

RECORDATION NO. 13555

FFB 18 1982 -3 20 PM

ITEL INTERSTATE COMMERCE COMMISSION

Rail Division

February 9, 1982

Two Embarcadero Center
San Francisco, California 94111
(415) 955-9090
Telex 34234

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

No. 2-019A012

Date FEB 18 1982

Fee \$ 50.00

Dear Ms. Mergenovich:

ICC Washington, D. C.

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 Corporation, Rail Division ("Itel"), for filing and recordation, four counterparts of the following document:

Lease Agreement dated as of October 15, 1981
between Itel and Burlington Northern Railroad
Company (the "Lease")

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

1. Itel Corporation, Rail Division *lessor*
Two Embarcadero Center
San Francisco, California 94111

2. Burlington Northern Railroad Company *lessee*
176 East Fifth Street
St. Paul, Minnesota 55101

The equipment covered by the Lease is two (2) IMPACK articulated railcars (A.A.R. mechanical designation FC 4653½" in length), bearing the reporting marks SSIX 100 and SSIX 101.

Also enclosed is a check for \$50.00 for the required recordation fee.

Please stamp all counterparts of the enclosed document 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 mailed via certified mail to Itel Corporation, Two Embarcadero Center, 24th Floor, San Francisco, California 94111, Attention: Patricia Salas Pineda, Esq.

Sincerely,



Patricia Salas Pineda
Counsel

PSP:en
Enclosures

cc: Doug Drummond
Itel Corporation

Cammie Marsden
Itel Corporation

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

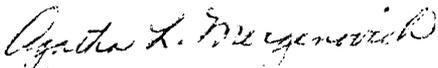
February 18, 1982

Patricia Salas Pineda
IteI-Rail Division
Two Embarcadero Center
San Francisco, California 94111

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/18/82 at 3:20PM, and assigned re-
recording number(s). **13555, & 13555-A**

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

FFB 18 1982 -3 20 PM

INTERSTATE COMMERCE COMMISSION

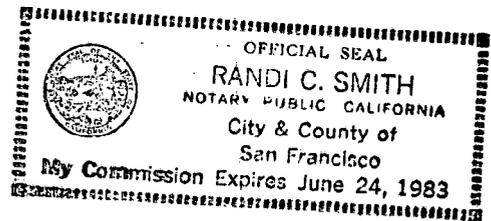
I, Douglas Drummond, hereby certify that the attached copy is an original counterpart.

Douglas Drummond
Douglas Drummond

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

On February 10, 1982, before the undersigned, a Notary Public for the State of California, personally appeared Douglas Drummond, known to me to be the person whose name is subscribed to the within instrument, acknowledged that he executed the same.

Randi C. Smith
Notary Public



L-0240
10/19/81

13555
RECORDATION NO. _____ Filed 10/25

FFB 18 1982 -3 20 PM

LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT ("Lease"), made as of this 15th day of October, 1981, between ITEL CORPORATION, RAIL DIVISION, a Delaware corporation, Two Embarcadero Center, San Francisco, California, 94111 as the lessor ("Itel Rail") and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, 176 East Fifth Street, St. Paul, Minnesota, 55101, as the lessee ("Lessee").

In consideration of the agreements of Lessee hereinafter contained, Itel Rail hereby leases to Lessee two (2) IMPACK railroad cars as described in Exhibit "A" attached hereto (hereinafter called collectively the "Equipment" and individually "Item of Equipment") upon the following terms and conditions:

I. Delivery of Equipment

- A. Itel Rail or its agent and Lessee shall inspect each Item of Equipment at the manufacturer's facility at Portland, Oregon. After determining that such Item of Equipment is in a condition reasonably satisfactory to Lessee, Lessee shall concurrently therewith furnish to Itel Rail a Certificate of Acceptance (in the form of Exhibit B attached hereto) stating acceptance of the Equipment by Lessee. Itel Rail shall thereafter deliver each accepted Item of Equipment to the Lessee's track as soon as possible. Upon interchange of each Item of Equipment to Lessee's track, such Item of Equipment shall be deemed delivered. Such interchange date shall hereinafter be called "Delivery Date".
- B. Itel Rail shall during the term of this lease prepare and file all documents required by regulatory agencies in connection with registration, maintenance and record-keeping for the Equipment. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Lease.

