

18 1987
AUG 31 1987 - 3 25 PM

ITEL

INTERSTATE COMMERCE COMMISSION
IteI Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

August 6, 1987

[Faint, illegible text]

No. 7-230A021

Date AUG 18 1987

Fee \$ 40.00

Hon. Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

ICC Washington, D. C.

Re: Assignment and Assumption of Leases, dated as of April 3, 1987, between Merlease Leasing Corp. and IteI Rail Corporation

Dear Ms. McGee:

On behalf of IteI Rail Corporation, the above instrument, in five (5) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. §11303(a), along with a check in the amount of \$40 covering the recordation fee.

Please record this Assignment and Assumption of Leases under a new recordation number. In addition, please cross-index this instrument to the following three leases:

- Lease Agreement dated as of June 4, 1982, between Rex Railways, Inc., as lessor, and Illinois Central Gulf Railroad, as lessee, which was filed with the ICC on July 7, 1982, and given Recordation No. 13693.
- Lease Agreement dated as of August 4, 1982, between Rex Railways, Inc., as lessor, and Missouri Pacific Railroad Company, as lessee, which was filed with the ICC on August 23, 1982, and given Recordation No. 13772.
- Lease Agreement dated as of May 24, 1978, between Rex Railways, Inc., as lessor, and Vermont Railways, as lessee, which was filed with the ICC on November 6, 1978, and given Recordation No. 9819.

The parties to the aforementioned instrument are listed below:

Merlease Leasing Corp. (Assignor)
Merrill Lynch World Headquarters
World Financial Center
North Tower, 25th Floor
New York, New York 10281-1201

IteI Rail Corporation (Assignee) /
55 Francisco Street
San Francisco, California 94133

ICC OFFICE OF
THE SECRETARY
AUG 18 3 24 PM '87
MOTOR OPERATING UNIT

Hon. Noreta R. McGee

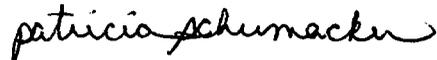
August 6, 1987

Page Two

This Assignment and Assumption of Leases provides for the assignment by Assignor to Assignee of all of Assignor's interest in the leases set forth in Schedule 1 attached thereto.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the fee receipt and acknowledgment letter.

Very truly yours,



Patricia Schumacker
Legal Department

:ps
Enclosures

cc: Ginny Hanger

1 5294

RECORDATION NO. Filed 1426

AUG 31 1987 - 3 25 PM

ASSIGNMENT OF LEASES

INTERSTATE COMMERCE COMMISSION

Assignment and Assumption of Leases, dated as of April 3, 1987, between Merlease Leasing Corp. ("Assignor") and IteL Rail Corporation ("Assignee").

WHEREAS, Assignor and Assignee have entered into an Agreement of Sale dated as of March 25, 1987 (the "Agreement of Sale") providing for the sale by Assignor to Assignee of certain XM general purpose unequipped boxcars specifically identified in the Agreement of Sale (the "Boxcars"); and

WHEREAS, the Boxcars are, and following sale by Assignor to Assignee will be, subject to the leases identified in Schedule 1 hereto; and

WHEREAS, the Agreement of Sale also provides for the assignment by Assignor to Assignee of all of Assignor's right, title and interest in and to such leases, as and to the extent such leases relate to the Boxcars.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee, intending to be legally bound, hereby agree as follows:

1. Assignor hereby assigns, transfers and sets over to Assignee all right, title, interest, powers and privileges of Assignor as lessor of the Boxcars under the leases specifically identified in Schedule 1 hereto (the "Leases"), as and to the extent that such Leases relate to the Boxcars, and in and to any and all amounts that may be or become owing to the lessor under the Leases with respect to ownership, operation, leasing, use or maintenance of the Boxcars from and after the Closing referred to in the Agreement of Sale (the "Closing").

