



**northwest
bank & trust**

1716 Mangum at W. 18th Street
Houston, Texas 77092
713/681-6151

RECORDATION NO. 14648/A
MAY 17 1985 - 1 30 PM
INTERSTATE COMMERCE COMMISSION

Date 5/17/85
Fee \$ 30.00
105 Washington

RECORDATION NO. 14648/B
MAY 17 1985 - 1 30 PM
INTERSTATE COMMERCE COMMISSION

April 25, 1985

Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Room 2303
Washington, D.C. 20423

RECORDATION NO. 14648
MAY 17 1985 - 1 30 PM

INTERSTATE COMMERCE COMMISSION

Attention: Mildred Lee

Re: Document for Recordation

Dear Ms. Lee:

We have attached two originals of an Assignment of Contract, a secondary document, and a Security Agreement, a primary document, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code. These documents are dated as of February 8, 1985.

The names and address of the parties to the document submitted herewith for recordation are as follows:

Assignee and Secured Party: Northwest Bank & Trust
1716 Mangum
Houston, Texas 77092

Assignor and Debtor: George B. Kelly
6 West 11th Place
Houston, Texas 77005

A description of the equipment covered by the Security Agreement is as follows: One (1) DOT 112J340W Nominal 32,000 Gallon L.P.G. Tank Rail Car No. NATX33995 with Marking of TCSX238.

A recording fee of \$20.00 is enclosed to cover the cost of recording these documents.

Please return the original and any extra copies not needed by the I.C.C. to the undersigned.

A short summary of the documents to appear in the index follows:

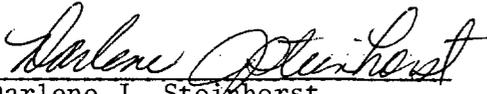
- (1) Assignment between George B. Kelly, 6 West 11th Place, Houston, Texas, 77005 ("Assignor") and Northwest Bank & Trust, 1716 Mangum, Houston, Texas 77092 ("Assignee") dated as of February 8, 1985, covering the contract rights of Assignor pursuant to the Management Agreement between Assignor and Tank Car Service, Inc. for the management, operation and leasing of certain railway equipment owned by Assignor;
- (2) Security Agreement between George B. Kelly, 6 West 11th Place, Houston, Texas 77005 ("Debtor") and Northwest Bank & Trust, 1716 Mangum, Houston, Texas 77092 ("Secured Party") dated as of February 8, 1985 and covering certain accounts receivable and one (1) DOT 1123J340W Nominal 32,000 Gallon, L.P.G. Tank Rail Car No. NATX33995 with Markings of TCSX238.

If you have any questions regarding this matter, or if you need additional information, please do not hesitate to call. Thank you.

Very truly yours,

NORTHWEST BANK & TRUST

By:


Darlene J. Steinhorst

Vice President, Loan Operations

DJS/mb
Enclosures

5/17/85

Interstate Commerce Commission
Washington, D.C. 20423

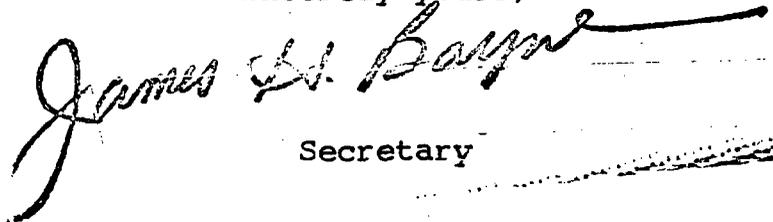
OFFICE OF THE SECRETARY

Darlene J. Steinhorst
Northwest Bank & Trust
1716 Mangum at W 18th St.
Houston, Texas 77092

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 5/17/85 at 1:30pm and assigned re-
recording number(s). 14648 & 14648-A 14648-B

Sincerely yours,


Secretary

Enclosure(s)

SECURITY AGREEMENT

(ACCOUNTS, INVENTORY, EQUIPMENT, MAY 17 1985 - 1 20 PM
FIXTURES, GENERAL INTANGIBLES, OTHER)

INTERSTATE COMMERCE COMMISSION

As of February 8, 1985
(Date)

GEORGE B. KELLY

6 West 11th Place (Name) Houston, Harris County, Texas
(No. and Street) (City) (County) (State)

hereinafter called "Debtor", for value received, the receipt and sufficiency of which is hereby acknowledged, hereby grants to NORTHWEST

BANK AND TRUST Houston, Harris County, Texas
(Bank Name) (City) (County) (State)

hereinafter called "Secured Party" the security interest hereinafter set forth and agrees with Secured Party as follows:

I. SECURITY INTEREST. Debtor hereby grants to Secured Party a security interest in and agrees that Secured Party has and shall continue to have a security interest in the following property, including without limitation the items described on Exhibits, if any, attached hereto and made a part hereof, to-wit: (CHECK APPROPRIATE BLOCK(S))

ACCOUNTS:

- All accounts now owned or existing as well as any and all that may hereafter arise or be acquired by Debtor, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts, or other proceeds of any sale or other disposition of inventory;
- Only those specific accounts and/or contracts listed and described on Schedule A attached or which may hereafter be attached hereto, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts, or other proceeds of any sale or other disposition of inventory;

INVENTORY:

- All of Debtor's inventory, including all goods, merchandise, raw materials, goods in process, finished goods and other tangible personal property now owned or hereafter acquired and held for sale or lease or furnished or to be furnished under contracts for service or used or consumed in Debtor's business and all additions and accessions thereto and contracts with respect thereto and all documents of title evidencing or representing any part thereof, and all products and proceeds thereof, including, without limitation, all of such which is now or hereafter located at the following locations:

FIXTURES:

- All of Debtor's fixtures and appurtenances thereto, and such other goods, chattels, fixtures, equipment and personal property affixed or in any manner attached to the real estate and/or building(s) or structure(s), including all additions and accessions thereto and replacements thereof and articles in substitution therefor, howsoever attached or affixed, located at the following locations:

_____ (legal description)

The record owner of the real estate is _____

EQUIPMENT:

- All equipment of every nature and description whatsoever now owned or hereafter acquired by Debtor including all appurtenances and additions thereto and substitutions therefor, wheresoever located, including all tools, parts and accessories used in connection therewith;

GENERAL INTANGIBLES:

- All other personal property now owned or hereafter acquired by Debtor other than goods, accounts, chattel paper, documents and instruments;

CHATTEL PAPER:

- All of Debtor's interest under lease agreements and other instruments or documents, whether now existing or owned by Debtor or hereafter arising or acquired by Debtor, evidencing both a debt and security interest in or lease of specific goods;

FARM PRODUCTS:

- All of Debtor's interest in any and all crops, livestock and supplies used or produced by Debtor in farming operations wheresoever located; Debtor's residence is in the county shown at the beginning of this Agreement, and Debtor agrees to notify promptly Secured Party of any change in the county of Debtor's residence; all of Debtor's crops or livestock are presently located in the following counties:

- All of Debtor's now owned or existing as well as hereafter acquired or arising instruments and documents;

- THE SPECIFIC COLLATERAL LISTED BELOW:

ONE (1) DOT 112J340W NOMINAL 32,000 GALLON L.P.G. TANK RAIL CAR NO. NATX33995 WITH MARKING OF TCSX238

and accessions, additions and attachments thereto and the proceeds and products thereof, including without limitation, all cash, general intangibles, accounts, inventory, equipment, fixtures, farm products, notes drafts, acceptances, instruments and chattel paper or other property, benefits or rights arising therefrom, and in and to all returned or repossessed goods arising from or relating to any of the collateral described herein or other proceeds, of any sale or other disposition of such collateral (all of the foregoing hereinafter sometimes called the "Collateral").

The security interest granted hereby is to secure the payment of (i) certain promissory note(s) ~~of even date herewith~~ in the original principal sum of \$ 27,438.00 dated February 8, 1985

Party whether direct or indirect, absolute or contingent, due or to become due and whether now existing or hereafter arising and howsoever evidenced or acquired, whether joint or several (all of which are hereinafter sometimes called the "Obligations"). Debtor acknowledges that the security interest hereby granted shall secure all future advances as well as any and all other obligations and liabilities of Debtor to Secured Party whether now in existence or hereafter arising.

II. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEBTOR

(a) Except for the security interest granted hereby, the Debtor is, and as to the Collateral acquired after the date hereof which is included within the security interest specified in Section I hereof, Debtor will be, the owner of all such Collateral free from all adverse claims, security interests and encumbrances;

(b) There is no Financing Statement now on file in any public office covering any part of the Collateral, and so long as any amount remains unpaid on any Obligations of the Debtor to Secured Party, Debtor will not execute and there will not be on file in any public office any such Financing Statement or statements except the Financing Statement filed or to be filed in respect to the security interest hereby granted;

(c) Subject to any limitation stated therein or in connection therewith, all information furnished to Secured Party concerning the Collateral and proceeds thereof, or otherwise for the purpose of obtaining credit or an extension of credit, is or will be at the time the same is furnished, accurate and correct in all material respects;

(d) The Collateral will be used by the Debtor primarily for:

Personal, family or household purposes; Farming Operations; or Business Use.

(e) Except as herein provided, Debtor will not remove the Collateral from the county or counties designated at the beginning of this Agreement without the written consent of Secured Party. The address of Debtor designated at the beginning of this Agreement is Debtor's place of business if Debtor has only one place of business; Debtor's chief executive office if Debtor has more than one place of business; or Debtor's residence if Debtor has no place of business. Debtor agrees to notify Secured Party promptly of any change in such address.

III. PROVISIONS REGARDING ACCOUNTS. The following provisions shall apply to all accounts included within the Collateral:

(a) Although it will be within Secured Party's discretion whether to make loans under this agreement, Debtor understands that Secured Party intends to limit its loans, advances or other extensions of credit so that the maximum aggregate principal amount at any one time remaining unpaid on all Obligations of Debtor to Secured Party secured hereby shall not be in excess of _____% of the aggregate amount owing to the Debtor for shipments of products previously made and for services rendered for which invoices have been issued and in respect of which the Debtor has furnished Secured Party with the assignments and other information required hereunder (such maximum ceiling on loans being hereinafter sometimes referred to as the "Loan Formula"). Debtor warrants that each and all of the accounts at any time included in the computation of the Loan Formula will be paid in full on or before _____ days from the respective dates of the billing thereof, and accounts which remain unpaid in whole or in part beyond such period or in respect of which set-offs, defenses or counterclaims are claimed by the account debtor shall not be included in the Loan Formula. Notwithstanding the delivery of an assignment or identification pursuant hereto or the making of any loan in connection therewith, Secured Party may within 20 days after the date of each such assignment or identification, respectively, by notice in writing to the Debtor reject as unacceptable any one or more of all of the accounts included in such assignment or identification; and in the event of any such rejection the Debtor shall forthwith pay and apply on its indebtedness to Secured Party an amount equal to the Loan Formula value of such rejected account or accounts and such account or accounts shall not thereafter be included in the Loan Formula. Any such rejection may be for any reason deemed by Secured Party to be sufficient and notice of such rejection shall be deemed sufficiently given if mailed to the Debtor by Secured Party within such 20-day period.

(b) The term "account", as used in this Security Agreement shall have the same meaning as set forth in the Uniform Commercial Code of Texas in effect as of the date of execution hereof, and as set forth in any amendment to the Uniform Commercial Code of Texas to become effective after the date of execution hereof, and also shall include all present and future notes, instruments, documents, general intangibles, drafts, acceptances and chattel paper of Debtor, and the proceeds thereof. As of the time any account becomes subject to such security interest, Debtor shall be deemed to have warranted as to each and all of such accounts (i) that each account and all papers and documents relating thereto are genuine and in all respects what they purport to be, (ii) that each account is valid and subsisting and arises out of a bona fide sale of goods sold and delivered to, or out of and for services rendered by the Debtor to, the account debtor named in the account, (iii) that the amount of the account represented as owing is the correct amount actually rendered by the Debtor to, the account debtor named in the account, and (iv) that the amount of the account represented as owing is the correct amount actually and unconditionally owing except for normal cash discounts and is not subject to any set-offs, credits, deductions or counter-charges, (v) that the Debtor is the owner thereof free and clear of all liens, encumbrances and security interest of any and every nature whatsoever. Secured Party shall have the right in its own name or in the name of the Debtor, whether before or after default by the Debtor, to demand, collect, receive, receipt for, sue for, compound and give acquittal for, any and all amounts due or to become due on the accounts and to endorse the name of the Debtor on all commercial paper given in payment or part payment thereof, and in its discretion to file any claim or take any other action or proceeding which Secured Party may deem necessary or appropriate to protect and preserve and realize upon the Security Interest of Secured Party in the Collateral. In order to assure collection of receivables in which Secured Party has a security interest hereunder, Secured Party may notify the post office authorities to change the address for delivery of mail addressed to Debtor to such address as Secured Party may designate, and to open and dispose of such mail and receive the collections of accounts receivable included herewith.