Rental

As consideration for use of the Equipment, Lessee shall pay Itel Rail the "Daily Rate" as hereinafter defined in Schedule No. 1 attached hereto.

3. Term of Lease

The term of this Lease (the "Lease Term") with respect to each Item of Equipment shall begin on the date that Lessee has accepted delivery of such Item of Equipment pursuant to the provisions of Section I.A. and shall expire six (6) months from the Delivery Date, unless otherwise provided herein.

4. Identification Marks

Upon or before the delivery to Lessee, the Equipment shall, at Itel Rail's expense, be marked with such markings as may be required by Itel Rail (including Itel Rail's "IMPACK" designation). If during the Lease Term any such markings shall

W.H.
10/21/81
J. [unclear]
10/19/81
10/24/81
 IC res. Transp. A
 President
 Accounting
DKK

Approved as to form
By [Signature]
Attorney *10/27/81*

be removed, defaced or destroyed, Lessee shall immediately cause such markings to be restored or replaced at Lessee's expense.

5. Assignment by Itel Rail

Itel Rail may assign, sell or encumber all or any part of this Lease and/or the Equipment. The rights of any such assignee shall not be subject to any defense, counter claim or set-off which Lessee may have against Itel Rail, provided that such assignment shall be subject to Lessee's right to possess and use the Equipment so long as Lessee is not in default hereunder and that such assignment shall not release any of Itel Rail's obligations hereunder or claims which Lessee has against Itel Rail.

6. Maintenance and Repair

As established by the Association of American Railroad Interchange Rules ("Interchange Rules"), Lessee, at its expense, shall maintain and repair the Equipment in accordance with its obligations under "Handling Line Responsibility" and Itel Rail shall perform or cause to be performed at Itel Rail's expense, the maintenance of and repairs to the Equipment in accordance with its obligations under "Owner's Responsibility", except that all repairs (including labor and material) due to product defects in the Equipment shall be paid by Itel Rail. Lessee may, at Itel Rail's expense, make any "Owner's Responsibility" repairs to any Item of Equipment not to exceed \$2,000 per occurrence without Itel Rail's prior written consent.

7. Loss of Equipment

If any Item of Equipment shall be lost, destroyed, or damaged in any manner which occurs, is attributable to, or arises from the placement, use, or movement of the Equipment by Lessee under this Lease, Lessee shall promptly deliver to Itel Rail written notice thereof, and shall within thirty (30) days after such loss, destruction, or damage (a) in the case of loss or total destruction, pay to Itel Rail a sum as determined by the depreciated value schedules set forth in the Interchange Rules, or (b) in the case of partial destruction, restore such Item of Equipment to good order and repair, ordinary wear and tear excepted. Payment by Lessee shall not be required for loss, destruction, or damage of the Equipment to the extent such loss, destruction, or damage was caused by a product defect or malfunction due to a manufacturer's or design defect in the Equipment. Upon expiration of the Lease Term, the Equipment will not be operated by Lessee except for redelivery or as otherwise requested by Itel Rail. Immediately upon the expiration of this Lease, Itel Rail shall be subject to all liabilities under this paragraph except to the extent of those liabilities incurred by Lessee during the Lease Term.

8. Taxes

Lessee shall timely pay, or promptly reimburse Itel Rail should payment be made by it, for all Federal, state or local property, sales, use or other taxes, duties, impositions, assessments or charges (collectively, the "Impositions") (excluding any Federal, state or local income taxes) levied or imposed upon, measured by or exacted because of the Equipment, Itel Rail's ownership thereof, or the use,

