

RECORDATION NO. 8343-G Filed 1425

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**ITEL
RAIL**

INTERSTATE COMMERCE COMMISSION

55 Francisco
San Francisco, California 94133
(415) 955-9090
Telex 34234

RECORDATION NO. 8343-H Filed 1425

SEP 28 1983 .9 10 AM

INTERSTATE COMMERCE COMMISSION

August 31, 1983,

322714022

No. SEP 28 1983

Date

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

Fee \$ 20.00

ICC Washington, D. C.

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I.C.C.
FEE OPERATION BR.

Dear Ms. Mergenovich

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 for filing and recordation as additional filings under the Conditional Sales Lease Contract effective July 1, 1976 between Itel Corporation and Union-Tidewater Financial Company, Inc., which was filed on May 25, 1976 at 10:45 A.M. and given Recordation Number ~~8343~~ 8343, four counterparts of each of the following two documents:

1. Amendment No. 1 and Agreement dated as of May 16, 1982 between Itel Corporation and Union-Tidewater Financial Corporation.
2. Assignment Agreement dated as of May 16, 1982 between Itel Corporation and Union-Tidewater Financial Company.

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

1. Union-Tidewater Financial Company
207 E. Redwood Street, P.O. Box 2373
Baltimore, Maryland 21203
2. Itel Corporation, Rail Division
55 Francisco, 7th Floor
San Francisco, California 94133

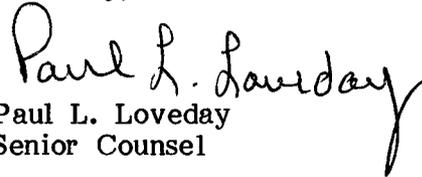
The equipment covered by these documents is ninety-eight (98) fifty foot six inch boxcars, A.A.R. mechanical designation XM, bearing reporting marks within the series VSO6000 - VSO6099.

Also enclosed is a check in the amount of \$20.00 for the required recording fees.

Ms. Agatha Mergenovich, Secretary
August , 1983
Page Two

Please stamp all counterparts of the enclosed Amendment and Assignment with your official recording stamp. You will wish to retain one (1) counterpart of each document for your files; it is requested that the remaining three (3) counterparts of each document be returned to ITEL Rail, attention Ms. Linda Lawrence, at the above listed address. Thank you.

Sincerely,


Paul L. Loveday
Senior Counsel

/ma
Enclosures

RECORDATION NO. 8343-6
FILED 1983

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INTERSTATE COMMERCE COMMISSION

Amendment No. 1 and Agreement

This Amendment No. 1 and Agreement is dated as of May 16, 1982 by and between Union-Tidewater Financial Company, Inc., a Maryland Corporation ("Lessor") and Itel Corporation, Rail Division, debtor and debtor in possession ("Lessee").

RECITALS

- A. Lessor and SSI Rail Corp. (the predecessor in interest to Itel Corporation as debtor and debtor in possession) entered into a Conditional Sales Lease Contract No. 73-3-1, the term of which commenced July 1, 1976 and pursuant to which 100 boxcars (the "Boxcars") were financed. "Boxcars" and "Equipment" have the same meaning as used in the Conditional Sales Lease Contract and this Amendment No. 1 and Agreement.
- B. SSI Rail Corp. was merged into Itel Corporation as debtor on December 22, 1977.
- C. Two of the Boxcars, with reporting marks VSO 6037 and VSO 6055, were destroyed on February 28, 1979 and July 9, 1979, leaving (upon payment to Lessor of the Casualty Value with respect to such two Boxcars) 98 Boxcars subject to the Conditional Sales Lease Contract. Notwithstanding such destruction, Itel Corporation as debtor and Itel Corporation as debtor in possession continued to pay Rent on such Boxcars. Neither Itel Corporation as debtor nor Itel Corporation as debtor in possession has paid a casualty value to Lessor for such destruction.
- D. The "CSLC", the "Lease" and "Agreement of Lease" shall all mean the Conditional Sales Lease Contract as amended by this Amendment No. 1 and Agreement.
- E. Upon confirmation of a plan of reorganization for Itel Corporation, debtor and debtor in possession (the "Plan of Reorganization") by the United States Bankruptcy Court, Northern District of California (the "Court"), all the assets, rights, obligations and liabilities of the Rail Division of Itel Corporation (including the rights and obligations of Itel Corporation as debtor and debtor in possession under the CSLC) shall be transferred to and assumed by Itel Rail Corporation.
- F. "Lessee" shall mean Itel Corporation, Rail Division as debtor and debtor in possession from the date that this Amendment No. 1 and Agreement is approved by the Court until the date that the Plan of Reorganization is confirmed by the Court. Upon confirmation of the Plan of Reorganization by the Court, Lessee shall mean Itel Rail Corporation.