(d) Debtor will from time to time execute such further instruments and do such further acts and things as Secured Party may reasonably require by way of further assurance to Secured Party an assignment or other form of identification in the form required by Secured Party of all accounts at any time included in the computation of the Loan Formula, together with such other evidence of the existence and identity of such accounts as Secured Party may reasonably require; and Debtor will mark its books and records to reflect the assignment of any such accounts, or other accounts which are included within the Security Interest specified in Section I hereof. Debtor will accompany each transmission of proceeds to Secured Party pursuant to subparagraph (a) above with a report in such form as Secured Party may require in order to identify the accounts to which such proceeds apply.

(e) Returned or repossessed goods arising from or relating to any accounts included within the security interest specified in Section I hereof shall be held separate and apart from any other property. Debtor shall as often as requested by Secured Party, but not less often than weekly even though no special request has been made, report to Secured Party the appropriate identifying information with respect to such returned or repossessed goods relating to accounts included in assignments, or identifications made pursuant hereto. At the same time the Debtor shall report the appropriate identifying information with respect to all accounts included in such assignments or identifications which remain unpaid in whole or in part beyond the period specified in the third sentence of the first paragraph of Section III hereof, or in respect of which set-offs, defenses or counterclaims are claimed by the account debtor. The Debtor shall forthwith pay and apply on its indebtedness to Secured Party an amount equal to the Loan Formula value of all accounts included in such reports.

IV. PROVISIONS REGARDING INVENTORY. The following provisions shall apply to all inventory included within the Collateral:

(a) As used herein, "Net Security Value of Inventory" shall mean the net value of all inventory after taking into account charges, liens and security interests (other than the interest of Secured Party), of all kinds against inventory, changes in the market value thereof, and all transportation, processing and other handling charges affecting the value thereof, all as determined by Secured Party in its sole discretion, which determination shall be final and binding upon Debtor. The term "Borrowing Base" shall mean an amount equal to _____% of the Net Security Value of Inventory. Whenever the Borrowing Base is used as a measure of loans, it shall be computed as of and applied to the loans outstanding at the time in question.

(b) Although it is within Secured Party's discretion whether to extend credit pursuant hereto, Debtor understands Secured Party will use the Borrowing Base as a maximum ceiling on loans. Debtor agrees that, unless otherwise agreed by Secured Party in writing, the outstanding principal balance of loans hereunder together with interest due and unpaid thereon will at no time exceed the Borrowing Base, and agrees that if at any such time such excess shall arise, Debtor shall make payments in cash, on demand, in reduction of such interest and principal, in such amount as may be necessary to eliminate such excess.

(c) Debtor shall immediately notify Secured Party of any event causing loss or depreciation in value of the Collateral and the amount of such loss or depreciation, which amount shall be immediately reflected in the Net Security Value of Inventory unless otherwise agreed by Secured Party in writing. Debtor will deliver to Secured Party prior to the 10th day of each month a report, in form satisfactory to Secured Party, with respect to the last preceding month, showing Debtor's opening inventory, inventory acquired, inventory sold and delivered, inventory sold and held for future delivery, inventory returned or repossessed, inventory used or consumed in Debtor's business and closing inventory.

(d) Debtor will promptly notify Secured Party in writing of any addition to, change in or discontinuance of its place(s) of business as shown in this agreement, the places at which inventory is located as shown herein, the location of its chief executive office and the location of the office where it keeps its records as set forth herein. All Collateral will be located at the place(s) of business shown at the beginning of this agreement and in Section I as modified by any notice(s) given pursuant hereto.

(e) Until default, Debtor may use the inventory in any lawful manner not inconsistent with this agreement or with the terms or conditions of any policy of insurance thereon and may also sell that part of the Collateral consisting of inventory provided that all of such sales are in the ordinary course of business. A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt. Until default, Debtor may also use and consume any raw materials or supplies, the use and consumption of which are necessary in order to carry on Debtor's business.

(f) All accounts which are proceeds of the inventory collateral covered hereby shall be subject to all of the terms and provisions hereof pertaining to accounts.

V. GENERAL COVENANTS.

(a) Debtor will furnish to Secured Party a landlord's waiver of all liens with respect to any Collateral covered by this Security Agreement which is or may be located upon leased premises, such landlord's waiver to be in the form acceptable to counsel for Secured Party.

(b) Debtor agrees to execute and deliver such Financing Statement or Statements, or amendments thereof or supplements thereto, or other instruments as Secured Party may from time to time require in order to comply with the Texas Uniform Commercial Code (or other applicable State law of the jurisdiction where any of the Collateral is located) and to preserve and protect the security interest hereby granted.