operations or leasing thereof or earnings arising therefrom, and will, at all times, keep the Equipment and each part thereof, free and clear of all taxes, assessments, license fees, or other charges which might in any way affect or impair the title of Itel Rail to, or its interest in, the Equipment, or result of a lien thereon. Lessee further agrees that it will promptly pay or reimburse Itel Rail for any interest or penalties payable by Itel Rail resulting from any delay in paying any of the Impositions which it has herein agreed to pay or reimburse. If, during the Lease Term, Lessee becomes liable for the payment or reimbursement of any charges, interest, penalties or attorney fees pursuant to this Section 8, such liability shall continue, notwithstanding the termination of this Lease, until all charges, interest or penalties are paid or reimbursed by Lessee. Notwithstanding the foregoing, Lessee shall not be required to pay any Imposition, or any interest or penalty thereon as long as it shall be in good faith or by appropriate legal or administrative proceedings contest the validity or amount thereof nor shall Lessee be required to pay any Imposition, or any interest or penalty thereon which accrued before or accrues after the Equipment subject to this Lease is on the line of Lessee.

9. Return of Equipment

Subject to Sections 6 and 7 hereof, upon the expiration of this Lease, Lessee shall deliver, at its expense and at Itel Rail's direction, the Equipment to Itel Rail in good order and repair, ordinary wear and tear excepted at one of the following points: (a) point of original delivery to Lessee; (b) East Winona, Minnesota; (c) Chicago, Illinois; (d) St. Louis, Missouri or (e) at such point that may be mutually agreed upon. For the purpose of delivering the Equipment to Itel Rail, Lessee shall, upon expiration of this Lease, permit Itel Rail to store the Equipment upon tracks of Lessee free of charge for a period of seven (7) days at the sole risk of Itel Rail irrespective of Lessee's negligence.

10. Indemnification and Insurance

A. Itel Rail shall not, in any event, be liable for physical injuries (including death) to persons (including, but not limited to, officers, employees and agent of Lessee and of its contractors and suppliers) or damage to property arising out of the use or operation of the Equipment or unauthorized modifications or repairs to the Equipment by Lessee or the performance by Lessee of any work relating to the Equipment during the period that Lessee has possession and control of the Equipment except to the extent such injuries or damages are caused by a product defect or malfunction due to a manufacturer's or design defect in the Equipment or negligence on the part of Itel Rail. Lessee shall assume the defense of and indemnify and save harmless Itel Rail, its officers, agents and employees, both personally and officially, from and against, and pay to Itel, its officers, agents and employees the full amount of, any and all losses, liabilities, damages, cost and/or expense arising out of, under, or in connection with any and all claims based upon physical injuries (including death) to persons (including, but not limited to, officers, employees and agents of Lessee and of its contractors and suppliers) or damage to property arising out of the use or operation of the Equipment or unauthorized modifications

by Lessee or the performance by Lessee of any work relating to the Equipment during the period that Lessee has possession and control of the Equipment except to the extent such injuries or damages are caused by a product defect or malfunction due to a manufacturer's or design defect in the Equipment or negligence on the part of Itel Rail and except as modified by Section 9. Lessee shall as soon as possible notify Itel Rail of any accident connected with the malfunctioning or operation of the Equipment, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident.

- B.** Lessee shall, at its sole cost and expense, maintain at all times during the term of the Lease and during any return and storage period, except as modified by Section 9, physical damage and public liability insurance covering the Equipment in the name of Itel Rail and Lessee and in such amounts and against such risks as are customarily insured by railroad companies and are satisfactory to Itel Rail and in any event with no less coverage than the insurance on other conventional railroad rolling stock which Lessee owns or leases. Lessee may in accordance with its normal practice, self-insure the Equipment for physical loss and damage to the extent it self-insures equipment similar to the Equipment and to the extent such self-insurance is consistent with prudent industry practice. The general public liability insurance required with respect to the Equipment shall insure against damage due to bodily injury, including death, and damage to property of others, and shall afford protection to the limit of not less than \$10,000,000.00 in the aggregate in any single occurrence. Any such public liability insurance may have deductible provisions to no greater extent than \$100,000.00 in the aggregate in any single occurrence and Lessee shall be liable to the extent of any such deductible.