Now, therefore, the parties agree as follows:

1. Amendment of Payment Provisions

(a) The Parties agree that the Original Cost of Equipment of each Boxcar is deemed to be \$29,140.06.

(b) The box on the first page of the CSLC entitled SCHEDULE OF RENTAL PAYMENTS FOR BASE LEASE TERM and Section 3 of the CSLC entitled RENT are hereby deleted and replaced in full as follows:

"3. Payments

(i) Lessee shall make principal and interest payments (hereinafter called

"Rent") to Lessor as follows:

<u>Date</u>	<u>Amount</u>
October 1, 1976 and on each succeeding January 1, April 1, July 1, and October 1 through and including July 1, 1991.	3.32808% of the Original Cost of Equipment for each Boxcar subject to the CSLC.

(ii) On October 1, 1991, Lessee shall pay to Lessor a Guaranteed Purchase Price in the amount of 10% of the Original Cost of the Equipment for each Boxcar then subject to the CSLC.

2. Amendment of Insurance; Loss and Damage; Indemnities Section

Section 5 of the CSLC is hereby amended to read in full as follows:

"5. **INSURANCE; LOSS AND DAMAGE; INDEMNITIES:**

(a) Lessee agrees to and does hereby indemnify and hold Lessor harmless of, from and against all claims, costs, expenses, damages and liabilities with respect to the Boxcars including without limitation their manufacture, delivery, possession, installation, use or operation, and without regard as to whether such claim is based upon warranty, negligence, strict liability or otherwise.

(b) Lessee shall and hereby agrees to maintain in force during the term of this Agreement, adequate public liability insurance covering the Boxcars and insuring both Lessee and Lessor against any loss, damage, claim, suit, action or liability arising out of the ownership, possession, maintenance, use or operation of the Boxcars. In addition, Lessee agrees to keep the Boxcars insured against loss or damage from every cause, whatsoever, with insurance company or companies satisfactory to Lessor, such policies to contain loss payable and additional insured clauses in favor of the Lessor as its interest may appear, in an amount not less than the full insurable value of said Boxcars, said insurance policy or policies to contain not less than ten (10) day notice of cancellation to the Lessor. Lessee shall provide Lessor with satisfactory evidence of insurance coverage as provided herein. In the event of any loss, damage, injury or accident involving the Boxcars, Lessee shall promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto. In the event any Boxcar shall become lost, stolen, destroyed or rendered permanently unfit for use, then on the Rent payment date next succeeding the date upon which Lessee receives reimbursement from the railroad responsible for such Boxcar or from the insurance carrier, Lessee shall make a Casualty Value payment to Lessor with respect to such Boxcar pursuant to the Schedule of Casualty Values attached as Exhibit A hereto. Such payment shall be an amount equal to (i) the Rent due with respect to such Boxcar on such date plus (ii) the Original Cost of Equipment multiplied by the percentage set forth in the Schedule of Casualty Values opposite such rent payment date. Upon (but not prior to) the payment of the Casualty Value by the Lessee with respect to any Boxcar, the Rent for such Boxcar shall thereafter cease to accrue and the term of this CSLC as to such Boxcar shall terminate. If a Boxcar is damaged but not destroyed or rendered permanently unfit for service, Rent shall continue to accrue and Lessee shall be responsible for repair of such Boxcar. All payments from railroads responsible for damage shall be paid to Lessee."

3. Amendment To Use of Equipment Section

Section 6 of the CSLC entitled Use of Equipment; Repair and Maintenance" is hereby amended by deleting therefrom the words "and not to assign or sublet the same;" and by adding the following at the end of such Section 6:

