

LEARNED, FOLEY & JORDAN, P.A.

LAW OFFICES  
SUITE 350, R. H. GARVEY BUILDING  
300 WEST DOUGLAS  
WICHITA, KANSAS 67202

October 3, 1979

261-5271  
AREA CODE 316

EDMUND R. LEARNED  
D. EMMETT FOLEY  
JOHN W. JORDAN

10874

RECORDATION NO. .... Filed 1425

OCT 10 1979 - 3 00 PM

9-283A193

Secretary of the Interstate Commerce Commission  
Washington, D.C.

No. \_\_\_\_\_  
Date OCT 10 1979

RE: Rail, Inc. -  
Continental Illinois National  
Bank and Trust Company -  
Security Agreement dated  
October 1, 1979

Fee \$ 50.00  
ICC Washington, D. C.

Dear Sir:

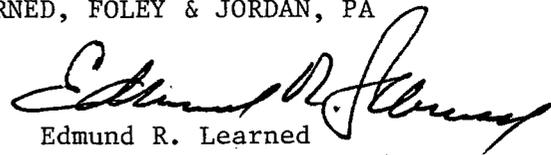
Enclosed for recording with your office pursuant to 49 USCA 11303 and CFR Part 1116 is the original and two counterparts of the above security agreement. Also enclosed is a check in the amount of \$50.00 to cover the recording fee.

Please return the original to our office after recording.

Sincerely yours,

LEARNED, FOLEY & JORDAN, PA

By

  
Edmund R. Learned

ERL/ms  
ENCL:

INTERSTATE  
COMMERCE COMMISSION  
R  
OCT 9 1979  
ADMINISTRATIVE SERVICES  
MAIL UNIT  
RECEIVED  
OCT 10 2 56 PM '79  
FEE OPERATION SR  
I. O. O.

**Interstate Commerce Commission**  
Washington, D.C. 20423

10/30/79

OFFICE OF THE SECRETARY

Edmund R. Learned  
Learned Foley & Jordan, PA  
Suite 350 R.H. Garvey Building  
300 West Douglas  
Wichita, Kansas 67202

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/10/79 at 3:00pm, and assigned re-  
recording number(s).

10874

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. 10874 Filed 1425

OCT 10 1979 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

---

---

SECURITY AGREEMENT

Dated as of October 1, 1979

FROM

RAIL, INC.

DEBTOR

TO

CONTINENTAL ILLINOIS NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO

SECURED PARTY

---

---

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated as of October 1, 1979 (the "Security Agreement") from RAIL, INC., a Kansas corporation (the "Debtor"), whose post office address is 141 West Jackson Blvd., Chicago, Illinois 60604 to CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO (the "Secured Party"), whose post office address is 231 South LaSalle Street, Chicago, Illinois 60693, Attention: Loan Division;

### R E C I T A L S:

A. The defined terms used in this Security Agreement shall have the respective meanings indicated herein unless elsewhere defined or the context shall otherwise require.

B. The Debtor, a wholly-owned subsidiary of Garvey International, Inc. ("Garvey"), and the Secured Party have entered into a Credit Agreement dated as of October 1, 1979 (the "Credit Agreement") wherein subject to certain conditions precedent, the Bank has agreed to lend to the Company, and the Company has agreed to borrow from the Bank, from time to time, prior to November 1, 1980 up to \$19,000,000.

C. The proceeds of the loans (individually "Loan" and collectively "Loans") are to be used by the Company for the purchase of up to 460 covered hopper railroad cars (the "Equipment") which will be leased by the Company to lessees (individually "Lessee" and collectively "Lessees").

D. The units of the Equipment are and will be identified in Schedules of Equipment attached and to be attached hereto, the first such Schedule identifying the first units of the Equipment being purchased with proceeds of the initial Loan being attached hereto at the time of execution hereof and additional such Schedules to be attached hereto at the dates of purchase of additional units of the Equipment to be identified therein. The leases of the Equipment to the Lessees (individually "Lease" and collectively "Leases") are and will be identified in Schedules of Leases attached and to be attached hereto, the first such Schedule identifying Leases applying to the units of Equipment listed in the first Schedule of Equipment being attached at the time of execution hereof and additional such Schedules of Leases to be attached hereto at the dates of purchase of additional units of the Equipment.