11. Assignment and Encumbrance

Lessee shall not, without the prior written consent of Itel Rail, assign, transfer or encumber its leasehold interest under this Lease, the Equipment or any portion thereof. In addition, Lessee, at its own expense, will, as soon as possible, cause to be duly discharged any lien, charge or other encumbrance which may be, at any time, imposed on or with respect to any of the Equipment or the interest of Itel Rail therein.

12. Remedies on Default

If Lessee shall attempt to sell, assign or encumber or dispose of the Equipment or any interest therein, or if Lessee defaults in the performance of any of the covenants, conditions or provisions of this Lease and such default continues after thirty (30) days notice to and demand on Lessee to cure such default, Itel Rail may immediately and without notice to Lessee, recover possession of the Equipment, thereby terminating this Lease. Without in any way limiting Itel Rail's rights and remedies otherwise provided by law, Itel Rail shall in addition have the right to recover from Lessee any and all rental amounts which under the terms of this Lease may then be due or which may have accrued to that date, together with Itel Rail's costs and expenses including reasonable attorneys' fees incurred in securing such enforcement thereof.

13. Use of the Equipment

Lessee shall make every effort to limit use of the Equipment as may be reasonably possible to intermodal freight service on Lessee's railroad tracks so as to demonstrate its suitability for such service. Lessee acknowledges that the Equipment is not designed for "humping" and that Lessee shall be liable for any losses or damages resulting from any such unauthorized "humping".

14. Compliance With Laws and Rules

Lessee will comply in all respects with all laws of the jurisdiction in which its operations involving the Equipment may extend, and with all lawful rules of the U.S. Department of Transportation and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment.

15. Lease Embodies Understanding of Parties

This Lease contains the entire understanding of Itel Rail and Lessee with respect to the subject matter hereof and supersedes any and all prior written and oral agreements, if any. There are no representations, covenants, agreements or warranties other than those expressly set forth herein. No change, modification or amendment of this Lease shall be effective unless in writing and signed by both parties.

16. Waiver

A waiver of any breach of this Agreement or of its terms or conditions by either party hereto, shall not be deemed a waiver of any repetition of such breach or in any way affect any other terms or conditions hereof; no waiver shall be valid or binding unless it is in writing and signed by the party making the waiver.

17. Severability of Lease

If any one or more of the provisions contained in this Lease shall be invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

18. Notices

All notices and other communications provided for hereunder shall be sent by registered air mail, cablegram, telex or telephone and confirmed in writing (by registered air mail), and shall be effective when dispatched if by a telex, cable or via telephone, or if by mail, five (5) days after the date of mailing. Any such notice shall be addressed to (a) Itel Corporation, Rail Division, Attn: President, Two Embarcadero Center, San Francisco, California, 94111; and (b) Burlington Northern Railroad Company, Attn: Senior Assistant Vice President-Intermodal, 176 East 5th Street, St. Paul, Minnesota, 55101, unless any such party has notified the other in writing complying with the provisions of this Section of a new address, in which event, the new address shall be used.

19. Legal Effects

Nothing contained in this Lease shall be deemed to be nor is it intended to be inserted for the purpose of creating a joint venture or partnership agreement, or arrangement of any kind or type between the parties hereto, and Lessee and ITEL Rail agree that they will, under no circumstances, hold themselves out as being a party to any such agreement or arrangement with each other.

20. Governing Law

This Lease is to be construed in accordance with the laws of the State of California irrespective of the place of business of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Lease by duly authorized officers.

ITEL CORPORATION,
RAIL DIVISION

By: _____

Title: _____

Date: _____

BURLINGTON NORTHERN
RAILROAD COMPANY

By: _____

Title: SENIOR VICE PRESIDENT-OPERATIONS

Date: _____

RHC 11/24/81

EXHIBIT "A" TO LEASE AGREEMENT

The IMPACK car is a patented, light weight, low profile, articulated railcar designed for transportation of piggyback trailers. The railcar consists of ten units (two end units and eight intermediate units), whose main structural component is a box-type fabricated centersill. Each unit also consists of two platforms, which support the trailer bogie, and a fixed trailer hitch, located on the opposite end of each unit from the platforms.

