits of the United States of America, or in international service as defined under the Internal Revenue Codes. Except for the lettering to be placed on the Cars by Evans prior to delivery indicating the interest of Lessee, Evans and any

assignee or mortgagee of Evans as permitted in Paragraph 11 hereof, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of Evans. Lessee shall give preference and shall load the Cars prior to loading similar railroad cars leased from other parties or purchased by Lessee subsequent to the date of this Lease or interchanged with the other railroads, provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request to shippers on its railroad tracks, and provided further, Lessee shall not have to give priority to the loading of the Cars at the expense of unreasonably disrupting Lessee's normal operations.

6. Repair Work. Except as otherwise provided herein, Evans shall at its sole cost and expense perform all Repair Work or authorize or cause same to be done. Lessee shall at its sole cost and expense perform or cause to be performed all Repair Work required by reason of improper loading procedures and/or the negligence of Lessee or an affiliate of Lessee. Lessee, at Evans' expense, may make running repairs defined in AAR Interchange Rules to facilitate continued immediate use of a Car, but shall not otherwise make any repair, alterations, improvements or additions to the Cars without Evans' prior written consent. Upon notification by other railroad(s) of the need for repair, Lessee will promptly notify Evans of the need for repair work. Evans may require Lessee to return Cars, at Evans' expense, for preventive maintenance or Repair Work, and may withdraw from this Lease any Cars which it in its sole discretion deems uneconomical for Repair Work of any kind.

7. Casualty Cars. Evans shall bear the risk of any Car which is lost, stolen, destroyed or damaged beyond economical repair ("Casualty Car") other than on Lessee's lines. Lessee shall bear the risk of and be responsible for any Car which is lost, stolen, destroyed or damaged beyond economical repair on its lines and shall within thirty (30) days after the occurrence of any such event, pay to Evans the amount provided in the Interchange Rules to be paid for such Casualty Car. This Lease shall terminate as to any Casualty Car on the date on which the casualty occurred. All payments for Repair Work or in connection with the loss of any Casualty Car due from third parties shall be assigned to and belong to Evans and Lessee shall cooperate with Evans in the prosecution and collection of all claims therefor.

8. Indemnities. Evans agrees to indemnify Lessee and hold it harmless from any loss, expense or liability which Lessee may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession, or operation of the Cars while subject to this Lease, excepting only any such loss, expense or liability which arises from Lessee's negligence or which arise as a result of the operation of the Cars on Lessee's lines and Lessee shall indemnify Evans for such loss, expense or liability. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

9. Taxes. Evans shall be liable for and pay all Federal, State or other governmental property taxes assessed or levied against the Cars except that Lessee shall be liable for and pay such taxes when the Cars bear reporting marks other than Evans'. Lessee shall be liable at all times for and shall pay or reimburse Evans for payment of (i) all Federal, State or Local sales or use taxes imposed upon or in connection with the Cars, this Lease, or use of the Cars for or under this Lease, (ii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and/or any governmental subdivision thereof and (iii) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars.

10. Termination. This Lease shall terminate upon expiration of its term, at election of either party hereto by reason of the default or breach of the other party in the terms hereof, or upon the election of Evans as hereinafter provided. In the event that average monthly rentals received for all cars in any calendar quarter as defined in Paragraph 2 are less than the amount per car per day as specified in the applicable Schedule then Evans may at its option upon thirty (30) days notice to Lessee terminate this Lease in its entirety, or terminate the Lease as to any or all of the Cars subject to this Lease or any Schedule hereto. Lessee shall at the termination of the Lease with respect to any Cars return such Cars to Evans in the same condition (except to Casualty Cars) in which the Cars were furnished and maintained by Evans during the term hereof, ordinary wear and tear excepted. Upon the termination of this Lease with respect to any or all Cars, Lessee shall at its sole cost and expense forthwith surrender possession of such Cars to Evans at any interchange point on Lessee's lines and Lessee agrees to use its best efforts to load the Cars toward the point designated by Evans. Lessee shall provide free storage for a period of up to 90 days for Cars as to which the Lease is terminated. This Lease may be terminated as to all Cars or as to any group of Cars covered by a Schedule without termination of the Lease as to Cars covered by any other Schedule. From and after termination of this Lease with respect to any Car and until its return to Evans all amounts earned by such Car shall be paid to Evans as defined in Paragraph 2, "Rental".

11. Sublease and Assignment. The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan the Cars without the prior written consent of Evans.

(b) all rights of Evans under this Lease may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part and Evans agrees to give notice to Lessee within 30 days of such assignment, pledge, mortgage, transfer or other such disposition. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust covering the cars heretofore or hereafter created by Evans.