"Lessee may lease the Boxcars to others; provided, however that the rights of any such Lessee shall be subject and subordinate to all the rights of Lessor hereunder. Lessee shall not assign its rights hereunder to any party without the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, that Lessor's consent shall not be required for an assignment of the CSLC to Itel Rail Corporation and an assumption by Itel Rail Corporation of all of Itel Corporation's (as debtor in possession) obligations under the CSLC upon the confirmation of a Plan of Reorganization for Itel Corporation as debtor in possession, and such consent shall not be required for any sale, assignment, or transfer of Itel Rail Corporation's interest in the CSLC if such sale, assignment or transfer arises pursuant to a merger into, consolidation with or transfer of all or substantially all of Itel Rail Corporation's assets to a purchaser, assignee or transferee which is a wholly owned subsidiary of Itel Rail Corporation, and provided further, however, that such subsidiary shall have fully assumed the Lessee's obligations under this CSLC. Effective upon (i) the confirmation of the Plan of Reorganization by the Court, and (ii) the assignment of the CSLC and the rights thereunder to Itel Rail Corporation and (iii) the assumption of the obligations under the CSLC by Itel Rail Corporation, Itel Corporation is hereby released from all obligations hereunder."

4. Amendment of Default Section

Section 8 of the CSLC is hereby amended to read in full as follows:

"8. DEFAULT: Any of the following events or conditions shall constitute an event of default hereunder:

(a) Non-payment of rent or any other amount due hereunder for ten (10) days after receipt by Lessee of written notice from Lessor that the same is overdue, or

(b) the Lessee's default in the performance of any covenant contained in this CSLC which is not cured within 30 days after Lessee's receipt of written notice from Lessor of such default, or

(c) the liquidation, dissolution or termination of existence of Lessee."

5. Payment of Casualty Values With Respect To Destroyed Boxcars

On October 1, 1982 Lessee shall pay Lessor \$45,477.14 as a Casualty Value payment with respect to the destroyed Boxcars referred to in Recital C hereof. Rent shall cease to accrue with respect to such Boxcars on October 1, 1982.

6. Waiver of Default Remedies

Effective as of the date of approval of this Amendment No. 1 and Agreement by the Court, Lessor hereby waives all events of default and its rights with respect to such events of default occurring prior to such approval by the Court.

7. Assignment of Leases

(a) Promptly upon the approval of this Amendment No. 1 and Agreement by the Court, Lessee shall assign to Lessor for security purposes only Lessee's lease (solely with respect to the Boxcars) with the Valdosta Southern Railroad Company ("VSO") dated as of March 26, 1976 and shall cause such assignment to be perfected by filing such assignment with the Interstate Commerce Commission. Said assignment shall be in the form of Exhibit B attached hereto.

(b) In the event that any Boxcar is leased to any entity other than VSO during the period that payments are due to Lessor from Lessee pursuant to the CSLC, the Lease with respect to such Boxcar shall be assigned by Lessee to Lessor for security purposes pursuant to an assignment in the form of Exhibit B attached hereto. Lessee shall perfect such assignment by filing it with the Interstate Commerce Commission.

(c) Lessee shall provide to Lessor proof of all ICC filings with respect to the Boxcars.

8. Subject to Approval By Court

This Amendment No. 1 and Agreement is subject to and conditioned upon the approval thereof by the Court on or before August 31, 1982. If this Amendment No. 1 and Agreement is not approved by the Court on or before August 31, 1982, this Amendment No. 1 and Agreement shall be null and void. Lessee agrees to make all reasonable efforts to persuade the Court to approve this Amendment No. 1 and Agreement on or before August 31, 1982 and agrees promptly to commence such efforts.

9. Full Force and Effect

Except as amended hereby, all provisions of the CSLC shall remain in full force and effect.

10. Release of Lessor by Lessee

Effective as of the date of approval of this Amendment No. 1 and Agreement by the Court, Lessee hereby releases Lessor from all claims it may have against Lessor with respect to recovery or refund of payments made by Lessee to Lessor on or before August 31, 1982 pursuant to the CSLC and hereby agrees that this Amendment No. 1 and Agreement will survive and not be affected by the confirmation of the Plan of Reorganization.

Initials:

MTJ
ESJ

In witness whereof, the parties have caused this Amendment No. 1 and Agreement to be executed by duly authorized officers.

**Iitel Corporation, Rail Division
as debtor in possession**

by 
title President
date 7-29-82

**Union-Tidewater Financial
Company, Inc.**

by 
title PRESIDENT
date July 22, 1982

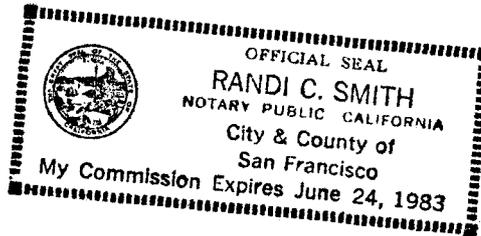
STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

SS:

On this 27th day of August, 1982, 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 Amendment No. 1 and 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.

