

# ITEL RAIL

RECORDATION NO. 10032-E  
FILED 1428  
FEB 25 1983 - 11 47 AM  
INTERSTATE COMMERCE COMMISSION

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

February <sup>16</sup>/<sub>8</sub>, 1983

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 enclose herewith on behalf of Itel Corporation for filing and recordation under the Lease Agreement dated July 26, 1978 (the "Lease") between Itel Corporation, Rail Division and Valley and Siletz Railroad Company which was filed on January 19, 1979 at 2:10 p.m. and given recordation No. 10032, four counterparts of the following document:

Amendment No. 4, dated as of July 26, 1982, to the Lease.

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

1. Valley and Siletz Railroad Company  
P.O. Box 7747  
Boise, Idaho 83707
2. Itel Corporation, Rail Division  
55 Francisco, 7th Floor  
San Francisco, California 94133

The equipment covered by this Amendment is one hundred forty nine (149) 50 foot, 100 ton boxcars with the following designations: seventy four (74) boxcars bearing reporting marks VS 2000 through VS 2029 and VS 2055 through VS 2099 (excepting VS 2076, which was destroyed) having AAR mechanical designation XM, and seventy five (75) boxcars bearing reporting marks VS 2030 through VS 2054 and VS 2100 through VS 2149 having AAR mechanical designation XP.

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

3-056-0531  
No. FEB 25 1983  
Date  
Fee \$ 10.00  
O.H.  
ICC Washington, D.C.

RECEIVED  
FEB 25 11 47 AM '83  
FEE OPERATION BR.

*This may be  
10032-F,  
but please  
check.*

*Agatha Mergenovich*

*Agatha Mergenovich*

RECEIVED  
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FEE OPERA  
I.C.C.

Ms. Agatha Mergenovich, Secretary  
February 9, 1983  
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 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

Doug Drummond  
Itel Corporation

10032-E

L-0281  
7/26/82

AMENDMENT NO. 4

RECORDATION NO. 10032-E  
Filed 1428  
FFB 25 1983 -il 11 AM  
INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 4 (the "Amendment") to that certain Lease Agreement (the "Lease") made as of July 26, 1978 between ITEL CORPORATION, RAIL DIVISION ("Itel") and VALLEY AND SILETZ RAILROAD COMPANY ("Lessee") is made this 26th day of July, 1982 by and between Itel and Lessee.

W I T N E S S E T H :

WHEREAS, Itel and Lessee are parties to the Lease pursuant to which one hundred fifty (150) boxcars bearing the reporting marks VS 2000-2149 have been leased and delivered by Itel to Lessee;

WHEREAS, Itel and Lessee are parties to Amendment No. 3 dated March 1, 1982, attached and incorporated into the Lease, which provides for the placement of certain boxcars subject to the Lease into an assignment pool on the railroad line of another party;

WHEREAS, Itel and Lessee desire to void and nullify Amendment No. 3;

WHEREAS, Itel and Lessee agree that it is to their mutual benefit to place for a period of time twenty-five (25) of said boxcars, bearing the reporting marks VS 2030-2054 (hereinafter collectively called "25 Boxcars") into an assignment pool on the railroad line of another party in order to improve the utilization of and revenue from the said 25 Boxcars.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree to amend the Lease as follows:

1. All terms defined in the Lease shall have their defined meanings when used in this Amendment.
2. Amendment No. 3, which is attached to and incorporated into the Lease, is hereby made null and void.
3. Item 2.K. on Schedule A, as amended by Amendment No. 2 and which is attached to and incorporated into the Lease, shall be deleted in its entirety and shall be replaced by the following:

"2.K.(i)(a) The mechanical designation of the 25 Boxcars shall be changed and remarked from 'XM' to 'XP' at Itel's expense. In addition, Itel shall, at its expense, perform or have performed the modification of the 25 Boxcars which shall include the installation of Rail Deck II loading systems in each of the 25 Boxcars.

(b) If, at any later date, Itel should desire to change the mechanical designation of any of the 25 Boxcars, Itel shall be entitled to do so at its expense. Upon any such remarking and redesignation, Itel shall attach to this Amendment a Certificate of Change, to be made a part hereof, describing both the previous and current mechanical designation of any of the 25 Boxcars.

(ii) The Boxcars bearing the reporting marks VS 2000-2029 and VS 2055-2099 shall have, and be marked with, the mechanical designation 'XM'.

(iii) The Boxcars bearing the reporting marks VS 2100-2149 shall have, and be marked with, the mechanical designation 'XP'."

4. Section <sup>6</sup>4.B. of the Lease is hereby amended by the addition of the following:

"With respect to the maintenance and repair costs of the Rail Deck loading systems in the 25 Boxcars, Itel shall pay an amount up to one hundred (100) dollars and Lessee shall pay any amount in excess of one hundred (100) dollars per calendar month for each of the 25 Boxcars. For the twelve (12) month maintenance period commencing as of the Compliance Date (as hereinafter defined), and for each twelve (12) month maintenance period thereafter, the foregoing obligations shall be determined on the basis of average monthly maintenance costs for the Rail Deck II Loading system in each of the 25 Boxcars."