If Evans shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment by Evans shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

12. Default. If Lessee or Evans shall fail to make any payment required hereunder within five (5) days after same shall have become due or shall breach any representation or warranty contained herein or shall default or fail for a period of ten (10) days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or a proceeding shall have been commenced by or against Lessee or Evans under any bankruptcy laws, Federal or State, or other laws for the appointment of a receiver, assignee or trustee of Lessee or Evans or their property, or Lessee or Evans shall make a general assignment for the benefit of creditors, then and in any of said events Evans or Lessee, as the case may be, may in addition to all other rights and remedies provided in law of equity, upon written notice to such effect, terminate this Lease in its entirety or with respect to any group of Cars with respect to which said default has occurred and thereafter recover any and all damages sustained by reason of Lessee's or Evans' default. The obligation to pay rental then or thereafter due or any other sum or sums due and unpaid or any damages suffered by reason of Lessee's or Evans' default hereunder shall survive the termination of the Lease and the retaking of the Cars.

13. Definitions. For all purposes of this Lease the following terms shall have the following meaning:

"Repair Work" - all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with and on the effective date of the requirements of all Interchange Rules and preventive maintenance as determined by Evans to keep and maintain the Cars in good working order and repair.

"Interchange Rules" - all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time be the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

14. Representations. Lessee and Evans respectively covenant, warrant and represent that all of the following matters shall be true and correct at all times that any Car is subject to this Lease:

- (a) Each party is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has the corporate power, authority and is duly authorized and qualified to do business wherever it transacts business and such qualification is required, and has corporate power to and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder.
- (b) This Lease has been duly executed on behalf of each party and constitutes the legal, valid and binding obligation of the respective parties enforceable in accordance with its term.
- (c) No governmental, administrative or judicial authorization, permission, consent or approval is necessary on the part of either party in connection with this Lease or any action contemplated on its part hereunder, nor will the execution or performance of this Lease violate any law, judgement order or regulation, or any indenture or agreement binding upon either party; and
- (d) Neither party nor their respective counsel know of any requirements for recording, filing or depositing this Lease other than pursuant to Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of Evans or its assignee or mortgagee in the United States of America.

Upon request of Evans or its assignee or mortgagee at any time or times, Lessee shall deliver to Evans an opinion of its counsel addressed to Evans or its assignee or mortgagee, in form and substance satisfactory to Evans or its assignee or mortgagee, which opinion shall confirm the matters set forth in this Paragraph 14 (a) through (d).

15. Miscellaneous.

- (a) This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns to the extent permitted herein.
- (b) Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States Mail, registered or certified, postage prepaid addressed to:

Evans at: East Tower
2550 Golf Road
Rolling Meadows, Illinois 60008

Lessee at: P. O. Box 404
Conshohocken, PA 19428

or such other address as either party may from time to time designate by such notice in writing to the other.

- (c) Lessee shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect Evans' title, which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease and shall promptly discharge any such lien, encumbrance or legal process. Lessee shall take all action requested by Evans to confirm Evans' interest in the Cars as Lessor and that Lessee has no interest in the Cars other than as Lessee hereunder.
- (d) So long as Lessee is not in default under this Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars.
- (e) During the continuance of this Lease, Evans shall have the right, at its own cost and expense, to inspect the Cars at any reasonable time or time wherever the Cars may be. Lessee shall, upon request of Evans, but no more than once every year, furnish to Evans two (2) copies of an accurate inventory of all Cars in service.

IN WITNESS WHEREOF, Evans and Lessee have duly executed this Lease as of the day and year first above written.

(CORPORATE SEAL)

ATTEST:

By: Joseph J. Hallman
Vice President/Comptroller

UPPER MERION & PLYMOUTH RAILROAD COMPANY

By: J. N. Bell
President

(CORPORATE SEAL)

ATTEST:

By: [Signature]
ASST. Secretary

EVANS RAILCAR LEASING COMPANY

By: [Signature]
Curtis C. Tatham
Senior Vice President Marketing

STATE OF ILLINOIS
COUNTY OF COOK

On this 24th day of October, 1983, before me personally appeared Curtis C. Jackson, to me personally known, who being by me duly sworn, says that he is President of EVANS RAILCAR LEASING COMPANY, and Laurence G. Propper personally known to me to be the Asst Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Janette C. Benedetti
Notary Public

My Commission Expires July 25, 1987

STATE OF PENNSYLVANIA
COUNTY OF MONTGOMERY

On this 31st day of August, 19 83, before me personally appeared J. Noel Ball, to me personally known, who being by me duly sworn, says that he is President of Upper Merion & Plymouth Railroad Company, and Joseph I. Hallman personally known to me to be the V. Pres./Comptroller of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mary Ann Tuturice
Notary Public

MARY ANN TUTURICE, Notary Public
Upper Merion, Montgomery Co., Pa.
My Commission Expires September 24, 1984

EXHIBIT A

Exhibit A to Schedule 1 dated August 23, 1983 to Lease dated August 23, 1983, by and between EVANS RAILCAR LEASING COMPANY ("Evans") and UPPER MERION & PLYMOUTH RAILROAD COMPANY ("Lessee").