Randi C. Smith
Notary Public

My Commission Expires:



STATE OF Maryland)
)
COUNTY OF Baltimore)

SS:

On this 23rd day of July, 1982, before me personally appeared C. H. Whittem Jr. to me personally known, who being by me duly sworn says that such person is President of Union-Tidewater Financial Company, Inc., that the foregoing Amendment No. 1 and 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.

Marian J. Rudell
Notary Public

My Commission Expires:

July 1, 1986

EXHIBIT A TO CSLC

Casualty Values

<u>Rent Payment Date</u>	<u>Casualty Value as Percentage of Original Cost of Equipment</u>
7/1/82	79.582
10/1/82	78.414
1/1/83	77.213
4/1/83	75.980
7/1/83	74.714
10/1/83	73.413
1/1/84	72.077
4/1/84	70.705
7/1/84	69.295
10/1/84	67.847
1/1/85	66.360
4/1/85	64.833
7/1/85	63.264
10/1/85	61.652
1/1/86	59.997
4/1/86	58.297
7/1/86	56.551
10/1/86	54.757
1/1/87	52.915
4/1/87	51.022
7/1/87	49.079
10/1/87	47.082
1/1/88	45.032
4/1/88	42.926
7/1/88	40.762
10/1/88	38.540
1/1/89	36.258
4/1/89	33.914
7/1/89	31.506
10/1/89	29.033
1/1/90	26.492
4/1/90	23.883
7/1/90	21.203
10/1/90	18.450
1/1/91	15.623
4/1/91	12.719
7/1/91	9.736

EXHIBIT B to CSLC

Assignment Agreement

Assignment Agreement dated as of May 16, 1982 by and between Itel Corporation debtor and debtor in possession ("Itel") and Union-Tidewater Financial Company, Inc. ("Union-Tidewater").

RECITALS

- A. Itel and Valdosta Southern Railroad Company ("VSO") have entered into a Lease Agreement dated as of March 26, 1976 which, together with the first equipment schedule thereto executed on March 29, 1976 by Itel and on March 26, 1979 by VSO, provides for among other things the Lease to VSO of 100 fifty foot six inch boxcars (the "Boxcars"). The Boxcars bore the reporting marks VSO 6000-6099. However, two of such Boxcars, VSO 6037 and VSO 6055, have been destroyed and are no longer subject to the above referenced Lease Agreement. The above referenced Lease Agreement, together with all amendments, supplements or riders thereto, insofar solely as they relate to the Boxcars, is hereinafter called the "VSO Lease".
- B. Itel and Union-Tidewater have executed a Conditional Sales Lease Contract, the term of which commenced July 1, 1976, as amended by Amendment No. 1 and Agreement (collectively the "CSLC"), pursuant to which Union-Tidewater financed the 100 Boxcars.

Now, therefore, the parties agree as follows:

1. Itel does hereby sell, assign, transfer and set over to Union-Tidewater all of the right, title and interest of Itel in and to the VSO Lease (insofar solely as it relates to the Boxcars) and Itel does hereby authorize and empower Union-Tidewater, in its own name to sue for, collect, receive and enforce all payments and other obligations of VSO under the VSO Lease (insofar solely as it relates to the Boxcars), except that Union-Tidewater shall not take any action until and unless Union-Tidewater has notified Itel that an event of default under the CSLC has occurred and is continuing and that the cure period has elapsed.
2. Itel represents and warrants that the VSO Lease has been duly authorized and executed by it and covenants that it will, from time to time, at the request of Union-Tidewater, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts as Union-Tidewater may reasonably request to give effect to the provisions hereof.

In witness whereof, the parties have caused this instrument to be executed by duly authorized officers.

**Itel Corporation, Rail Division
debtor and debtor in possession**

by _____

title _____

date _____

**Union-Tidewater
Financial Company, Inc.**

by *C. J. Matthews*

title PRESIDENT

date July 22, 1982

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

ss:

On this _____ day of _____, 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 Assignment 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.

Notary Public

My Commission Expires:

STATE OF *Maryland*)
)
COUNTY OF *Baltimore*)

ss:

On this *23rd* day of *July* 1982, before me personally appeared *C. H. Whittum, Jr.* to me personally known, who being by me duly sworn says that such person is *President* of Union-Tidewater Financial Company, Inc., that the foregoing Assignment 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.

Marian J. Rudell

Notary Public

My Commission Expires:

July 1, 1986