

No. **8-349A027**

Date **DEC 14 1978**

Fee \$ **50.**

December 11, 1978

9825

RECORDATION NO. Filed 1425

DEC 15 1978 - 9 50 AM

INTERSTATE COMMERCE COMMISSION

Washington, D. C.

Secretary of the Interstate
Commerce Commission
Washington, D. C. 20423

Re: Recordation of Security Agreement
covering railroad cars

Gentlemen:

In accordance with the provisions of 49 U.S. Code Section 20c, we are enclosing herewith an original and two fully executed counterparts of Security Agreement between The Frost National Bank of San Antonio as secured party (mortgagee), whose address is 100 W. Houston Street, San Antonio, Texas 78205, and Carl C. Krueger, Jr., as debtor (mortgagor), whose address is 25 Finesterre, Rockport, Texas 77832.

A general description of the property covered by said Security Agreement is as follows: Certain railroad tank cars purchased or to be purchased from Richmond Tank Car Company by debtor, being generally described as 23,500 gallon nominal capacity tank cars DOT111A100W3, exterior coiled and insulated; 100 ton roller bearing trucks bearing the following numbers: RTMX12538-12544; RTMX12648; RTMX12695-12696.

In addition to the Security Agreements, we are enclosing herewith our check in the amount of \$50 to cover the anticipated recording fee in connection with this transaction. Please record these documents and return the original to Mr. L. A. Pittman, Jr., Senior Vice President, The Frost National Bank of San Antonio, P. O. Drawer 1600, San Antonio, Texas 78296, the said Mr. Pittman being an executive officer of the bank who has knowledge of the matters set forth herein.

RECEIVED
DEC 15 9 46 AM '78
I.C.C.
FEE OPERATION BR.

Secretary of the Interstate
Commerce Commission

Page 2

Thanking you in advance for your cooperation in this
matter, I am

Very truly yours,

THE FROST NATIONAL BANK OF SAN ANTONIO

By: *J. Pittman Jr.*
Senior Vice President

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

12/27/78

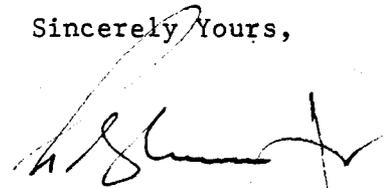
OFFICE OF THE SECRETARY

L.A. Pittman, Sr.
Senior Vice Pres.
The Frost Natl. Bank Of San Antonio
P.O. Drawer 1600
San Antonio, Texas 78296

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 12/15/78 at 9:50am , and assigned recordation number(s) 9925

Sincerely Yours,



H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

DEC 15 1978-9 50 AM

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT

STATE OF TEXAS :
 : KNOW ALL MEN BY THESE PRESENTS
 COUNTY OF BEXAR :

THAT CARL C. KRUEGER, JR., 25 Finesterre, Rockport, Texas 77832, hereinafter called "Debtor", hereby grants to THE FROST NATIONAL BANK OF SAN ANTONIO, 100 W. Houston Street, San Antonio, Texas 78205, hereinafter called "Secured Party", a security interest in the following described personal property, together with all attachments and other additions to, substitutes to, and replacements for, and improvements of said collateral, all products thereof, plus all proceeds thereof, all of which shall hereinafter be collectively called "Collateral", to-wit: Debtor's inventory of railroad tank cars, being 23,500 gal. nominal capacity tank cars DOT111A100W3, exterior coiled and insulated, now or hereafter purchased from Richmond Tank Car Company; and all 100 ton roller bearing trucks bearing the following serial numbers: RTMX12538-12544; RTMX12648; RTMX12695-12696; together with all accounts, chattel paper, leases and rental agreements and other such documents now owned or at any time or times hereafter obtained or acquired by Debtor in connection with any of said inventory, plus all of Debtor's rights and interests in and to all rents, income and tracking charges now or hereafter becoming payable from the lease or rental of any of said inventory.