CERTIFICATE OF ACCEPTANCE

Evans Railcar Leasing Company
2550 Golf Road
Rolling Meadows, IL 60008

Gentlemen:

The undersigned, being a duly authorized representative of Lessee, hereby accepts _____ (____) Cars bearing numbers as follows:

for the Lessee pursuant to the Lease and certifies that each of said Cars is plainly marked in stencil on both sides of each Car with the words

EVANS RAILCAR LEASING COMPANY
OWNER AND LESSOR

Title to this Car subject to documents recorded
under Section 20c of Interstate Commerce Act

in readily visible letters not less than one inch (1") in height; and that each of said Cars conforms to, and fully complies with the terms of said Lease and is in condition satisfactory to the Lessee. If the Lessee is a railroad, Lessee hereby certifies that it is an interstate carrier by rail and that the Cars are intended for actual use and movement in interstate commerce.

Lessee

EVANS' LOT NO.

SCHEDULE 1

Page 1 of Schedule 1 dated August 23, 1983, to Lease dated August 23, 1983 by and between EVANS RAILCAR LEASING COMPANY ("Evans") and UPPER MERION & PLYMOUTH RAILROAD COMPANY ("Lessee").

TYPE AND DESCRIPTION OF CAR:

52'5" 100-ton general purpose gondolas built in 1980 with an umler value of \$40,001.

NUMBER OF CARS:

40

INTERIOR EQUIPMENT:

None

SPECIAL LININGS:

None

PERMITTED LADING USE:

Steel Plate, Scrap Steel

REPORTING MARKS AND NUMBERS:

UMP (numbers to be advised)

SPECIFICATIONS DESIGNATED BY LESSEE:

None

INITIAL F.O.T. POINT:

Nearest connecting point on the Upper Merion & Plymouth Railroad

Page 2 of Schedule 1 dated August 23, 1983 to Lease dated August 23, 1983 by and between EVANS RAILCAR LEASING COMPANY ("Evans") and UPPER MERION & PLYMOUTH RAILROAD COMPANY ("Lessee").

LEASE TERM: 2 Years. Will automatically continue month to month unless cancelled upon 30 days prior written notice by either party.

EVANS' PERCENTAGE OF CAR HIRE RECEIVED:

MINIMUM AVERAGE DAILY RENTAL PER CAR:

SPECIAL TERMS: None

(CORPORATE SEAL)

ATTEST:

By: Joseph J. Hallman
Vice President/Comptroller

UPPER MERION & PLYMOUTH RAILROAD COMPANY

By: J. N. Bell
President

(CORPORATE SEAL)

ATTEST:

By: [Signature]
ASST. Secretary

EVANS RAILCAR LEASING COMPANY

By: [Signature]
Curtis C. Tatham, Senior Vice President Marketing

FIRST AMENDMENT DATED SEPTEMBER 18, 1985

FIRST AMENDMENT dated as of September 18, 1985 to Schedule 1 dated August 23, 1983 ("Schedule 1") of that certain Railroad Car Lease Agreement dated August 23, 1983 ("Lease") by and between EVANS RAILCAR LEASING COMPANY, as Lessor ("Evans") and UPPER MERION & PLYMOUTH RAILROAD COMPANY, as Lessee ("UMP").

W I T N E S S E T H:

WHEREAS, pursuant to the Lease and Schedule 1, UMP currently leases forty (40) 52'6" 100-ton general purpose gondolas marked and numbered UMP 5501-5507; 5511; 5513; 5515; 5518; 5520; 5523; 5535; 5536; 5538-5540; 5542; 5543; 5545; 5547; 5549; 5550; 5552-5555; 5557; 5558; 5560; 5565; 5570; 5581; 5582; 5587; 5592; 5596-5598 ("Cars") from Evans; and

WHEREAS, all parties hereto desire to amend Schedule 1 as hereinafter indicated:

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the parties agree as follows:

1. The Lease shall be extended for two (2) years commencing October 19, 1985 continuing month to month thereafter unless cancelled upon thirty (30) days prior written notice by either party.
2. Evans percentage of car hire earnings received shall be changed to UMP to retain of the off line car hire earnings.
3. In the event the minimum average daily rental per car falls below , UMP shall have the option to pay any shortfall between the stated minimum and the actual car hire earnings received by Evans, and in the event that UMP does not exercise such option then Evans may terminate this Lease as to any or all of the Cars.
4. Evans may elect to modify the Cars in order to reinforce the ends of the Cars. In the event that Evans modifies the Cars in such a manner, Evans shall be reimbursed for the cost of such modification, car, from the car hire, and, car hire for the purposes of determining rentals under Section 2 of the Lease shall be correspondingly reduced.
5. Except to the extent hereby or heretofore modified or amended, the terms and conditions of Schedule 1 and of the Lease shall remain unchanged.

