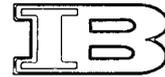




# IMPERIAL BANK



NUMBER TWO BATTERY STREET • SAN FRANCISCO, CALIFORNIA 94111

11472 TELEPHONE: (415) 956-7500

RECORDATION NO. .... Filed 1425

January 30, 1980  
FEB 7 1980 - 11 55 AM  
INTERSTATE COMMERCE COMMISSION

No. **0-038A024**  
FEB 7 1980

Date \_\_\_\_\_  
Fee \$ 50.00

Interstate Commerce Commission  
Interstate Commerce Building  
Washington, D.C. 20044

ICC Washington, D. C.

RE: Security Interest of Imperial Bank

Ladies and Gentlemen:

You are hereby requested to record the enclosed Security Agreement, of which there is one original and two counterparts thereof. Enclosed is a check in the amount of \$50.00 to cover your recordation fee.

Under the Security Agreement James Kilpatrick and Susan Kilpatrick whose address is 450 Sansome, Suite 120, San Francisco, CA, 94111, grants a security interest in the equipment hereinafter described in this letter to the Imperial Bank, a California corporation, whose address is Number Two Battery Street, San Francisco, CA, 94111.

The Security Agreement relates to the railway equipment consisting of one (1) 20,000 gallon capacity funnel flow, sloping bottom, interior coiled, uninsulated low pressure, general purpose, railroad tank car ICC Road Numbers PLMX 14032.

When recorded, the document should be returned to:

Imperial Bank  
Number Two Battery Street  
San Francisco, CA. 94111  
ATTN: R.K. Williams

Very truly yours,

Brian L. Bigney  
Assistant Vice President

BLB:rkw

*Done daily*  
*C. Bentley*

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

2/7/80

OFFICE OF THE SECRETARY

**Brian L. Bigney**  
**Imperial Bank**  
**Number Two Battery Street**  
**San Francisco, Calif. 94111**

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 **2/7/80** at **11:55am**, and assigned re-  
recording number (s). **11472 & 11472-A**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)



FEB 7 1980 - 11 55 AM

PROMISSORY NOTE AND SECURITY AGREEMENT and Disclosure Required by Federal Law INTERSTATE COMMERCE COMMISSION NUMBER \_\_\_\_\_ Simple Interest

This Promissory Note and Security Agreement is made between James Kilpatrick and Susan Kilpatrick hereinafter referred to as "Debtor," and IMPERIAL BANK, hereinafter referred to as "Secured Party," or "Bank."

Debtor grants Secured Party a security interest in the property described below and all accessories and equipment therefor and all after-acquired property used in connection with it, all of which property is herein referred to as collateral, and in all proceeds of collateral and sums payable for any loss or damage by reason of insurance covering any of the collateral.

CREDIT INFORMATION: Debtor authorizes Bank to release information concerning Debtor's credit worthiness, record and standing to guarantors, other creditors, and to credit bureaus, consumer reporting agencies and other credit reporters.

YEAR	MAKE OR TRADE NAME	TYPE-MODEL NO.	IDENTIFICATION OR SERIAL NO.
	PLM	Tank Car	PLMX14032

Other Describe: One (1) 20,000 gallon capacity funnel flow, sloping bottom, interior coiled, un-insulated low pressure, general purpose, railroad tank car (See Attached for further description)  
Located at: description  
(hereinafter referred to as "The Premises")

SECURITY INTEREST. A Deed of Trust security instrument will not cover after-acquired property of Debtor and will not secure other or future indebtedness of Debtor. Any other form of security instrument will secure all other and future indebtedness of Debtor to Bank. All sums due Bank on this credit give rise to a right of setoff which Bank may assert against deposit balances (e.g., savings and checking accounts) maintained by Debtor with Bank at the time such sums are due. Bank waives any benefit of California Civil Code Section 3054.

PROPERTY AND LIABILITY INSURANCE: Property or liability insurance may be obtained by Debtor through any person of his choice and is not obtainable through Bank.

