8-345A067

NO.

Date DEC 11 1978

Fee $ 50.00

ICC Washington, D. C.

RECORDATION NO. 9897 Filed 1425

DEC 11 1978 -2 30 PM

INTERSTATE COMMERCE COMMISSION

ITEL CORPORATION
RAIL DIVISION

November 29, 1978

Honorable H. G. Homme
Acting Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are an original, two counterparts and three photocopies of a Conditional Sale Agreement dated as of November 29, 1978 between Bethlehem Steel Corporation, Bethlehem, Pennsylvania 18016, and Itel Corporation, acting through its Rail Division, Two Embarcadero Center, San Francisco, California 94111. This Conditional Sale Agreement covers the following railroad equipment:

> 200 70-ton, TOFC/COFC, 89'4" Flatcars, numbered PW 105201-105400, both inclusive. Identifying marks on the foregoing equipment: "Ownership subject to a security agreement filed with the Interstate Commerce Commission".

Also enclosed is this company's check in the sum of $50, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing Agreement.

Very truly yours,

Paul M. Willard
Counsel

:tae
Enclosures

RECEIVED
DEC 11 2 25 PM '78
I.C.C.
FEE OPERATION BR.

TWO EMBARCADERO CENTER
SAN FRANCISCO
CALIFORNIA 94111
(415) 955-9090
TELEX 34-234

Interstate Commerce Commission
Washington, D.C. 20423

12/11/78

OFFICE OF THE SECRETARY

Paul M. Willard

Itel Corporation
Two Embarcadero Center
San Francisco,Calif.9411

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 12/11/78 at 2:30pm, and assigned recordation number(s) 9897

Sincerely Yours,

H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. 9897 Filed 1425

DEC 11 1978 - 2 30 PM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of November 29, 1978, by and between Bethlehem Steel Corporation, a Delaware corporation (hereinafter called the "Manufacturer"), and Itel Corporation, a Delaware corporation, acting through its Rail Division (hereinafter called the "Vendee").

W I T N E S S E T H

The Manufacturer and the Vendee have heretofore entered into the Purchase Agreement (hereinafter called the "Purchase Agreement") referred to in Section 1, of Schedule A, hereto attached (hereinafter called "Schedule A") whereunder the Manufacturer has agreed to construct and deliver to the Vendee at the delivery point specified in Section 2, of Schedule A, and the Vendee has agreed to accept and pay for the Railroad equipment (hereinafter individually called a Car and collectively called the "Cars") described in Section 3, of Schedule A; and

Inasmuch as the Vendee contemplates no third party financing arrangements for acquisition of the Cars prior to payment therefor, and the Vendee does not wish to pay for the Cars prior to the shipment of the Cars from the Manufacturer's plant, the Vendee (in order that it may use the Cars during the time between shipment from the Manufacturer's plant and payment of the purchase price 10 business days after delivery, acceptance and invoicing for all of the Cars) has requested the Manufacturer to give the Vendee temporary custody and possession of the Cars on completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

NOW THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. The Manufacturer agrees to deliver the Cars to the Vendee and the Vendee agrees to accept the Cars from the Manufacturer at the delivery point above referred to. The rights of the Vendee hereunder in respect of each Car shall commence on the date of acceptance of each such Car and end on the earlier of January 31, 1979, or the date of payment of the purchase price for all of the Cars. When the purchase price of all of the Cars has been paid, this Agreement shall automatically be terminated without further action by or notice to any party concerned. On delivery of each Car to the Vendee, the Vendee will assume the responsibility and risk of loss with respect to such Car.

2. After the Vendee's representative finds that each Car upon completion has been built in accordance with the requirements of the Purchase Agreement, he will execute and deliver to the Manufacturer a certificate of acceptance acknowledging the receipt of delivery of each Car under this Agreement. Title to the Cars shall remain in the Manufacturer and the Vendee's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of payment. At such time, the Manufacturer shall, at the request and expense of the Vendee, execute to the Vendee a bill of sale for the Cars as is, where is, and without warranty of any kind except only that the Cars are free from all liens and encumbrances created by the Manufacturer. Neither the inspection nor any examination nor the acceptance of any Car shall be deemed a waiver or a modification by the Vendee of any of its rights against the Manufacturer under any warranties contained in the Purchase Agreement. The Vendee, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the

Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, the Vendee shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

3. The Vendee agrees that it will permit no liens of any kind to attach to the Cars (other than any rights of its lessee under the Vendee's lease with such lessee); and that it will

(a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and

(b) pay any and all taxes, fines, charges, and penalties.

that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of its ownership or because of the use, marking, operation, management or handling of the Cars by the Vendee during the term of this Agreement. The Vendee's obligations contained in this paragraph shall survive the termination of this Agreement by mutual agreement or otherwise.

