

ITEL

*Cross only
14605*

Itel Rail Corporation

55 Francisco
San Francisco, California 94133

(415) 984-4000

Telex 34234

RECORDATION NO. 10129-C Filed 1425

March 25, 1985

MAR 28 1985 - 9 15 AM

No. **5-087A020**

INTERSTATE COMMERCE COMMISSION

Date **MAR. 28. 1985**

Fee \$ **10.00**

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

ICC Washington, D. C.

Dear Mr. Bayne:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Rail Corporation for filing and recordation under the Lease Agreement dated as of July 26, 1978 between Itel Corporation, Rail Division as predecessor in interest to Itel Rail Corporation and Minnesota, Dakota & Western Railway Company which was filed with the I.C.C. on February 22, 1979 and given I.C.C. Recordation No. 10129, four counterparts of the following document:

*Under
Rec No
10129-C
but don't
know what
letter*

Amendment No. 2 dated July 2, 1984 to the Lease Agreement dated July 26, 1978 between Itel Corporation, Rail Division, and Minnesota, Dakota & Western Railway Company.

The names and addresses of the parties to the aforementioned are:

1. Itel Rail Corporation
55 Francisco St., 5th Floor
San Francisco, California 94133
2. Minnesota, Dakota & Western Railway Company
First Avenue
International Falls, Minnesota 56649

The equipment covered by this Amendment is ninety-nine (99) boxcars bearing reporting marks MDW 6000-6099.

Also enclosed is a check in the amount of \$10.00 for the required recording fee.

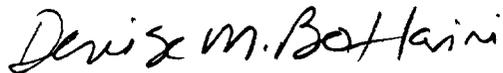
REC'D
MAR 28 9 08 AM '85
100-001

Handwritten signature

Mr. James H. Bayne, Secretary
March 25, 1985
Page Two

Please stamp all counterparts of the enclosed Amendment with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be returned to the bearer of this document.

Sincerely,

A handwritten signature in cursive script that reads "Denise M. Bottarini".

Denise M. Bottarini
Legal Assistant

DMB/vdv/145

cc: Robert S. Clark
Michael Kelly, Esq.
Virginia Hanger.

Interstate Commerce Commission
Washington, D.C. 20423

3/28/85

OFFICE OF THE SECRETARY

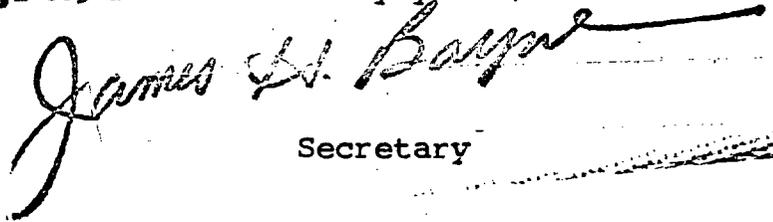
Denise M Bottarini
Legal Assistant
Itel Rail Corporation
55 Francisco
San Francisco, Calif. 94133

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/28/85 at 9:15am and assigned re-
recording number (s): 10129-C, 10032-H, 10032-I, 10032-J, 10032-K

14605, 14605-A, 14605-B

Sincerely yours,


Secretary

Enclosure(s)

RECORDATION NO. 10129C Filed 1425

AMENDMENT NO. 2

MAR 28 1985 - 9 15 AM

INTERSTATE COMMERCE COMMISSION

This Amendment No. 2 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of July 26, 1978, between ITEL CORPORATION, RAIL DIVISION and MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY ("Lessee") is made as of this 2nd of July, 1984, by and between Itel Rail Corporation, as successor in interest to Itel Corporation, Rail Division ("Lessor"), and Lessee.

W I T N E S S E T H:

WHEREAS, Lessor and Lessee are parties to the Agreement pursuant to which four hundred (400) boxcars ("Boxcars") described therein have been leased to Lessee; and

WHEREAS, the Boxcars bearing reporting marks MDW 6071, 9041, 10007, 10014, 10039, 10090, 10101, 10127, 10167, 10176 and 10188 were destroyed on February 20, 1982; December 21, 1977; September 1, 1980, November 16, 1978; February 24, 1978; October 25, 1979; September 1, 1980; January 23, 1980; March 14, 1978; August 27, 1977; and November 30, 1974, respectively, and are no longer subject to the Agreement; and

WHEREAS, Lessor and Lessee agree that it is to their mutual benefit for Lessee to enter into a sublease agreement with a third party for a certain number of Boxcars for a period of time to improve utilization of and revenue from the Boxcars.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree to amend the Agreement as follows:

1. All terms defined in the Agreement shall have their defined meanings when used in the Amendment.

2. Subsection 2.I.(i) of Schedule A, attached to and incorporated into the Agreement, is hereby amended by the deletion of the words "two hundred Boxcars" and "one hundred Boxcars" and the replacement of such words with "one hundred ninety-one (191) Boxcars" and "ninety-nine (99) Boxcars" respectively.