CREDIT LIFE INSURANCE: Credit Life Insurance is not required to obtain this credit. If the AMOUNT FINANCED (item 3) is more than \$15,000, Credit Life Insurance cannot be obtained through this Bank. Credit Life Insurance for the Amount Financed (\$15,000 or less) for the term of the credit specified in the Payment Schedule (item 7) may be obtained through this Bank at a cost of \$ \_\_\_\_\_ for Single Credit Life  Disability  Joint Credit Life

Payment delay will not extend the term of insurance coverage.  
Age at Last Birthday n/a Age at Last Birthday n/a  
I/We desire the Credit Life Insurance for the scheduled term of the credit.

X \_\_\_\_\_ 19 \_\_\_\_\_  
DEBTOR DATE

X \_\_\_\_\_ 19 \_\_\_\_\_  
DEBTOR DATE

LATE CHARGES: There are no late charges on this loan, it being impracticable to fix the actual damage to the Bank resulting from administrative and accounting costs. However, you may be charged for collection expenses incurred by the Bank.

LATE PAYMENT ACCELERATION: Upon any default in payment, time being of the essence, at the option of the bank, the entire principal sum then unpaid, together with the earned interest and collection expenses, shall be immediately due and payable.

PREPAYMENT: The **FINANCE CHARGE** has been precomputed and added to the Amount Financed, Debtor may prepay the unpaid balance of the Amount Financed, wholly or in part, at any time. Upon full prepayment, Debtor will receive a rebate of the unearned portion of the **FINANCE CHARGE** (if more than **\$1.00** remains unearned) calculated under the actuarial method, less any amount needed to bring Bank's earnings on this credit to a minimum **FINANCE CHARGE** in the amount of **\$50.00**, and a rebate of the cost of any Credit Life Insurance calculated under the Rule of 78's method.

1. AMOUNT OF CREDIT (includes Net Balance due on any previous obligation \$ _____ )	<u>\$17,000.00</u>	
2. OTHER CHARGES (Not part of finance charge)	A To be Paid in Cash	B To be Financed
Registration	\$ _____	\$ _____
Filing	\$ _____	\$ _____
License	\$ _____	\$ _____
Other	\$ _____	\$ _____
INSURANCE		
Property		\$ _____
Liability		\$ _____
Credit Life	\$ _____	\$ _____
Total other charges to be financed (Col. B)		\$ <u>-0-</u>

3. AMOUNT FINANCED (1 + 2B) \$17,000.00

\*4. **FINANCE CHARGE.** The interest rate in effect on this credit is 17 % per annum.

A. Interest Computed on item 3 for the scheduled term of the credit \$ 4,818.88  
B. **\$50.00** is the minimum **FINANCE CHARGE** on this credit.

\* **FINANCE CHARGE** (A or B) \$4,818.88

5. **ANNUAL PERCENTAGE RATE** 17 %

\*6. TOTAL OF PAYMENTS (3+4) \$21,818.88

\*7. PAYMENT SCHEDULE: Debtors, jointly and severally, promise to pay to the order of Bank the Amount Financed in the principal sum of \$ 17,000.00 together with interest at the rate of 17 % per annum on unpaid principal until paid in full or a minimum **FINANCE CHARGE** of **\$50.00**, whichever is greater, payable in 36 equal successive monthly installments of \$ 606.08 each, or more, on the 15th day of each month beginning February 19 80; and a "balloon payment" of \$ \_\_\_\_\_ due \_\_\_\_\_, 19 \_\_\_\_\_. The Bank does not intend to refinance any "balloon payment" shown above if not paid when due.

\*NOTICE: SEE BELOW FOR IMPORTANT INFORMATION.

\*The interest amount shown in item 4 (**FINANCE CHARGE**), the amount shown in item 6 (TOTAL OF PAYMENTS), and the number of payments shown in item 7 (PAYMENT SCHEDULE) are all estimates computed using the INTEREST RATE in effect on the date of this agreement (or the minimum **FINANCE CHARGE** of **\$50.00**) and are based upon the assumption that installments are paid each month as stated in the Payment Schedule. You will receive a coupon book showing your minimum payment and the payment due date. You must pay not less than the minimum payment shown on the coupon by the due date of each month. Excepting the minimum **FINANCE CHARGE** of **\$50.00**, early payment could decrease the amounts disclosed, and the number of payments. Delay in payment could increase them. This is because the INTEREST RATE will be applied on a daily basis to the unpaid outstanding balance of item 3, the "Amount Financed" to determine your **FINANCE CHARGE** (subject the minimum **FINANCE CHARGE** of **\$50.00**) until that balance is fully paid.