(c) Secured Party may, at its option, whether before or after default, but without obligation to the Debtor, discharge taxes, liens or security interests or other encumbrances at any time levied or placed upon the Collateral, and may place and pay for insurance thereon, or pay for the repair, improvement, maintenance and preservation of the Collateral and pay any filing or recording fees necessary to preserve and protect the security interest hereby granted. The Debtor agrees to reimburse Secured Party on demand for any payment made or any expense incurred by the Secured Party pursuant to the foregoing authorization, and such amount shall constitute additional obligations of Debtor which shall be secured by and entitled to the benefits of this Security Agreement. Debtor agrees to pay interest on such amounts at the rate of ten percent (10%) per annum from the date such are incurred by Secured Party until paid by Debtor.

(d) Secured Party shall have the right at any time, in its own name or in the name of Debtor, whether before or after default by Debtor, to notify any and all account debtors to make payment thereof directly to Secured Party and to demand, collect, receive, receipt for, sue for, compound for and give acquittal for, any and all amounts due or to become due on the accounts and to endorse the name of the Debtor on all commercial paper given in payment or part payment thereof, and in its discretion to file any claim or take any other action or proceeding which Secured Party may deem necessary or appropriate to protect and preserve and realize upon the security interest of Secured Party in the Collateral; but to the extent Secured Party does not so elect, Debtor shall continue to collect the accounts. Except as otherwise permitted by the proviso to this sentence, all proceeds of collection of accounts received by the Debtor shall forthwith be accounted for and transmitted to Secured Party in the form as received by Debtor and shall not be commingled with any funds of the Debtor; provided, however, that prior to default by Debtor in the payment of any Obligations to Secured Party or until the privilege given to Debtor by this proviso shall be revoked by Secured Party in writing, the Debtor need transmit to Secured Party only the proceeds of accounts included in the identification or assignment made pursuant to Section III (d) hereof.

(e) Debtor shall at all reasonable times allow Secured Party by or through any of its officers, agents, attorneys or accountants, to examine or inspect the Collateral wherever located and to examine, inspect and make extracts from Debtor's books and records. Debtor shall do, make, execute and deliver all such additional and further acts, things, deeds, insurances, instruments as Secured Party may require, to more completely vest in and assure to Secured Party its rights hereunder and in or to the Collateral.

(f) Debtor shall have and maintain insurance at all times with respect to all tangible collateral covered hereby insuring against risks of fire (including so-called extended coverage), theft and other risks as Secured Party may reasonably require, containing such terms, in such form and amounts and written by such companies as may be reasonably satisfactory to Secured Party, all of such insurance to contain loss payable clauses in favor of Secured Party as its interest may appear. All policies of insurance shall provide for ten (10) days written minimum cancellation notice to Secured Party and at request of Secured Party shall be delivered to and held by it. Secured Party is hereby authorized to act as attorney for Debtor in obtaining, adjusting, settling and cancelling such insurance and endorsing any drafts or instruments. Secured Party shall be authorized to apply the proceeds from any insurance to the Obligations secured hereby whether or not such Obligations are then due and payable.

(g) As additional security for payment of the Obligations, Debtor hereby grants to Secured Party a security interest, and a contractual pledge and assignment of, in and to any and all money, property, accounts, securities, documents, chattel paper, claims, demands, instruments, items or deposits of the Debtor, and each of them, or to which any of them is a party, now held or hereafter coming within Secured Party's custody or control, including by way of example and not of limitation all certificates of deposit and other depository accounts, whether such have matured or the exercise of Secured Party's rights results in loss of interest or other penalty on such deposits. Without prior notice to or demand upon the Debtor, Secured Party may exercise its rights granted above, as well as other rights and remedies at law and equity (all of which are cumulative), at any time when a default has occurred or Secured Party deems itself insecure.

(h) If Secured Party should at any time be of the opinion that the Collateral is not sufficient or has declined or may decline in value, or should Secured Party deem payment of Debtor's Obligations to Secured Party to be insecure, then Secured Party may call for additional Collateral satisfactory to Secured Party, and Debtor promises to furnish such additional security forthwith. The call for additional collateral may be oral, by telegram, or United States mail addressed to Debtor and shall not affect any other subsequent right of Secured Party to exercise the same. Debtor agrees that Secured Party shall have no duty or obligation to collect any account, or to take any other action to preserve or protect the Collateral; however, should Secured Party elect to collect any account or take possession of any Collateral, Debtor releases Secured Party from any claim or claims for loss or damage arising from any act or omission in connection therewith.