3. Subsection 2.J of Schedule A, attached to and incorporated into the Agreement, is hereby amended to delete Boxcars bearing the railroad reporting marks MDW 9041, 10007, 10014, 10039, 10090, 10101, 10127, 10167, 10176 and 10188.

4. Subsection 2.J of Schedule C, attached to and incorporated into the Agreement, is hereby amended to delete the Boxcar bearing the railroad reporting marks MDW 6071.

5. Lessor consents to Lessee's entering into a sublease agreement, ("BN Sublease"), dated as of July 3, 1984, with Burlington Northern Railroad Company ("BN") for ninety-nine (99) Boxcars bearing reporting marks MDW 6000-6099 ("Cars"), provided, however, that the BN Sublease shall be in the form of Exhibit B attached hereto. Lessor's consent is hereby specifically conditioned upon the following: (a) Lessee's agreement that Lessee shall remain primarily responsible for the payment of Rent set forth in the Agreement and for the

performance of all the other terms of the Agreement to be performed by Lessee; and (b) Lessee's agreement that the BN Sublease are subject and subordinate to the rights of Lessor under the Agreement and any modification or amendment thereof.

The term of the BN Sublease with respect to each Car shall commence at 12:01 p.m. on the date and at the location that such Car is remarked with the BN reporting marks and shall expire as to all the Cars five (5) years from the date on which the first Car was remarked (the "BN Sublease Period").

6. At the commencement of the BN Sublease, Lessor shall restencil the railroad markings on each Car to the BN's reporting marks ("Initial Remark"). The BN Sublease will provide for the BN to pay the costs of the Initial Remark up to one hundred twenty-five dollars (\$125.00) per Car. Any costs associated with the Initial Remark in excess of one hundred twenty-five dollars (\$125.00) per Car shall be for Lessor's account. Upon the expiration of the BN Sublease, Lessee or a contractor chosen by Lessor shall, at Lessor's expense and option, restencil the railroad markings on each Car to Lessee's reporting marks ("Final Remark"). In the event of early termination of the BN Sublease due to Lessee's default thereunder, Lessee or a contractor chosen by Lessor shall, at Lessor's option and Lessee's expense, perform the Final Remark. Concurrently with the Initial Remark and the Final Remark, Lessor and Lessee shall execute a Certificate of Remarketing (in the form of Exhibit A attached hereto) specifying the previous and current reporting marks for each Car restenciled

pursuant to the BN Sublease. Such Certificate of Remarkings shall become attached to and incorporated into this Amendment and the BN Sublease.

7. The parties hereto acknowledge that notwithstanding Sections 4 and 5 of the Agreement, during the BN Sublease Period only, BN shall perform, at BN's expense, the registrations and record-keeping functions with respect to the Cars set forth in Section 4 of the BN Sublease and Itel Rail shall have no liability with respect to the Cars in connection with Sections 4 and 5 of the Agreement during the BN Sublease Period only.

8. The parties hereto acknowledge that, during the BN Sublease Period only, notwithstanding Section 6 of the Agreement and Subsections 5.A and 5.B of the BN Sublease, the obligations of Lessee (MD&W) under Subsections 5.A and 5.B of the BN Sublease shall be performed and satisfied by Lessor (Itel Rail). The parties further acknowledge that notwithstanding Section 6 of the Agreement, BN shall pay those taxes set forth in Subsection 5.D of the BN Sublease. Itel Rail also agrees to indemnify and hold Lessee harmless for the costs and expenses in moving the Cars to BN's lines after Delivery (as defined in the BN Sublease) and for the costs and expenses, if any, incurred by Lessee as a result of the warranty given in Section 3 of the BN Sublease.