Excepting the minimum **FINANCE CHARGE** of **\$50.00**, prepayment, in whole or in part, could cause the amounts shown to be less due to earlier reduction of the unpaid balance of the Amount Financed to which the INTEREST RATE is applied and your **FINANCE CHARGE** could be less. Conversely, late payment could increase your **FINANCE CHARGE** due to later reduction of the unpaid balance of the Amount Financed and the continuing application of the INTEREST RATE to that balance.

If late payments should be frequent, the resulting collection expense could cause the number of payments to be extended. Delay in payment will not extend the term of any insurance coverage.

ADDITIONAL TERMS: All of the "Additional Terms" on the reverse side hereof have been read by Debtor who understands and agrees that all of said "Additional Terms" are part of this agreement.

Each spouse signing this agreement expressly assents to the liability of his or her separate property for all debts and obligations under this Promissory Note and Security Agreement.

EACH DEBTOR ACKNOWLEDGES THAT BEFORE SIGNING THIS CONTRACT HE RECEIVED AND READ A COMPLETED LEGIBLE COPY OF THIS CONTRACT.

BY: Brian L. Bigney  
Brian L. Bigney, Assistant Vice President  
DATE: \_\_\_\_\_ 19 \_\_\_\_\_

DEBTOR: James M. Kilpatrick DATE: 1/11/80  
DEBTOR: Susan Kilpatrick DATE: 1/11/80

ORIGINAL (TO BANK)

- TRUTH IN LENDING COPY -  
(1) GIVE TO CUSTOMER PRIOR TO SIGNING.  
(2) CUSTOMER AND BANK SIGN THIS COPY AFTER CONTRACT IS SIGNED.  
DUPLICATE (TO CUSTOMER)

ADDITIONAL TERMS

8. TITLE. Debtor warrants and represents that Debtor has, or upon acquisition will have, title to all of the collateral and no other person, entity, agency or government has or purports to have or upon the acquisition will have, any right, title, encumbrance, adverse claim or interest in any of the collateral save and except the security interest herein granted.