4. The Vendee will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement. Upon the expiration or other termination of this Agreement, other than by payment of the purchase price, the Vendee will surrender and deliver up the Cars in good order and running condition to the Manufacturer free of all charges at the point designated by the Manufacturer.

5. Prior to the delivery of each Car to the Vendee, such car will be numbered with a car number as set forth in Section 3, of Schedule A, and there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Vendee upon each side of each Car in letters not less than one inch in height the words set forth in Section 5, of Schedule A.

6. The Vendee agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Vendee of the Cars, as contemplated by this Agreement, shall not relieve the Vendee of its obligations to accept, take, and pay for the Cars in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement, which is by reference made a part of this Agreement as fully as though expressly set forth herein.

ATTEST

Secretary

ITEL CORPORATION, RAIL DIVISION

By: _____

Date: 11/30/78

ATTEST

ASSISTANT SECRETARY

BETHLEHEM STEEL CORPORATION

By: _____

Date: 12/6/78

SCHEDULE A

SECTION 1. Purchase Agreement:

Vendee's letter of March 2, 1978, Manufacturer's letter of March 7, 1978, LOT NO. 3400-3489.

SECTION 2. Delivery Point:

At the Manufacturer's plant in Johnstown, Pa.

SECTION 3. Railroad Equipment:

200 TOFC/COFC, 70-ton, 89'4" Flatcars - PW 105201-105400

SECTION 4. Purchase Price:

The price is estimated at $43,800 per unit or $8,760,000 for all of the equipment plus any prepaid freight.

SECTION 5. Markings on Cars:

Stencil in letters at least one inch in height: "Ownership subject to a security agreement filed with the Interstate Commerce Commission".

STATE OF Pennsylvania)
) SS:
COUNTY OF Lehigh)

On this 6th date of December 1978, before me personally appeared David Adams II, to me personally known, who, being by me duly sworn, says that he is Vice President of Bethlehem Steel Corporation that one of the seals affixed to the aforegoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of this board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lucy B. Kyle
Notary Public

Notarial Seal

My Commission expires: August 14, 1982

STATE OF CALIFORNIA)
) SS:
CITY AND COUNTY OF)
SAN FRANCISCO

On this 28th day of November 1978, before me personally appeared DONALD H. GLEASON, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of Itel Corporation, Rail Division, that one of the seals affixed to the aforegoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of this board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

OFFICIAL SEAL
BEVERLY LEONG
NOTARY PUBLIC CALIFORNIA
San Francisco County
My Commission Expires April 30, 1982

Beverly Leong
Notary Public

Notarial Seal

My Commission expires:

THIS AGREEMENT, dated as of November 29, 1978, by and between Bethlehem Steel Corporation, a Delaware corporation (hereinafter called the "Manufacturer"), and Itel Corporation, a Delaware corporation, acting through its Rail Division (hereinafter called the "Vendee").

W I T N E S S E T H

The Manufacturer and the Vendee have heretofore entered into the Purchase Agreement (hereinafter called the "Purchase Agreement") referred to in Section 1, of Schedule A, hereto attached (hereinafter called "Schedule A") whereunder the Manufacturer has agreed to construct and deliver to the Vendee at the delivery point specified in Section 2, of Schedule A, and the Vendee has agreed to accept and pay for the Railroad equipment (hereinafter individually called a Car and collectively called the "Cars") described in Section 3, of Schedule A; and

Inasmuch as the Vendee contemplates no third party financing arrangements for acquisition of the Cars prior to payment therefor, and the Vendee does not wish to pay for the Cars prior to the shipment of the Cars from the Manufacturer's plant, the Vendee (in order that it may use the Cars during the time between shipment from the Manufacturer's plant and payment of the purchase price 10 business days after delivery, acceptance and invoicing for all of the Cars) has requested the Manufacturer to give the Vendee temporary custody and possession of the Cars on completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

