

No. 5-087A021

WILMER, CUTLER & PICKERING

1666 K STREET, N. W.

WASHINGTON, D. C. 20006

Date ..MAR. 28. 1985...

Fee \$ 20.00

RECORDATION NO. 10032-9

MAR 28 1985 -9 15 AM

ICC Washington, D. C.

EUROPEAN OFFICE

1 COLLEGE HILL

LONDON, EC4R 2RA, ENGLAND

TELEPHONE 01-236-2401

TELEX: 851 883242

CABLE ADDRESS: WICRING LONDON

CABLE ADDRESS: WICRING WASH., D. C.

INTERNATIONAL TELETYPE

TELEX: 89-2402

TELEPHONE 202 872-6000

INTERSTATE COMMERCE COMMISSION

ALLEN H. HARRISON, JR.

DIRECT LINE (202)

872-6093

INTERSTATE COMMERCE COMMISSION

MAR 28 1985 -9 15 AM March 28, 1985

MAR 28 1985 -9 15 AM

Dear Mr. Bayne:

INTERSTATE COMMERCE COMMISSION

On behalf of Itel Rail Corporation, I submit for filing and recording, under 49 U.S.C. § 11303(a) and the regulations promulgated thereunder, the enclosed four executed counterparts, of each of the four following secondary documents:

10032 -H

- 1) Amendment No. 7 dated July 2, 1984 to the Lease Agreement dated July 26, 1978 between Itel Corporation, Rail Division and Valley and Siletz Railroad Company.
- 2) Assignment of Amendment 7 dated July 2, 1984 to July 26, 1978 Lease between Itel Rail and Valley and Siletz Railroad Company.
- 3) Assignment Agreement dated July 2, 1984 between Valley and Siletz Railroad Company and Minnesota, Dakota and Western Railway Company.
- 4) Assignment of Assignment Agreement between Valley and Siletz Railroad Company and Minnesota, Dakota and Western Railway Company to the Trustee.

All of the above-listed documents relate to arrangements to allow one of the parties to enter into a sublease agreement with a third party as to a certain number of boxcars subject to the related Lease Agreement dated as of July 26, 1978 between Itel Rail Corporation, successor in interest to Itel Corporation, Rail Division and Valley and Siletz Railroad Company, recorded with the ICC January 19, 1976 under ICC Recordation No. 10032. Each document listed above should be recorded in the order listed under the next four available letters under Recordation No. 10032.

The names and addresses of the parties to the aforementioned Amendment No. 7, under numbered paragraph 1) above, are:

*Handwritten notes and signatures on the left margin, including 'S. H. Harrison' and a large signature.*

*Vertical handwritten notes: 'MAY 28 9 10 AM '85', 'MOIC', and other markings.*

1. Itel Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133
2. Valley and Siletz Railroad Company (Lessee)  
One Jefferson Square  
Boise, Idaho 83728

The names and addresses of the parties mentioned in the related Assignment of Amendment 7 dated July 2, 1984 to July 26, 1978 Lease between Itel Corporation, Rail Division and Valley and Siletz Railroad Company, under numbered paragraph 2) above, are:

1. Itel Rail Corporation (Assignor)  
55 Francisco Street  
San Francisco, California 94133
2. First Security Bank of Utah, National  
Association (Trustee-Assignee)  
79 South Main Street  
Salt Lake City, Utah 84125

The equipment covered by the Amendment No. 7 and the Assignment of the Amendment is one hundred-forty-nine (149) boxcars bearing reporting marks VS 2000-2075 and VS 2077-2149.

The names and addresses of the parties to the afore-mentioned Assignment Agreement, under numbered paragraph 3) above, are:

1. Valley and Siletz Railroad Company (Assignor)  
One Jefferson Square  
Boise, Idaho 83728
2. Minnesota, Dakota & Western Railway Company  
(Assignee)  
First Avenue  
International Falls, Minnesota 56649

The names and addresses of the parties mentioned in afore-mentioned Assignment of Assignment Agreement, under numbered paragraph 4) above, are:

1. Itel Rail Corporation (Assignor)  
55 Francisco Street  
San Francisco, California 94133

2. First Security Bank of Utah, National  
Association (Trustee-Assignee)  
79 South Main Street  
Salt Lake City, Utah 84125

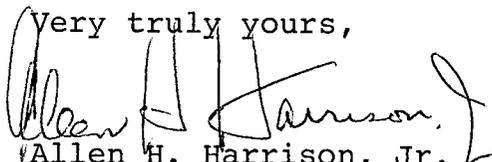
The equipment covered by this Assignment Agreement and the Assignment of the Assignment is one hundred-forty-nine (149) boxcars bearing reporting marks VS 2000-2075 and VS 2077-2149.