9. COVENANTS AND AGREEMENTS. Debtor hereby covenants and agrees as follows: (a) Debtor will pay, prior to delinquency, all taxes, liens, or assessments of any kind levied or assessed against the Collateral, or any part thereof, and should Debtor fail, refuse, or neglect to pay any such tax, lien or assessment, Secured Party may, but is not obligated to, pay the same and any amounts so paid shall bear interest at the maximum allowed by law per annum, and said amount and interest shall be secured thereby and shall be immediately repayable by Debtor to Secured Party; (b) Debtor will not, without the prior consent of Secured Party, sell, contract to sell, lease, encumber or dispose of the collateral or any portion thereof; (c) Debtor will at all times maintain the collateral in good condition and repair and free and clear from all liens, claims or charges for repairs, towage, storage, attachment, execution or other legal process; (d) Debtor will keep the collateral separate and identifiable and at the premises. Debtor will not remove, or cause the collateral to be removed from the premises without Secured Party's prior written consent; as to a motor vehicle or boat, Debtor will not remove, or cause the same to be removed from this State nor use nor permit the same to be used for racing, rental, hire, or military purposes; (e) Debtor will insure the collateral with Secured Party as loss payee, as Secured Party's interest may appear, in form and amount, with companies and against risk and liability satisfactory to Secured Party, and will assign the policy to Secured Party, and will authorize Secured Party to make any claim thereunder and to receive payment and endorse any instrument in payment of loss or return of premium or other refund or return; in the event Debtor does not procure said insurance, Secured Party may do so, and any sums so expended for insurance premiums shall be immediately due and payable from Debtor to Secured Party, together with interest at the maximum allowed by law per annum and the cost and expense of such insurance, together with any interest thereon shall be secured hereby; (f) Debtor will promptly notify Secured Party in the event of any damage to the collateral from any source whatsoever; (g) Secured Party may, at any time during the continuance hereof, enter upon the premises and examine the collateral; (h) Debtor will, pay when due all sums secured hereby and will perform each and every obligation in accordance with the Security Agreement and said Promissory Note; (i) Debtor will, upon written demand from Secured Party, establish the correctness of information supplied by Debtor to Secured Party of any change in information supplied and of any changes in the address at which the Collateral is kept. Debtor will execute any and all further agreements, assignments, or documents that Secured Party may reasonably request in order to carry out the purposes and intent of this Security Agreement; (j) Debtor hereby authorizes Secured Party to perform any act which the Secured Party deems necessary in order to protect and preserve the collateral and the interest of Secured Party therein; (k) If the collateral, or any portion thereof, ever becomes attached to real property, Debtor will, upon request of Secured Party, furnish Secured Party with a description of the real property and the name of the record owner and on demand of Secured Party, a disclaimer of subordination agreement signed by every person having an interest in the real property whereby such person's disclaimer of subordinate any interest in the collateral to the security interest of the Secured Party; (l) Debtor hereby waives any and all rights that he may have to require Secured Party to proceed against any other person, or to exhaust the collateral or to pursue any other remedy Secured Party may have. Debtor hereby waives presentment, demand for performance, notice of default, protest, notice of protest and dishonor with respect to his indebtedness secured hereby and the collateral; (m) In the event of an attorney being employed by Secured Party to make collection or to enforce payment of any obligation or indebtedness of Debtor hereunder, or in the event that suit be brought or other steps be taken pursuant hereto, Debtor will pay all costs and reasonable attorneys' fees incurred by Secured Party; (n) Debtor will, if Bank, as indicated above, gives value to enable Debtor to acquire rights in or to the use of the collateral, use such value for such purpose; (o) The title of the collateral, or any part thereof, consists of a boat or motor vehicle. Debtor will keep the same properly licensed and report to Secured Party any change in the license number. Debtor agrees that the certificate of ownership showing Secured Party as legal owner of all the said collateral, with an indebtedness secured hereby has been paid in full; (p) In the event the collateral, or any part thereof, consists of a boat, Debtor will keep a true copy of this Promissory Note and Security Agreement with the boat's papers, exhibit a boat to a boat person furnishing or about to furnish repairs, supplies, towage, use of dry dock or marina, fuel, or other necessities, or other supplies or services to the same, prior to the turning in thereof and take such other steps as may be designated by Secured Party from time to time as a condition to the world that Debtor has no right, power or authority to suffer or permit to be imposed on or against the boat any liens, claims or charges which might be, or might be deemed to be, prior to the security interest hereof.

10. DEFAULT. The happening of any of the following shall constitute a default by Debtor under this Security Agreement and said Promissory Note: (a) any warranty, representation or statement made or furnished by Debtor proves to have been false in any material respect when made or furnished; (b) failure by Debtor to keep or perform any of the terms or provisions of this Security Agreement, or failure to pay any amount due on the Promissory Note including but not limited to the obtaining and maintaining, during the term of the Promissory Note, of insurance on the collateral as required by paragraph 9 hereof; (c) failure by Debtor in the payment of any indebtedness secured by this Security Agreement; (d) the levy of any attachment, execution or other process against Debtor, or against the collateral described herein and the failure or removal of such process within thirty (30) days; (e) the insolvency, assignment for benefit of creditors, filing of any petition in bankruptcy or for any other relief under the provisions of the National Bankruptcy Act and the failure of withdrawal of said petition within thirty (30) days of or against Debtor; or (f) the loss, theft or substantial destruction of the collateral unless such loss, theft or destruction is insured against as provided in paragraph 9(e) hereinabove.