9. The parties agree that during the BN Sublease Period only, all full payments of Base Rent (as defined in the BN Sublease) made by BN with respect to the Cars identified in

Equipment Schedule No. 4 of the BN Sublease shall be paid to Itel Rail and that such full payment of Base Rent shall satisfy Lessee's obligations with respect to such Cars. The parties hereto also acknowledge that payments made by Lessee (MD&W) to BN for mileage charges, straight car hire and incentive car hire while on Lessee's rail lines shall be solely for BN's account and shall not be considered "Payments" under Section 7 of the Agreement.

10. During the BN Sublease Period, Subsections 7.D, 7.E, 7.F, 7.G and 7.H shall be of no force or effect with respect to the Cars. Upon the expiration or termination of the BN Sublease, the foregoing Subsections shall be reinstated in the Agreement with respect to the Cars.

11. The second sentence of Section 10 of the Agreement shall be deleted with respect to the Cars.

12. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all of the Boxcars subject to the Agreement, including the Cars.

13. This Amendment may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

MINNESOTA, DAKOTA & WESTERN
RAILWAY COMPANY

By *DA Hayes*
Title President
Date January 8, 1985

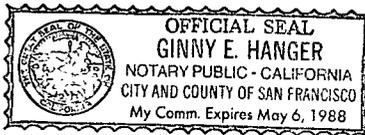
By ^{OK} *Robert A Schwarz*
Title PRESIDENT
Date 12/27/84

L54324A

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

On this 8th day of January, 1984, 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 Amendment No. 2 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.

Ginny E Hanger
Notary Public



STATE OF Idaho)
) ss.
COUNTY OF Ada)

On this 27 day of Dec., 1984, before me personally appeared ROBERT H. SCHWARZ, to me personally known, who being by me duly sworn says that such person is President of MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY, that the foregoing Amendment No. 2 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.

Lois Marston
Notary Public

L54324A

EXHIBIT A
CERTIFICATE OF REMARKING

<u>Old Boxcar Marks</u>	<u>New Boxcar Marks (at Commencement of Sublease)</u>	<u>Date of Remarking</u>	<u>New MD&W Boxcar Marks (Pursuant to Expiration of Sublease)</u>	<u>Date of Remarking</u>
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ITEL RAIL CORPORATION
Authorized Representative

By: _____

Title: _____

Date: _____

MINNESOTA, DAKOTA & WESTERN
RAILWAY COMPANY

By: _____

Title: _____

Date: _____

EXHIBIT B

L-0723
10/25/84

BOXCAR SUBLEASE

THIS SUBLEASE AGREEMENT (the "Sublease") made as of this 3rd day of July, 1984, between MINNESOTA, DAKOTA AND WESTERN RAILROAD COMPANY, a Minnesota corporation, First Avenue, International Falls, Minnesota 56649, as the sublessor ("Sublessor") and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, Continental Plaza, 777 Main Street, Fort Worth, Texas 76102, as the sublessee ("Sublessee").

I. Scope of Sublease

- A. Sublessor agrees to lease to Sublessee, and Sublessee agrees to lease from the Sublessor upon the terms and conditions set forth herein, a number of items of equipment of the number, type and other description set forth in any equipment schedules executed by the parties concurrently herewith or hereafter and made a part of this Sublease. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Sublease. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car".
- B. It is the intent of the parties to this Sublease that Sublessor shall at all times be and remain the sublessor of all Cars. Sublessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and it will take such action and execute such documents as may be necessary to accomplish this intent.
- C. This Sublease Agreement and every provision thereof is for the exclusive benefit of the parties hereto and Irel Rail Corporation and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right in any other person to recover by way of damages or otherwise against either of the parties hereto or Irel Rail Corporation. Nothing in this Section I.C. shall be deemed to limit the rights of any owner or secured party under any financing agreement as referred to in Section 7.A. hereof. If or to the extent that this Section I.C. and Section 7.A. are inconsistent, Section 7.A. shall prevail.

2. Term

This Sublease shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Sublease with respect to each Car described on each Schedule shall commence at 12:01 p.m. on the date and at the location that such Car is remarked pursuant to Section 3, and shall expire as to all of the Cars described on each Schedule, five (5) years from the date on which the first Car on such Schedule was remarked (the "Term").