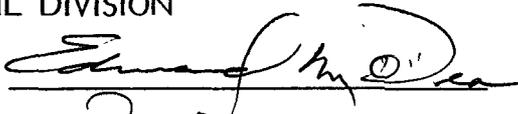
5. A. Itel and Lessee agree that the 25 Boxcars should be placed for a period of time as specified in the Assignment Agreement (as hereinafter defined) into an assignment pool on the railroad lines of Minnesota, Dakota and Western Railway Company ("MDW") in order to improve the utilization of and revenue from the 25 Boxcars.

B. For the purposes of paragraph 15 of the Lease, Itel hereby grants Lessee full power and authority to enter into, in the name of Lessee, an assignment agreement as set forth in Exhibit A attached hereto (to be hereinafter referred to as "Assignment Agreement") with MDW covering the 25 Boxcars for the period through and including January 17, 1994, plus any extended period as may be specified in the Assignment Agreement. Under said Assignment Agreement, Lessee shall be empowered to place the 25 Boxcars in the possession of said MDW with the right in said MDW to utilize the 25 Boxcars in interline revenue service under Lessee's reporting marks. The 25 Boxcars shall, at Itel's expense, be delivered from VS to MDW at any MDW interchange point. Lessee shall take appropriate action to terminate the Assignment Agreement on the date of the next termination opportunity upon receiving instructions from Itel to do so.

- C. The Lease shall remain in effect with respect to all of the boxcars subject to the Lease, including the 25 Boxcars, provided that, with respect to the 25 Boxcars, Section 7 of the Lease shall be amended by the substitution of the number "100%" in lieu of the number "90%" each time that it appears during the period from the compliance date ("Compliance Date" as hereinafter defined) to and including the expiration or termination date of the Assignment Agreement (to be hereinafter referred to as the "Ending Date"). Section 7 of the Lease shall be reinstated as it originally appears with respect to the 25 Boxcars upon the Ending Date. The Compliance Date, with respect to each of the 25 Boxcars, shall be June 1, 1982.
- D. In the event of any occurrence of Force Majeure ("Force Majeure" as hereinafter defined) affecting the 25 Boxcars, Lessee shall give notice to Itel as promptly as possible of the nature and probable duration of such Force Majeure and, as a result of such Force Majeure, Lessee may, at its option, terminate the Assignment Agreement, provided, however, that Lessee shall use its best efforts to place the 25 Boxcars into another assignment agreement. Force Majeure shall be defined to include, without limitation, acts of God, legislation or regulations of any governmental body, court decrees, acts of the public enemy, riots, strikes, labor disputes, labor or material shortages, fires, explosions, floods, breakdown of or damage to plants, equipment or facilities.
- E. Nothing herein contained shall (i) be deemed to constitute a waiver or otherwise modify, affect or impair any sums due to Itel or Lessee with respect to any of the 25 Boxcars under the terms and conditions of the Lease with regard to any period of time prior to the Compliance Date or after the Ending Date, or (ii) be deemed to constitute a waiver or otherwise modify, affect or impair the powers, rights, or remedies vested in or available to Itel or Lessee with respect to any of the 25 Boxcars under the terms and conditions of the Lease with regard to any period of time prior to the Compliance Date or after the Ending Date.
6. This Amendment shall be subject to the approval of Itel's Unsecured Creditor's Committee, and in the event that Itel determines the approval of the United States Bankruptcy Court for the Northern District of California ("Bankruptcy Court") to be necessary, this Amendment shall also be subject to such Bankruptcy Court approval. In the event that the Unsecured Creditor's Committee approval is not obtained, this Amendment shall be null and void. If Itel determines the Bankruptcy Court's approval to be necessary and such approval is not obtained, this Amendment shall be null and void. All of the 25 Boxcars shall have the Raildeck II Loading systems installed and be available for delivery to MDW no later than 26 weeks following the approval of Itel's Unsecured Creditor's Committee, and the approval of the Bankruptcy Court (if the latter approval is deemed necessary). If, because of Force Majeure (as defined in paragraph 4.D. of this Amendment), Itel is unable to have all 25 Boxcars equipped with the Raildeck II Loading systems and delivered to MDW as set forth herein, the said obligations of Itel shall be suspended to the extent made necessary by Force Majeure. The effect of any such event of Force Majeure, with respect to the installation of the Raildeck II Loading systems and the delivery, shall be eliminated by Itel as promptly as possible.