11. REMEDIES. Upon or at any time after, a default by Debtor, as set forth above, Secured Party may at its option: (a) declare the entire indebtedness secured by this Security Agreement immediately due and payable; (b) exercise all remedies of a secured party under the California Uniform Commercial Code; (c) require Debtor to assemble the collateral and make it available to Secured Party in a place to be designated by Secured Party which is reasonably convenient to both parties; (d) enter the premises where the collateral is kept and repossess and remove the same without legal process if it can do so without a breach of the peace or proceed by legal action to get repossession; (e) without removal render the collateral unusable and dispose of the same on the Debtor's premises; (f) sell, lease, or otherwise dispose of the collateral or any portion thereof in its then condition or following any commercially reasonable preparation processing; (g) upon having possession, propose to retain this collateral in satisfaction of the indebtedness secured by this Security Agreement; (h) proceed against Debtor with or without proceeding against the collateral; (i) proceed against Debtor for any deficiency after proceeding against the collateral; (j) incur expenses including reasonable attorneys' fees, legal expenses and costs, to exercise any right or remedy under this Security Agreement, the repayment of which by Debtor is secured by this Security Agreement; (k) do any and all other acts allowed by law to enforce his rights to collect the indebtedness secured by this Security Agreement. Unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will give Debtor reasonable notice of the time and place of any sale thereof or of the time after which any private sale or other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address set forth herein at least five (5) days before the time of the sale or disposition. The proceeds of the disposition shall be applied in the following order: (a) the reasonable expenses of retaking, holding, preparing for sale, selling, leasing and the like, including reasonable attorneys' fees and legal expenses incurred by Secured Party; (b) the satisfaction of the indebtedness secured by this Security Agreement; and (c) the satisfaction of indebtedness secured by a subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. All rights and remedies hereunder shall be cumulative.

12. MISCELLANEOUS. This Security Agreement shall be construed in accordance with the following provisions: (a) this Security Agreement applies and shall inure to the benefit of the successors and assigns of Secured Party and shall bind the successors and assigns of Debtor; (b) this Security Agreement sets forth the entire agreement between Debtor and Secured Party with respect to all matters herein, and the provisions hereof may not be changed or modified except by an instrument in writing signed by the parties hereto; (c) all covenants, agreements, representations and warranties made herein and in documents delivered with promissory note; (d) time is of the essence of this Security Agreement. No course of dealings between Debtor and Secured Party nor any failure, neglect or delay by Secured Party in exercising any and all of his rights hereunder shall operate as a waiver, forfeiture or abandonment of any such right except only to the extent expressly waived in writing; (e) any single or partial exercise of any right, power or remedy hereunder shall not preclude the further exercise hereunder. This Security Agreement is being delivered and is intended to be performed in the State of California and shall be construed in accordance with the laws of the State of California; (f) whenever in this Security Agreement the context so requires, the neuter gender includes the masculine and /or feminine and the singular number includes the plural; (g) each spouse who signs this Security Agreement hereby expressly assents to the liability of his or her separate property for all indebtednesses to Secured Party under the terms of this Security Agreement. The obligations and agreements of indebtedness hereunder, if there be more than one Debtor, are joint and several.

The Undersigned hereby authorize and direct the Imperial Bank to pay the net proceeds of this note

TO PLM Railroad Management DATE \_\_\_\_\_  
James Kilpatrick Signature of Borrower CREDITED ACCOUNT NO \_\_\_\_\_  
Susan Kilpatrick Signature of Borrower ISSUED CASHIER CHECK NO \_\_\_\_\_

NAME Kilpatrick, James & Susan

6. Cont'd.

All accounts, contract rights, instruments, and other rights of Debtor with respect to the Equipment, including but not limited to, any and all leases of the Equipment; the Management Agreement dated \_\_\_\_\_, with respect to the Equipment between Debtor and PLM Railcar Management, Inc., a California corporation, any and all rents and other monies which are now or may hereafter be payable to Debtor on account of the Equipment and such agreements; and any and all guarantees, endorsements, warranties, indemnity agreements, maintenance agreements, insurance policies, or other agreements pertaining to such agreements or the Equipment, and any and all monies due or to become due and payable under the foregoing.