3. Supply Provisions

Sublessee hereby approves the specifications of the Cars delivered to it by Sublessor. Sublessor shall, at Sublessee's expense, remark the Cars with the railroad markings of Sublessee ("Initial Remark") in compliance with all applicable regulations. Any costs associated with the Initial Remark in excess of one hundred twenty-five dollars (\$125) per Car shall be for Sublessor's account. Each Car shall be deemed delivered and subject to the terms and provisions of this Sublease at 12:01 p.m. on the date and at the location such Car is remarked ("Delivery"). After the Cars have been remarked, the Cars shall be moved to Sublessee's railroad line at no cost to Sublessee as soon as is consistent with mutual convenience and economy. Sublessor warrants that, upon Delivery, each Car shall meet or exceed specifications for interchange service as defined in the AAR Field Manual and shall be in acceptable condition for Class A boxcar loading. Notwithstanding that Sublessee may not have immediate physical possession of the Cars leased hereunder, Sublessee agrees to pay the Rent set forth in this Sublease.

4. Record Keeping

- A.** Sublessee shall, at its expense, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Sublease. Such matters shall include, but are not limited to, (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports that may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars.
- B.** Sublessee shall perform all record keeping functions relating to the use of the Cars, including but not limited to, car hire reconciliation, collection and receipt of Offline Car Hire (as hereinafter defined in Section 6) from other railroad companies, maintenance and repair, and billing in accordance with the AAR Interchange Rules ("Interchange Rules"). All records shall be separately recorded and maintained by Sublessee in a form suitable for reasonable inspection by Sublessor from time to time during Sublessee's regular business hours. Sublessee shall, on a monthly basis, supply Sublessor with copies of Sublessee's interchange records relating to the Cars. Sublessee shall supply Sublessor with copies of such other records as Sublessor may reasonably request. Sublessee hereby authorizes Sublessor to subscribe to the Train 80 and Train 86 Advices for the Cars.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Sublessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Sublessee's expense in the event it was occasioned by the fault of Sublessee, or arises in those instances in which the Interchange Rules would assign responsibility to Sublessee as the handling carrier for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Sublessee shall, at its expense, inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and Sublessee shall be liable to Sublessor for any repairs required for damage not noted at the time of interchange. Sublessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper on Sublessee's railroad line.
- B. Sublessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition. Sublessee may make any necessary repairs (1) as required by the AAR Interchange Rules to make the Cars acceptable for interchange, and (2) to facilitate the earliest possible loading of each Car. Sublessee shall not, however, make any other repair, alteration, modification, improvement or addition to any Car without Sublessor's prior written consent. Sublessee shall be liable to Sublessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Sublessor. Sublessor shall have the right to perform certain Repairs, (as hereinafter defined), to the Cars at a location on Sublessee's property which is mutually agreeable to Sublessor and Sublessee or at an independent repair facility. Repairs ("Repairs") shall be of the type that Sublessor determines Sublessee would not normally perform or of the type that Sublessor determines would normally precipitate movement of such Cars to a repair facility. Sublessor shall notify Sublessee at least forty-eight (48) hours in advance of performing such Repairs. In the event that Sublessor elects to perform such Repairs on any Car, Rent shall abate for such Car on each twenty-four (24) hour day during which such Repairs are being made.
- C. As long as this Sublease shall remain in effect, Sublessee shall be responsible for the Cars (i) while in Sublessee's possession or control, and (ii) in the same manner that Sublessee is responsible under AAR Interchange Rules for similar equipment not owned by Sublessee. Sublessee shall, at all times while this Sublease is in effect, self-insure the Cars against property and public liability to the extent such self-insurance is consistent with prudent industry practice.
- D. Sublessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify Sublessor and its successors against taxes, fees, levies, impost, duties or withholdings of any nature together with penalties, fines or interest thereon (taxes) imposed on, incurred by or asserted

against: (1) the Cars; (2) sale, lease, sublease or delivery of the Cars; (3) revenues earned by the Cars, including but not limited to mileage charges and/or car-hire revenues, during the terms of this Sublease, except for taxes imposed on Sublessor's income.

6. Lease Rental

A. Definitions

(i) "Offline Car Hire" shall be the total revenues earned and due from other railroad companies while each Car is in the possession (including time and mileage) of any railroad other than the Sublessee's railroad or Minnesota, Dakota and Western Railroad Company ("Offline Use"), whether or not such revenues are collected and received by Sublessee and without regard to any claimed abatement, reduction or offset caused by the action of Sublessee. The Offline Car Hire shall be calculated using a per diem and mileage rate which are hereinafter referred to as the Base Hourly Rate and the Base Mileage Rate, as set forth in the applicable Equipment Schedule, attached hereto.

