

RECORDATION NO. 7945-C filed & recorded

NOV 28 1975 - 12 45 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT dated as of March 15, 1975 (hereinafter called this Assignment), by and between FIRST SECURITY STATE BANK, acting as a Trustee (hereinafter called the Lessor or the Vendee), under a Trust Agreement dated as of the date hereof with Itel Leasing International, Inc. (hereinafter called the Beneficiary), and FIRST SECURITY BANK OF UTAH, N.A., as Agent (hereinafter called the Vendor) under a Finance Agreement dated as of the date hereof (hereinafter, as amended, called the Finance Agreement).

WHEREAS the Vendee has entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter, as amended, called the Security Documentation), with National Railway Utilization Corporation (hereinafter called the Builder) and Itel Corporation, as Guarantor, providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in Annex A thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and Pickens Railroad Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 11 hereof, the Lessor hereby assigns, transfers and sets over

unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee under the Security Documentation, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 2 of the Lease when due, the Vendor shall notify the Lessor and the Beneficiary at the addresses set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security

and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the Security Documentation (without regard to any limitation of liability of the Lessor contained therein), this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. On the Take-Out Date (as defined in the Finance

Agreement), the Lessor will furnish the Vendor with an opinion of counsel that this Assignment has been duly authorized, executed and delivered by the Lessor and is a legal and valid agreement binding on the Lessor.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Utah, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 22 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the Security Documentation or Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the Security Documentation, the Lessor may, so long as no event of default under the Security Documentation or Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce or avail itself of, such rights, powers, privileges, authorizations or benefits.

12. Notwithstanding any other provision of this Assignment, it is understood and agreed that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security State Bank, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Assignment is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under said Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, or on account of any representation, undertaking or agreement of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under any of it, making claim hereunder, may look to said Trust Estate and to the Beneficiary for satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

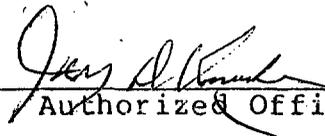
FIRST SECURITY STATE BANK,
as Trustee,

by


Authorized Officer

[Corporate Seal]

Attest:


Authorized Officer

FIRST SECURITY BANK OF UTAH, N.A.,
as Agent,

by



Authorized Officer

[Corporate Seal]

Attest:



Authorized Officer

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this 24th day of November 1975, before me personally appeared Fred Murphy, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said banking corporation, that said instrument was signed and sealed on behalf of said banking corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said banking corporation.



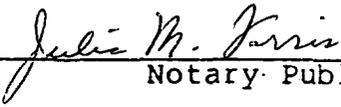
Notary Public
Julia M. Farris

[Notarial Seal]

My Commission expires
May 23, 1979

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this 24th day of November 1975, before me personally appeared Robert S. Clark , to me personally known, who being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.



Notary Public
Julia M. Farris

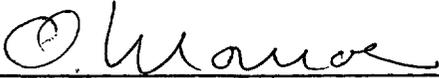
[Notarial Seal]

My Commission expires
May 23, 1979

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of March 15, 1975.

PICKENS RAILROAD COMPANY

BY: 
President

ITEL CORPORATION

BY: _____
Attorney-in-Fact

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of March 15, 1975.

PICKENS RAILROAD COMPANY,

by

Vice President

ITEL CORPORATION,

by

Wesley C. Dossa
Attorney-in-Fact