2. Assignor hereby represents and warranties to Assignee as follows:

Set forth on Schedule 1 hereto is a description of each Lease (which term includes all amendments, riders, equipment schedules and side letters thereto relating to the Boxcars, all of which are listed on Schedule 1 hereto). None of the Boxcars is subject to any lease other than one of the Leases. Assignor does not possess any original counterparts of any of the Leases. Assignor has furnished Assignee a true and complete copy of each Lease (as and to the extent such Lease relates to the Boxcars). The number and reporting marks of the Boxcars subject to each Lease are set forth on Schedule 1 hereto. The expiration date of each Lease as such Lease relates to the Boxcars is not later than the date set forth on Schedule 1 hereto. As and to the extent the Leases relate to the Boxcars, the Leases constitute the legal, valid and binding obligations of Assignor, as lessor, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally or by equitable limitations on the availability of remedies. Assignor is not in default under any Lease and is not aware of any default under any Lease or of any event which with the giving of notice or the

passage of time would constitute a default or event of default under any of the Leases and Assignor has not given or received from the lessee under any Lease any default notice.

3. Assignee shall indemnify Assignor against, and hold harmless Assignor from, any and all claims that may be asserted against Assignor, and any and all liabilities, losses, damages, costs and expenses that Assignor may suffer or incur caused by, resulting from or arising out of the Leases, at any time from and after the Closing.

Assignor shall indemnify, defend and hold harmless Assignee against any and all claims, liabilities, losses, damages, costs and expenses (including attorneys fees) caused by, resulting from, or arising out of (i) the Leases, prior to the Closing; and (ii) the untruth, inaccuracy or breach of any representations, warranties or agreements of the Assignor contained herein. The obligations of Assignor under this Section shall survive the Closing.

4. Assignor shall, at any time and from time to time after the Closing, at the request and expense of Assignee (except for attorneys fees of Assignor), do, execute, acknowledge or deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, assignments, conveyances or assurances as may be reasonably requested by Assignee, including appropriate UMLER filings, for the better transferring, assigning, conveying, granting, assuring, vesting and confirming to the Assignee, of good, valid and marketable title, interest, and right to the Leases as they relate to the Boxcars.

5. Assignor shall, if requested by Assignee, sign a notice or notices to the lessees under each Lease and to Rex Railways, Inc., to be drafted by Assignee (i) notifying such lessees and Rex Railways, Inc. that Assignor has assigned its interest in the Leases to Assignee (as the Leases relate to the Boxcars), (ii) directing such lessees to forward records and revenues pertaining to the Boxcars to Assignee and to make appropriate filings and (iii) containing such other similar matters as Assignee shall reasonably request.

6. Assignee hereby assumes and accepts, and agrees to be responsible for, from and after the Closing, all of the obligations, duties and liabilities of the lessor of the Boxcars under the Leases and agrees that it shall, from and after the Closing, be treated as the lessor of the Boxcars for all purposes under the Leases.

7. Assignor and Assignee agree that, as between themselves, Assignor shall, from and after the Closing, be released from and relieved of the obligations, duties and liabilities of the lessor of the Boxcars under the Leases; provided, however, that Assignor shall remain responsible for such obligations, duties and liabilities attributable to or arising during, and shall retain all rights accrued or arising during, the period prior to the Closing.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption of Leases on April 3, 1987.

MERLEASE LEASING CORP.

By Steven L. Benson

Attest George F. Baringer

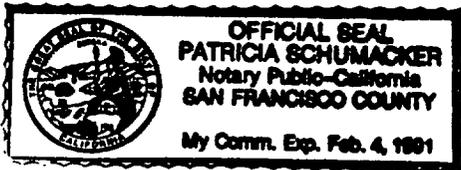
ITEL RAIL CORPORATION

By Robert Kellum

Attest Paul L. Sawday
Secretary

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

On this 3rd day of April, 1987, before me personally appeared Robert C. Kiehnle, to me personally known, who being by me duly sworn says that such person is Vice President-Finance of ITEL Rail Corporation, that the foregoing Assignment of Leases 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.



Patricia Schumacker
Notary Public

STATE OF California)
) ss:
COUNTY OF San Francisco)

On this 3rd day of April, 1987, before me personally appeared Steven L. Berson, to me personally known, who being by me duly sworn says that such person is attorney-in-fact of Merlease Leasing Corp., that the foregoing Assignment of Leases 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.