E. The indebtedness incurred by each Loan shall be evidenced by a promissory note of the Company (individually

"Note" and collectively "Notes"). The Notes and all principal thereof and interest (and premium, if any) thereon and all additional amounts and other sums at the time due and owing from or required to be paid by the Debtor under the terms of the Notes, this Security Agreement, or the Credit Agreement are hereinafter sometimes referred to as "indebtedness hereby secured".

F. All of the requirements of law have been fully complied with and all other acts and things necessary to make this Security Agreement a valid, binding and legal instrument for the security of the Notes have been done and performed.

SECTION 1. GRANT OF SECURITY INTEREST. The Debtor in consideration of the premises and of the sum of TEN DOLLARS received by the Debtor from the Secured Party and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Notes, and to secure the payment of all other indebtedness hereby secured and the performance and observance of all covenants and conditions in the Notes, in this Security Agreement, and in the Credit Agreement contained, does hereby convey, warrant, mortgage, assign, pledge and grant the Secured Party, its successors and assigns, a security interest in all and singular of the Debtor's right, title and interest in and to the properties, rights, interests and privileges described in Sections 1(a), (b) and (c) hereof (all of which properties hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as the "Collateral").

(a) Collateral includes the Equipment listed in Schedules of Equipment attached and to be attached hereto and which are the subject of Leases in Schedules of Leases attached or to be attached hereto.

Except as otherwise specifically provided in this Section 1 and in Section 3 hereof, when and only when all payments under the Notes and as herein provided, shall have been paid and all the Debtor's obligations under the Notes and herein contained shall have been performed by the Debtor, absolute right to the possession of, title to and property in the Collateral shall pass to and vest in the Debtor without further transfer or action on the part of the Secured Party. However, the Secured Party, if so requested by the Debtor at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Debtor, or upon its order, free of all liens, security interests and other encumbrances

created or retained hereby and deliver such bill or bills of sale to the Debtor, (b) execute and deliver for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Secured Party in the Collateral and (c) pay to the Debtor any money paid to the Secured Party pursuant to this Security Agreement and not theretofore applied as herein provided. The Debtor hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Debtor.

(b) Collateral also includes all right, title, interest, claims and demands of the Debtor as lessor in, to and under the Leases listed in Schedules of Leases attached and to be attached hereto, including all extensions of the respective terms of said Leases, together with all rights, powers, privileges, options and other benefits of the Debtor as lessor under said Leases, including, without limitation:

(1) The right to receive and collect all installments of rent and Casualty Value (as defined in Section 11 hereof), insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable or receivable by the Debtor, as lessor under the Leases,

(2) the right to make all waivers and agreements and to give and receive duplicate copies of all notices and other instruments or communications, and

(3) the right, subject to Section 12 hereof, to take such action upon the occurrence of an Event of Default under the Lease or an event which with the lapse of time or giving of notice, or both, would constitute an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by said Leases or by law, and to do any and all other things whatsoever which the Debtor or any lessor is or may be entitled to do under the Leases. So long

as no Event of Default shall have occurred and be continuing, the Debtor (a) may retain possession of and/or lease the Equipment listed in Schedules of Equipment attached and to be attached hereto, (b) at its own expense endeavor to collect as and when due the rentals due and payable under Leases pursuant to which such Equipment may from time to time be subject and (c) pursue all claims against manufacturers of such Equipment. The foregoing to the contrary notwithstanding, Debtor agrees that, upon receipt of the written request of Secured Party, it will notify the Lessees under Leases listed in Schedules of Leases attached and to be attached hereto to make payment of installments of rental directly to Secured Party. Any installments of rental so received by Secured Party shall be deposited in a cash collateral account and within a reasonable time shall be applied in payment of installments of principal on the Notes as provided in Section 3(a) hereof or released to Debtor as Secured Party may desire.

(c) All rights, claims, causes of action, if any, which the Debtor may have against any manufacturer or seller or any Lessee of the Debtor, as lessor, of the Equipment or other property described in clause (a) of this Section 1 and proceeds of such rights, claims and causes of action.