This Security Interest is to secure the payment of an indebtedness owing by Debtor to Secured Party and evidenced by that one certain Promissory Note, dated December 7, 1978, in the original principal sum of Three Hundred Seventy Thousand Three Hundred Ten and No/100 Dollars (\$370,310.00), executed by Debtor, pursuant to the original instrument provided, bearing interest as therein stipulated, providing

for acceleration of maturity and for attorneys' fees; and to secure all renewals and extensions of all or any part of said indebtedness hereby secured.

In connection with the granting of this Security Interest, Debtor hereby represents and warrants as follows:

A. Except for the security interest hereby created, the Debtor is, and as to the collateral to be acquired after the date hereof, shall be, the owner of such collateral free from any lien, security interest or other encumbrance, and Debtor shall defend the collateral and proceeds and products thereof against all claims and demands of all persons at any time claiming the same or any interest therein adverse to Secured Party.

B. No dispute, right of setoff, counterclaim or defense exists or will ever exist with respect to any part of the collateral.

C. The delivery at any time by Debtor to Secured Party of any documents describing or listing collateral, or purporting to evidence title thereto, shall constitute a representation and warranty by Debtor under this Agreement that, with respect to such collateral, and each item thereof, Debtor is the owner of such collateral, that the description of such collateral, as shown in such documents, is true and correct, and that the collateral is not consigned and is not subject to any agreement for repurchase.

D. There is no litigation or governmental proceeding pending nor threatened which would materially adversely affect Debtor.

E. Debtor shall not ever make a sale or other disposition of any of the collateral without the prior written consent of Secured Party first had and obtained.

F. Debtor will file all tax returns required to be filed, will render all inventory covered hereby for ad valorem tax

purposes in the appropriate taxing jurisdiction(s), and will pay all taxes due or to become due (including interest and penalties), such taxes to include but not be limited to all income taxes, and all ad valorem, excise and other such taxes or assessments levied in connection with the collateral or the use thereof.

G. Subject to any limitations stated therein or in connection therewith, all balance sheets, earnings statements, and other financial data which have been or may hereafter be furnished to Secured Party in connection herewith, do or shall fairly represent the financial condition of Debtor as of the dates and the results of his operations for which the same are furnished, and all other information, reports and other papers and data furnished to Secured Party are or shall be at the time the same are so furnished accurate and correct in all material respects and complete insofar as completeness may be necessary to give Secured Party a true and accurate knowledge of the subject matter, there having been no material adverse change in the financial condition of Debtor between such dates and the date hereof.

H. Debtor warrants that all representations now or hereafter made by him to Secured Party, whether in this Agreement or in any supporting financial statements are, will be, and shall continue to be true and correct in all respects.

I. That Debtor's residence and principal place of business is in Rockport, Texas, and that any leases, rental agreements or other chattel paper relating to the inventory covered hereby shall be kept by Debtor in Rockport, Texas, unless delivered to Secured Party as hereinafter provided.

J. Debtor expressly agrees that Secured Party has not and will not during the term hereof require Debtor to maintain any sort of compensating balances with Secured Party in connection with this transaction.

With respect to the collateral which is inventory, Debtor covenants and agrees to:

A. Handle the collateral with reasonable care, skill and caution;

B. Keep the collateral in good repair, working order and condition, and promptly make all necessary repairs or replacements thereto;

C. Keep the collateral properly sheltered, and not permit the same to be damaged, injured or depreciated; provided, however, that Debtor shall immediately notify Secured Party of any event causing loss or depreciation in the value of such collateral and the amount of such loss or depreciation;

D. Keep the collateral fully insured in such amounts, against such risks and with such insurers as may be satisfactory to Secured Party, with loss payable to Secured Party (under a standard mortgagee clause) as its interest may appear, the risk of loss of the collateral to remain on Debtor, and, from time to time, at the request of Secured Party, furnish to the latter satisfactory proof of the maintenance of such insurance and the payment of premiums thereon, and if requested by Secured Party, deposit with Secured Party copies of policies or certificates evidencing such insurance, and in the event of breach by Debtor of any of the provisions of this clause, Secured Party may at its option maintain insurance on only Secured Party's interest in the collateral, any cost thereby incurred by Secured Party to be immediately due and payable by Debtor. All such insurance policies shall provide that they may not be cancelled or modified without first giving at least ten (10) days written notice of any such cancellation or modification to Secured Party.

E. Debtor shall not allow any of the inventory to be loaded with commodities that are or may be injurious or harmful to the same, nor shall Debtor permit the inventory to be operated

outside the limits of the continental United States during the term hereof.

With respect to all collateral, Debtor covenants and agrees to:

A. From time to time properly execute and deliver to Secured Party all such other assignments, certificates, supplemental documents and financing statements, and do all other acts or things, as the latter may reasonably request in order to more fully evidence and perfect the security interest herein created; to pay all lawful fees in connection with the preparation of any documentation in connection with this transaction, as well as in connection with the filing, recording or releasing any lien or security interest in the collateral; Debtor, upon request of Secured Party, shall deliver to Secured Party the certificate of title and/or registration to any collateral, properly endorsed; Debtor hereby agrees that a carbon, photographic or other reproduction of this Agreement or a financing statement shall be sufficient as a financing statement;

B. Pay the indebtedness in accordance with the terms thereof;

C. Promptly furnish Secured Party with any documents, lists, certificates, and other information which Secured Party may reasonably request concerning the collateral;

D. Allow Secured Party to inspect the collateral and all records of Debtor relating thereto or to the indebtedness, and to make and take away copies of any such records;

E. Promptly notify Secured Party of any change in any fact or circumstance warranted or represented by Debtor in this Agreement or in any other document furnished by Debtor to Secured Party in connection with the collateral or the indebtedness;

F. Promptly notify Secured Party of any claim, action or proceeding affecting title to the collateral, or any part

thereof, or the security interest herein, and at the request of Secured Party, appear in and defend, at Debtor's expense, any such action or proceeding;

G. Hold in trust for Secured Party all chattel paper at any time received by Debtor, and promptly deliver the same to Secured Party, unless Secured Party, at its option, permits Debtor to retain the same, in which case Debtor agrees to immediately make a clear notation on any such chattel paper so retained to the effect that the same has been assigned to The Frost National Bank of San Antonio.

H. To maintain complete books and records in accordance with generally accepted accounting principles, consistently applied, such books and records and all of Debtor's accounts to be maintained at Debtor's address as it appears at the beginning of this Agreement.

I. To promptly furnish to Secured Party such information respecting the business affairs of Debtor as Secured Party may from time to time reasonably request.

J. Debtor further agrees that, without the prior written consent of Secured Party, he will not create any other security interest in, mortgage or otherwise encumber the collateral, or any part thereof, or permit the same to be or become subject to any lien, attachment, execution, sequestration, other legal or equitable process, or any encumbrance of any kind or character, except the security interest herein created, nor allow the same to be affixed to any real or personal property. Debtor covenants not to use the collateral or permit the same to be used for any unlawful purpose or in any manner inconsistent with the provisions or requirements of any policy of insurance thereon.

K. Not to accept any anticipation or prepayment of any rents by any tenants under any leases or rental agreements covering the collateral, and that all leases and rental agreements

will be valid and enforceable and that no default will exist thereunder, and that Debtor shall perform all obligations and duties under said agreements and will promptly notify Secured Party of any default claimed by any party thereto; and that Debtor shall not alter, modify or amend the terms or conditions of any of such leases or rental agreements without first obtaining the consent in writing of Secured Party thereto.

Should any covenant, duty or agreement of Debtor fail to be performed in accordance with its terms hereunder, Secured Party may, but shall never be obligated to, perform or attempt to perform such covenant, duty or agreement on behalf of Debtor, and any amount expended by Secured Party in such performance or attempted performance shall be immediately due and payable by Debtor to Secured Party.

The term "default" as used herein shall mean the occurrence of any of the following events:

A. The failure of Debtor to pay the indebtedness, or any part thereof, as it becomes due in accordance with the terms thereof; or

B. The failure of Debtor punctually and properly to perform any covenant, agreement or condition contained herein or in any other security agreement, mortgage, deed of trust, assignment or contract of any kind securing or assuring payment of the indebtedness, or any part thereof; or

C. The insolvency of Debtor; or

D. The levy against the Collateral or any part thereof of any execution, attachment, sequestration, or other writ, or the loss, theft, damage, waste, destruction, sale or encumbrance of any of the Collateral.

E. The appointment of a receiver of Debtor for the Collateral or any part thereof; or

F. The execution by Debtor of an assignment for the benefit of creditors; or

G. The adjudication of Debtor as a bankrupt; or

H. The filing, by way of petition, or by way of answer, of any petition or other pleading seeking adjudication of Debtor as a bankrupt, or an adjustment of Debtor's debts, or any other relief under any bankruptcy, reorganization, Debtor's relief or insolvency law now or hereafter existing; or

I. When Secured Party believes that the prospect of payment of the indebtedness, or the performance by Debtor of any of his covenants, agreements or other duties hereunder, is impaired; or

J. The receipt by Secured Party of information establishing that any representation or warranty made by Debtor herein or in any other document delivered by Debtor to Secured Party in connection herewith is, or was when made, knowingly false, misleading or erroneous.

Upon the occurrence of a default, in addition to any and all other rights and remedies which Secured Party may then have hereunder, or under the Uniform Commercial Code of the State of Texas (hereinafter called "Code), or otherwise, Secured Party at its option may:

A. Declare the entire unpaid balance of the indebtedness immediately due and payable, without notice, demand or presentment, which are hereby waived;

B. Enter upon the premises where the collateral is located and take possession thereof and remove the same, with or without judicial process, and, in connection therewith, without any responsibility or liability on the part of Secured Party, take possession of any property located in the collateral and hold or store such property for Debtor at Debtor's expense;

C. Require Debtor to assemble the collateral and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties;

D. Render unusable any equipment which may be part of the collateral;

E. Reduce its claim to judgment, foreclosure or otherwise enforce its security interest in all or any part of the collateral by any available judicial procedures;

F. After notification, if any, provided for hereafter, sell, lease or otherwise dispose of on the premises of Debtor, or elsewhere, as chosen by Secured Party, all or any part of the collateral, in its then condition or following any commercially reasonable preparation or processing; any such sale or other disposition may be made as a unit or in parcels, by public or private proceedings, and by way of one or more contracts (it being agreed that the sale of any part of the collateral shall not exhaust Secured Party's power of sale, but sales may be made from time to time until all of the collateral has been sold or until the obligation has been paid in full), and at any such sale it shall not be necessary to exhibit the collateral;

G. Surrender any policies of insurance on the collateral and receive and apply the unearned premiums as a credit on the indebtedness, and, in connection therewith, Debtor hereby appoints Secured Party as its agent and attorney-in-fact to collect such premiums, Secured Party to exercise such power at its sole discretion;

H. At its discretion, retain the collateral in satisfaction of the indebtedness whenever the circumstances are such that Secured Party is entitled to do so under the Code;

I. Apply by appropriate judicial proceedings for appointment of a receiver for the collateral, or any part thereof, and Debtor hereby consents to any such appointment;

J. Buy the collateral at any public sale, and buy the collateral at any private sale if the collateral is of a type

customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations.

K. To collect any rents payable under any leases, rental agreements and/or chattel paper covered hereby as the same become due, and in this connection, Debtor does hereby direct each and all of the tenants to pay such rents as may be due or thereafter become due to Secured Party upon demand for payment thereof by Secured Party, the right of Secured Party to collect said rents being independent of any right to repossess and sell any of the collateral. In connection herewith, Secured Party shall have the right to manage, operate and maintain the collateral and to perform all acts necessary and proper in its sole discretion and to expend such sums as may be necessary in connection therewith, including the authority to effect new leases, to cancel or surrender existing leases, to alter or amend the terms of existing leases, to renew existing leases, or to make concessions to tenants, Debtor hereby releasing all claims against Secured Party arising out of such management, operation and maintenance, except for the liability of Secured Party to credit the net amount of rents received by it to the indebtedness secured hereby, after payment of all proper charges and expenses, including reasonable compensation to such agents, employees or representatives as shall be selected or employed, and after the accumulation of a reasonable reserve to meet taxes, assessments, insurance premiums and the like.

