ITEL
Pullman

Itel Rail Corporation
55 Francisco Street
San Francisco, California 94133
(415) 984-4000
(415) 781-1035 Fax

16227
RECORDATION NO. ——— FILED 1425

March 1, 1989

MAR 6 1989 -11 05 AM

INTERSTATE COMMERCE COMMISSION

9-065A004

Date 3/6/89
Fee $13

ICC Washington, D. C.

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

Re: Railcar Purchase and Sale Agreement between Itel Railcar Corporation and GWI Leasing Corporation

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in thre (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the $13 recordation fee.

Please record this Railcar Purchase and Sale Agreement under a new recordation number.

The parties to the aforementioned instrument are listed below:

Itel Railcar Corporation (Seller
55 Francsico Street
San Francisco, California 94133

GWI Leasing Corporation (Purchaser
71 Lewis Street
Greenwich, Connecticut 06830

This Railcar Purchase and Sale Agreement covers sixty-three (63) 3560 cubic foot, 100-ton covered hoppers bearing reporting marks USLX 605-799 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

patricia schumacker

Patricia Schumacker
Legal Department

Interstate Commerce Commission

Washington, D.C. 20423

3/10/89

OFFICE OF THE SECRETARY

Patricia Schumacker

Itel Rail Corp.

55 Francisco St.

San Francisco, Calif. 94133

Dear Ms. Schumacker:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/6/89 at 11:05am, and assigned recordation number(s).

16227

15063-U

15064-N

15480-B

15480-C

15480-D

15852-B

Sincerely yours,

Noreta R. McGee

Secretary

Enclosure(s)

Two
Two Extra Document Included Four total

SE-30
(7/79)

16227

RECORDATION NO. _____ FILED 1425

MAR 6 1989 -11 05 AM

INTERSTATE COMMERCE COMMISSION

RAILCAR PURCHASE AND SALE AGREEMENT

RAILCAR PURCHASE AND SALE AGREEMENT ("Agreement") between **ITEL RAILCAR CORPORATION**, a Delaware corporation ("Seller"), and **GWI LEASING CORPORATION** ("Purchaser"), a Delaware corporation, dated as of January 17, 1989.

WHEREAS, Seller is the owner of covered hoppers identified on Schedules 1 and 2 hereto (the "Cars"), Purchaser desires to buy the Cars from Seller and Seller desires to sell the Cars to Purchaser, upon the terms and conditions contained herein.

NOW, THEREFORE, Purchaser and Seller hereby agree as follows:

1. **Agreement to Purchase**

   Seller agrees to sell, and Purchaser agrees to purchase, Seller's entire right, title and interest in and to the Cars, together with all parts, fixtures, equipment and appurtenances thereto.

2. **Purchase Price**

   The purchase price for the Cars shall be [redacted] per Car for the Cars on Schedules 1 and 2. Payment of the purchase price shall be made by wire transfer in immediately available funds on the date of closing (as defined hereinbelow).

3. **Closing**

   The closing of the sale of the Cars on Schedule 1 (the "First Closing") will take place at San Francisco, California on January 31, 1989, or at such other time and place as the parties may agree. The closing of the sale of the Cars on Schedule 2 shall be at such time and place as the parties may agree, but shall take place no later than February 28, 1989. The First Closing and the closing of the sale of the Cars on Schedule 2 are hereinafter referred to as the "Closing".

4. **Deliveries at Closing**

   A. At the applicable Closing, Seller shall deliver to Purchaser a duly executed Bill of Sale (the "Bill of Sale") substantially in the form attached hereto as Exhibit B, for the Cars.

   B. At the applicable Closing, Purchaser shall deliver to Seller a wire transfer in immediately available funds in payment of the purchase price, as provided in Section 2 hereof.

5. **Delivery of the Cars**

   Seller shall be deemed to have delivered the Cars to Purchaser, and

Purchaser shall be deemed to have taken delivery of and accepted the Cars from Seller, immediately upon the applicable Closing, without any further action on the part of Purchaser or Seller; except that Purchaser shall remark the Cars to bear reporting marks other than Seller's reporting marks prior to placing the Cars into service, and shall advise Seller of the new reporting marks and number for each Car.

6. <u>Representations and Warranties of Seller</u>

Seller hereby represents and warrants to Purchaser as follows:

A. The Cars are free and clear of all liens, pledges, security interests, encumbrances or other defects of title created by, through or under Seller and there is no contract or restriction which prevents Seller from conveying or transferring the Cars to Purchaser. Purchaser acknowledges that the Cars described on Schedule 2 are subject to a lease agreement between Seller and a third party, which expires in January 1989.

B. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority necessary to enter into this Agreement and the Bill of Sale and all other documents contemplated hereby or thereby, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby.