NOW THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. The Manufacturer agrees to deliver the Cars to the Vendee and the Vendee agrees to accept the Cars from the Manufacturer at the delivery point above referred to. The rights of the Vendee hereunder in respect of each Car shall commence on the date of acceptance of each such Car and end on the earlier of January 31, 1979, or the date of payment of the purchase price for all of the Cars. When the purchase price of all of the Cars has been paid, this Agreement shall automatically be terminated without further action by or notice to any party concerned. On delivery of each Car to the Vendee, the Vendee will assume the responsibility and risk of loss with respect to such Car.

2. After the Vendee's representative finds that each Car upon completion has been built in accordance with the requirements of the Purchase Agreement, he will execute and deliver to the Manufacturer a certificate of acceptance acknowledging the receipt of delivery of each Car under this Agreement. Title to the Cars shall remain in the Manufacturer and the Vendee's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of payment. At such time, the Manufacturer shall, at the request and expense of the Vendee, execute to the Vendee a bill of sale for the Cars as is, where is, and without warranty of any kind except only that the Cars are free from all liens and encumbrances created by the Manufacturer. Neither the inspection nor any examination nor the acceptance of any Car shall be deemed a waiver or a modification by the Vendee of any of its rights against the Manufacturer under any warranties contained in the Purchase Agreement. The Vendee, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the

Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, the Vendee shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

3. The Vendee agrees that it will permit no liens of any kind to attach to the Cars (other than any rights of its lessee under the Vendee's lease with such lessee); and that it will

(a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and

(b) pay any and all taxes, fines, charges, and penalties.

that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of its ownership or because of the use, marking, operation, management or handling of the Cars by the Vendee during the term of this Agreement. The Vendee's obligations contained in this paragraph shall survive the termination of this Agreement by mutual agreement or otherwise.

4. The Vendee will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement. Upon the expiration or other termination of this Agreement, other than by payment of the purchase price, the Vendee will surrender and deliver up the Cars in good order and running condition to the Manufacturer free of all charges at the point designated by the Manufacturer.

5. Prior to the delivery of each Car to the Vendee, such car will be numbered with a car number as set forth in Section 3, of Schedule A, and there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Vendee upon each side of each Car in letters not less than one inch in height the words set forth in Section 5, of Schedule A.

6. The Vendee agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Vendee of the Cars, as contemplated by this Agreement, shall not relieve the Vendee of its obligations to accept, take, and pay for the Cars in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement, which is by reference made a part of this Agreement as fully as though expressly set forth herein.

ATTEST

H H Houston
Secretary

ITEL CORPORATION, RAIL DIVISION

By: [signature]

Date: 11/30/78

ATTEST

R F Masters
ASSISTANT SECRETARY

BETHLEHEM STEEL CORPORATION

By: David Adams
VICE PRESIDENT, FINANCE

Date: 12/6/78

SCHEDULE A

SECTION 1. Purchase Agreement:

Vendee's letter of March 2, 1978, Manufacturer's letter of March 7, 1978, LOT NO. 3400-3489.

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The price is estimated at $43,800 per unit or $8,760,000 for all of the equipment plus any prepaid freight.

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Stencil in letters at least one inch in height: "Ownership subject to a security agreement filed with the Interstate Commerce Commission".

STATE OF Pennsylvania)
) SS:
COUNTY OF Lehigh)

On this 6th date of December 1978, before me personally appeared David Adamoff, to me personally known, who, being by me duly sworn, says that he is Vice President of Bethlehem Steel Corporation that one of the seals affixed to the aforegoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of this board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lucy B. Kyle
Notary Public

Notarial Seal

My Commission expires: August 14, 1982

STATE OF CALIFORNIA)
) SS:
CITY AND COUNTY OF)
SAN FRANCISCO

On this 28th day of November 1978, before me personally appeared DONALD H. GLEASON, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of Itel Corporation, Rail Division, that one of the seals affixed to the aforegoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of this board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

OFFICIAL SEAL
BEVERLY LEONG
NOTARY PUBLIC - CALIFORNIA
San Francisco County
My Commission Expires April 30, 1982

Beverly Leong
Notary Public

Notarial Seal

My Commission expires: