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RECORDATION NO. 1 5230  
Filed & Recorded

May 14, 1987 12:15 PM

ICC OFFICE OF  
FILED  
MAY 14 12 11 PM '87  
HOTEL, EASTING UNIT

BY HAND

INTERSTATE COMMERCE COMMISSION

Honorable Noreta R. McGee  
Secretary, Interstate Commerce Commission  
Washington, D.C. 20423

\$20.00 fee

(has cross indexing)

Dear Ms. McGee:

On behalf of CIS Corporation, I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, two (2) enclosed executed counterparts of a primary document, not previously recorded, entitled Security Agreement, dated as of May 11, 1987.

The parties to the said enclosed document are:

Itel Rail Corporation - Borrower/Debtor  
55 Francisco Street  
San Francisco, CA 94133

7-134A097

CIS Corporation - Lender/Secured Party  
909 Montgomery Street  
San Francisco, CA 94133

The said document grants a security interest in the subject rolling stock to CIS Corporation.

The rolling stock consists of fifty-nine (59) boxcars as listed on Exhibit A attached hereto.

NO. MAY 14 1987

20.00

Please cross-index the interest granted by said Security Agreement against that certain Lease dated as of March 31, 1987 between Burlington Northern Railroad Company, as Lessee, and CIS Corporation, as Lessor, to be filed shortly hereafter.\*

Enclosed is my check in the amount of ten dollars (\$10.00) in payment of the filing fee, plus \$10.00 for cross indexing fee.

Once this filing has been made, please return to bearer one (1) stamped counterpart of the document not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

\* Recordation No. 15234

Very truly yours,

Bertram C. Izant

Bertram C. Izant

BCI/sa  
Enclosures

*New member*  
*Checked by [unclear] to [unclear]*

EXHIBIT A

IDENTIFICATION OF BOXCARS

ATSF  
Reporting Marks  
of  
Boxcars

Description

625000	625038	
625001	625041 ✓	
625002	625042	
625004	625044	
625005	625045	
625007 ✓	625046	
625008	625047	
625009	625048 ✓	
625010	625049	
625011	625050	
625012	625051 ✓	
625013	625052	
625014	625053	
625016	625054	
625018	625055	
625019	625056	
625020	625057	
625022	625058	
625023	625059	
625024	625060	
625026	625061 ✓	
625027	625062	
625028	625063	
625029	625064	
625030	625065	
625032	625066	
625033	625067	
625034	625068	
625035	625069	
625037 ✓		

100-ton, specially equipped, insulated, shock control, load divider, plate C boxcars

Interstate Commerce Commission

Washington, D.C. 20423

5/14/87

OFFICE OF THE SECRETARY

Bertram C. Izant  
114 Sansome Street, Suite 634  
San Francisco, Calif. 94104

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 5/14/87 at 12:15pm, and assigned re-  
recording number(s). 15230 & 15231

Sincerely yours,

*Noreta R. McGee*  
Secretary

Enclosure(s)

1 5230

RECORDATION NO. \_\_\_\_\_ Filed & Recorded

MAY 14 1987 12-1 5 PM

INTERSTATE COMMERCE COMMISSION

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SECURITY AGREEMENT

Dated as of May 11, 1987

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between

ITEL RAIL CORPORATION

and

CIS CORPORATION

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**SECURITY AGREEMENT**

SECURITY AGREEMENT dated as of May 11, 1987, between ITEL RAIL CORPORATION, a Delaware corporation (the "Borrower"), and CIS CORPORATION, a New York corporation (the "Lender"):

**WITNESSETH:**

WHEREAS, Borrower is entering into a Boxcar Purchase Agreement dated as of May 4, 1987 (the "Boxcar Purchase Agreement") with The Atchison, Topeka and Santa Fe Railway Company ("ATSF") for the purchase of 59-100 ton, insulated, shock control, load divider, plate C boxcars, which boxcars bear reporting marks from within series ATSF 625000 through 625069 and are listed on Exhibit A attached hereto (collectively, the "Boxcars", and individually a "Boxcar");

WHEREAS, Borrower is entering into a Rebuilding Agreement dated as of April 30, 1987 with Evans Transportation Company (the "Rebuilder") for the rebuilding of the Boxcars (the "Rebuilding Agreement");

WHEREAS, Lender is entering into a Lease dated as of March 31, 1987 with Burlington Northern Railroad Company ("BN") for the lease of the Boxcars (the "Lease");

WHEREAS, Borrower and Lender are entering into a Purchase Agreement dated as of the date hereof under which the Lender will purchase the Boxcars from the Borrower.

WHEREAS, the Borrower desires to borrow up to ~~\_\_\_\_\_~~ (the "Principal Sum") from Lender to finance the purchase of the Boxcars under the Boxcar Purchase Agreement and Lender is willing to lend such sum to the Borrower on the terms and conditions hereof;

NOW THEREFORE, the parties hereto hereby agree as follows:

**ARTICLE I**

**DEFINITIONS; AMOUNT AND TERMS OF LOAN**

SECTION 1.01. Definitions. All capitalized terms not defined herein shall have the meanings set forth in the Lease.

SECTION 1.02. The Loan. The Lender agrees, on the terms and conditions hereinafter set forth, to make a loan (the "Loan") to the Borrower in the principal amount of the Principal Sum on or before May 1, 1987.

SECTION 1.03. The Note. The Loan shall be evidenced by a promissory note

(the "Note") received by the Lender pursuant to Article II hereof, in form attached hereto as Exhibit B, payable to the order of the Lender in the principal amount of the Principal Sum.

**SECTION 1.04. Making the Loan.** The Borrower agrees to give to the Lender written or telephone notice (to be confirmed promptly in writing) (the "Borrowing Notice") specifying the date, and the identification of the accounts of the Borrower, into which the proceeds of the Loan are to be made to permit wire transfer. Not later than 3:00 p.m. (New York City time) on or before the Delivery Date (the "Closing Date") and upon fulfillment of the applicable conditions set forth in Article II hereof, the Lender will wire transfer the proceeds of the Loan to the account specified in the Borrowing Notice.

**SECTION 1.05. Repayment of Principal of and Interest on the Loan.** The Borrower shall pay the principal of and interest on the Loan in the amounts and at the times and rates specified in the Note.

**SECTION 1.06. Interest.** Interest shall accrue on the unpaid principal amount of the Loan at the rates specified in the Note; provided, however, that notwithstanding any provision of this agreement to the contrary, the rate of interest on the Loan shall at no time exceed the maximum interest rate which Lender is permitted to charge from time to time under applicable laws.

**SECTION 1.07. Computation of Interest.** Interest hereunder and under the Note shall be computed on the basis of a 360-day year period.

## ARTICLE II

### CONDITIONS PRECEDENT

#### SECTION 2.01. Conditions Precedent to the Loan.

(a) The obligation of the Lender to make the Loan on the Closing Date is subject to fulfillment of the following conditions:

(1) The Lender shall have received evidence satisfactory in form and substance to it as to the following:

(A) The Borrower has good and marketable title to the Boxcars.

(B) The Lender has a duly perfected first priority security interest in the Collateral (as defined below) enforceable in accordance with the terms of this Agreement.

(C) Appropriate Uniform Commercial Code financing statements or other documents covering the security interest granted to the Lender hereunder have been duly filed in each jurisdiction necessary or advisable to perfect or protect the security interest granted hereunder and any appropriate documents have been filed with the Interstate Commerce Commission.

(2) Borrower has executed the Note in the face amount of the Principal Sum.

(3) No Event of Default or event which with the giving of notice or the passage of time would constitute an Event of Default under the Lease, the Boxcar Purchase Agreement, the Purchase Agreement, the Rebuilding Agreement or this Agreement has occurred and is continuing on the Closing Date.

(4) The Lender shall have received certificates of the insurers, satisfactory in form and substance to it, as to the insurance maintained and carried with respect to the Boxcars.

(5) The Lender has received such other documents and certificates as it or Lender's counsel shall reasonably request and an opinion of counsel to Borrower in customary form with respect to those matters contained in Sections 4.01(a)(i) - (vi), (viii) and (x) hereof.

(6) There shall not have been, in the reasonable opinion of the Lender, any material adverse change in the business, financial condition or operations of the Borrower since the date hereof.