The security interest granted by this Section 1 is subject to (a) the right, title and interest of the Lessees under the Leases, and (b) the lien of current taxes and assessments not in default (but only if such taxes are entitled to priority as a matter of law), or, if delinquent, validity of which is being contested in good faith. The liens, claims and encumbrances identified in clauses (a) and (b) are hereinafter collectively referred to as the "Permitted Encumbrances".

SECTION 2. REPRESENTATIONS AND WARRANTIES. The Debtor represents and warrants that:

(a) It is, or will be the owner of the Equipment listed and to be listed in Schedules of Equipment and there are and will be no encumbrances or liens of any kind or character against said Equipment except of the Secured Party pursuant hereto and Permitted Encumbrances and that it has good right and lawful authority to transfer, convey, assign and mortgage the same, as of the date hereof.

(b) The Debtor will keep at all times all and every part of the Equipment free and clear of all claims (except Permitted Encumbrances), liens or

impositions which might in any way affect the title of the Secured Party or result in a lien upon any part of the Equipment, provided, however, that the Debtor shall be under no obligation to pay any impositions where the nonpayment thereof does not, in the written opinion of the Secured Party, adversely affect the title, lien, property or rights of the Secured Party in or to the Equipment or otherwise under this Security Agreement. If any impositions for which the Debtor is liable as aforesaid shall have been charged or levied against the Secured Party directly and paid by the Secured Party, the Debtor shall reimburse the Secured Party upon presentation of an invoice therefor, and any amounts so paid by the Secured Party shall be secured by and under this Security Agreement.

(c) The Debtor has not made any pledge, mortgage, grant of security interest or assignment of the Equipment except under this Security Agreement.

SECTION 3. RELEASES OF COLLATERAL. As more fully set forth in Section 1(b) hereof the Debtor has hereby granted to the Secured Party a security interest in rents, issues, profits, income and other sums due and to become due under the Leases in respect of the Equipment as security for the Notes. After written notice from Secured Party to the Debtor requesting that Lessees make payment of rent under the Leases directly to Secured Party and so long as no Event of Default as defined in Section 12 hereof has occurred and is continuing:

(a) The amounts from time to time received by the Secured Party which constitute payment by the Lessees under the Leases of the installments of rent shall be applied first, to the payment of the installments of principal and interest (and in each case first to interest and then to principal) on the Notes which have matured or will mature on or before the due date of the installments of rent which are received by the Secured Party, and then the balance, if any, of such amounts shall be paid to or upon the order of the Debtor.

(b) The amounts received by the Secured Party which constitute payment by the Lessees of the "Casualty Value" of the Equipment pursuant to provisions of the Leases shall be applied first to the payment or prepayment of the entire principal of, and accrued and unpaid interest on, the Notes, or toward the cost of replacement Equipment as provided for in

Section 11, and second, the balance, if any, of such amount shall promptly be released to or upon the order of the Debtor.

(c) The amounts received by the Secured Party from time to time which constitute proceeds of casualty insurance maintained by the Lessees in respect of the Equipment, shall be held by the Secured Party as a part of the Collateral and shall be applied by the Secured Party from time to time to any one or more of the following purposes:

(1) So long as no Event of Default has occurred and is continuing to the knowledge of the Secured Party, the proceeds of such insurance shall, if such Equipment is to be repaired, be released to the Debtor to reimburse the Lessee for expenditures made for such repair upon receipt by the Secured Party of a certificate of an authorized officer of the Lessee to the effect that any damage to such Equipment in respect of which such proceeds were paid will be fully repaired.

(2) If the insurance proceeds shall not have been released to the Debtor pursuant to the preceding subparagraph (1) within 120 days from the receipt thereof by the Secured Party (unless the Lessee has informed the Secured Party that such Equipment is being repaired) and upon completion of such repairs, the Lessee expects to request the release of the insurance proceeds pursuant to subparagraph (1) of this Section 3(c) or if within such period the Lessee shall have notified the Secured Party in writing that the Lease pursuant to which such Equipment is leased is to be terminated in respect of such Equipment, then so long as no Event of Default hereunder has occurred and is continuing to the knowledge of the Secured Party, the insurance proceeds shall be applied by the Secured Party as follows:

(A) First, to the prepayment of the Notes all in the manner and to the extent provided for therein; and

(B) Second, the balance, if any, of such insurance proceeds held by the Secured Party after making the applications provided for by the preceding subparagraph (A) shall be released to or upon the order of the Debtor.

