

ITEL

1 5852 A
RECORDATION NO. _____ FILED 1988

Itel Rail Corporation

September 28, 1988 OCT 6 1988-3 44 PM

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

INTERSTATE COMMERCE COMMISSION

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

Re: Schedule No. 1 to Master Lease Agreement dated September 12, 1988, between Itel Rail Corporation and Interstate Bi-Modal, Inc.

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 Septmeber 12, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Interstate Bi-Modal, Inc., which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

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

Interstate Bi-Modal, Inc. (Lessee)
1280 Wall Street West
Lyndhurst, New Jersey 07071

This Schedule adds to the Master Lease Agreement one hundred (100) 89'4" TOFC/COFC flatcars bearing reporting marks SSIX 89100-89199.

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

OCT 6 1988 - 3 22 PM

SCHEDULE NO. 1

INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE No. 1 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of September 17 1988 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and INTERSTATE BI-MODAL, INC., as lessee ("Lessee") is made this 12th day of September, 1988, between ITEL RAIL CORPORATION ("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. 1, 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	No. of Cars
FC	89'4" TOFC/COFC flatcar	SSIX <u>89100 - 89199</u>	89'4"	9'0"	100

Lessee agrees that the Cars will transport containers carrying only non-hazardous materials.

3. A. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is delivered to Lessee's lines ("Delivery") and shall continue as to all of the Cars described in this Schedule for two (2) years from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to Lessee's lines (the "Initial Term"). Upon the delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
- B. If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, the Agreement may be extended for a period of time upon the mutual written agreement of the parties (the "Extended Term(s)").
4. Within five (5) days after Lessor has given Lessee notice that Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point specified in the notice. Cars so inspected and

accepted by Lessee and any Cars which Lessee does not inspect within five (5) days of such notice of delivery shall, upon Delivery thereof, be deemed accepted and subject to the Agreement. Lessor shall deliver to Lessee an executed Certificate of Acceptance in the form of Exhibit A attached hereto with respect to any and all Cars.

5. Lessor shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement.
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 or substituted for Exhibit B thereto. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. 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.
8. A. The fixed rent ("Fixed Rent") shall be
for each full calendar month ("Month")
during the Initial Term or any Extended Term, subject to the adjustments contained in Subsection 8.B. hereinbelow. 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, except as otherwise provided herein.
- B. The Fixed Rent for each Car shall be calculated by adding a constant factor of
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. For any Car undergoing repairs for which Lessor is responsible, the Fixed Rent shall abate on the fifth (5th) day after a Car is placed into a repair facility and shall not recommence until the day such Car is delivered to Lessee or otherwise returned to service. In case of such abatement, the Initial Term and any Extended Term(s) may, at Lessor's option, be extended for a period of time to be determined by dividing the aggregate number of days the Fixed Rent for the Cars subject to this Schedule was abated by the number of Cars subject to this Schedule on the date Lessor performs such calculation.
- D. 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 Initial Term and any Extended Term. Mileage payments paid or allowed by railroads with respect to the Cars shall be the property of Lessor, but Lessor shall credit mileage payments actually received by it during an Accounting Period (as defined below) (less taxes, other than Lessor's income taxes, due or to become due on account of such 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 from the execution date of the applicable Schedules); provided, however, that in no event shall the aggregate mileage payments credited exceed the total rent payable by Lessee during such Accounting Period. Any credit unused at the end of the Accounting Period with respect to such Cars shall be the property of Lessor. In the event Lessor receives 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.
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.

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

10. Subsection 10.A.(iv) of the Agreement shall not apply with respect to the Cars.

11. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, Lessee shall return such Car to Lessor by loading such Car to a destination off Lessee's lines or delivering it to Lessor, at no cost to Lessee, to such maintenance, storage or terminal facility as Lessor designates to Lessee in writing. Subsection 12.D. of the Agreement does not apply with respect to the Cars described on this Schedule.
12. 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.
13. 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

By: 
Title: President
Date: September 12, 1988

INTERSTATE BI-MODAL, INC.

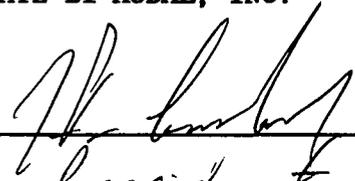
By: 
Title: President
Date: 2 September 1988

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 1 dated as of _____ to Lease Agreement dated as of _____, by and between ITEL RAIL CORPORATION ("Lessor") and INTERSTATE BI-MODAL, INC. ("Lessee").

CAR REPORTING
MARKS AND NUMBER

DELIVERY DATE

The last day of the Initial Term for the above referenced Cars shall be

_____.

ITEL RAIL CORPORATION

By: _____

Title: _____

Date: _____

EXHIBIT B

Running Repairs: TOFC/COFC Flatcars

Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Pedestal Locks
Grab Irons	Couplers
Brake Shoes	Draft Gears
Brake Shoe Keys	Coupler Carriers
Brake Connecting Pin	Center Plate Repair (Not Replacement of Center Plate)
Brake Head Wear Plates	Lube of Hitches
Air Brakes	Cotter Keys
Hand Brakes	Roller Bearing Adapters
Brake Beams and Levers	Air Hose Supports
Truck Springs	

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

On this 12th day of September, 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 Rail 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 New Jersey)
) ss:
COUNTY OF Essex)

On this 2nd day of Sept, 1988, before me personally appeared J. Tucker-Lambert, to me personally known, who being by me duly sworn says that such person is President of Interstate Bi-Modal, Inc., 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.

Mary M. Sole
Notary Public

MARY M. SOLE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 2, 1992