(b) The Lender agrees that the making available to the Borrower of the amount of the Loan on the Closing Date shall constitute, without further action by the Lender, conclusive evidence, as between the Borrower and the Lender, that the conditions set forth in paragraph (a) of this Section have been complied with in a manner satisfactory to the Lender.

## ARTICLE III

### COLLATERAL SECURITY

**SECTION 3.01 Grant of Security.** Borrower hereby transfers, assigns and sets over to Lender and grants to the Lender a security interest in the following (the "Collateral"), all whether now owned or hereafter acquired:

(a) All claims, rights, powers, privileges and remedies on the part of the Borrower, with respect to the Boxcars, whether arising by statute, at law, in equity or otherwise;

(b) All rights of the Borrower, in and to the Boxcar Purchase Agreement, the Bills of Sale issued thereunder, together with all estates and interests of Borrower therein and thereto, and all rights, powers and privileges of Borrower thereunder or in respect thereof; and

(c) All rights and powers of Borrower, in and to the Rebuilding Agreement, together with all estates and interests of Borrower therein and thereto, and all rights, powers and privileges of Borrower thereunder or in respect thereof.

together with full power and authority, in the name of the Lender or Borrower or otherwise, should an Event of Default have occurred and be continuing, as attorney-in-fact of Borrower hereby irrevocably constituted, to enforce, collect, receive and receipt for any and all of the foregoing sums assigned, or entitled to be received pursuant to other rights assigned.

**SECTION 3.02. Security for Note.** This Agreement is made for the benefit of the Lender and any subsequent holder of the Note to secure the payment of the principal of and interest on all outstanding indebtedness under the Note, and the performance of and compliance with all the terms of the Note and of this Agreement, and all costs and expenses of the Lender incurred in connection with enforcing performance of and compliance with all the terms of the Note and of this Agreement (all such obligations of the Borrower hereafter referred to as the "Obligations").

**SECTION 3.03. Protection of Security.** Further to preserve and protect the security afforded the Lender by this Agreement, Borrower agrees:

(a) To perform and comply with each and every term of this Agreement to be performed or complied with by Borrower.

(b) Unless the prior written consent (such consent not to be unreasonably withheld) of the Lender is obtained, the Borrower shall not waive, amend, modify, or in any way alter any of the terms of the Rebuilding Agreement, or cancel or terminate the Rebuilding Agreement or consent to or accept any cancellation, termination or surrender thereof, or waive any default under or breach of the Rebuilding Agreement or make any agreement with the Rebuilder with respect to the Rebuilding Agreement.

(c) If Borrower shall fail to make any payment or do any act as

provided herein, then the Lender may (but shall not be obligated to), without prior notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as the Lender may deem necessary or advisable to preserve and protect the Collateral secured hereby, including specifically, without limiting the Lender's general powers, the right to appear in and defend any action or proceeding purporting to affect the security interest in the Collateral created by this Agreement or the rights or powers of the Lender hereunder, and the right to perform and discharge each and every obligation, covenant and agreement of Borrower contained in the Rebuilding Agreement; and in exercising any such powers, Lender may incur reasonable costs and expenses (including, but not limited to, the reasonable fees and actual expenses of counsel), for which costs and expenses the Lender shall be reimbursed by Borrower from the Collateral. Lender shall give Borrower notice of any action taken by it pursuant to this paragraph.

(d) Borrower agrees that it will use its best efforts to assist the Lender in verifying the location and condition of the Collateral and Borrower agrees that the Lender may at any reasonable time during ordinary business hours at its option, whether or not Borrower is in default, inspect the books and records of Borrower upon reasonable notice and make copies thereof or extracts therefrom, which inspection shall be reasonably related to the transactions contemplated hereunder.

(e) Borrower shall not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Boxcars, except materialmen's, mechanic's, workmen's, repairmen's, employees or other like liens arising in the ordinary course of business, or as permitted under the Rebuilding Agreement.

**SECTION 3.04. Protection of Security Interest.** Upon an Event of Default, Borrower hereby appoints the Lender its true and lawful attorney, with full power of substitution in the premises, to enforce the Borrower's rights under the Rebuilding Agreement, and to take any other action which the Lender may deem necessary or appropriate to protect and preserve the security interest of the Lender in the Collateral.