(d) In the event that the Debtor requests a release of the Collateral under circumstances set forth in Section 1(a) hereof, and Debtor has complied with all provisions thereof, then, the Secured Party shall release such Collateral from the lien of this Security Agreement and shall execute appropriate documents, all pursuant to said Section 1(a) hereof.

SECTION 4. REPORTS AND INSPECTIONS. On or before April 30 in each year, commencing in 1980, the Debtor shall furnish to the Secured Party an accurate statement signed by an officer of Debtor (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Security Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Secured Party may reasonably request, (b) setting forth the amount, description and numbers of any units that have been repaired and that are in use on the date of such statement, and (c) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Section 14 hereof have been preserved or replaced. The Secured Party shall have the right, by its agents, to inspect the Equipment and the Debtor's records with respect thereto at such reasonable times as the Secured Party may request during the terms of this Security Agreement.

SECTION 5. COMPLIANCE WITH LAWS AND RULES. During the term of this Security Agreement, the Debtor will comply, and will cause each Lessee under the Leases to comply at all times in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Debtor shall cause the Lessee to conform therewith, at its own expense; provided, however, that the Debtor may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Secured Party, adversely affect the property or rights of the Secured Party under this Security Agreement.

SECTION 6. POSSESSION AND USE. The Debtor and each Lessee under the Leases, so long as an Event of Default shall not have occurred under this Security Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof; provided, however, that such possession and use of units of Equipment shall be upon the lines of railroad owned or operated by any railroad company operating only in the United States or Canada from and after delivery of the Equipment by the Debtor to the Lessee, but only upon and subject to all the terms and conditions of this Security Agreement.

SECTION 7. MAINTENANCE. The Debtor shall at all times maintain the Equipment, or cause the Equipment to be maintained in good order and repair by each Lessee, at its own expense.

SECTION 8. INSURANCE. The Debtor will, at all times during the term of this Security Agreement, at its own expense, cause to be carried and maintained property insurance for the fair market value and public liability insurance in respect of the units of Equipment at the time subject hereto, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by railroads in respect of similar equipment owned by them. The Secured Party shall not be liable for the payment of premiums and assessments under any insurance policy and such insurance shall be primary without right of contribution from any other insurance which is carried by the Secured Party to the extent that such other insurance provides it with contingent and/or excess liability insurance with respect to its interest as such in the Equipment.

SECTION 9. OTHER ENCUMBRANCES, ETC. The Debtor will not, except as permitted by the Credit Agreement or this Security Agreement, sell, loan, pledge, mortgage, lease, assign or otherwise dispose of, or create or suffer to be created any levies, liens or encumbrances on any of the Equipment, or any interest therein, and the Debtor will from time to time cause to be paid all liens, taxes, assessments and governmental charges lawfully levied, assessed or imposed upon the Equipment or any interest therein; provided, however, that nothing herein contained shall be deemed to require any lien, tax, assessment, charge, claim or demand to be paid or discharged prior to the due date thereof, or so long as the validity thereof is being contested by the Debtor in good faith by appropriate proceedings, if (i) an adequate reserve with respect thereto is established and maintained in accordance with generally accepted accounting principles, and (ii) the lien, tax, assessment, charge, claim or demand is

paid prior to the foreclosure of any lien which may have attached as security therefor. The Debtor will give the Secured Party notice of any attachment or judicial process affecting the Equipment as soon as it has knowledge thereof.

