

3-055A143

RECORDATION NO. 13818-A Filed 1425

NOV 24 1983

**ITEL**

FEB 24 1983 - 1 00 PM

Rail Division

Date

Fee \$ 10.00

INTERSTATE COMMERCE COMMISSION

Two Embarcadero Center  
San Francisco, California 94111  
(415) 955-9090

December 22, 1982

Ms. Agatha Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclosed herewith on behalf of Itel Corporation, Rail Division ("Itel") for filing and recordation under the Sublease Agreement dated July 30, 1982 between the Texas Mexican Railway Company, which was filed on October 26, 1982 at 12:40 P.M. and given recordation No. 13818, four counterparts of the following document:

13818-A

Assignment of Sublease and Agreement dated as of July 30, 1982 by and between Itel and First Security Bank of Utah, N.A. as Trustee (the "Assignment").

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

1. First Security Bank of Utah, N.A.  
Corporate Trust Division  
79 South Main Street  
Salt Lake City, Utah 84125
2. Itel Corporation, Rail Division  
Two Embarcadero Center, 24th Floor  
San Francisco, California 94111

RECEIVED  
FEB 24 12 55 PM '83  
OPERATION BR.

The equipment covered by the Assignment is one hundred eighty six (186) flatcars (AAR mechanical designation FC, 89'4" in length) bearing reporting marks SFLC 901295 through and including SFLC 901480.

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

Ms. Agatha Mergenovich, Secretary  
December 22, 1982  
Page Two

Please stamp all counterparts of the enclosed Assignment 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 of the document be returned to the bearer of this letter.

Sincerely,



Patricia Salas Pineda  
Counsel

PSP:dmm  
Enclosures

cc: Michael Walsh, Esq.  
Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10020

Robert S. Clark, Esq.  
Senior Trust Officer  
First Security Bank of Utah, N.A.  
Corporate Trust Division  
79 South Main Street  
Salt Lake City, Utah 84125

L-0344  
10/26/82

RECORDATION NO. 13818-A  
FFB 24 1983-1 00 PMA  
Filed 1426  
INTERSTATE COMMERCE COMMISSION

**ASSIGNMENT OF SUBLEASE AND AGREEMENT**, dated as of and effective as of June 30, 1982 (hereinafter called this "Assignment"), by and between **ITEL CORPORATION**, a Delaware corporation (together with its successors and assigns, being hereinafter called "Itel") and **FIRST SECURITY BANK OF UTAH, N.A.**, as Trustee, a national banking association, incorporated and existing under the laws of the United States of America (hereinafter called the "Trustee").

**WHEREAS**, Itel and the Trustee have entered into an Equipment Trust Agreement, dated as of November 1, 1978 (such Equipment Trust Agreement, together with any amendments or supplements thereto, being hereinafter called the "Agreement"); and

**WHEREAS**, Itel and The Texas Mexican Railway Company (hereinafter called "TM") entered into a lease of Equipment (as defined in the Agreement), dated as of March 15, 1978 (such lease, together with any amendments or supplements thereto, being hereinafter called the "TM Lease") pursuant to Equipment Schedule No. 3 of which, executed by Itel on December 13, 1978, Itel leased to TM one hundred fifty (150) of the units of the Trust Equipment (as defined in the Agreement), bearing road numbers TM 400000-400149; and pursuant to Equipment Schedule No. 4 of which, executed by Itel on December 18, 1978, Itel leased to TM one hundred fifty (150) of the units of the Trust Equipment, bearing road numbers TM 400150-400299; and

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

**WHEREAS**, Itel assigned to the Trustee, as collateral security for the performance of Itel's obligations under the Agreement, all of Itel's interest under the TM Lease to the extent the TM Lease relates to Trust Equipment, by means of four documents entitled Assignment of Lease and Agreement, one dated November 15, 1978, two dated December 28, 1978, and one dated March 28, 1979; and

**WHEREAS**, pursuant to Amendment 4 to the TM Lease dated as of August 4, 1982, and Amendment 5 to the TM Lease dated as of August 24, 1982 (the "Amendments"), Itel gave consent to TM to enter into a sublease agreement with the Atchison, Topeka and Santa Fe Railway Company for one hundred eighty-six units of Trust Equipment from within the series TM 40000-TM 400224 (the "Flatcars"); and

**WHEREAS**, pursuant to the Amendments, TM and the Atchison, Topeka and Santa Fe Railway Company (hereinafter called the "Sublessee") have entered into a sublease, dated as of July 30, 1982 (such sublease, together with any amendments or supplements thereto, being hereinafter called the "Sublease") pursuant to which TM subleased the Flatcars to the Sublessee, and the Sublessee changed the reporting marks on the Flatcars to those SFLC reporting marks set forth in Annex I attached hereto; and

**WHEREAS**, the Sublease may also cover the subleasing to the Sublessee of other equipment not included as part of the Trust Equipment; and

**WHEREAS**, TM has assigned to Itel, as collateral security for the performance of TM under the TM Lease, all of its interest in the Sublease as and only to the extent that the Sublease relates to the Flatcars, by means of a document entitled "Assignment of Sublease and Agreement" of even date herewith; and

**WHEREAS**, in order to continue to provide security for the obligations of Itel under the Agreement, Itel agrees to assign for security purposes its rights in, to and under the Sublease to the Trustee as and only to the extent that the Sublease relates to the Flatcars.