**SECTION 3.05. No Assumption by the Lender.** Anything contained herein or in the Rebuilding Agreement to the contrary notwithstanding: (a) Borrower shall at all times remain liable to Rebuilder under the Rebuilding Agreement to perform all its duties and obligations thereunder, to the same extent as if this Agreement had not been executed; (b) the exercise by Lender of any of the rights assigned to it hereunder shall not release Borrower from any of its duties or obligations under the Rebuilding Agreement and (c) the Lender shall not have any obligation or liability under the Rebuilding Agreement by reason of, or arising out of, this Agreement, or be obligated to perform any of the obligations or duties of Borrower under the Rebuilding Agreement.

**SECTION 3.06. Continuing Security Interest; Transfer of Note.** This Article III shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until payment in full of the Obligations, (ii) be binding upon Borrower, its successors and assigns, and (iii) inure, together with the rights and remedies of the Lender hereunder, to the benefit of the Lender, and its successors,

transferees and assigns. Without limiting the generality of the foregoing clause (iii), Lender may assign or otherwise transfer the Note held by it to any other person or entity, and such other person or entity shall thereupon become vested with all the benefits in respect thereof granted to Lender herein or otherwise. Upon the payment in full of the Obligations, the security interest granted hereby shall terminate. Upon any such termination, the Lender will, at Borrower's expense (except for Lenders' attorneys' fees), execute and deliver to Borrower such documents as Borrower shall reasonably request to evidence such termination.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

###### SECTION 4.01. Representations, Warranties and Covenants.

(a) The Borrower represents, warrants and covenants that

(i) The Borrower is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has full power and authority to enter into and perform its obligations under this Agreement and the Note;

(ii) The execution, delivery and performance by the Borrower of this Agreement, Boxcar Purchase Agreement, the Rebuilding Agreement and the Secured Note (the "Basic Documents") have been duly authorized by all necessary corporate action and under present law do not and will not contravene any law or any governmental rule or regulation or any judgment, decree or order presently binding on Borrower or its Certificate of Incorporation or By-laws or contravene the provisions of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property of the Borrower, except for the lien granted to the Lender in the Collateral, under any indenture, mortgage, contract or other agreement or instrument to which it is a party or by which it or its property is bound;

(iii) The execution, delivery and performance by the Borrower of the Basic Documents do not require the consent, approval, authorization or order of, the giving of notice to, the registration or filing with, or the taking of any other action in respect of, any Federal, state or other governmental authority or agency ;

(iv) The Basic Documents have been duly authorized, executed and delivered by the Borrower and, assuming the due authorization, execution and delivery hereof by the other parties thereof and thereto, constitute legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their respective terms;

(v) There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened, before any court, administrative agency, arbitrator or governmental body which individually or in the aggregate, might materially impair the ability of the Borrower to perform its

obligations hereunder and under the Note and the Borrower is not in default under any material indenture, mortgage, contract or other agreement or instrument to which it is a party or by which it or its property is bound which individually or in the aggregate might materially impair the ability of the Borrower to carry on its ordinary business or to perform its obligations hereunder;

(vi) On the closing date hereof, the Borrower shall have title to the Boxcars free and clear of all liens, claims, charges or other encumbrances whatsoever, except the lien created by this Agreement and the interest of BN under the Lease;

(vii) Financing statements under the Uniform Commercial Code in the form requested by the Lender have been executed by the Borrower, and have been or shall be delivered to the Lender for filing against the Borrower in all jurisdictions where such filing is necessary in order to protect and establish the security interest for the Lender granted hereunder and upon such filing Lender shall have a first priority perfected security interest in the Collateral and no further action, including any filing or recording of any document (including any financing statement in respect thereof under the Uniform Commercial Code of any applicable jurisdiction) is necessary in order to establish and perfect the Lender's security interest granted hereunder against any third parties in any jurisdiction or where such further filing or recording is necessary it has or shall have been done;

(viii) The Note will be entitled to the benefits and security of this Agreement;

(ix) The chief executive office of Borrower is in San Francisco, California and the office where Borrower keeps its records relating to the Boxcars is in San Francisco, California;