SECTION 10. INDEMNITIES. The Debtor agrees to indemnify, protect and hold harmless the Secured Party and its respective agents, officers, directors and employees from and against all losses, costs, charges, expenses, damages, injuries, liabilities, claims, penalties, interest and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith (including, without limitation, attorneys fees and costs), arising out of or as the result of (a) the entering into or the performance of this Security Agreement, (b) the retention by the Secured Party of security title to the Equipment, (c) the use, construction, operation, condition, repair, refurbishing, reconfiguration, purchase, delivery, storage or return of the Equipment, (d) any accident in connection with the repair, refurbishing, reconfiguration, operation, use, condition, possession, storage or return of the Equipment resulting in damage to property or injury or death to any person and (e) the transfer of title to the Equipment by the Secured Party pursuant to any of the provisions of this Security Agreement.

The Debtor further agrees to indemnify, protect and hold harmless the Secured Party and its respective agents, officers, directors and employees, from and against any and all losses, charges, expenses, liability, claims and demands, including royalty payments and any attorneys' fees and costs, in any manner imposed upon or accruing against the Debtor, its assigns or the Lessees of the Equipment because of the use in or about the construction or operation of the Equipment of any design system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right.

This covenant of indemnity shall continue in full force and effect notwithstanding the full satisfaction of the Notes and the release and the conveyance of security title to the Equipment to the Debtor, or the termination of this Security Agreement in any manner whatsoever.

The Secured Party shall give notice to the Debtor of any claim arising hereunder and the Debtor shall have the right to take up and defend any such claim.

The Debtor will bear the responsibility for and risk of and shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of the Equipment.

SECTION 11. CASUALTY OCCURRENCES. In the event that the Equipment shall be worn out, lost, stolen, destroyed, or, in the opinion of the Debtor, shall no longer be economically useful to the Debtor or any Lessee, or shall be irreparably damaged or otherwise rendered unsuitable or unfit for use from any cause whatsoever, or shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a stated period which exceeds the remaining term of this Security Agreement (such occurrences being hereinafter called "Casualty Occurrences"), the Debtor shall promptly and fully inform the Secured Party in regard thereto (after it has knowledge of such Casualty Occurrence). The Debtor shall, on the next date for the payment of an installment of indebtedness hereby secured or interest hereunder occurring more than 30 days after it has knowledge of such event, pay to the Secured Party a sum equal to the aggregate Casualty Value (as defined herein) of such Equipment as of the date of such payment and shall file with the Secured Party a certificate of an officer of the Debtor setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

Any money paid to the Secured Party pursuant to the preceding paragraph of this Section 11 shall, as the Debtor may direct in a written instrument filed with the Secured Party, be applied (so long as no Event of Default shall have occurred and be continuing), in whole or in part, to prepay installments of indebtedness hereby secured, or toward the cost of new or used unit or units of Equipment in good condition and complying with all the provisions of this Security Agreement to replace the Equipment suffering a Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied to reduce installments thereafter falling due in the inverse order of maturity. The Casualty Value of the Equipment suffering a Casualty Occurrence (including replacement Equipment) shall be deemed to be the value attributed to such unit of Equipment on the applicable Valuation Certificate before the Conversion Date as of the date that the Debtor determines that such unit of Equipment suffered a Casualty Occurrence and after the Conversion Date, the value attributed to such a unit of Equipment on the Conversion Date on the applicable Valuation Certificate (or cost thereof in the case of a replacement unit) less an amount representing (as of the date that the Debtor determines that such Equipment suffered a Casualty Occurrence) depreciation on such Equipment at the rate of 7% per annum, but in no event shall the Casualty Value be less than the then outstanding indebtedness under the Notes hereby secured in respect of such unit of Equipment as of the date that the Debtor determines that such Equipment suffered a Casualty Occurrence.

The Debtor will cause any replacement Equipment to be marked as provided in Section 14 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Security Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Security Agreement. Title to all such replacement Equipment shall be free and clear of all liens and encumbrances except the liens permitted by Section 1 hereof and shall be taken initially and shall remain in the name of the Debtor subject to the provisions hereof and the Debtor shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement Equipment to come under and be subject to this Security Agreement. All such replacement Equipment shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Debtor shall file with the Secured Party a written direction to apply amounts toward the cost of any replacement Equipment, the Debtor shall file therewith:

(a) A certificate of a Vice President, an Assistant Vice President, or the Comptroller or Chief Accounting Officer of the Debtor certifying as to the matters hereinabove set forth in this Section 11; and

(b) an opinion of counsel for the Debtor that the Secured Party has a valid and perfected security interest in such replacement Equipment, free and clear from all claims, liens, security interests and other encumbrances, except the rights of the Debtor under this Security Agreement and the Lessee under the Lease and that such Equipment has come under and become subject to this Security Agreement.