(ii) "Year" shall be defined as any calendar year or applicable portion thereof during which each Car is subject to the Sublease.

B. Each Car delivered pursuant to Section 3 shall become subject to the applicable rental calculation under Subsection 6.C. upon the Delivery of such Car.

C. Sublessee agrees to pay the following rent to Sublessor for the use of each Car:

(i) All Offline Car Hire for the Cars; and

(ii) In the event that the Offline Use of each Car for any Year equals less than eighty-six percent (86%) of the total hours in such Year, and assuming that each Car travels ninety (90) miles per day during

such Year ("Base Utilization"), Sublessee shall pay Sublessor an amount equal to the difference between: 1) the Offline Car Hire which the Cars, in the aggregate, would have earned with each Car at the Base Utilization ("Base Rent") and 2) the actual Offline Car Hire earned by the Cars for such Year.

- D. The calculations required in Subsections 6.C. shall be made within five (5) months after the end of the calendar year ("Final Calculation"). In order that Sublessor may meet its financial commitments, the respective Base Rent shall be prorated on a monthly basis ("Monthly Base Rent") and Sublessee shall submit to Sublessor within forty (40) days after the end of each Service Month (as defined hereinbelow) a report ("Monthly Report") calculating the amount ("Monthly Payment") equal to the sum of the Monthly Base Rents for the Cars. For the purposes hereof, "Service Month" shall be defined as a calendar month during which any Cars are subject to the Sublease. Upon Sublessor's receipt of each Monthly Report, the Monthly Payment shall be due and payable and Sublessor shall be hereby authorized by Sublessee to initiate a draft against Sublessee's account for such Monthly Payment. Within twenty (20) days of the Final Calculation (as defined hereinabove), any amounts due Sublessor, including but not limited to, any Offline Car Hire earned the Cars in excess of the applicable Base Rent for such Year, shall be paid to Sublessor by Sublessee.
- E. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Sublease on the date car hire ceased as set forth in the aforementioned Rule 7. Sublessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Sublessor to Sublessee. If any Car, while in the possession of Sublessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Sublessee shall notify Sublessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Sublessee fails to notify Sublessor within sixty (60) days of the Damage Date, Sublessor reserves the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Sublessee shall remit to Sublessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Sublessor.

7. Possession and Use

- A. So long as Sublessee shall not be in default under this Sublease, Sublessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Sublease and in the manner and to the extent the Cars are customarily used in the railroad freight business

as set forth in Subsection 7.B. However, Sublessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Ite! Rail Corporation ("Ite! Rail") in connection with the acquisition of the Cars which are the subject of this Sublease. Accordingly, following notice to Sublessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Sublease), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party. Sublessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Sublessor or Sublessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.

- B. The use of the Cars shall be limited to use by a rail common carrier, but such use may be in common contract or exempt transportation, and the Cars shall always bear the reporting marks of a rail common carrier. During the term of this Sublease, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.
- C. Sublessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars, or any interest therein or in this Sublease or Schedule thereto. Sublessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Default

- A. The occurrence of any of the following events shall be an event of default:
 - (i) The nonpayment by Sublessee of any sum required herein to be paid by Sublessee within ten (10) days after the date on which Sublessee receives notification from Sublessor that such payment is due;
 - (ii) The breach by Sublessee/Sublessor of any other term, covenant, or condition of this Sublease, which is not cured within ten (10) days after Sublessee/Sublessor receives notice of such event from the other party's;
 - (iii) The filing by or against the Sublessee/Sublessor of any petition or the initiation by or against the other party of any proceeding: (a) for any relief which includes, or might result in, any modification of the obligations of the other party hereunder; or (b) under any

bankruptcy, reorganization, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness.

(iv) The subjection of any of Sublessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which would impair the use of the Cars.