Erlinda G. Tayengco
Notary Public

SCHEDULE 2①

CA [signature]

1. Lease Agreement dated as of June 4, 1982 ("ICG Lease") between Rex Railways, Inc. ("Rex"), as lessor, and Illinois Central Gulf Railroad ("ICG"), as lessee.
 - a. Amendment dated as of August 13, 1982.
 - b. Amendment dated as of August 10, 1983.
 - c. Amendment dated as of September 6, 1983.
 - d. Amendment dated as of September 6, 1985.
 - d. Amendment dated as of February 13, 1986.
 - e. Schedule executed on June 27, 1986 showing ownership of boxcars.
 - f. Schedule executed on July 2, 1986 showing ownership of boxcars.
 - g. Schedule executed on July 28, 1986 showing ownership of boxcars.
 - h. Schedule executed on August 14, 1986 showing ownership of boxcars.
 - i. Amendment dated as of November 5, 1986 between Merlease Leasing Corp., successor in interest to Rex with respect to 282 boxcars, and ICG.

Boxcars subject to ICG Lease: 287 boxcars identified by reporting mark on pages 4 through 10 of Schedule 1.

Expiration date: ^{not later than} April 15, 1988 for ICG 531300 - 531996 and ^{not later than} August 15, 1988 for ICG 532000 - 532170 (N.S.)

2. Lease Agreement dated as of August 4, 1982 ("MP Lease") between Rex, as lessor, and Missouri Pacific Railroad Company, as lessee.
 - a. Amendment dated as of March 13, 1984.
 - b. Schedule executed on June 27, 1986 showing ownership of boxcars.
 - c. Schedule executed on July 2, 1986 showing ownership of boxcars.
 - d. Schedule executed on July 29, 1986 showing ownership of boxcars.
 - e. Schedule executed on August 14, 1986 showing ownership of boxcars.
 - f. Schedule executed on November 19, 1986 showing ownership of boxcars.

Boxcars subject to MP Lease: 125 boxcars identified by reporting mark on pages 1 through 3 of Schedule No. 1.

Expiration date: ^{not later than} March 15, 1988.

CA [signature]

3. Lease Agreement dated as of May 24, 1978 ("VTR Lease") between Rex, as lessor, and Vermont Railways, Inc., as lessee.
 - a. Amendment dated as of June 5, 1978.
 - b. Amendment dated as of July 6, 1978.
 - c. Amendment dated as of July 7, 1978.
 - d. Schedule A executed on September 6, 1978 showing ownership of boxcars.
 - e. Schedule B executed on September 18, 1978 showing ownership of boxcars.
 - f. Schedule C executed on September 21, 1978 showing ownership of boxcars.
 - g. Schedule D executed on October 20, 1978 showing ownership of boxcars.
 - h. Letter Agreement dated as of July 27, 1983.
 - i. Letter Agreement as of January 23, 1984.
 - j. Letter Agreement as of May 7, 1984.
 - k. Letter Agreement dated as of June 27, 1985.

Boxcars subject to VTR Lease: 61 boxcars identified by reporting mark on pages 11 through 12 of Schedule No. 1.

Expiration, date: ^{not later than} December 15, 1988.

CA *ADW*

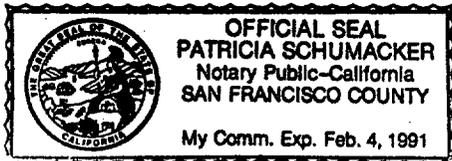
CERTIFICATION OF TRUE COPY

On August 4, 1987, I, Ginny Hanger, examined the original copy ASSIGNMENT AND ASSUMPTION OF LEASES, and I hereby certify that I have compared the attached duplicate copy with the original, and that it is a complete, true and correct copy of the original in all respects, including the dates, signatures and acknowledgements thereof.

Ginny Hanger

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

On August 4, 1987, before the undersigned, a Notary Public for the State of California, personally appeared Ginny Hanger, known to me to be the person whose name is subscribed to the above instrument, acknowledged that she executed the same.



Patricia Schumacker
Notary Public