So long as no Event of Default shall have occurred and be continuing, any money paid to the Secured Party pursuant to this Section 11 shall, if the Debtor shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or prime-2 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of or bankers' acceptances accepted by, domestic

commercial banks in the United States of America having capital and surplus in excess of \$50,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called "Investments"). Any such obligations may from time to time be sold and the proceeds reinvested in such Investments as the Debtor may in writing direct. Any interest received by the Secured Party on any Investments shall be held by the Secured Party and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Secured Party thereon, up to the cost (including accrued interest) thereof, shall be held by the Secured Party for application pursuant to this Section 11 and any excess shall be paid to the Debtor. If such proceeds (plus such interest) shall be less than such cost, the Debtor will promptly pay to the Secured Party an amount equal to such deficiency. The Debtor will pay all expenses incurred by the Secured Party in connection with the purchase and sale of Investments.

If one or more Events of Default shall have occurred and be continuing, all money held by the Secured Party pursuant to this Section 11 (including, for this purpose, Investments) shall be applied by the Secured Party as if such money were money received upon the sale of Equipment pursuant to Section 13 hereof.

In order to facilitate the sale or other disposition of the Equipment suffering a Casualty Occurrence, the Secured Party shall, upon request of the Debtor, after payment by the Debtor of a sum equal to such portion of the Casualty Value of such Equipment for which payment shall not have been waived by the Secured Party as hereinabove provided, execute and deliver to the Debtor or the Debtor's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Security Agreement, in such form as may be reasonably requested by the Debtor.

SECTION 12. DEFAULT. The term "Event of Default" for all purposes of this Security Agreement shall mean one or more of the following:

(a) The Debtor shall fail to pay in full any installment of indebtedness or interest then due under the Notes or any other sum payable by the Debtor as provided in this Security Agreement when payment thereof shall be due hereunder and such failure shall continue for more than 5 business days; or

(b) the Debtor shall, for more than 30 days after the Secured Party shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Security Agreement, or of the Credit Agreement on its part to be kept or performed or to make provision satisfactory to the Secured Party for such compliance, such proposed provisions to not be unreasonably rejected by the Secured Party; or

(c) any proceedings shall be commenced by or against the Debtor for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Debtor under this Security Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Debtor or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(d) the Debtor shall make or suffer any unauthorized assignment or transfer of this Security Agreement or any interest herein or any unauthorized transfer of the right to possession of any Equipment and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Equipment (or make provision satisfactory to the Secured Party for such compliance) within 15 days after written notice from the Secured Party demanding such cancellation and recovery of possession;

then at any time after the occurrence of such an Event of Default the Secured Party may, upon compliance with any mandatory legal requirements then in force and applicable to such action by the Secured Party, declare (hereinafter called a "Declaration of Default") the entire indebtedness then due under the Notes, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the

unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in the Notes as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Secured Party shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness then due under the Notes so payable, with interest as aforesaid, and to collect such judgment out of any property of the Debtor wherever situated. The Debtor shall promptly notify the Secured Party of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an Event of Default under this Security Agreement, but failure to give such notice shall not cure any such Event of Default or impair the rights of the Secured Party in respect thereof.

The Secured Party may at its election waive any such Event of Default and its consequences and rescind and annul any Declaration of Default by notice to the Debtor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such Event of Default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Debtor that time is of the essence of this Security Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 13. REMEDIES, ETC. The Debtor agrees that when any Event of Default as defined in Section 12 has occurred and is continuing, but subject always to the provisions hereof, the Secured Party shall have the rights, options, duties and remedies of a secured party, and the Debtor shall have the rights and duties of a Debtor, under the Uniform Commercial Code of Illinois (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted) and without limiting the foregoing, the Secured Party may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, or set forth in Section 12 hereof, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) subject always to the rights of the Lessees under the Leases, the Secured Party personally or by agents or attorneys, shall have the right (subject to

compliance with any applicable mandatory legal requirements) to take immediate possession of the Equipment, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Debtor, with or without notice, demand, process of law or legal procedure, if this can be done without breach of the peace, and search for, take possession of, remove, keep and store the same, or use and operate or lease the same until sold;