IN WITNESS WHEREOF, Evans and UMP have entered into this First Amendment this 18th day of September, 1985.

(CORPORATE SEAL)

ATTEST:

By: Joseph J. Hallman
137 Secretary

UPPER MERION & PLYMOUTH RAILROAD

By: J. N. Ball
President

(CORPORATE SEAL)

ATTEST:

By: Laurence P. Prange
Laurence P. Prange
Assistant Secretary

EVANS RAILCAR LEASING COMPANY

By: William M. Sheehan
William M. Sheehan
Vice President Marketing

SECOND AMENDMENT DATED FEBRUARY 17, 1987

SECOND AMENDMENT dated as of February 17, 1987, to Schedule 1 dated August 23, 1983, ("Schedule 1") of that certain Railroad Car Lease Agreement dated August 23, 1983, ("Lease") by and between EVANS RAILCAR LEASING COMPANY, as Lessor ("Evans") and UPPER MERION & PLYMOUTH RAILROAD COMPANY, as Lessee ("UMP").

WITNESSETH:

WHEREAS, pursuant to the Lease and Schedule 1, UMP currently leases forty (40) 52'6" 100-ton gondolas ("Cars") from Evans; and

WHEREAS, all parties hereto desire to amend Schedule 1 as hereinafter indicated:

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the parties agree as follows:

1. The number of cars shall be increased from forty (40) to fifty-four (54) marked and numbered UMP 5500-5506; 5511; 5513; 5515; 5517; 5518; 5520; 5522; 5523; 5527; 5533; 5535; 5536; 5538; 5539; 5540; 5542; 5543; 5545; 5547; 5549; 5550; 5552-5555; 5557-5560; 5562; 5565; 5570; 5572; 5574; 5581; 5582; 5587; 5591; 5592; 5595; 5596-5598; 5602; 5609; 5611; 5620 (one car UMP 5507 has been destroyed).
2. Except to the extent hereby or heretofore modified or amended, the terms and conditions of Schedule and of the Lease shall remain unchanged.

IN WITNESS WHEREOF, Evans and UMP have entered into this Second Amendment this 17th day of February, 1987.

(CORPORATE SEAL)

ATTEST:

By: Joseph J. Hallman
Assistant Secretary

UPPER MERION & PLYMOUTH RAILROAD

By: Earl C. Jurena
President

(CORPORATE SEAL)

ATTEST:

By: Laurence P. Prange
Assistant Secretary

EVANS RAILCAR LEASING COMPANY

By: William M. Sheehan
Vice President Marketing

THIRD AMENDMENT DATED SEPTEMBER 2, 1987

THIRD AMENDMENT dated as of September 2, 1987, to Schedule 1 dated August 23, 1983, ("Schedule 1") of that certain Railroad Car Lease Agreement dated August 23, 1983, ("Lease") by and between EVANS RAILCAR LEASING COMPANY, as Lessor ("Evans") and UPPER MERION & PLYMOUTH RAILROAD COMPANY, as Lessee ("UMP").

W I T N E S S E T H:

WHEREAS, pursuant to the Lease and Schedule 1, UMP currently leases fifty-four (54) 52'6" 100-ton gondolas ("Cars") from Evans; and

WHEREAS, all parties hereto desire to amend Schedule 1 as hereinafter indicated:

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the parties agree as follows:

1. The lease shall be extended for six (6) months commencing October 19, 1987, continuing month to month thereafter, unless cancelled upon thirty (30) days prior written notice by either party.
2. Except to the extent hereby or heretofore modified or amended, the terms and conditions of Schedule 1 and of the Lease shall remain unchanged.

IN WITNESS WHEREOF, Evans and UMP have entered into this Third Amendment this 2nd day of September, 1987.

(CORPORATE SEAL)

ATTEST:

By: *Dennis T. Hurst*
Secretary

UPPER MERION & PLYMOUTH RAILROAD COMPANY

By: *Earl C. Owens*
President

(CORPORATE SEAL)

ATTEST:

By: *Laurence P. Prange*
Laurence P. Prange
Assistant Secretary

EVANS RAILCAR LEASING COMPANY

By: *William M. Sheehan*
William M. Sheehan
Vice President Marketing