C. The execution, delivery and performance of this Agreement and the Bill of Sale and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action on the part of Seller; and this Agreement and the Bill of Sale are valid and binding obligations of Seller, in each case enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally or by equitable limitations on the availability of remedies. The execution, delivery and performance of this Agreement and the Bill of Sale by Seller and the consummation by Seller of the transactions contemplated hereby or thereby, will not (i) conflict with or result in a breach of any provisions of the Restated Certificate of Incorporation or bylaws of Seller; (ii) violate the provisions of any agreement or contract binding upon Seller or (iii) violate any statute, rule, regulation, judgment, order, writ, injunction or decree of any court, administrative agency or governmental body applicable to Seller.

D. No filing with any authority, agency or third party or permit, authorization, consent or approval thereby is necessary for the consummation by Seller of the transactions contemplated by this Agreement and the Bill of Sale.

E. The sale to Purchaser of the Cars pursuant to this Agreement neither constitutes nor forms a part of a "bulk transfer" within the meaning of Article (or Division) Six of the Uniform Commercial Code of any jurisdiction having authority over the Seller or the Cars.

F. Seller has not employed any broker or finder or incurred any liability for brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.

All of the foregoing warranties shall survive the applicable Closing.

7. **WARRANTY DISCLAIMER**

PURCHASER ACKNOWLEDGES THAT IT IS PURCHASING THE CARS "AS IS, WHERE IS", "WITH ALL FAULTS", AND IN RELIANCE SOLELY ON ITS OWN JUDGEMENT. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE CARS, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

PURCHASER AGREES THAT SELLER SHALL HAVE NO LIABILITY WHATSOEVER FOR CONSEQUENTIAL OR INDIRECT DAMAGES.

8. **Representations and Warranties of Purchaser**

Purchaser hereby represents and warrants to Seller as follows:

A. Purchaser is a corporation duly organized, validly existing and in good standing of the laws of the State of Delaware, and has all requisite corporate power and authority necessary to enter into this Agreement, and all other documents contemplated hereby to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

B. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Purchaser. This Agreement is a valid and binding obligation of Purchaser, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally or by equitable limitations on the availability of remedies. The execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not (i) conflict with or result in a breach of any provisions of the Certificate of Incorporation or bylaws of Purchaser; (ii) violate the provisions of any agreement or contract binding upon Purchaser; or (iii) violate any statute, rule, regulation, judgment, order, writ, injunction or decree of any court, administrative agency or governmental body applicable to Purchaser or its property.

C. No filing with, or permit, authorization, consent or approval of, any authority or agency or third party is necessary for the consummation by Purchaser of the transactions contemplated by this Agreement.

D. Purchaser has not employed any broker or finder or incurred any liability for brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.

E. There are not and will not be, any sales, use or other taxes payable or assessable as a result of the purchase and sale of the Cars.

All of the foregoing warranties shall survive the applicable Closing.

9. **Destruction of Cars before Closing**

Seller and Purchaser acknowledge that the Cars are, at any time, travelling in interstate commerce, that a Car or Cars might be destroyed before the Closing, and that it may not be possible for either Purchaser or Seller to learn of such destruction before the Closing. Seller and Purchaser agree that in the event either of them learns that any Car or Cars have been destroyed before the Closing, the party so learning shall provide to the other party reasonably satisfactory evidence of such destruction and such Car or Cars shall be removed from this Agreement and the Bill of Sale and Seller shall promptly refund to Purchaser the purchase price for such Car. Seller shall be entitled to any railroad or lessee indemnity and any proceeds of insurance received by either Purchaser or Seller in respect of such destroyed Car. Seller agrees to use its best efforts to prevent the destruction of any Car.

10. **Operations Prior to Closing**

All revenues earned by or with respect to the Cars, and all costs, charges and expenses incurred on or with respect to the Cars, for all periods through and including the applicable Closing, are for the account of Seller, in each case regardless of when revenues and expense invoices are actually received (with a daily pro ration for the month during which the applicable Closing occurs, if actual revenues and expenses cannot be traced).

11. **Indemnification**

Purchaser agrees to indemnify, defend and hold harmless Seller from any and all claims, liabilities, losses, damages, costs and expenses, including attorneys' fees (collectively "Damages") caused by, resulting from or arising out of the ownership, leasing, possession, operation, use or maintenance of the Cars, at any time from and after the applicable Closing, except any Damages caused by, resulting from or arising out of (i) Seller's negligence; and (ii) the untruth, inaccuracy or breach of any representations, or warranties or agreements of Seller contained herein.

12. **Costs**

Seller and Purchaser each shall bear its own costs with respect to the preparation and negotiation of this Agreement, unless otherwise provided herein.

13. **Assignment of Claims**

Seller agrees to assign to Purchaser, effective as of the Closing, all claims, causes of action, warranties, rights of indemnity and other rights, if any, as currently exist or will exist against third parties with respect to the Cars, to the extent that such rights are assignable and to the extent they arise after the Closing.

14. **Assignability**

This Agreement and Purchaser's rights and obligations hereunder are not assignable by Purchaser in whole or in part. This Agreement shall be assignable by Seller upon written notice to Purchaser.