Enclosed is a check of this firm for \$20 to cover the required filing fees for the enclosed documents.

A short summary of the document to appear in the Index is as follows:

"149 boxcars numbered VS 2000-2075 and VS 2077-2149"

Once the filing has been made, please return to bearer the stamped counterparts of the documents not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filings and the two extra copies of this letter of transmittal.

Very truly yours,  
  
Allen H. Harrison, Jr.  
Attorney for ITEL Rail  
Corporation for the  
purpose of this filing

Honorable James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Enclosures

AHH/iw

BY HAND

03/08/85

MAR 28 1985 9 15 AM

INTERSTATE COMMERCE COMMISSION

**ASSIGNMENT OF ASSIGNMENT AGREEMENT  
BETWEEN VALLEY & SILETZ RAILROAD COMPANY AND  
MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY TO THE TRUSTEE**

**ASSIGNMENT OF ASSIGNMENT AGREEMENT** dated as of March 4, 1985 (hereunder called this "Assignment"), from **ITEL RAIL CORPORATION**, a Delaware corporation ("Itel Rail") to **FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION**, a national banking association, incorporated and existing under the laws of the United States of America (the "Trustee").

**WHEREAS**, Itel Rail has entered into a Consolidated, Amended, and Restated Equipment Trust Agreement, dated January 1, 1982, among First Security Bank of Utah, N.A., Itel Corporation and Itel Rail Corporation (the "ETC Modification Agreement"), and pursuant to the ETC Modification Agreement, Itel Rail has certain obligations with respect to the Itel Corporation, Itel Rail Corporation 10% Amended Equipment Trust Certificates, 1978 Series 3, due 1994 as set forth in Schedule 2.F. of the ETC Modification Agreement (the "Amended 1978 Series 3 Trust Certificates"); and

**WHEREAS**, Itel Rail is the successor in interest to Itel Corporation, Rail Division pursuant to Itel Corporation's Amended Plan of Reorganization which became effective on September 19, 1983; and

**WHEREAS**, Itel Rail and the **VALLEY & SILETZ RAILROAD COMPANY ("VS")** have entered into a Lease (as defined in the ETC Modification Agreement) of Equipment (as defined in the ETC Modification Agreement) dated as of July 26, 1978 (such Lease together with any amendments and supplements thereto called the "Lease"), providing for the leasing by Itel Rail to VS of certain units of the Trust Equipment (as defined in the ETC Modification Agreement); and

**WHEREAS**, the Lease may also cover the leasing to VS of other Equipment not included as part of the Trust Equipment; and

**WHEREAS**, in order to provide security for the obligations of Itel Rail under the ETC Modification Agreement, Itel Rail assigned for security purposes its rights to and under the Lease, as amended, to the Trustee as and only to the extent that the Lease relates to the Trust Equipment by means of an Assignment (as defined in the ETC Modification Agreement) dated as of January 15, 1979; and

**WHEREAS**, VS has entered into an Assignment Agreement with the **MINNESOTA, DAKOTA AND WESTERN RAILWAY COMPANY ("MDW")** dated as of July 2, 1984 (the "Assignment Agreement") assigning to MDW all of VS' duties, rights, interests and powers, of any form or nature, created by or pursuant to the Lease (such Lease, together with any amendments and supplements, thereto called the "Assigned Lease"), but not relieving VS of any liabilities it may have incurred under the Lease until the date of assignment; and

WHEREAS, Itel Rail has rights under the Assignment Agreement as third party beneficiary and otherwise; and

WHEREAS, in order to provide security for the obligations of Itel Rail under the ETC Modification Agreement, Itel Rail agrees to assign for security purposes its rights to and under the Assignment Agreement to the Trustee as and only to the extent that the Assignment Agreement relates to the Trust Equipment;