Reasonable notification of the time and place of any public sale of the collateral or reasonable notification of the time after which any private sale or other intended disposition of the collateral is to be made shall be sent to Debtor and to any other person entitled under the Code to notice; provided, however, that it is agreed that notice sent or given not less than five (5) calendar days prior to the taking of the action

to which the notice relates is reasonable notification and notice for the purposes hereof.

Secured Party shall be entitled to apply the proceeds of any sale, lease or disposition of the collateral in the following manner: First, to the payment of all of its reasonable expenses, including attorney's fees and other legal expenses incurred in retaking, holding and preparing the collateral, or any part thereof, for sale(s) or other disposition, in arranging for such sale(s) or other disposition, and in actually selling the same; and next, toward the payment of the balance of the indebtedness in such order and manner as Secured Party, in its discretion, may deem advisable. Secured Party shall account to Debtor for any surplus, but if the proceeds are not sufficient to pay the indebtedness in full, Debtor shall remain liable for any deficiency.

Debtor agrees to assume liability for, and to indemnify and hold Secured Party harmless from and against any and all claims, causes of action, or liability for injuries to or deaths of persons and damage to property, howsoever arising from or incident to the use, operation or storage of the collateral, such indemnification to include but not be limited to all court costs and attorney's fees. Debtor further agrees to indemnify and hold Secured Party harmless from any and all liability, loss or damage which it may or might incur under any leases, rental agreements, or chattel paper covered hereby (including court costs and attorney's fees), Debtor expressly agreeing that Secured Party shall never be obligated to perform or discharge any obligation, duty or liability under any such agreement by reason of this Security Agreement.

All rights and remedies of Secured Party hereunder are cumulative of each other and of every other right or remedy which Secured Party may otherwise have at law or in equity or under any other contract or document for the enforcement

of the security interest herein or the collection of the indebtedness, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of any other rights or remedies.

Secured Party shall have no duty as to the collection or protection of collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto beyond the reasonably safe custody thereof. Secured Party may exercise its rights with respect to collateral without resorting or regard to other collateral or sources of reimbursement for liability. Secured Party shall not be deemed to have waived any of its rights upon or under liabilities or collateral unless such waiver be in writing and signed by Secured Party. No delay or omission on the part of Secured Party in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion.

If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the remainder of such provision, and the application thereof to other persons or circumstances, shall not be affected thereby.

This Agreement shall be interpreted and enforced according to the laws of the State of Texas in effect from time to time, and shall be binding upon Debtor and Debtor's successors and assigns, and shall inure to the benefit of Secured Party, its heirs, legal representatives, successors and assigns.

EXECUTED this 7th day of December, 1978.

THE FROST NATIONAL BANK OF
SAN ANTONIO, SECURED PARTY

By: *J. Pittman*
Senior Vice President

x *Carl C. Krueger, Jr.*
CARL C. KRUEGER, JR., DEBTOR

STATE OF TEXAS :

COUNTY OF Aransas :

BEFORE ME, the undersigned authority, on this the 8 day of December, 1978, personally appeared CARL C. KRUEGER, JR., known to me to be the person described in and who executed the foregoing instrument, who, after being by me duly sworn, acknowledged that he executed the same as his free act and deed for the consideration therein expressed.

Wynne M. Lair
Notary Public in and for Aransas
County, Texas

STATE OF TEXAS :

COUNTY OF BEXAR :

BEFORE ME, the undersigned authority, on this the 11th day of December, 1978, personally appeared L. A. Pittman, Jr., Senior Vice President of THE FROST NATIONAL BANK OF SAN ANTONIO, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of THE FROST NATIONAL BANK OF SAN ANTONIO, a national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association, and that he signed the same in the capacity therein stated and for the consideration therein expressed.

Cynthia M. Hurriga
Notary Public in and for Bexar
County, Texas

CYNTHIA M. HURRIGA
Notary Public, Bexar County, Texas