



March 1, 1989

RECORDATION NO. 15852 B FILED 1423

MAR 6 1989 - 11 05 AM

Istel Rail Corporation

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

Date 3/6/89
Fee 1.3

INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

9-065A005

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

Re: Amendment No. 1 (with Schedule No. 1.A. attached thereto)
to Master Lease Agreement dated September 12, 1988, among
Istel Rail Corporation, Istel Railcar Corporation and
Interstate Bi-Modal, Inc.

Dear Ms. McGee:

On behalf of Istel 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 Amendment under the Master Lease Agreement
dated Septmeber 12, 1988, between Istel Rail Corporation, Istel
Railcar Corporation and Interstate Bi-Modal, Inc., which was
filed with the ICC on October 6, 1988, under Recordation No.
15852.

The parties to the aforementioned instrument are listed below:

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

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

This Amendment (and Schedule) reflects the remarking of one
hundred (100) 89'4" TOFC/COFC flatcars to NYCH reporting marks.

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

MAR 6 1989 - 11 05 AM

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 1 TO LEASE AGREEMENT

THIS AMENDMENT NO. 1 (the "Amendment") to that certain Lease Agreement ("the Agreement") dated as of September 12, 1988, between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and INTERSTATE BI-MODAL, INC., as lessee ("Lessee"), is made as of this 13TH day of JANUARY / FEBRUARY, 1989, between ITEL RAIL CORPORATION ("Lessor") and Lessee.

R E C I T A L S:

- A. Lessor and Lessee are parties to the Agreement and to Schedule No. 1 dated September 12, 1988, ("Schedule No. 1") thereto, pursuant to which Lessor leased to Lessee one hundred (100) TOFC/COFC flatcars bearing the reporting marks SSIX 89100-89199 (the "Cars").
- B. Lessee acquired the New York Cross Harbor Railroad Terminal Corporation ("NYCH") effective as of January 13, 1989.
- C. Lessee wishes to remark the Cars to bear the reporting marks of the New York Cross Harbor Railroad Terminal Corporation and to amend the terms of the Agreement with respect to the Cars described in Schedule No. 1 effective upon such remarking.

NOW, THEREFORE, the parties hereto agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have the meanings defined therein when used in this Amendment, except that the term "Cars" when used herein, shall only refer to the equipment described in Schedule No. 1 and Schedule No. 1.A. attached hereto.
- 2. The terms of Schedule No. 1. A. attached hereto shall apply with respect to each Car effective on the day said Car is remarked to bear the reporting marks of NYCH.
- 3. Except as expressly modified by this Amendment, all other terms of the Agreement shall remain in full force and effect.
- 4. 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 RAIL CORPORATION

INTERSTATE BI-MODAL, INC.

By: *[Signature]*
 Title: President
 Date: 2/23/89

By: *[Signature]*
 Title: VP
 Date: 2/13/89

SCHEDULE NO. 1.A.

THIS SCHEDULE NO. 1.A. ("Schedule") to that certain Lease Agreement, as amended, (the "Agreement") made as of September 12, 1988, between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and INTERSTATE BI-MODAL, INC., as lessee ("Lessee") is made this 13th day of JANUARY, 1989, between ITEL RAIL CORPORATION ("Lessor") and Lessee. Effective on the date that each Car described on Schedule No. 1 dated September 12, 1988 to the Agreement ("Schedule No. 1") is remarked to bear the reporting marks "NYCH", the terms of this Schedule No. 1.A. shall supersede and replace the terms of Schedule No. 1 with respect to such Car to the extent that Schedule No. 1.A. is inconsistent with Schedule No. 1.

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.A., except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule and in Schedule No. 1, 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	Dimensions Inside		No. of Cars
			Length	Width	
FC	89'4" TOFC/COFC flatcars	NYCH 89100- 89199	89'4"	9'0"	100

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

3. The term of the Agreement with respect to each Car described in this Schedule shall commence on the date such Car is delivered to Lessee ("Delivery") even if it bears the reporting marks from within the series SSIX 89100-89199 and shall continue for all the Cars as provided for in Subsections 3.A. and 3.B. of Schedule No. 1 even after they have been remarked to bear NYCH reporting marks. Upon the delivery of the final Car, Lessor shall notify Lessee in writing of the expiration date of the Initial Term of the Agreement with respect to the Cars as provided for in Subsection 3.A. of Schedule No. 1. Unless Lessee, within fifteen (15) days of the date 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.
4. A. At any time after Delivery and upon prior written notice to Lessor, Lessee shall, at its expense, remark each Car to bear the reporting

marks of its subsidiary, New York Cross Harbor Railroad Terminal Corporation ("NYCH"). Lessee shall pay the rent set forth in Schedule No. 1 for each Car that bears Lessor's reporting marks while said Car is being remarked by Lessee and shall advise Lessor of the date of remark for each Car. When said Car has been remarked, Lessee shall pay the rent set forth in Schedule No. 1.A. for said Car. Upon the remark of the final Car to NYCH reporting marks, Lessor shall provide Lessee with a certificate of remark in the form of Exhibit A attached hereto, which shall list the new reporting marks and number of each Car and the date it was remarked.