(x) This Agreement creates a valid security interest in favor of the Lender in respect of the Boxcars and the Rebuilding Agreement, which security interest shall be superior in right to all claims of secured and unsecured creditors of Borrower and to all other security interests, liens, claims and encumbrances except for materialmen's, mechanic's, workmen's, repairmen's, employees or other like liens arising in the ordinary course of business, or as permitted under the Rebuilding Agreement;

(xi) The Borrower will at all times during the term of this Agreement carry and maintain or cause to be carried and maintained on the Boxcars at its own cost and expense, the same public liability and property damage insurance on the Boxcars as it carries with respect to other railcars owned by it. Borrower shall furnish the Lender with certificates or other satisfactory evidence of the maintenance of the insurance required hereunder and shall furnish certificates or other satisfactory reports evidencing renewal prior to the expiration date of the original and any renewal policy or policies;

(xii) The Borrower shall not directly or indirectly create, incur, assume or suffer to exist any lien, encumbrance, lease or security interest in the Collateral except the lien of this agreement materialmen's, mechanic's, workmen's, repairmen's, employees or other like liens arising in the ordinary

course of business or as permitted under the Rebuilding Agreement and the interest of the Lessee under the Lease; and

(xiii) The Borrower agrees to faithfully perform each and every obligation and agreement which the Basic Documents provide is to be performed by the Borrower and notify promptly the Lender of any Default or Event of Default or alleged Event of Default by any party thereto or any termination or alleged termination of any thereof.

## ARTICLE V

### EVENTS OF DEFAULT

**SECTION 5.01. Events of Default.** If any of the following events ("Events of Default") shall occur and be continuing:

(a) Any installment of principal of or interest on the Note shall not be paid within seven (7) days of the due date thereof; or

(b) Any representation or warranty made by Borrower in this Agreement or by Borrower (or any of its officers) in any certificate, agreement, instrument or statement contemplated by or made or delivered pursuant to or in connection with this Agreement which shall prove to have been incorrect in any material respect when made; or

(c) Borrower shall fail to perform or observe any other term, covenant or agreement contained in this Agreement on its part to be performed or observed and such failure shall continue for fifteen (15) days after written notice from the Lender; or

(d) Borrower shall be adjudicated as bankrupt or insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or shall apply for or consent to the appointment of any receiver or similar officer for it or for all or any substantial part of its property; or such receiver, or similar officer shall be appointed without the application or consent of the Borrower and such appointment shall continue undischarged for a period of 30 days; or the Borrower shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Borrower and shall remain undismissed for a period of 30 days; or any judgment, writ, warrant of attachment of execution or similar process shall be issued or levied against the Collateral, or any part thereof and such judgment, writ or similar process shall not be released, vacated or fully bonded within 30 days after its issue or levy;

then, and in any such event, the Lender may, in addition to the remedies provided for in this Agreement and by written notice to Borrower, declare the entire unpaid principal amount of the Note, all interest accrued and unpaid thereon and all other

amounts payable under this Agreement to be forthwith due and payable, whereupon the Note, all such accrued interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Borrower.

## ARTICLE VI

### REMEDIES

**SECTION 6.01. Remedies of Default.** If an Event of Default under this Agreement shall occur and be continuing, then the Lender, without the necessity of or the obligation to resort to any other security, shall have, in addition to the rights and remedies granted by this Agreement, the right at any time and from time to time, in its sole discretion, to exercise any rights and remedies granted to a secured party holding a purchase money security interest under the Uniform Commercial Code, and the Lender may reduce its claim hereunder and on the Note to a judgment, foreclose or otherwise enforce the security interest granted hereby by any procedure, judicial or otherwise, as allowed by law. Any sale of the Collateral hereunder may be held in the Lender's discretion, in any of the following locations: where the Collateral is located, at the office of Borrower or at any of the Lender's offices. Upon such sale, the Lender may purchase the Collateral free from any equity or right of redemption, which is hereby waived and released. Upon such sale, after deducting all costs and expenses of every kind for sale or delivery (including, but not limited to, the reasonable fees and expenses of counsel for the Lender) from the proceeds of such sale, the Lender shall apply any residue remaining first to the payment of the liabilities of Borrower first under the Note and then under this Agreement. The balance, if any, remaining after payment in full of any and all such liabilities shall be paid to Borrower. Any right granted to Borrower under the Uniform Commercial Code of any State to redeem the Collateral prior to disposition or discharge of the obligation is expressly conditioned upon receipt of the Lender of all funds then due under this Agreement and all expenses of the Lender in retaking, holding and preparing the Collateral, including, without limitation, reasonable fees and expenses of counsel for the Lender. The rights of the Lender specified in this paragraph shall be cumulative and shall in no event be deemed exclusive of any other right the Lender may have hereunder and pursuant to the laws (including without limitation the Uniform Commercial Code) of the United States or any state of the United States. Notwithstanding the foregoing, the security interests granted hereby are effective immediately and their effectiveness is not contingent upon the occurrence of an Event of Default under this Agreement. Upon the occurrence and during the continuance of an Event of Default, the Lender in its discretion may declare the unpaid principal amount of the Note and accrued interest thereon to be immediately due and payable, upon which declaration such principal amount and such accrued interest shall immediately become due and payable without further act or notice of any kind.