(b) subject always to the rights of the Lessees under the Leases, the Secured Party may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Debtor and the Lessees once at least ten days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of the Equipment, or any part thereof, at public auction to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Secured Party may determine, and at any place (whether or not it be the location of the Equipment or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice, and the Secured Party or the holder or holders of the Notes, or of any interest therein, may bid and become the purchaser at any such sale;

(c) subject always to the rights of the Lessees under the Leases, the Secured Party may proceed to protect and enforce this Security Agreement and the Notes by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the mortgaged property or any part thereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper, legal or equitable remedy available under applicable laws; and

(d) subject always to the rights of the Lessees under the Leases, the Secured Party may proceed to exercise all rights, privileges and remedies of the

Debtor under the Leases, and may exercise all such rights and remedies either in the name of the Secured Party or in the name of the Debtor for the use and benefit of the Secured Party.

In case of any sale of the Equipment, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Security Agreement, the principal of the Notes if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable; also in the case of any such sale, the purchaser or purchasers of the Equipment, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Notes and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Notes including principal and interest thereof out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash.

To the extent permitted by law, the Debtor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any delay, stay or extension law now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereinafter in force providing for the valuation or appraisal of the Equipment or any part thereof prior to any sale or sales thereof to be made pursuant to any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, the Debtor hereby expressly waives for itself and on behalf of each and every person, and except decree or judgment creditors of the Debtor acquiring any interest in or title to the Equipment or any part thereof subsequent to the date of this Security Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Secured Party, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the

property sold, shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Debtor, its successors or assigns (subject, however, to the then existing rights, if any, of the Lessee under the Lease).

The rentals, proceeds and/or avails of any lease or sale of the Equipment, or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including legal expenses and attorneys' fees, incurred or made hereunder by the Secured Party, or the holder or holders of the Notes and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) Second, to the payment of the holder or holders of the Notes of the amount then owing or unpaid on the Notes for principal, interest and premium, if any;

(c) Third, to the payment of the surplus, if any, to the Debtor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

No delay or omission of the Secured Party to exercise any right or power arising from any default on the part of the Debtor hereunder shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Secured Party of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom except as may be otherwise provided herein. No remedy hereunder is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing; nor shall the giving, taking or enforcement of any other or additional security, collateral or guarantee for the payment of the indebtedness secured under this Security Agreement operate to prejudice, waive or affect the security of this Security Agreement or any rights, powers or remedies hereunder, nor shall the Secured Party be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

SECTION 14. MARKING OF EQUIPMENT, FILING AND RECORDING, ETC.

The Debtor will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in the Schedule or Schedules of Equipment hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Security Agreement to cover such Equipment, and will cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 11303" or the name of the Secured Party followed by the word "Owner", or other appropriate markings approved by the Secured Party with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Secured Party's interest in the Equipment and its rights under this Security Agreement. The Debtor will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Debtor will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Secured Party by the Debtor and filed, recorded and deposited by the Debtor in all public offices where this Security Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Debtor will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Debtor may cause the Equipment to be lettered with the names or initials or other insignia of a Lessee or its affiliates.

The Debtor will cause this Security Agreement, all Schedules of Equipment and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act; and the Debtor will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Secured Party for the purpose of proper protection, to the satisfaction of counsel for the Secured Party, of its interest in the Equipment and its rights under this Security Agreement or for the purpose of carrying out the intention of this Security Agreement; and the Debtor will promptly furnish to the Secured Party certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Secured Party.

SECTION 15. APPLICABLE STATE LAWS. Any provision of this Security Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Security Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Debtor to the full extent permitted by law, it being the intention of the parties hereto that this Security Agreement shall be deemed to be a Security Agreement and enforced as such.

Except as otherwise provided in this Security Agreement, the Debtor, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Secured Party's rights under this Security Agreement and any and all rights of redemption.

