

# ITEL

March 26, 1992

## IteI Rail Corporation

550 California Street  
San Francisco, CA 94104  
(415) 984-4200

Hon. Sidney L. Strickland, Jr., Esq.  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

16026-E  
RECORDATION NO. FILED 125

MAR 27 1992 3 50 PM

INTERSTATE COMMERCE COMMISSION

Re: **Schedule No. 4**

2-087A065

Dear Mr. Strickland:

On behalf of IteI 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 \$16 recordation fee.

Please record both the subject Schedule under the Master Lease Agreement dated as of November 7, 1988, between IteI Rail Corporation, successor to both IteI Rail Corporation and IteI 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:

IteI Rail Corporation 550 California Street San Francisco, California 94104	(Lessor)
Brandywine Valley Railroad Company 50 South First Street Coatesville, Pennsylvania 19320	(Lessee)

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MOTCA OPERATING UNIT

The subject Schedule adds to the Master Lease Agreement one hundred six (106) 2,244 cubic foot, 100-ton, Plate B gondolas bearing reporting marks BVRV 5508-5745 (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 Assistant

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SCHEDULE NO. 4

INTERSTATE COMMERCE COMMISSION

This Schedule No. 4 to that certain Lease Agreement made as of November 7, 1988, as amended (the "Agreement"), between ITEL RAIL CORPORATION ("Lessor"), as successor in interest to both Itel Rail Corporation and Itel Railcar Corporation, and BRANDYWINE VALLEY RAILROAD COMPANY ("Lessee") is made as of March 16, 1992

RECITALS:

- A. Lessor and Lessee are parties to the Agreement pursuant to which 106 gondolas bearing reporting marks and numbers from within the series BVRY 5508-5745 (the "Car(s)") were leased and delivered by Lessor to Lessee.
- B. Pursuant to the Letter of Intent dated May 31, 1991, Lessor and Lessee desire to change the rental and the term of the Agreement with respect to the Cars.
- C. The parties desire to enter into a new agreement with respect to the Cars retroactive to July 1, 1991.

Lessor and Lessee agree as follows:

- 1. **Supersedes and Replaces:** Retroactive to July 1, 1991, this Schedule No. 4 supersedes and replaces Schedules No. 1, No. 2. and No. 3 to the Agreement.
- 2. **Capitalized Terms:** All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 4 except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
- 3. **Cars Leased:** Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig	Description	Reporting Marks and Numbers	Cubic Capacity	Length	Dimensions Inside		No. of Cars
					Width	Height	
GB	100-Ton, Plate B Gondola	See Exhibit A	2,244	52'6"	9'6"	4'6"	106

- 4. **Term:** The term of the Agreement with respect to the Cars described in this Schedule shall be deemed to have commenced on July 1, 1991 and shall expire on June 30, 1992.
- 5. **Recordkeeper:** Lessor  
  
Lessee hereby authorizes Lessor on behalf of Lessee to subscribe to Lessee's Train 62, 65, 67, 71, 80 and other Car Location Movement Records ("CLM's") from the AAR and agrees to execute any documents necessary to implement such authorization.
- 6. **Car Hire Payables:** Lessee shall transmit or cause to be transmitted to the AAR Lessee's car hire payable records in a format acceptable to the AAR so that such records will be included in the monthly AAR Car Hire Exchange Tape. Upon Lessor's reasonable request, Lessee shall promptly provide Lessor with records of Lessee's car hire payables.
- 7. **UMLER:** Lessee shall provide Lessor with the UMLER passkey with respect to the Cars and hereby authorizes Lessor to receive the UMLER fleet tape for the Cars.

8. **Car Hire Accounting for Other Equipment:** Lessor shall perform car hire accounting for any equipment not leased from Lessor but bearing the same reporting marks upon terms set forth in a separate car hire service agreement containing reasonable and customary terms.

9. **Running Repairs Invoice:** Lessee shall submit a monthly invoice in AAR format for running repairs performed on any Car by Lessee or by another railroad which has billed and received payment therefor from Lessee.

10. **Party Responsible for Maintenance:** Lessor

Lessee may make running repairs to those parts of any Car specified in the Exhibit B.

11. **Lessee Reimbursement:** Lessee shall, within 30 days of notification that Lessor has paid a bill for maintenance or repair for which Lessee is responsible, reimburse Lessor for such payment.

12. **Taxes:** Lessor shall reimburse Lessee for all federal, state and local property taxes assessed against or levied upon the Cars and paid by Lessee. Lessor may contest such taxes in appropriate proceedings and Lessee will cooperate with Lessor in such contest. Lessor shall not be liable for penalties or interest payable. Lessee shall forward to Lessor upon receipt copies of all correspondence, notifications of proposed assessments and tax bills with respect to such property taxes. Upon Lessor's reasonable request Lessee shall provide Lessor with a draft of Lessee's property tax return before it is filed. Lessee shall be liable for all other taxes or governmental impositions with respect to the Cars.