**SECTION 6.02. Remedies Cumulative.** Each and every right, power and remedy herein specifically given to the Lender shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute.

## ARTICLE VII

### MISCELLANEOUS

**SECTION 7.01 Further Assurance.** Borrower from time to time shall, execute, deliver to the Lender and file, all such instruments and take all such actions as the Lender may reasonably request in order to preserve and protect the security interest granted or intended to be granted to the Lender hereunder, to effectuate the purpose of this Agreement or to carry out the terms hereof, including, without limitation, the execution and filing of financing statements or continuation statements under the Uniform Commercial Code and the filing of any documents, agreements or statements with the Interstate Commerce Commission. Borrower hereby authorizes the Lender to file this Agreement or any such financing statements or continuation statements (and to sign the same on behalf of Borrower) with respect to the Collateral with any appropriate governmental office in order to preserve, protect, perfect or continue the perfection of any and all security interests granted or created hereby.

**SECTION 7.02. Assignment by Borrower.** Borrower may not sell its interest in the Boxcars nor assign its interest under the Rebuilding Agreement to any person.

**SECTION 7.03. Assignment by Lender.** All or any of the right, title or interest of Lender in, to or under this Security Agreement and the rights, benefits and advantages of Lender hereunder may be assigned or transferred and may be reassigned or retransferred by any assignee of Lender at any time and from time to time, but such assignment shall not be effective until Borrower has received written notice thereof.

**SECTION 7.04. Termination.** The assignments made and the security interests created hereunder shall terminate when all the obligations of Borrower under the Note and this Agreement then due and unpaid shall have been discharged and all amounts due hereunder have been paid, and the Lender, at the request of Borrower, will execute termination statements and such other documents as may be necessary or appropriate to make clear upon the public records and otherwise the termination of any and all such assignments and security interests.

**SECTION 7.05. Controlling Law; Successors and Assigns.** This Agreement shall be governed by and be construed in accordance with the laws of the State of New York (without regard to any conflicts of law rule which might result in the application of the law of any other jurisdiction), including all matters of construction, validity and performance, and shall inure to the benefit of and be binding upon the Borrower and the Lender and their respective successors and assigns.

**SECTION 7.06. Changes, Waivers, etc.** Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement thereof is sought. No failure or delay by the Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**SECTION 7.07. Notices.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the term hereof shall be in writing, and any such notice shall become effective upon being deposited in the mails, certified or registered, with appropriate postage prepaid for first-class mail, return receipt requested, or, if delivered by hand, when received, and shall be directed (i) if to Lender or Borrower, to the respective addresses set forth opposite the signatures of such parties at the foot of this Agreement, or (ii) if to any assignee or successor in interest of Borrower or Lender, addressed to such assignee or successor in interest at such address as such assignee or successor in interest shall have furnished by notice to the Lender or the other parties hereto, or (iii) to such other address as any such party or any such assignee or successor in interest may designate by notice given to the parties hereto.

**SECTION 7.08. Notice to Borrower.** The Lender agrees that so long as any obligations remain outstanding under the Note, it shall give Borrower prompt written notice of any application by BN for a waiver, consent, amendment or modification of the Lease.