VI. EVENTS OF DEFAULT

(a) Debtor shall be in default under this Security Agreement upon the happening of any of the following events or conditions (herein sometimes called an "Event of Default"): (i) failure of Debtor to pay when due any interest on or any principal or installment of principal of any Obligation of Debtor or similar instrument permits the acceleration of maturity of any indebtedness of Debtor to Secured Party; (iii) any representation or warranty made by Debtor herein or made in any statement or certificate furnished to Secured Party by the Debtor pursuant hereto or in connection with any loan or loans proves incorrect in any material respect as of the date of the making or issuance thereof; (iv) default occurs in the observance or performance by Debtor of any provision of this agreement or of any note, assignment or transfer under or pursuant thereto; (v) the dissolution, termination of existence, insolvency or business failure of the Debtor, or the application for the appointment of a receiver of any part of the property of the Debtor, or the commencement by or against the Debtor of any proceeding under any bankruptcy arrangement, reorganization, insolvency, or similar law for the relief of debtors, or by or against any guarantor or surety for the Debtor, or upon the service of any warrant, attachment, levy, garnishment or similar process in relation to a tax lien, debt, judgment, obligation of Debtor or assessment; or (vi) the Collateral becomes, in the judgment of Secured Party, unsatisfactory or insufficient in character or value.

(b) Upon the occurrence of an Event of Default, or if Secured Party deems payment of Debtor's Obligations to Secured Party to be insecure, and at any time thereafter, Secured Party may, at its option, without demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor, or any other notice whatsoever, to the Debtor, declare all Obligations secured hereby immediately due and payable and Secured Party shall thereupon have the rights and remedies of a secured party under the Texas Uniform Commercial Code and as otherwise granted herein or under any applicable law or in any other agreement executed by Debtor (all of which rights and remedies shall be cumulative), including without limitation, the right to sell, lease or otherwise dispose of any or all of the Collateral and to apply the proceeds thereof toward payment of any costs and expenses and attorney's fees and legal expenses thereby incurred by the Secured Party and toward payment of the Obligations in such order or manner as the Secured Party may elect. Secured Party shall have the right to take immediate possession of the Collateral, with or without process of law, and for that purpose Secured Party may enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by the Secured Party which is reasonably convenient to both parties. 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 send Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending a reasonable notice shall be met if such notice is mailed, postage prepaid, to Debtor at the address designated at the beginning of this Security Agreement at least five days before the time of the sale or disposition. Expenses of legal expenses, plus interest thereon at a rate per annum at all times equal to the highest lawful contract rate permitted by applicable usury laws, and shall constitute additional Obligations of Debtor which shall be due on demand and which shall be secured by and which shall be secured by and which shall constitute additional Obligations of Debtor or other lawful disposition by Secured Party of the Collateral following its retaking, are insufficient to satisfy the Security Agreement. If the proceeds of any sale or other lawful disposition by Secured Party of the Collateral following its retaking, are insufficient to pay the expenses of retaking, repairing, holding, preparing the Collateral for sale, selling it and the like, to satisfy the Obligations of Debtor to Secured Party, then Debtor agrees to pay any deficiency, but Debtor shall be entitled to any surplus if one results after lawful application of all such proceeds. Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

(c) Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

(d) It is the intention of the parties hereto to comply with applicable usury laws; accordingly, it is agreed that notwithstanding any provision to the contrary in this Security Agreement, or in any of the documents evidencing the Obligations or otherwise relating thereto, no such provision shall require the payment or permit the collection of interest in excess of the maximum permitted by such laws. If any excess of interest in such respect is provided for, or shall be adjudicated to be so provided for, in this Security Agreement, or in any of the documents evidencing the Obligations or otherwise relating thereto, then in such event (a) the provisions of this paragraph shall govern and control, (b) neither the Debtor hereof nor his heirs, legal representatives, successors or assigns or any other party liable for the payment hereof, shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount permitted by such laws, (c) any such excess which may have been collected shall be at the option of the holder of the instrument evidencing the Obligations, either applied as a credit against the then unpaid principal amount thereof or refunded to the Maker thereof and under applicable usury laws as now or hereafter construed by the courts having jurisdiction.

(e) The remedies of Secured Party hereunder are cumulative, and the exercise of any one or more of the remedies provided herein shall not be construed as a waiver of any of the other remedies of Secured Party.

VII. GENERAL

(a) Any provision hereof found to be invalid under the law of the State of Texas, or any other State having jurisdiction or other applicable law, shall be invalid only with respect to the offending provision. All words used herein shall be construed to be of such gender or number as the circumstances require. If this Security Agreement is executed by more than one Debtor, the obligations of all such Debtors shall be joint and several. This Agreement shall be binding upon the heirs, personal representatives, successors or assigns of the parties hereto, but shall inure to the benefit of successor or assigns of the Secured Party only. The law of the State of Texas shall apply to this Agreement and its construction and interpretation.

(b) Any carbon, photographic or other reproduction of any financing statement signed by Debtor is sufficient as a financing statement for all purposes, including without limitation, filing in any state as may be permitted by the provisions of the Uniform Commercial Code of such state.

(c) This Security Agreement and the security interest herein granted are in addition to, and not in substitution, novation or discharge of, any and all prior or contemporaneous security agreements and security interests in favor of Secured Party or assigned to Secured Party by others. All rights, powers and remedies of Secured Party in all such security agreements are cumulative, but in the event of actual conflict in terms and conditions, the terms and conditions of the latest security agreement shall govern and control.

(d) The security interest hereby granted and all the terms and provisions hereof shall be deemed a continuing security agreement and shall continue in full force and effect, and all the terms and provisions hereof shall remain effective as between the parties, until first to occur of the following: (i) the expiration of four (4) years from the date of payment of Debtor's last Obligation to Secured Party; or (ii) repayment by Debtor of all Obligations secured hereby and the giving by Debtor of ten (10) days written notice of revocation of the terms and provisions hereof.

(e) Signed in multiple original counterparts and delivered on the day and year first above written.

On this 13th day of MAY, 1985, before me, personally appeared George B. Kelly, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

THE STATE OF TEXAS
COUNTY OF HARRIS, ss
\$
\$
\$

Signature of Notary Public
BETTY A. HOWARD
My Commission Expires: MAY 2, 1987
Notary Public, State of Texas/County of Harris
My Commission Expires 04-28-87

GEORGE B. KELLY
Debtor

SCHEDULE A

MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT ("Agreement"), by and between Tank Car Service, Inc., a Texas Corporation ("TCSI"), having its principal place of business in Houston, Texas, and George B. Kelly ("Owner"), a corporation of _____

W I T N E S S E T H

WHEREAS, Owner has One railroad tank cars TCSX 238 (the "Railway Equipment") and is desirous of entering into the following Agreement with TCSI, whereby TCSI will manage the Railway Equipment pursuant to the terms and conditions hereof; and

WHEREAS, TCSI is desirous of undertaking the management of the Railway Equipment pursuant to the terms and conditions hereof:

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions set forth herein, the parties hereto agree as follows:

1. Owner hereby appoints TCSI to manage and otherwise supervise the operation of the Railway Equipment in the name of the Owner, or in the name of TCSI, but for the account and on behalf of the Owner pursuant and subject to the terms and conditions set forth in this Agreement.
2. TCSI hereby accepts the appointment set forth in Paragraph 1 and agrees to perform the duties and obligations set forth herein. Owner acknowledges and agrees that, whereas TCSI has accepted the responsibility of managing the Railway Equipment, except as specifically set forth herein to the contrary or as provided by law, TCSI shall have the sole function and operative judgement, to be exercised in a reasonable manner, for the leasing, operation and management of the Railway Equipment and for establishing and implementing policies and standards of leasing, operation, service, maintenance, repair, reporting and other such policies and standards affecting the Railway Equipment or the operation, maintenance or repair thereof. TCSI shall be entitled to rely upon written or oral instructions received from Owner as to any and all acts to be performed by TCSI.
3. Effective on the delivery of the Railway Equipment to TCSI, Owner does hereby deliver and release to TCSI the Railway Equipment for the management thereof by TCSI and TCSI acknowledges and delivery and receipt thereof.
4. Except as provided below, Owner shall be responsible for the payment of all expenses incurred in connection with the Railway Equipment, including ad valorem and other taxes, freight, storage, design changes and other modifications required by governmental regulations or technological changes and periodic inspection related costs, deductibles under insurance policies, minor and major repair and maintenance work (including, without limitation, running repairs, cleaning and painting), and other expenses, levies or charges, including the Management Fee (as defined in Paragraph 12 hereof), incurred in connection with the Railway Equipment and the operation and leasing thereof (all of which shall hereinafter be sometimes collectively referred to as the "Expenses").
5. Owner agrees to pay a portion of the aggregate ad valorem, gross receipts, property, or similar taxes levied against all tank cars (including the Railway Equipment) managed or owned by TCSI (the "TCSI Fleet") in an amount equal to the percentage which the Lease Fees (as defined in Paragraph 7-a) earned by the Railway Equipment are of the gross rental and service charges earned by all tank cars in the TCSI Fleet.