SECTION 16. SUCCESSORS AND ASSIGNS. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Security Agreement contained by or on behalf of the Debtor or by or on behalf of the Secured Party, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

Nothing in this Section 16 shall be deemed to restrict the right of the Debtor or of any Lessee to assign or transfer its interest under the Security Agreement or its leasehold interest under the Lease respectively, in the Equipment or possession of the Equipment to any corporation (which shall have duly assumed in writing satisfactory to the Secured Party the obligations hereunder of the Debtor or Lessees) into or with which the Debtor or Lessee shall have become merged or consolidated, provided that such assignees, successors or transferees will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Security Agreement or the Leases and that such merger or consolidation or acquisition shall not alter in any way the Debtor's obligations to the Secured Party or any Lessee's obligations to the Lessor which shall be and remain those of a principal and not a guarantor. The Debtor agrees to give the Lessor and the Secured Party prior written notice of any such merger or consolidation.

SECTION 17. PARTIAL INVALIDITY. The unenforceability or invalidity of any provision or provisions of this Security Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

SECTION 18. COMMUNICATIONS. All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mail, registered, postage prepaid, addressed as follows:

If to the Secured Party: Continental Illinois National Bank  
and Trust Company of Chicago  
231 South LaSalle Street  
Chicago, Illinois 60693

Attention: Loan Division

If to the Debtor: Rail, Inc.  
141 West Jackson Blvd.  
Chicago, Illinois 60604

Attention: Bob M. White

or to any such party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

SECTION 19. GOVERNING LAW. This Security Agreement and the Notes shall be construed in accordance with and governed by the laws of the State of Illinois; provided, however, that the Secured Party shall be entitled to all the rights conferred by any applicable federal statute, rule or regulation.

SECTION 20. COUNTERPARTS. This Security Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Security Agreement.

SECTION 21. HEADINGS. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Security Agreement nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the Debtor has caused this Security Agreement to be executed and the Secured Party has caused this Security Agreement to be executed on its behalf by one

of its Vice Presidents and its corporate seal to be here-  
unto affixed, and said seal and this Security Agreement to  
be attested by one of its Assistant Secretaries, all as of  
the day and year first above written.

RAIL, INC.

By *Robert White*  
President

DEBTOR

(Seal)

ATTEST:

*L. J. Kuster*  
Secretary

CONTINENTAL ILLINOIS NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO

By *Charles A. [Signature]*  
Vice President

SECURED PARTY

(Seal)

ATTEST:

*Robert E. Klein*  
~~Trust Officer~~

SECOND VICE PRESIDENT

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

On this 30 day of October, 1979, before me personally appeared Bob M. White and Robert Kuerten, to me personally known, who being by me duly sworn, did say that they are the President and Secretary, respectively, of Rail, Inc. and that the foregoing instrument was signed and sealed by them in the respective capacities therein set forth on behalf of said corporation by authority of its board of directors; and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Shirley J. Paul  
Notary Public

My commission expires: 12/15/79

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

On this 3<sup>rd</sup> day of October, 1979, before me appeared CHARLES A. HUSTON and ROBERT E. KLINE, to me personally known, who being by me duly sworn, did say that they are the Vice President and ~~Trust Officer~~<sup>Trust Officer</sup>, respectively, of Continental Illinois National Bank and Trust Company of Chicago, and that the foregoing instrument was signed and sealed on behalf of said bank in the capacity therein set forth and is the free act and deed of said bank.

Shirley J. Paul  
Notary Public

My commission expires:

MY COMMISSION EXPIRES SEPT. 11, 1982

SCHEDULE OF EQUIPMENT

<u>Description</u>	<u>Quantity</u>	<u>Identifying Number</u>
New 4780 Cubic Foot 100 Ton covered hopper cars manufactured by Evans Transportation Co.	35	LOAM99105-99139

SCHEDULE OF LEASES

Leasee: Illinois Central Gulf Railroad  
Agreement Date: June 12, 1979  
Term: Two Years  
Delivery Date: September 1979  
Rental: Mileage and Per Diem/Railroad Markings

Covering 35 100 Ton covered hopper cars - Debtor Identification  
Numbers: LOAM99105-99139