**SECTION 7.09. Indemnity.** Borrower agrees to indemnify Lender and its respective successors, assigns, agents and employees against, and hold such indemnified persons harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities at law or in equity, including attorneys' fees ("Impositions"), arising out of, connected with or resulting from this Agreement, Note or the Boxcars through the respective Delivery Date as defined in the Lease (or date that the Boxcar is deemed delivered), including, without limitation, the manufacture, selection, purchase, delivery, possession, condition, use, operation or return thereof for each Boxcar; provided that Borrower shall not be required to indemnify any such person from Impositions arising out of such person's gross negligence or willful misconduct and except for acts or omissions by BN under the Lease. The Borrower's obligations hereunder will survive the satisfaction of the Secured Note. All payments due from the Borrower under this Section 7.09 shall be payable 10 days after demand and shall be in an amount which after deduction of the net amount, if any, of all income taxes required to be paid by Lender, or any other indemnified party, as a result of the non-deductibility of any such Impositions and/or the receipt by Lender, or any other indemnified party, of such payments shall equal the Impositions.

**SECTION 7.10. Costs.** Except as provided for in this Section, each party hereto shall pay its own costs and expenses in connection with the transactions contemplated by this Agreement.

**SECTION 7.11. Severability.** In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**SECTION 7.12. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

SECTION 7.13. Section Headings. The section headings in this Agreement have been inserted for convenience only and form no part of this Agreement.

SECTION 7.14 Power of Attorney. Borrower does hereby constitute Lender its true and lawful attorney, irrevocable, with full power (in the name of Borrower of otherwise) for the purpose of effectuating any sale, assignment, transfer or delivery for the enforcement of the lien of this Agreement, whether pursuant to foreclosure or power of sale or otherwise, and to execute and deliver all such Bills of Sale, assignments and other instruments as Lender may reasonably consider necessary or appropriate, with full power of substitution. If so requested by Lender or any purchaser, Borrower shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to Lender or such purchaser all Bills of Sale, Assignments, Releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

ITEL RAIL CORPORATION

By:   
Name: Desmond P. Hayes  
Title: President

CIS CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

**SECTION 7.13. Section Headings.** The section headings in this Agreement have been inserted for convenience only and form no part of this Agreement.

**SECTION 7.14 Power of Attorney.** Borrower does hereby constitute Lender its true and lawful attorney, irrevocable, with full power (in the name of Borrower or otherwise) for the purpose of effectuating any sale, assignment, transfer or delivery for the enforcement of the lien of this Agreement, whether pursuant to foreclosure or power of sale or otherwise, and to execute and deliver all such Bills of Sale, assignments and other instruments as Lender may reasonably consider necessary or appropriate, with full power of substitution. If so requested by Lender or any purchaser, Borrower shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to Lender or such purchaser all Bills of Sale, Assignments, Releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

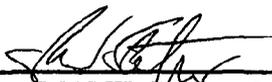
**ITEL RAIL CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CIS CORPORATION**

By:  \_\_\_\_\_

Name: **ROSS W. STEFANO**  
**VICE PRESIDENT - TREASURER**

Title: \_\_\_\_\_

Address: One CIS Parkway, P.O. Box 4785  
Syracuse, New York 13221

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ONONDAGA )

On this 12th day of May, 1987, before me personally appeared Ross W. Stefano, to me personally known, who being by me duly sworn says that such person is Vice President/Treasurer of CIS Corporation, that the foregoing Security 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.

Linda M. Maar  
Notary Public

LINDA M. MAAR  
Notary Public in the State of New York  
Qualified in Onondaga County No. 4786245  
My Commission Expires ~~March 30, 19~~  
July 31, 1989

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

On this \_\_\_\_\_ day of May, 1987, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that such person is \_\_\_\_\_ of Itel Rail Corporation, that the foregoing Security 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

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF                    )

On this \_\_\_\_\_ day of May, 1987, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that such person is \_\_\_\_\_ of CIS Corporation, that the foregoing Security 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

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

On this 11<sup>th</sup> day of May, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Rail Corporation, that the foregoing Security 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.



