

ITEL

October 11, 1988

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

Itel Rail Corporation

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

RECORDATION NO. 1 5879-A FILED 1988

OCT 17 1988 - 11 25 AM

INTERSTATE COMMERCE COMMISSION

Re: Schedule No. 1 to Master Lease Agreement No. 2209 dated September 20, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Newburgh and South Shore Railroad Company

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 Master Lease Agreement No. 2209 dated September 20, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Newburgh and South Shore Railroad Company, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

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

Newburgh and South Shore Railroad Company (Lessee)
4200 E. 71st Street
Cleveland, Ohio 44105

This Supplement adds to the Master Lease Agreement ten (10) 2244 cubic foot, 100-ton gondolas bearing reporting marks NSR 11100-11110 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

patricia schumacker
Patricia Schumacker
Legal Department

SCHEDULE 1

OCT 17 1988 - 11 35 PM '88

THIS SCHEDULE 1 ("Schedule") to that certain ^{INTERSTATE COMMERCE COMMISSION} Lease Agreement, (the "Agreement") made as of September, 1988 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and NEWBURGH AND SOUTH SHORE RAILROAD COMPANY, as lessee ("Lessee") is made this 20th day of September, 1988, between ITEL RAILCAR CORPORATION ("Lessor") and Lessee.

Lessor and Lessee agree as follows:

1. Except as otherwise provided herein, all terms defined in the Agreement shall have the meanings defined therein when used in this Schedule.
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	Reporting Marks and Numbers	Length	Dimensions Inside Width	Height	Door Width	Number of Cars
GB	2244 cubic feet, 100-ton, steel floor, solid ends gondola	NSR 11100-11108, 11110	52'6"	9'6"	4'6"	----	10

3. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date and at the location such Car is remarked pursuant to Subsection 3.A. and shall continue as to all of the Cars described in this Schedule for a period of three (3) years from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) the sixtieth (60th) day after the first Car described in this Schedule was delivered (the "Term"). Upon the delivery of the last Car described in this Schedule, Lessor shall provide written notice to Lessee as to the expiration date of the Agreement with respect to the Cars subject to this Schedule. Unless, within fifteen (15) days of the date of such notice, Lessee demonstrates to the reasonable satisfaction of Lessor that such expiration date is incorrect, Lessee shall be deemed to have concurred to such expiration date.
4. Each Car shall be deemed delivered and subject to the terms and provisions of the Agreement at 12 noon on the date and at the location such Car is remarked ("Delivery"). When a Car has been remarked, it shall be moved to Lessee's railroad line at no initial cost to Lessee at the earliest time that is consistent with the mutual convenience and economy of the parties. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay the rent set forth in the Agreement. In order to move the Cars to Lessee's railroad line and 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 with respect to such 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 car 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 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 pay for 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 (as modified by Exhibit B attached hereto); provided, however, that 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 the 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 and gross receipts imposed on Lessee, gross receipts or sales or use tax imposed on the 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 commencement date of this Agreement. Unless otherwise agreed by Lessor and Lessee, any lines purchased by Lessee or added to the Eligible Lines during the Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Per Diem Revenues and Mileage Revenues (as defined in Subsection 8.A.(ii) and 8.A.(iii) hereinbelow).
- (ii) "Per Diem Revenues" is defined as the total per diem revenues earned and due from other railroad companies for the use or handling of the Cars, including but not limited to, per diem as provided for gondolas under Appendix R, Hourly and Mileage Car Hire Rate Table, and as set forth in The Official Railway Equipment Register dated January 1988, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action of Lessee.
- (iii) "Mileage Revenues" is defined as the total revenues earned and due from other railroad companies for the use or handling of the Cars, including but not limited to, mileage as prescribed for gondolas under Appendix R, Hourly and Mileage Car Hire Rate Table, and as set forth in The Official Railway Equipment Register dated January 1988, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action of Lessee.

