

ITEL

Pullman

April 20, 1990

Itel Rail Corporation

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

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

0-113A080

Re: 1) Amendment No. 1
2) Schedule No. 3

RECORDATION NO. 16026-A FILED 1423
APR 23 1990 -3 05 PM

RECORDATION NO. 16026-C FILED 1423
APR 23 1990 -3 05 PM
INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

INTERSTATE COMMERCE COMMISSION

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 \$30 recordation fee.

Please record both the Amendment and the Schedule under the Master Lease Agreement dated as of November 7, 1988, between Itel Rail Corporation, successor to both Itel Rail Corporation and Itel Railcar Corporation, and Brandywine Valley Railroad Company, which was filed with the ICC on November 14, 1988, under Recordation No. 16026.

The parties to the aforementioned instrument are listed below:

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

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

The Amendment clarifies the terms of certain equipment repairs and amends Schedule Exhibit A to Schedule 1 by deleting "BRVY 5560" and substituting "BVRV 5600;" Schedule No. 3 adds to the Master Lease Agreement forty (40) 52'6", 100-ton GB gondolas bearing reporting marks BVRV 5706-5745.

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

APR 23 1990 3 05 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 26026-D FILED MSB

APR 23 1990 -3 05 PM

LOT NO. 2222-03

INTERSTATE COMMERCE COMMISSION

SCHEDULE NO. 3

ITEL RAIL CORPORATION ("Lessor")
as successor in interest to both

THIS SCHEDULE No. 3 ("Schedule") to that certain Lease Agreement, as amended, (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 2nd day of March, 1989, 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. 3, 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		Doors Width	No. of Cars
				Inside Width	Height		
GB	100-ton gondolas	BVRY 5706 - 5745	52'6"	9'6"	4'6"	----	40

3. 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 remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for three (3) 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 "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.
4. 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. 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 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 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 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 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 "Guaranteed Base Rent" is defined as

per

 Car per quarter. The initial Guaranteed Base Rent for each Car per calendar quarter has been calculated by adding a constant 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. The Initial Guaranteed Base Rent for any Car which is not subject to the Agreement for an entire calendar quarter shall be prorated at

for such Car during such calendar quarter.

- (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; provided, however, that Lessor shall retain and be entitled to all Revenues earned by such Car after such Initial Loading, including any Revenues due Lessee pursuant to Subsection 8.C.(ii) ("Lessee's Revenue Share"), until the total amount of Lessee's Revenue Share retained by Lessor shall have become equal to Lessor's expenses for remarking and delivering such Car to Lessee ("Delivery Expense").

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 quarter. 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 or applicable portion thereof exceed the Guaranteed Base Rent, Lessor shall retain an amount equal to the Guaranteed Base Rent and Lessee, subject to Subsection 8.B., shall receive one hundred percent (100%) of all Revenues received in excess of the 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. Any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the revenues earned by the Cars.
- F. 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 RAIL CORPORATION, as successor in interest to,
ITEL RAILCAR CORPORATION

BRANDYWINE VALLEY RAILROAD COMPANY

By: 
Title: President and Chief Executive Officer
Date: March 2, 1990

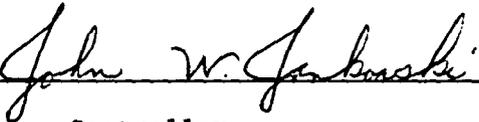
By: 
Title: Controller
Date: August 4, 1989

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

ITEL RAIL CORPORATION, as successor in interest to,

Exhibit A to Schedule No. 3 dated as of _____ by and between ITEL RAILCAR CORPORATION ("Lessor") and BRANDYWINE VALLEY RAILROAD COMPANY ("Lessee") to Lease Agreement dated as of November 7, 1988 by and between Lessor, Itel Rail Corporation and Lessee.

CAR REPORTING
MARKS AND NUMBER

DELIVERY DATE

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

_____.

ITEL RAILCAR CORPORATION

By: _____

Title: _____

Date: _____

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)

and Chief Executive Officer of ITEL RAIL CORPORATION,

as successor in interest to
On this 2nd day of March, 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 Railcar Corporation, that the foregoing Schedule No. 3 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.

Sharon L. Van Fossan
Notary Public



STATE OF Pennsylvania)
) ss:
COUNTY OF Chester)

On this 4 day of August, 1989, before me personally appeared John W. Jankowski, to me personally known, who being by me duly sworn says that such person is Controller of Brandywine Valley Railroad Company that the foregoing Schedule No. 3 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.

Linda L. Porreca
Notary Public