B. Upon the occurrence of any event of default hereunder, without limiting Sublessor's rights and remedies otherwise provided by law which shall be available to Sublessor in addition to the following rights and remedies (no right or remedy of Sublessor being exclusive but all such rights and remedies being available at all times to Sublessor and Sublessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Sublessor in enforcing its rights and remedies hereunder), Sublessor may, at its option, terminate this Sublease and/or may

(i) Proceed by any lawful means to enforce performance by Sublessee of this Sublease or to recover damages for a breach thereof, and/or

(ii) By notice in writing to Sublessee, terminate Sublessee's right of possession and use of the Cars, whereupon all right and interest of Sublessee in the Cars shall terminate; and thereupon Sublessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Sublessee. Sublessor shall, in addition, have the right to recover from Sublessee any and all rental amounts which under the terms of this Sublease may then be due or which may have accrued to that date, together with Sublessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

C. Upon the occurrence of any event of default hereunder, without limiting Sublessee's rights and remedies otherwise provided by law which shall be available to Sublessee in addition to the following rights and remedies (no right or remedy of Sublessee being exclusive but all such rights and remedies being available at all times to Sublessee and Sublessee in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Sublessee in enforcing its rights and remedies hereunder), Sublessee may, at its option, terminate this Sublease and/or may proceed by any lawful means to enforce performance by Sublessor of this Sublease or to recover damages for a breach thereof.

9. Expiration or Early Termination

A. Expiration

Upon the expiration hereof, Sublessee shall promptly return the Cars to Sublessor as follows:

- (i) If some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving the Cars to the Sublessee's railroad tracks subsequent to the time of expiration. Sublessee shall, at Sublessor's option, provide, with respect to any Car which is either on the Sublessee's railroad tracks at the time of expiration or is subsequently returned to Sublessee's railroad, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of expiration, whichever date is later. At the option of Sublessor, either Sublessee or a contractor chosen by Sublessor shall, at Sublessor's expense, remark the Cars as set forth in Subsection 9.C. of this Sublease. Prior to remarking, Sublessee shall, at its expense and at Sublessor's option, remove any company logos and any other markings which were placed on any Car by Sublessee after initial Delivery of such Car. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor. After remarking, Sublessee shall deliver each Car to an interchange point on Sublessee's railroad lines to be determined by Sublessor not less than thirty (30) days in advance.

B. Early Termination

Upon the early termination pursuant to Section 8 hereof, Sublessee shall promptly return the Cars to Sublessor as follows:

- (i) If some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving the Cars to the Sublessee's railroad tracks subsequent to the time of expiration. Sublessee shall, at Sublessor's option, provide, with respect to any Car which is either on the Sublessee's railroad tracks at the time of expiration or is subsequently returned to Sublessee's railroad, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of expiration, whichever date is later. At the option of Sublessor, either Sublessor or a contractor chosen by Sublessor shall, at Sublessee's expense, remark the Cars as set forth in Subsection 9.C. of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor. After remarking, Sublessee shall deliver each Car to an interchange point on Sublessee's railroad lines to be determined by Sublessor not less than thirty (30) days in advance.

- C. Remarking, with respect to each Car, shall include the following: (i) removal of existing mandatory markings of Sublessee; (ii) complete cleaning subsequent to the removal of markings as designated by Sublessor; (iii) application of new mandatory markings; and (iv) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

10. Indemnities

- A.** SUBLESSEE SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF SUBLESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN SUBLESSEE'S POSSESSION OR CONTROL (EXCEPT SUCH DAMAGE TO THE CARS ARISING OUT OF ANY CIVIL INSURRECTION, RIOT, EARTHQUAKE OR ACT OF THE PUBLIC ENEMY), OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO SUBLESSEE AS HANDLING CARRIER.
- B.** SUBJECT TO SUBSECTION 10.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH SUBLESSEE SHALL BE RESPONSIBLE AS SET FORTH HEREIN, SUBLESSOR WILL DEFEND, INDEMNIFY AND HOLD SUBLESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST SUBLESSEE WITH RESPECT TO THE CARS (INCLUDING ANY APPLIANCES OR APPURTENANCES THERETO), INCLUDING WITHOUT LIMITATION, THE LEASING OR RETURN OF THE CARS, USE, MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE CARS OR THE CONDITION OF THE CARS (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY SUBLESSOR OR SUBLESSEE).

11. Representations, Warranties and Covenants

Sublessee represents, warrants and covenants that:

- A.** Sublessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and, insofar as is material to Sublessor's rights under this Sublease, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Sublease.
- B.** The entering into and performance of this Sublease will not violate any judgment, order, law or regulation applicable to Sublessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Sublessee or on the Cars pursuant to any instrument to which Sublessee is a party or by which it or its assets may be bound.
- C.** There is no action or proceeding pending or threatened against Sublessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Sublessee such that Sublessee's ability to perform its obligations hereunder would be materially and adversely affected.

- D. There is no fact which Sublessee has not disclosed to Sublessor in writing, nor is Sublessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Sublessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Sublessee or the ability of the Sublessee to perform its obligation under this Sublease.