13. **Rent**

A. **Definitions:**

(i) **"Eligible Lines"** means, with respect to any Cars on this Schedule, the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. If Lessee's lines expand through purchase, Lessee's merger with another railroad or otherwise or if Lessee's lines are sold to and become lines of another railroad, then lines other than the Eligible Lines shall be deemed to be lines of a foreign road for purposes of determining Revenues and for purposes of Section 15, and CLM's required in Section 5 shall continue to be provided to Lessor as if Lessee's lines were still only the Eligible Lines. If Lessee sells or otherwise disposes of a part but not all of the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties, "Eligible Lines" shall mean only that part retained by Lessee.

(ii) **"Revenue Rates"** means the hourly and mileage car hire rates prescribed by the ICC in any applicable time period for each Car.

(iii) **"Revenues"** means the total revenues, calculated at the Revenue Rates, that are earned or due in any applicable time period for the use or handling of the Cars on this Schedule on all railroad lines other than the Eligible Lines, including, but not limited to, hours ("Hourly Revenues") and mileage ("Mileage Revenues"), whether or not collected and received by the Record Keeper, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

(iv) **"Guaranteed Base Rent"**

B. **Rent Payment:**

Lessee shall pay rent to Lessor for each Car calculated as follows:

(i) If Revenues earned from all Cars on this Schedule in any calendar quarter or applicable portion thereof are less than the Guaranteed Base Rent, Lessor shall retain a sum equal to 100% of such Revenues and Lessee shall, within ten 10 days of receiving an invoice from Lessor, pay to Lessor the difference ("Difference") between the total Guaranteed Base Rent due and the actual Revenues

for said calendar quarter or applicable portion thereof. The Difference shall be due and payable regardless of any claimed abatement, reduction or offset.

- (ii) If Revenues earned from all Cars on this Schedule 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 the Guaranteed Base Rent.

14. **Revenue Shortfalls:** If, as a result of any action or inaction by Lessee (including but not limited to any abatement, reduction or offset claimed by a using or handling carrier), Lessor shall receive with respect to any calendar quarter amounts for the use or handling of the Cars on any railroad line other than the Eligible Lines which are less than the Revenues earned during such calendar quarter or are less than the Cars would have earned at the Revenue Rates, then Lessee shall pay to Lessor within 10 days of Lessor's request an amount equal to the difference between the amount actually received and the Revenues such Cars would have earned at the Revenue Rates.
15. **Lessee Operation of Other Lines:** If 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.
16. **Third Party Agreements Affecting Revenues:** Without Lessor's prior written approval, Lessee shall not enter into any agreement with any party that affects the Revenues earned by the Cars.
17. **Final Calculations:** The calculations required in Section 13 shall be made within 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. Lessor shall within 3 months after the end of each calendar quarter calculate on a quarterly year-to-date basis the approximate amounts due both parties. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation; provided, however, that within 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.
18. **If Car Hire Rates Not Prescribed:**
  - A. If the ICC ceases to prescribe car hire rates or significantly alters in a way adverse to Lessor the manner in which car hire rates are prescribed or the rates themselves, the parties shall in good faith negotiate to amend this Section and the Schedule so that the amounts Lessor receives in rent after such ICC action are approximately the same as Lessor would have received had no such ICC action occurred. If such good faith negotiations are unsuccessful, Lessor may terminate the Agreement with respect to any or all of the Cars on this Schedule upon not less than 30 days written notice to Lessee at any time during the Agreement.
  - B. Lessor shall determine car hire rates offered to users of deprescribed Cars and shall, at Lessor's expense, prepare and present the owner's case in any arbitration or other proceeding held to resolve disputed car hire rates.
19. **Offset:** Lessor may retain any amounts owed to or collected on behalf of Lessee to offset any sums owed to Lessor by Lessee.
20. **Indemnities:** Lessee agrees to defend, indemnify and hold harmless Lessor from any and all claims, losses, damages, liabilities, costs, and expenses (including attorneys' 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, custody or control, or would be the Lessee's responsibility as the "handling carrier" under the Interchange Rules and Car Hire Rules if the Cars were not bearing Lessee's reporting marks. The indemnities contained in this Agreement shall survive the expiration or termination of this Agreement.

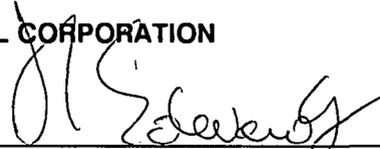
21. Expiration or Termination

- A. **Return of Cars:** Upon the expiration or other termination of the Agreement with respect to any Car on this Schedule, Lessee shall return such Car to Lessor at the interchange point on Lessee's lines designated by Lessor (the "Return Location"). Lessee shall bear any transportation costs incurred in moving any Car to the Return Location. If the Return Location is on Lessee's tracks, Lessee shall use best efforts to load such Car with freight and deliver it to a connecting carrier for shipment.
- B. **Storage:** Lessee shall, at Lessor's option, provide up to 120 days free storage on its lines for any Car which is either on Lessee's lines at expiration or other termination or is subsequently returned to Lessee's lines.
- C. **Holdover Rent:** Until any Car is returned to Lessor, Lessee shall continue to pay rent for such Car. If Lessor requests in writing the return of any Car and Lessee fails to use best efforts to return such Car, Lessee upon written notice from Lessor shall pay rent on a monthly basis in an amount equal to the amount which would be earned by such Car if it were off the Eligible Lines 100% of the time and earning Hourly Revenues and Mileage Revenues at the Revenue Rates and Lessee shall in addition make all other payments and keep all obligations required of Lessee under this Agreement as though such expiration or other termination had not occurred. Nothing in this Section shall give Lessee the right to retain possession of any Car after expiration or other termination of this Agreement with respect to such Car.