At each end of the ten unit IMPACK system is a standard E coupler and high capacity rubber-friction draft gear arrangement. The units themselves are semi-permanently connected using an articulated casting, which also serves as the centerplate. Adjacent units share a common truck at the articulated connector.

The trucks are low profile, utilizing 28" diameter wheels and D4 spring arrangements. The truck bolster feature is the only non-standard item in the truck arrangement. Each side bearing location has been extended to support an end-to-end double side bearing cage arrangement which contains constant contact type side bearings. This system is complemented by the end sill/body side bearing configuration located on each end of the intermediate units, and at the articulated end of the end units. The ten unit (i.e. ten trailer carrying capacity) railcar has a total of 11 trucks, and the overall length is 465 ft. 3½ inches.

EXHIBIT "B" TO LEASE AGREEMENT

Certificate of Acceptance No.

BURLINGTON NORTHERN RAILROAD COMPANY, as lessee ("Lessee") under that certain Lease Agreement (the "Lease") made as of October 15, 1981, with ITEL CORPORATION, RAIL DIVISION hereby certifies that the Equipment described below (and which are also described on Schedule "A" to the Lease), have been inspected by the Lessee and have been found to be in good order and have been accepted by the Lessee as Equipment under the Lease.

The Equipment accepted hereby are:

Car No.

Trailer Capacity Units

BURLINGTON NORTHERN
RAILROAD COMPANY

By: _____

Title: _____

Date: _____

SCHEDULE NO. 1 TO LEASE AGREEMENT

SCHEDULE NO. 1 to the Lease Agreement ("Lease") dated October 15, 1981, between ITEL CORPORATION, RAIL DIVISION as lessor ("Itel Rail") and BURLINGTON NORTHERN RAILROAD COMPANY as lessee ("Lessee").

1. Description of Equipment and Trailer Capacity

<u>Car No.</u>	<u>Units Per Car</u>
SSIX 100	10
SSIX 101	10

2. Daily Rate

\$20.00 per Trailer Capacity Unit

3. Payments

For each Trailer Capacity Unit, Lessee shall pay to Itel Rail payments of the Daily Rate as follows:

For the calendar month in which the Delivery Date occurs, Lessee shall pay to Itel Rail the Daily Rate accrued for all the days from and including the Delivery Date to and including the last day in said calendar month no later than the last day of the following month. For each calendar month thereafter, Lessee shall pay to Itel Rail the Daily Rate accrued for all the days during each calendar month no later than the last day of the following month, provided, however, that in the calendar month in which expiration of the Lease occurs, Lessee shall pay to Itel Rail the Daily Rate accrued for all the days prior to and including the expiration date within said calendar month no later than the last day of the following month.

Itel Rail shall grant Lessee an allowance equal to rental payments made pursuant to the Lease toward the purchase of the Equipment for or by the Burlington Northern Railroad Company.

IN WITNESS WHEREOF, the parties have executed this Schedule No. 1 to the Lease by duly authorized officers.

ITEL CORPORATION,
RAIL DIVISION

By: [Signature]

Title: President

Date: 11/25/81

BURLINGTON NORTHERN
RAILROAD COMPANY

By: [Signature]

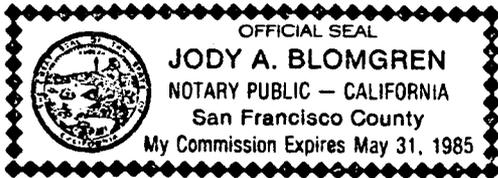
Title: SENIOR VICE PRESIDENT-OPERATIONS

Date: 11/19/81

RIC 1246

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

On this 25th day of November, 1981, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of Itel Corporation, Rail Division, that the foregoing Lease Agreement 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.



Jody A. Blomgren
Notary Public

STATE OF Minnesota)
) ss:
COUNTY OF Ramsey)

On this 19th day of November, 1981, before me personally appeared W. F. Thompson, to me personally known, who being by me duly sworn says that such person is SENIOR VICE PRESIDENT-OPERATIONS of Burlington Northern Railroad Company, that the foregoing Lease Agreement 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.

Leonard G. Forcica
Notary Public