12. Inspection

Sublessor shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Sublessee's compliance with its obligations hereunder.

13. Miscellaneous

- A. Itel Rail Corporation hereby gives its written consent for Sublessor and Sublessee to enter into this Sublease for Cars bearing the reporting marks listed on Equipment Schedules No. 1, 2, 3, and 4, attached hereto.

- B. This Sublease and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Sublessee may not without the prior written consent of Sublessor, assign this Sublease or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

- C. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Sublessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Sublease and Schedules hereto and to confirm the subordination provisions contained in Section 7 of this Sublease.

- D. It is expressly understood and agreed by the parties hereto that this Sublease constitutes a lease of the Cars only and no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Sublessee any right, title or interest in the Cars, except as a Sublessee only.

- ~~E. The parties agree that any dispute except an event of default as outlined in Section 8.A. herein, arising under the terms of this Agreement shall be resolved by arbitration in San Francisco, California following the procedures of the American Arbitration Association and each shall be deemed bound by the award. Each party consents to the entry of judgment by any court having jurisdiction in the matter in accordance with the decision of the arbitrator(s).~~

DWG
11/27/94

- F. No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power or remedy available to such party nor shall any waiver or indulgence by either party or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- G. This Sublease shall be governed by and construed according to the laws of the State of California.
- H. Sublessee shall notify Sublessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- I. Sublessee shall also notify Sublessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Sublessee shall furnish to Sublessor promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.
- J. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth herein.
- K. The obligations and liabilities of Sublessor and Sublessee hereunder shall survive the expiration or early termination of this Sublease.
- L. This Sublease represents the entire Sublease. This Sublease shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the date first above written.

MINNESOTA, DAKOTA AND WESTERN
RAILROAD COMPANY

By: _____

Title: _____

Date: _____

BURLINGTON NORTHERN
RAILROAD COMPANY

By: James W. Eastin Jr.

Title: Sr. Vice President
Marketing & Sales

Date: 11/13/84

ACKNOWLEDGMENT AND CONSENT:

Itel Rail Corporation

Date: _____

STATE OF _____)
COUNTY OF _____) ss:

On this _____ day of _____, 1984, before me personally appeared _____, to me personally known, who being by me duly sworn says that such person is _____ of Minnesota, Dakota and Western Railroad Company, that the foregoing Sublease 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.

Notary Public

STATE OF TEXAS)
COUNTY OF TARRANT) ss:

On this 13th day of November, 1984, before me personally appeared Darius W. Gaskins, Jr., to me personally known, who being by me duly sworn says that such person is Sr. VP Marketing & Sales of Burlington Northern Railroad Company, that the foregoing Sublease 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.



Notary Public

L-0723

EQUIPMENT SCHEDULE NO. 1

Minnesota, Dakota and Western Railroad Company hereby subleases the following Cars to Burlington Northern Railroad Company subject to the terms and conditions of that certain Sublease dated as of July 3, 1984.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XP	100-Ton, Plate F Boxcar, 15" end- of-car-cushioning	BN 377000- 377049	50'6"	9'6"	12'10"	2-8' Sliding	50

For each Car listed on Equipment Schedule No. 1:

"Base Hourly Rate" is defined as \$.83 per hour and "Base Mileage Rate" is defined as \$.076 per mile as listed in Hourly and Mileage Car Hire Rate Table in the April 1984 edition of the ICC Official Railway Equipment Register and shall fluctuate as specified therein and shall be increased as set forth below.

Commencing July 1 of each year during the Initial Term or any Extended Term, the Base Hourly Rate and the Base Mileage Rate shall be increased by an amount equal to one half (1/2) of the increase in the index for Material Prices, Wage Rates and Supplements Combined (excluding fuel) listed in the AAR Wage and Price Index for such year.

MINNESOTA, DAKOTA AND WESTERN
RAILROAD COMPANY

BY: _____

TITLE: _____

DATE: _____

BURLINGTON NORTHERN
RAILROAD COMPANY

BY: Doane W. Gaskin Jr.