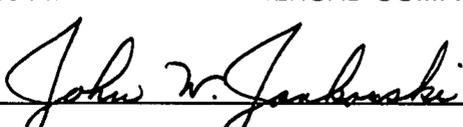
22. **Counterparts:** This Schedule may be executed in any number of counterparts, and such counterparts together shall constitute one contract.

Each party, pursuant to due corporate authority, has caused this Schedule to be executed by its authorized officer, and each of the undersigned hereto declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

ITEL RAIL CORPORATION

By:   
Title: President & Chief Executive Officer  
Date: March 16, 1992

BRANDYWINE VALLEY RAILROAD COMPANY

By:   
Title: CONTROLLER  
Date: 1/31/92

**EXHIBIT A TO SCHEDULE NO. 4**

**REPORTING MARKS AND NUMBERS**

- |               |               |                |
|---------------|---------------|----------------|
| 1. BVRV 5508  | 37. BVRV 5589 | 72. BVRV 5711  |
| 2. BVRV 5509  | 38. BVRV 5590 | 73. BVRV 5712  |
| 3. BVRV 5510  | 39. BVRV 5594 | 74. BVRV 5713  |
| 4. BVRV 5514  | 40. BVRV 5599 | 75. BVRV 5714  |
| 5. BVRV 5516  | 41. BVRV 5600 | 76. BVRV 5715  |
| 6. BVRV 5519  | 42. BVRV 5601 | 77. BVRV 5716  |
| 7. BVRV 5524  | 43. BVRV 5604 | 78. BVRV 5717  |
| 8. BVRV 5526  | 44. BVRV 5605 | 79. BVRV 5718  |
| 9. BVRV 5528  | 45. BVRV 5607 | 80. BVRV 5719  |
| 10. BVRV 5529 | 46. BVRV 5608 | 81. BVRV 5720  |
| 11. BVRV 5530 | 47. BVRV 5613 | 82. BVRV 5721  |
| 12. BVRV 5534 | 48. BVRV 5614 | 83. BVRV 5722  |
| 13. BVRV 5537 | 49. BVRV 5615 | 84. BVRV 5723  |
| 14. BVRV 5541 | 50. BVRV 5616 | 85. BVRV 5724  |
| 15. BVRV 5544 | 51. BVRV 5617 | 86. BVRV 5725  |
| 16. BVRV 5546 | 52. BVRV 5618 | 87. BVRV 5726  |
| 17. BVRV 5548 | 53. BVRV 5619 | 88. BVRV 5727  |
| 18. BVRV 5551 | 54. BVRV 5621 | 89. BVRV 5728  |
| 19. BVRV 5556 | 55. BVRV 5622 | 90. BVRV 5729  |
| 20. BVRV 5561 | 56. BVRV 5623 | 91. BVRV 5730  |
| 21. BVRV 5563 | 57. BVRV 5625 | 92. BVRV 5731  |
| 22. BVRV 5564 | 58. BVRV 5626 | 93. BVRV 5732  |
| 23. BVRV 5566 | 59. BVRV 5627 | 94. BVRV 5733  |
| 24. BVRV 5567 | 60. BVRV 5628 | 95. BVRV 5734  |
| 25. BVRV 5568 | 61. BVRV 5700 | 96. BVRV 5735  |
| 26. BVRV 5569 | 62. BVRV 5701 | 97. BVRV 5736  |
| 27. BVRV 5573 | 63. BVRV 5702 | 98. BVRV 5737  |
| 28. BVRV 5576 | 64. BVRV 5703 | 99. BVRV 5738  |
| 29. BVRV 5577 | 65. BVRV 5704 | 100. BVRV 5739 |
| 30. BVRV 5578 | 66. BVRV 5705 | 101. BVRV 5740 |
| 31. BVRV 5579 | 67. BVRV 5706 | 102. BVRV 5741 |
| 32. BVRV 5580 | 68. BVRV 5707 | 103. BVRV 5742 |
| 33. BVRV 5583 | 69. BVRV 5708 | 104. BVRV 5743 |
| 34. BVRV 5584 | 70. BVRV 5709 | 105. BVRV 5744 |
| 35. BVRV 5585 | 71. BVRV 5710 | 106. BVRV 5745 |
| 36. BVRV 5586 |               |                |

**EXHIBIT B TO SCHEDULE NO. 4**

**RUNNING REPAIRS**

**GONDOLAS**

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
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	