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

1. Itel Rail hereby assigns, transfers, and sets over unto the Trustee, as collateral security for the payment and performance of Itel Rail's obligations under the ETC Modification Agreement with respect to the Amended 1978 Series 3 Trust Certificates, all of Itel Rail's rights, title, and interest, powers, privileges, and other benefits under the the Assignment Agreement and Assigned Lease as and only to the extent that the Assignment Agreement and Assigned Lease relates to the Trust Equipment set forth in Annex A hereto, including, without limitation, all rights to receive and collect all rentals, profits, and other sums payable to or receivable by Itel Rail from MDW under or pursuant to the provisions of the Assigned Agreement and Assigned Lease to the extent that the same are payable in respect of such Trust Equipment, whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"); provided, however, that until a Default (as defined in the ETC Modification Agreement) or an Event of Default (as defined in the ETC Modification Agreement) shall occur, it is understood that Itel Rail shall be entitled to collect and receive all the Payments and 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 Assigned Lease, and to apply all Payments to which Itel Rail is entitled to the payment of any and all of Itel Rail's obligations under the ETC Modification Agreement and to retain the balance, if any. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, Itel Rail hereby irrevocably authorizes and empowers the Trustee in its own name, in the name of its nominee or in the name of Itel Rail or as its attorney, to ask, demand, sue for, collect, and receive any and all the Payments to which Itel Rail is or may become entitled under the Assignment Agreement and Assigned Lease, and to enforce compliance by MDW with all the terms and provisions thereof. Whenever a Lease covers other Equipment not included as part of the Trust Equipment and the amount of any payment due to Itel Rail under such Lease as car hire payments (including both straight and incentive per diem), mileage charges, or other rental revenues is calculated on an aggregate basis for all Equipment leased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to such Trust Equipment leased under such Lease. The term "Assigned Fraction" as used herein shall mean a fraction, the numerator of which shall be the number of units of Equipment comprising such Trust Equipment leased under such Lease and

the denominator of which shall be the aggregate number of units of Equipment (including such units of Trust Equipment) at the time leased under such Lease.

2. This Assignment is executed only as security for the obligations of Itel Rail with respect to the Amended 1978 Series 3 Trust Certificates under the ETC Modification Agreement and, therefore, the execution and delivery of this Assignment shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify, the liability of Itel Rail under the Assignment Agreement and Assigned Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of Itel Rail to MDW shall be and remain enforceable by MDW, its successor and assigns, against, and only against Itel Rail or persons other than the Trustee or any holder of Amended 1978 Series 3 Trust Certificates.
3. To protect the security afforded by this Assignment, Itel Rail agrees as follows:
  - (a) Itel Rail will faithfully abide by, perform and discharge each and every obligation, covenant, and agreement which the Assigned Lease provides is to be performed by Itel Rail;
  - (b) At Itel Rail's sole cost and expense, Itel Rail will appear in and defend every action or proceeding arising under, growing out of, or in any manner connected with the obligations, duties, or liabilities of Itel Rail under the Assigned Lease; and
  - (c) Should Itel Rail fail to make any payment or to do any act which this Assignment requires Itel Rail to make or do, then the Trustee may, but without obligation so to do, after first making written demand upon Itel Rail and affording Itel Rail a reasonable period of time within which to make such payment or do such act, but without releasing Itel Rail from any obligation hereunder, make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security provided hereby, including specifically without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant, and agreement of Itel Rail contained in the Assigned Lease, and in exercising any such powers, the Trustee may pay necessary costs and expenses, employ counsel, and incur and pay reasonable attorneys' fees, and Itel Rail will reimburse the Trustee for such costs, expenses, and fees.
4. Upon the full discharge and satisfaction of all of Itel Rail's obligations under the ETC Modification Agreement and this Assignment, all rights herein assigned to the Trustee shall terminate, and all estate, right, title, and interest of the Trustee in and to the Lease shall revert to Itel Rail.

5. ITEL Rail will, from time to time, do and perform any other act and will execute, acknowledge, and deliver and file, register, deposit, and record (and will refile, reregister, rerecord, or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Trustee in order to confirm or further assure the interests of the Trustee hereunder.
6. If an Event of Default shall occur and be continuing under the ETC Modification Agreement, the Trustee may assign all or any of the rights assigned to it hereby or arising under the Assignment Agreement and Assigned 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 Trustee hereunder. The Trustee will give written notice to ITEL Rail and MDW of any such assignment.
7. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by the laws of the United States permitting filing with the Interstate Commerce Commission.

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

ITEL RAIL CORPORATION

By: \_\_\_\_\_

*JD Hayes*

(Seal)

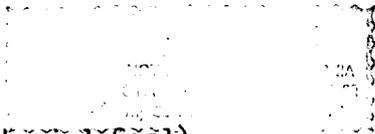
Attest: \_\_\_\_\_

Assistant

*Howard S. Chelmer*  
Secretary

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

On this 25<sup>th</sup> day of March, 1985, 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 Rail Corporation, that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and that such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



(Notarial Seal)

Joseph D. Kemp  
Notary Public

My commission expires: April 15, 1988

ANNEX A

<u>No. of Units</u>	<u>Reporting Marks</u>	<u>Trust Equipment Description</u>	<u>AAR Mechanical Designation</u>
76	VS 2000-2075	50'6", 100-Ton Plate F	XP
73	VS 2077-2149	50'6" 100-Ton Plate F	XP