Sr. Vice President

TITLE: _____

DATE: 11/13/84

ACKNOWLEDGMENT AND CONSENT:

Itel Rail Corporation

Date: _____

L-0723

EQUIPMENT SCHEDULE NO. 2

Minnesota, Dakota and Western Railroad Company hereby subleases the following Cars to Burlington Northern Railroad Company subject to the terms and conditions of that certain Sublease dated as of July 3, 1984.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XP	100-Ton, Plate F Boxcar, 15" end- of-car-cushioning	BN 377050- 377064	50'6"	9'6"	12'10"	2-8' Sliding	15

For each Car listed on Equipment Schedule No. 2:

"Base Hourly Rate" is defined as \$.81 per hour and "Base Mileage Rate" is defined as \$.076 per mile as listed in Hourly and Mileage Car Hire Rate Table in the April 1984 edition of the ICC Official Railway Equipment Register and shall fluctuate as specified therein and shall be increased as set forth below.

Commencing July 1 of each year during the Initial Term or any Extended Term, the Base Hourly Rate and the Base Mileage Rate shall be increased by an amount equal to one half (1/2) of the increase in the index for Material Prices, Wage Rates and Supplements Combined (excluding fuel) listed in the AAR Wage and Price Index for such year.

MINNESOTA, DAKOTA AND WESTERN
RAILROAD COMPANY

BY: _____

TITLE: _____

DATE: _____

ACKNOWLEDGMENT AND CONSENT:

Itel Rail Corporation

Date: _____

BURLINGTON NORTHERN
RAILROAD COMPANY

BY: Dominic W. Gartin Jr.

TITLE: Sr. Vice President

DATE: 11/13/84

L-0723

EQUIPMENT SCHEDULE NO. 3

Minnesota, Dakota and Western Railroad Company hereby subleases the following Cars to Burlington Northern Railroad Company subject to the terms and conditions of that certain Sublease dated as of July 3, 1984.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	100-Ton, Plate F Boxcar, 15" end- of-car-cushioning	BN 377065- 377123	50'6"	9'6"	12'10"	2-8' Sliding	59

For each Car listed on Equipment Schedule No. 3:

"Base Hourly Rate" is defined as \$.84 per hour and "Base Mileage Rate" is defined as \$.067 per mile as listed in Hourly and Mileage Car Hire Rate Table in the April 1984 edition of the ICC Official Railway Equipment Register and shall fluctuate as specified therein and shall be increased as set forth below.

Commencing July 1 of each year during the Initial Term or any Extended Term, the Base Hourly Rate and the Base Mileage Rate shall be increased by an amount equal to one half (1/2) of the increase in the index for Material Prices, Wage Rates and Supplements Combined (excluding fuel) listed in the AAR Wage and Price Index for such year.

MINNESOTA, DAKOTA AND WESTERN
RAILROAD COMPANY

BY: _____

TITLE: _____

DATE: _____

BURLINGTON NORTHERN
RAILROAD COMPANY

BY: *Dorin W. Goshing*

TITLE: Sr. Vice President
Marketing & Sales

DATE: 11/13/84

ACKNOWLEDGMENT AND CONSENT:

Ite! Rail Corporation

Date: _____

L-0723

EQUIPMENT SCHEDULE NO. 4

Minnesota, Dakota and Western Railroad Company hereby subleases the following Cars to Burlington Northern Railroad Company subject to the terms and conditions of that certain Sublease dated as of July 3, 1984.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	100-Ton, Plate F Boxcar, 15" end- of-car-cushioning	BN 377124- 377222	50'6"	9'6"	12'10"	2-8' Plug	99

For each Car listed on Equipment Schedule No. 4:

"Base Hourly Rate" is defined as \$.91 per hour and "Base Mileage Rate" is defined as \$.069 per mile as listed in Hourly and Mileage Car Hire Rate Table in the April 1984 edition of the ICC Official Railway Equipment Register and shall fluctuate as specified therein and shall be increased as set forth below.

Commencing July 1 of each year during the Initial Term or any Extended Term, the Base Hourly Rate and the Base Mileage Rate shall be increased by an amount equal to one half (1/2) of the increase in the index for Material Prices, Wage Rates and Supplements Combined (excluding fuel) listed in the AAR Wage and Price Index for such year.

MINNESOTA, DAKOTA AND WESTERN
RAILROAD COMPANY

BY: _____

TITLE: _____

DATE: _____

BURLINGTON NORTHERN
RAILROAD COMPANY

BY: *Dorin W. Gaskin*

TITLE: Sr. Vice President
Marketing & Sales

DATE: 11/13/84

ACKNOWLEDGMENT AND CONSENT:

Itel Rail Corporation

Date: _____