- (iv) "Revenues" is defined as the sum of Per Diem Revenues and Mileage Revenues.
- (v) The "Utilization Rate" of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Cars commencing upon the Initial Loading (as defined hereinbelow), and the denominator of which is the aggregate number of days in each calendar year that the Cars were on lease to Lessee, commencing upon the Initial Loading.
- (vi) The "Base Rent" per calendar quarter is defined as the cash equivalent that represents the Per Diem Revenues which the Cars would have earned in the aggregate if the Cars had been on railroad lines other than Eligible Lines for that such Cars were subject to the Agreement during such calendar quarter.
- (vii) "Initial Loading" as to each 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 received on Lessee's lines.

B. Lessor shall receive

Each Car delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 8.C. upon the Initial Loading of the Car.

C. Lessee agrees to pay the following rent to Lessor for the use of the Cars:

- (i) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof are equal to or less than the Base Rent, Lessor shall retain a sum equal to
- (ii) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof exceed the Base Rent, Lessor shall retain an amount
Rent and Lessee shall receive
- (iii) Lessor shall receive an amount equal to

other railroad companies with respect to the Cars.

D. (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) and 8.A.(iii), Lessee shall pay to

Lessor, within ten (10) days of written 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) In the event that, as a result of any action or inaction by Lessor, Lessee shall receive or earn for the use of any Cars, Revenues calculated at mileage rates that are lower in amount than those specified in Subsection 8.A. (ii), Lessor shall pay to Lessee, within ten (10) days of Lessee'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.

(iii) Upon any abatement, reduction or offset as described in Subsections 8.A. (ii) and 8.A. (iii), Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.

(iv) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, then 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 Lease.

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.

F. If, with respect to any calendar quarter, Revenues received by Lessor are less than
per Car, Lessor may, at any time, at its option and upon not less than thirty (30) days prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine.

G. If any Car has remained on Lessee's property because Lessee has not given preference to the Cars as specified in Subsection 3.B., Lessee shall be liable for and remit to Lessor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of a railroad for the entire period during which such Car is on Lessee's property.

- 9. If the Utilization Rate of the Cars described in this Schedule is less than _____ in the aggregate during the entire Term of the Agreement, then upon the expiration of the Agreement with respect to the Cars described in this Schedule, Lessee shall be responsible for all costs associated with the remark and transportation of each Car as provided in Subsections 11.A.(ii), 11.A.(iii) and Section 11.C. of the Agreement; provided, however, that in the event a contractor chosen by Lessor remarks each Car, then Lessee shall be responsible for a cost of no greater than _____ per Car for such remark.
- 10. If the Utilization Rate of the Cars described in this Schedule is _____ or more in the aggregate during the entire Term of the Agreement, then upon the expiration of the Agreement with respect to the Cars described in this Schedule, Lessor shall be responsible for any costs associated with the remark and transportation of each Car.
- 11. A. Upon the expiration of the Agreement with respect to any Car listed on this Schedule, if pursuant to the storage provisions as set forth in Section 11.A.(i) of the Agreement such Car remains in storage beyond the free storage period, Lessor shall pay to Lessee, within thirty (30) days after receiving an invoice from Lessee, a daily storage rate of _____ per Car for each day the Car(s) remains in storage after the free storage period.
- B. Upon the early termination of the Agreement with respect to any Car listed on this Schedule, if pursuant to the storage provisions as set forth in Section 11.B.(i) of the Agreement such Car remains in storage beyond the free storage period, Lessor shall pay to Lessee, within thirty (30) days after receiving an invoice from Lessee, a daily storage rate of _____ per Car for each day the Car(s) remains in storage after the free storage period.
- 12. Except as expressly modified by this Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.
- 13. This Schedule may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAILCAR CORPORATION

NEWBURGH AND SOUTH SHORE RAILROAD COMPANY

By: *D. M. Myers*
 Title: *President*
 Date: *October 3, 1988*

By: *[Signature]*
 Title: President
 Date: September 20, 1988

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

On this 3rd day of October, 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 1 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 20th day of September, 1988, before me personally appeared R. E. Smith, to me personally known, who being by me duly sworn says that such person is President of Newburgh and South Shore Railroad Company, that the foregoing Schedule 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 corporation.

B. J. Glowinski
Notary Public

EXHIBIT B

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