7. Nothing set forth in this Amendment with respect to the Lease represent a waiver by the parties hereto of any rights under the Lease or the Bankruptcy Code and is not an assumption of the Lease under the Bankruptcy Code, and in the event of rejection of the Lease by order of the Bankruptcy Court under the Bankruptcy Code, Lessee may claim pre-petition damages, if any, with respect to such rejection of the Lease.
8. Except as expressly modified by this Amendment, all terms and provisions of the Lease shall remain in full force and effect.
9. 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.

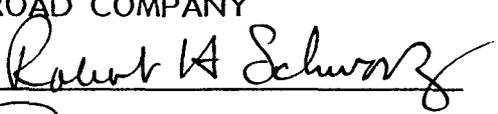
ITEL CORPORATION,  
RAIL DIVISION

By: 

Title: President

Date: 1/10/82

VALLEY AND SILETZ  
RAILROAD COMPANY

By: 

Title: PRESIDENT

Date: DECEMBER 16, 1982

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

On this 14<sup>th</sup> day of January, 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. 4 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

STATE OF Idaho )  
 ) ss:  
COUNTY OF Ada )

On this 16 day of Dec, 1982, before me personally appeared Robert H. Schwarz, to me personally known, who being by me duly sworn says that such person is President of Valley and Siletz Railroad Company, that the foregoing Amendment No. 4 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.

Carl R. [Signature]  
Notary Public

EXHIBIT A

**Valley & Siletz Railroad Company**

**P.O. Box 7747  
Boise, Idaho 83707**

July 27, 1982

Mr. Elmer L. Braaten  
General Manager, Rail Operations  
Minnesota, Dakota and Western Railway Company  
Box 19  
International Falls, Minnesota 56649

Dear Mr. Braaten:

Please accept this letter as the agreement ("Assignment Agreement") whereby Valley and Siletz Railroad Company ("VS") shall supply the Minnesota, Dakota and Western Railway ("MDW") with twenty-five (25) fifty foot, 100-ton XP boxcars with Raildeck II loading systems bearing the reporting marks VS 2030-2054 ("Boxcar(s)") and the MDW shall place said Boxcars into an assignment pool on MDW's railroad line under Car Service Directive 145.

The term of this Assignment Agreement with respect to each Boxcar shall commence on the date and at the location that such Boxcar is delivered to MDW, and shall expire on January 17, 1994 ("Initial Term"). This Assignment Agreement shall be automatically extended for not more than five (5) consecutive periods of twelve (12) months each ("Extended Term(s)"), provided, however, that VS may terminate this Assignment Agreement upon thirty (30) days prior written notice delivered to MDW during the Initial Term or any Extended Terms.

The Boxcars shall be delivered empty to MDW at any MDW interchange point during the 2nd quarter 1983. MDW shall not make any alterations to the Boxcars without VS' prior written consent. During the term of this Assignment Agreement, MDW shall load the Boxcars prior to loading substantially similar boxcars leased or assigned from other parties or purchased by MDW subsequent to the date of this Assignment Agreement or interchanged from other railroads; provided, however, that this shall in no event prevent or prohibit MDW from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

It is understood and agreed that during the term of this Assignment Agreement, MDW's only obligation with regard to the Boxcars placed into assigned pool service hereunder shall be (i) the payment of such per diem and mileage payments required of MDW by the Code of Car Hire Rules and Interpretations-Freight and as directed in the current edition of the Official Railway Equipment Register, (ii) compliance with the handling carrier's obligations under AAR Interchange Rules while the Boxcars are in MDW's possession, and (iii) the obligations upon expiration or termination of this Assignment Agreement set forth below. MDW shall be entitled to a per diem and mileage relief of such per diem and mileage payments per Boxcar for each day such Boxcar is on MDW's railroad line, said per diem and mileage relief not to exceed three (3) days per Boxcar per month. Said per diem and mileage relief shall be substantiated by appropriate movement records and shall be presented to VS within sixty (60) days from the end of any Service Month (hereinafter defined as the calendar month in which per diem and mileage payments were earned).



Mr. Elmer L. Braaten  
July 27, 1982  
Page Two

Upon the expiration or termination of this Assignment Agreement, MDW shall ensure that the Boxcars are in interchange condition, normal wear and tear excepted, and shall remove the Boxcars from Car Service Directive 145. Thereafter, MDW, as directed by VS, shall either provide final outbound loads for each of the Boxcars or transport empty any or all of the Boxcars, at MDW's expense, to any VS interchange point.

MDW recognizes that VS' rights and MDW's rights are subject and subordinate to the rights of any lessor, owner or secured party with respect to the Boxcars, but VS hereby expressly represents and covenants that it has full authority to make this Assignment Agreement.

We trust this Assignment Agreement will assist you in meeting your equipment requirements in the coming months.

Please indicate your concurrence to the above terms and conditions by signing below and arrange to have the original returned to me.

Yours very truly,



R. H. Schwarz  
President

I CONCUR:



Elmer Braaten  
General Manager - Rail Operations  
Minnesota, Dakota and Western Railway Company