Patricia Schumacker  
Notary Public

EXHIBIT A

IDENTIFICATION OF BOXCARS

ATSF  
Reporting Marks  
of  
Boxcars

ATSF #s

Description

625000      625038  
625001      625041  
625002      625042  
625004      625044  
625005      625045  
625007      625046  
625008      625047  
625009      625048  
625010      625049  
625011      625050  
625012      625051  
625013      625052  
625014      625053  
625016      625054  
625018      625055  
625019      625056  
625020      625057  
625022      625058  
625023      625059  
625024      625060  
625026      625061  
625027      625062  
625028      625063  
625029      625064  
625030      625065  
625032      625066  
625033      625067  
625034      625068  
625035      625069  
625037

100-ton, specially equipped, insulated, shock control, load divider, plate C boxcars

SECURED NOTE

\$ \_\_\_\_\_, 1987

ITEL RAIL CORPORATION, a Delaware corporation (the "Company"), hereby promises to pay to the order of CIS Corporation, a New York corporation ("CIS"), or its assigns, the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which principal sum is equal to \$13,200 times the number of boxcars being purchased on the date hereof by the Company (the "Boxcars") from The Atchison, Topeka and Santa Fe Railway Company ("ATSF") pursuant to that certain Boxcar Purchase Agreement dated as of April \_\_, 1987 between the Company and ATSF. The Company has agreed to sell the Boxcars to CIS pursuant to a certain Purchase Agreement dated as of \_\_\_\_\_, 1987 (the "Purchase Agreement"). CIS has agreed to lease the Boxcars so purchased from the Company to Burlington Northern Railroad Company ("BN") pursuant to a certain Lease dated as of March 31, 1987 between CIS and BN (the "Lease").

This Secured Note shall bear no interest for the first 135 days of the term of this loan, 4% interest per annum for days 136 through 166 of the term of this loan on the unpaid principal portion thereof, and 8.5% interest per annum for days 167 through October 31, 1987 on the unpaid principal portion thereof. Any remaining principal amount due under this Secured Note with respect to Boxcars which shall not have been accepted, or deemed to have been accepted, by BN under the Lease on or before October 31, 1987 shall be due and payable by the Company on said date, together with interest at the rate of 8.5% per annum on such principal amount from the date of this Secured Note through October 31, 1987, notwithstanding the first sentence of this paragraph. Any principal amount, together with any accrued but unpaid interest, of this Secured Note which shall not be paid when due shall bear interest from November 1, 1987 at a rate equal to the interest rate announced by Citibank, N. A. from time to time as its prime lending rate, plus 2% per annum.

On each Delivery Date as defined in the Lease or date that the Boxcars are deemed accepted under the Lease, \$13,200 in principal amount for each Boxcar accepted under the Lease and purchased by CIS on such date and accrued interest on such principal amount shall be due and payable by the Company, which principal and interest shall thereupon be deemed to have been paid as provided for in the Purchase Agreement by the reduction in the purchase price paid by CIS to the Company for the Boxcars being purchased on such date. Any remaining balance of this Secured Note shall be due and payable on November 1, 1987.

This Secured Note is a Secured Note authorized by and issued under that certain Security Agreement dated as of the date hereof (the "Security Agreement") executed by the

Company and CIS. Reference is hereby made to the Security Agreement for a description of the other rights of CIS, the other obligations of the Company, the Collateral securing this Secured Note and the rights of the Company and CIS in respect of the Collateral. The terms defined in the Security Agreement are used herein with the same meanings.

The Company agrees to pay all costs and expenses, including reasonable attorneys' fees, expended or incurred by the holder in connection with the successful enforcement of this Secured Note, the collection of any sums due hereunder, any action for declaratory relief in any way related to this Secured Note, or the protection, or preservation of any rights of the holder hereunder.

Upon the occurrence of an Event of Default, the principal amount of this Secured Note may be declared immediately due and payable upon the conditions and in the manner and with the effect provided in the Security Agreement.

No failure on the part of CIS in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof or the exercise of any other right or remedy hereunder. No modification or waiver of any provision of this Secured Note, nor any departure by the Company therefrom, shall in any event be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. Whenever any payment to be made hereunder shall be due on a Saturday, Sunday or public holiday, such payment shall be deemed to be payable on the next following business day and such extension of time in such case, shall be included in computing interest, if any, in connection with such payment.

IN WITNESS WHEREOF, the Company has caused this Secured Note to be duly executed on its behalf by a duly authorized officer.

ITEL RAIL COPRORATION

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_