

ITEL

November 8, 1988

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

Istel Rail Corporation

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

1 6026-A
RECORDED BY _____ FILED

NOV 14 1988 - 11 12 AM

INTERSTATE COMMERCE COMMISSION

Re: Schedule No. 1 to Master Lease Agreement No. 2222-00 dated as of November 7, 1988, between Istel Rail Corporation, Istel Railcar Corporation and Brandywine Valley Railroad Company

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 Schedule under the Master Lease Agreement dated as of November 7, 1988, between Istel Rail Corporation, Istel Railcar Corporation and Brandywine Valley Railroad Company, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

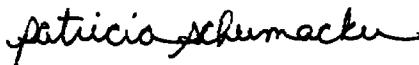
Istel Railcar Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Brandywine Valley Railroad Company (Lessee)
50 South First Street
Coatesville, Pennsylvania 19320

This Schedule adds to the Master Lease Agreement sixty (60) 100-ton gondolas bearing reporting marks BVRV 5508-5628 (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

Interstate Commerce Commission
Washington, D.C. 20423

11/14/88

OFFICE OF THE SECRETARY

Patricia Schumacker
Legal Department
Itel Rail Corporation
55 Francisco Street
San Francisco, Calif. 94133

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/14/88 at 11:10am, and assigned recordation number(s). 7093-A, 15415-C & 16026, 16026-A & 15923 B

Sincerely yours,

Narita L. McEneaney

Secretary

Enclosure(s)

NOV 14 1988 - 11 19 AM
 INTERSTATE COMMERCE COMMISSION
 LOT NO. 2222-01

SCHEDULE NO. 1

THIS SCHEDULE No. 1 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of November 7, 1988 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and BRANDYWINE VALLEY RAILROAD COMPANY, as lessee ("Lessee") is made this 7th day of November, 1988, between ITEL RAILCAR 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	Design. Description	Numbers	Length	Dimensions Inside Width	Height	No. of Cars
GB	100 ton gondolas	BVRY 5508-5628 (N.S. See Exhibit A)	52'6"	9'6"	4'6"	60

3. The term of the Agreement with respect to each Car described in this Schedule shall commence ("Delivery") at 12 noon on October 1, 1988 and shall continue as to all of the Cars described in this Schedule through and including September 30, 1991 (the "Initial Term").
4. Lessee agrees to pay the rent set forth in the Agreement, notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereunder. In order to ensure optimal use of the Cars, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders to facilitate the movement of the Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules.
5. A. 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. If Lessee's reporting marks are on any Cars, then Lessee shall provide Lessor with the UMLER passkey 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 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 agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all

correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Unless Lessor and Lessee agree otherwise, any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee 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 April, 1988 edition of The Official Railway Equipment Register, as may be updated from time to time.
- (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)

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 Guaranteed Base Rent 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. The Guaranteed Base Rent for

- (v) "Initial Loading" of a Car shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after such Car is first received on Lessee's lines.

- B. Lessor shall receive all Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. of the Agreement shall become subject to the rental calculation under Subsection 8.C. hereinbelow upon the Initial Loading of such Car.

- C. Lessee agrees to pay rent to Lessor for the Cars calculated as follows:
 - (i) In the event Revenues earned in any calendar quarter or applicable portion thereof are equal to or less than the Guaranteed Base Rent, Lessor shall retain a sum equal to one hundred percent (100%) of the total Revenues, and collect from Lessee the difference ("Difference") between the Guaranteed Base Rent and the actual Revenues for such calendar. Lessee shall pay Lessor such Difference not later than thirty (30) days after receiving an invoice from Lessor for such Difference after the calendar quarter in which the Difference occurs.

 - (ii) In the event Revenues earned in any calendar quarter or applicable portion thereof exceed the Guaranteed Base Rent, Lessor shall retain an amount equal to the Guaranteed Base Rent and Lessee, shall receive one hundred percent (100%) of all Revenues received in excess of the Guaranteed Base Rent.

- D. If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

- E. 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 calendar 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; provided, however, that Lessee shall not be responsible to Lessor for any claims, losses, damages, liabilities, and expenses arising from the gross negligence or willful misconduct of Lessor.
- 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. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, if some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to said tracks subsequent to the time of expiration of this Agreement as to the Cars. Lessee shall, at Lessor's option, provide up to one hundred twenty (120) days' free storage on its railroad tracks for any Car which is either on Lessee's railroad tracks at expiration or is subsequently returned to Lessee's railroad tracks. Said one hundred twenty (120) days shall run either from expiration or from the date such Car is returned to Lessee's railroad line subsequent to expiration, whichever date is later. If requested to do so by Lessor, Lessee shall, at Lessor's option, either move a remarked Car to an interchange point on Lessee's lines selected by Lessor or use its best efforts to load the remarked Car with freight and deliver it to a connecting carrier for shipment.

11. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.
12. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAILCAR CORPORATION

By: *D. Hayes*
Title: President
Date: November 7, 1988

BRANDYWINE VALLEY RAILROAD COMPANY

By: *Robert L. King*
Title: President
Date: 10/28/88

EXHIBIT A

BVRY 5508-5510
BVRY 5514
BVRY 5516
BVRY 5519
BVRY 5524
BVRY 5526
BVRY 5528-5530
BVRY 5534
BVRY 5537
BVRY 5541
BVRY 5544
BVRY 5546
BVRY 5548
BVRY 5551
BVRY 5556
BVRY 5561
BVRY 5563
BVRY 5564
BVRY 5566-5569
BVRY 5573
BVRY 5576-5580
BVRY 5583-5586
BVRY 5589
BVRY 5590
BVRY 5560
BVRY 5594
BVRY 5599
BVRY 5601
BVRY 5604
BVRY 5605
BVRY 5607
BVRY 5608
BVRY 5613-5619
BVRY 5621-5623
BVRY 5625-5628

EXHIBIT B

Running Repairs: Gondolas

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

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

On this 7th day of November, 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 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.



Patricia Schumacker
Notary Public

STATE OF PA)
) ss:
COUNTY OF Chester)

On this 28th day of October, 1988, before me personally appeared Robert F. Toia, to me personally known, who being by me duly sworn says that such person is President of Brandywine Valley Railroad Company 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.

Linda L. McMinn
Notary Public