15. **Miscellaneous**

This Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws doctrine, but the parties shall be entitled to all rights under 49 U.S.C. Section 11303. This Agreement can be modified or rescinded only by a writing signed by Purchaser and Seller. This Agreement may be executed in two or more counterparts, and such counterparts taken together shall constitute one and the same instrument.

16. **Notice**

Any notices required or permitted hereunder shall be in writing, addressed to the other party as set forth below and shall be valid when delivered personally or by telex or three days after having been dispatched by United States mail, first class, postage prepaid, as follows:

If to Seller: Itel Railcar Corporation
55 Francisco Street
San Francisco, California 94133
Attn: Jeffrey Corbett, Assistant Vice President

If to Purchaser: GWI Leasing Corporation
71 Lewis Street
Greenwich, Connecticut 06830
Attn: Mortimer B. Fuller, Chairman

Either party may, by written notice to the other, change the address to which notices are to be sent.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

GWI LEASING CORPORATION

By: Lawrence Cahill

Title: President

Date: January 17th, 1989

Attest: Virginia Lebowitz

ITEL RAILCAR CORPORATION

By: D D Noyes

Title: President

Date: 1/27/89

Attest: H J Chaber

Assistant Secretary

SCHEDULE 1

IDENTIFICATION OF CARS

Reporting Mark	Type and Approximate Dimensions
USLX 750 USLX 752 USLX 755 USLX 756 USLX 760 USLX 761 USLX 762 USLX 763 USLX 764 USLX 765 USLX 767 USLX 769 USLX 771 USLX 772 USLX 773 USLX 775 USLX 776 USLX 778 USLX 779 USLX 781 USLX 784 USLX 786 USLX 787 USLX 789 USLX 791 USLX 792 USLX 797 USLX 799	Twenty-eight (28), 3560 cubic foot, 100-ton covered hoppers

==========TOTAL: 28 Cars

SCHEDULE 2

IDENTIFICATION OF CARS

Reporting Mark	Type and Approximate Dimensions
USLX 605 USLX 619 USLX 620 USLX 625 USLX 629 USLX 630 USLX 635 USLX 638 USLX 642 USLX 648 USLX 650 USLX 651 USLX 652 USLX 654 USLX 659 USLX 666 USLX 669 USLX 670 USLX 678 USLX 707 USLX 710 USLX 713 USLX 717 USLX 720 USLX 723 USLX 727 USLX 753 USLX 758 USLX 759 USLX 770 USLX 780 USLX 785 USLX 788 USLX 793 USLX 794	Thirty-five (35), 3560 Cubic-foot, 100-ton covered hoppers

==========**TOTAL: 35 Cars**

Exhibit B

BILL OF SALE

KNOW ALL PERSONS BY THESE PRESENTS THAT, in San Francisco, California, in consideration of the payment of $10 (ten dollars) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **ITEL RAILCAR CORPORATION** ("Seller") does hereby grant, bargain, sell convey, transfer and deliver to **GWI LEASING CORPORATION** ("Purchaser"), its successors and assigns forever, all right, title and interest of Seller in and to all of the railcars identified on Schedule 1 (or Schedule 2) hereto (the "Cars"), together with all additions, parts, fittings, appurtenances, equipment, accessories, attachments, fixtures, and accessions installed thereon or attached thereto, and all records, files, drawings and specifications pertaining thereto, **TO HAVE AND TO HOLD** the same unto Purchaser, its successors and assigns forever.

Seller does hereby assign, grant, bargain, sell, convey, transfer and deliver to Purchaser, its successors and assigns forever, all right, title, interest, powers and privileges of Seller in and to such warranties, claims, causes of action, rights or indemnity and other rights, if any, as currently exist or will exist against third parties with respect to the Cars, to the extent that such rights are assignable.

Seller represents and warrants to Purchaser as follows:

> Seller has good, valid and marketable title to the Cars free and clear of all liens, pledges, security interest, charges, encumbrances or other defects of title of any nature whatsoever and there is no contract or restriction which prevents Seller from conveying or transferring to Purchaser unencumbered title to the Cars, or giving possession of the Cars, to Purchaser.

IN WITNESS WHEREOF, Seller has executed this instrument in this _____ day of _____, 198____.

ITEL RAILCAR CORPORATION By:_____

Title:_____

Date:_____

Signed in the presence of: _____
Assistant Secretary

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

On this 27th day of January, 1989, 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 Railcar Corporation, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public

OFFICIAL SEAL
SHARON L VAN FOSSAN
NOTARY PUBLIC - CALIFORNIA
SAN FRANCISCO COUNTY
My comm. expires AUG 16, 1991

STATE OF Connecticut)
) ss:
COUNTY OF Fairfield)

On this 17th day of January, 1989, before me personally appeared Lawrence J. Cahill, to me personally known, who being by me duly sworn says that such person is President of GWI Leasing Corporation, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

JOYCE M. BARRETT
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1993
Notary Public