- B. Lessee covenants that the NYCH shall subscribe to the Association of American Railroads interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department for the duration of this Agreement.
- 5.
- A. Lessor shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee hereby authorizes Lessor to subscribe to the car hire data exchange tape, Train 62 Junction Advices, and the Train 65, 67 and 80 Advices with respect to the Cars and agrees to execute any documents necessary to implement such authorization. If, for any reason, Lessor does not subscribe to Train 65 and 67 Advices, Lessee shall, within ten (10) days after the close of each calendar month, supply Lessor with copies of Lessee's interchange records with respect to Cars interchanged to and from Lessee's railroad line.
 - B. Lessee shall provide Lessor with the UMLER passkey of the NYCH necessary for registering such Cars and shall authorize Lessor to receive the UMLER Fleet Tape. Lessee shall, within thirty (30) days of notification that Lessor has paid a car repair bill for equipment bearing reporting marks not leased to Lessee by Lessor or for which Lessee is responsible for the cost of maintenance as set forth in the Agreement (or any other agreement between Lessor and Lessee), Lessee shall reimburse Lessor for any amount paid.
 - C. Lessor shall perform car hire accounting for any equipment acquired or leased by Lessee from a party other than Lessor, which equipment bears the same reporting marks as any Car for which Lessor performs car hire accounting ("Other Equipment"). Such car hire accounting shall be performed upon terms to be agreed upon between the parties, which terms shall be set forth in a separate care hire service agreement ("Car Hire Agreement"). Under such Car Hire Agreement, Lessor shall, on behalf of Lessee, receive car hire rental and other payments relating to the use and handling of the Other Equipment by other railroads ("Funds") and shall deposit the Funds into an Agency Bank Account for the purpose of segregating the Funds from the Revenues (as defined in Section 8 hereinbelow) relating to the Cars so as to ensure that the interests of both Lessor and Lessee are protected. Such Car Hire Agreement shall provide that Lessee shall

pay Lessor on a monthly basis a fee which is mutually agreeable to Lessor and Lessee.

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 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 property of Lessee and the railroad lines owned and operated by NYCH as of the date this Schedule is executed by the parties. Unless Lessor and Lessee agree otherwise, any lines purchased or added to the Eligible Lines or any Eligible Lines sold by Lessee or NYCH to another party, effective on the date of such sale, during the Initial Term or any Extended Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(iii) hereinbelow).
- (ii) "Revenues 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 January 1989 edition of The Official Railway Equipment Register.

- (iii) "Revenues" is defined as the total 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, including, but not limited to, per diem and mileage, 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) The "Base Rent" is defined as
per Car per calendar quarter
("Quarter"). The Base Rent for any Car that is not subject to the Agreement for an entire Quarter shall be prorated at
- B. Each Car shall become subject to the rental calculations under Subsection 8.C. hereinbelow on the date it is remarked to bear Lessee's reporting marks.
- C. Lessee agrees to pay rent to Lessor for the Cars calculated as follows:
 - (i) In the event Revenues earned in any Quarter or applicable portion thereof are less than the Base Rent, Lessor shall retain a sum equal to one hundred percent (100%) of the total Revenues and Lessee shall, within ten (10) days of receiving an invoice from Lessor, pay to Lessor the difference between the total Base Rent due and the actual Revenues for said Quarter or applicable portion thereof.
 - (ii) In the event Revenues earned in any Quarter or applicable portion thereof are equal to or exceed the Base Rent, Lessor shall retain an amount equal to the Base Rent and an amount equal to of all Revenues in excess of the Base Rent, and Lessee shall receive of all Revenues received in excess of the Base Rent.
- D. The Base 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.

- E. For any Car undergoing repairs for which Lessor is responsible, the Base 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 Base 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.
- F. (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.
- G. The calculations required in Section 8 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessor shall, prior to making such Final Calculations, retain the Revenues and other payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under this Section 8, Lessor shall within three (3) months after the end of each Quarter, calculate on a quarterly year-to-date basis the amounts due both parties pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

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 Cars described in this Schedule, if some or all of the Cars are to be delivered to Lessor at the railroad tracks of the NYCH, 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 the railroad tracks of the NYCH for any Car which is either on said railroad tracks at expiration or is subsequently returned to said railroad tracks. Said ~~one hundred~~ ~~twenty (120)~~ days shall run either from expiration or from the date such Car is returned to the railroad lines of the NYCH 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

INTERSTATE BI-MODAL, INC.

By: AD Boyer

By: SAT

Title: President

Title: VP

Date: 2/23/89

Date: 2/15/89

FIFTEEN (15)
SAT
AD

FIFTEEN
(15)
SAT
AD

EXHIBIT A

CERTIFICATE OF REMARK

Exhibit A to Schedule No. 1.A. dated as of _____, between ITEL RAIL CORPORATION ("Lessor") and INTERSTATE BI-MODAL, INC. ("Lessee") to the Lease Agreement dated as of September 12, 1988, by and between ITEL RAILCAR CORPORATION and Lessor, severally, as lessors, and Lessee.

USLX REPORTING
MARKS AND NUMBER

NYCH REPORTING
MARKS AND NUMBER

DATE REMARKED

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 23rd day of February, 1989, 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 Amendment No. 1 to Lease Agreement and Schedule No. 1.A. were 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.


Notary Public



STATE OF N. J.)
) ss:
COUNTY OF Bergen)

On this 15th day of February, 1989, before me personally appeared Stephen Fraser, to me personally known, who being by me duly sworn says that such person is Vice President of Interstate Bi-Modal, Inc. that the foregoing Amendment No. 1 to Lease Agreement and Schedule No. 1.A. were 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.


Notary Public
IRENE NAPOLI

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 4, 1993