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

- I. Itel hereby assigns, transfers and sets over unto the Trustee, as collateral security for the payment and performance of Itel's obligations under the Agreement, all of Itel's right, title and interest, powers, privileges and other benefits under the Sublease as and only to the extent that the Sublease relates to the Flatcars including, without limitation, all rights to receive and collect all rentals, profits and other sums payable to or receivable by Itel from the Sublessee under or pursuant to the provisions of the Sublease to the extent that the same are payable in respect of the Flatcars, whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such monies being hereinafter called the Payments); **PROVIDED, HOWEVER**, that until an Event of Default under the Agreement, or any event which, with notice or lapse of time or both, could constitute such an Event of Default, shall occur, it is understood that Itel shall be entitled to collect and receive all such 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 Sublease, and to apply all Payments to which Itel is entitled to the payment of any and all of Itel's obligations under the Agreement and to retain the balance, if any. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, Itel hereby irrevocably authorizes and empowers the Trustee in its own name, or in the name of its nominee, or in the name of Itel or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which Itel is or may become entitled under the Sublease, and to enforce compliance by the Sublessee with all the terms and provisions thereof. Whenever the Sublease covers other equipment not included as part of the Trust Equipment and the amount of any payment due to Itel under such Sublease 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 subleased 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 the Flatcars subleased under such Sublease. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of the Flatcars and the denominator of which shall be the aggregate number of units of equipment (including the Flatcars) at the time leased under such Sublease.

2. This Assignment is executed only as security for the obligations of Itel under the 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 under the Sublease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of Itel to the Sublessee shall be and remain enforceable by the Sublessee, its successor and assigns, against, and only against Itel or persons other than the Trustee.
3. To protect the security afforded by this Assignment, Itel agrees as follows:
  - (a) Itel will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Sublease provides is to be performed by Itel.
  - (b) At Itel's sole cost and expense, Itel 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 under the Sublease.
  - (c) Should Itel fail to make any payment or to do any act which this Assignment requires Itel to make or do, then the Trustee, but without obligation so to do, after first making written demand upon Itel and affording Itel a reasonable period of time within which to make such payment or do such act, but without releasing Itel from any obligation hereunder, may 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 contained in the Sublease; and in exercising any such powers, the Trustee may pay necessary costs and expense, employ counsel and incur and pay reasonable attorneys' fees, and Itel will reimburse the Trustee for such costs, expenses and fees.
4. Upon the full discharge and satisfaction of all of Itel's obligations under the 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 Sublease shall revert to Itel.
5. Itel will, from time to time, do and perform any other act and will execute, acknowledge, 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 Agreement, the Trustee may assign all or any of the rights assigned to it hereby or arising under the Sublease, 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 and the Sublessee of any such assignment.

7. This Assignment shall be governed by the Laws of the State of Utah, but the parties shall be entitled to all rights conferred by the laws of the United States permitting filing with the Interstate Commerce Commission.

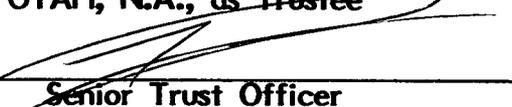
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date first above written.

ITEL CORPORATION

By:   
President, Rail Division

Date: 11/18/82

THE FIRST SECURITY BANK  
OF UTAH, N.A., as Trustee

By:   
Senior Trust Officer

Date: 2/16/83

ROBERT S. CLARK

VICE PRESIDENT AND MANAGER  
CORPORATE TRUST DEPARTMENT

L-0345

ANNEX I

<u>Units of Trust Equipment</u>	<u>Previous TM Reporting Marks</u>	<u>Current SFLC Reporting Marks</u>	<u>Trust Equipment Description</u>
186	TM 400000	SFLC 901295	70-ton, 89'4" flatcars for Trailer and Container Service, Mechanical designation FC
	001	296	
	002	297	
	003	298	
	004	299	
	005	300	
	006	301	
	007	302	
	008	303	
	009	304	
	010	305	
	011	306	
	012	307	
	013	308	
	014	309	
	015	310	
	016	311	
	017	312	
	018	313	
	019	314	
	020	315	
	021	316	
	022	317	
	023	318	
	024	319	
	025	320	
	026	321	
	027	322	
	028	323	
	029	324	
	030	325	
	031	326	
	032	327	
	033	328	
	034	329	
	035	330	
	036	331	
	037	332	
	038	333	
	039	334	
	040	335	
	041	336	
	042	337	
	043	338	
	044	339	
	045	340	
	046	341	
	047	342	
	048	343	
	049	344	
	050	345	