6. Owner agrees to cooperate fully with TCSI and to provide all assistance reasonably requested by TCSI to carry out its obligations hereunder. This shall include, subject to the provisions of Paragraph 13 hereof, full cooperation and assistance in any lawsuit or other similar matter or proceeding before any court or agency.

7. In consideration of the Management Fee provided for hereunder, TCSI agrees to utilize reasonable time and efforts to:

- a. Collect the rental and service charges earned by the Railway Equipment (the "Lease Fees"). Such duties shall not, however, be deemed to include the filing of a suit to collect such Lease Fees, although TCSI may elect to do so at its option but at the expense of the Owner, subject to the provisions of Paragraph 13 hereof.
- b. Obtain leases for the Railway Equipment for a term not to exceed sixty (60) months and maintain the Railway Equipment under lease throughout the term of this Agreement. TCSI shall execute any such lease for the account and on behalf of the Owner.
- c. Comply with the terms and conditions of any lease agreement to which the Railway Equipment is subject during the term hereof. It is understood, however, that before TCSI shall be obligated to comply with any lease not negotiated by TCSI or any amended terms and conditions of any such lease, such lease and/or amendments must be approved in writing by TCSI.
- * d. Make all required registration and other filings with the Interstate Commerce Commission, the Association of American Railroads, the Department of Transportation and any other governmental or industry authority.
- e. File applicable ad valorem and other tax returns and pay from the Lease Fees or from funds advanced by Owner, all such taxes due, in accordance with the provisions of Paragraph 5. TCSI may, however, retain during each calendar year of the term of this Agreement, an amount equal to three percent (3%) of the Lease Fees received during that calendar year, remitting to Owner any amount not required for such taxes.
- f. Maintain adequate books and records sufficient to account properly for the Lease Fees, Expenses and other such items applicable to the Railway Equipment.
- g. Contract for or otherwise obtain all repair and/or maintenance work on Railway Equipment considered necessary by TCSI, subject to the provisions of Paragraph 4.
- h. Provide periodic reports to Owner on a quarterly basis (the "Quarterly Reports") which shall set forth the Lease Fees derived from the use of the Railway Equipment, as well as Expenses incurred or that are reasonably foreseeable to be incurred in connection with the Railway Equipment. The Quarterly Reports shall be for the quarters ending March 31, June 30, September 30, and December 31, and will be delivered to Owner as promptly as is reasonably possible. Should the lease Fees exceed the Expenses incurred in connection with the Railway Equipment, payment of the excess (except for any amount retained under Paragraph 7e and this Paragraph 7h) shall accompany the Quarterly Report. Should Expenses (incurred or reasonably foreseeable) exceed the Lease Fees at any time during the period in question, the Owner shall remit the amount to TCSI if requested. It is understood that TCSI shall be under no obligation to advance funds for payment of the Expenses, regardless of the results of the nonpayment thereof.

It is further understood that TCSI shall have the authority to retain portions of Lease Fees that exceed actual Expenses incurred to cover the future Expenses that can be reasonably foreseen to exceed the Lease Fees for the applicable future period or periods. Such retention of Lease Fees shall be accomplished on a reasonable basis and in such a manner as to minimize the effect that such retention shall have on cash distribution, if any, made to Owner.

1. Reasonably pursue any and all warranties and other claims against manufacturers, users, lessees, railroads and other parties on behalf of the Owner. Such duties shall not, however, be deemed to include the filing of suit, although TCSI may elect to do so at its option, but at the expense of the Owner, subject to the provisions of Paragraph 13.

8. Subject to the provisions set forth herein, this Agreement shall be effective commencing on the first date on which a railroad tank car included in the Railway Equipment is delivered to TCSI, and shall automatically terminate five (5) years from such date.

9. Except as otherwise provided in this Agreement, the Owner may terminate this Agreement by giving TCSI written notice of termination not less than three (3) months prior to the termination date designated in such notice; provided however, if Owner shall owe TCSI any amounts under this Agreement the Owner may not terminate this Agreement as to any of the Railway Equipment until all such amounts have been paid. TCSI shall, at its option be entitled to continue to lease and otherwise operate and manage the Railway Equipment and retain any and all Lease Fees received therefrom until all amounts outstanding and/or subsequently incurred in connection with such continued leasing of the Railway Equipment have been paid.

10. Should either party default under its obligations set forth herein, the sole and exclusive remedy of the other party shall be to advise the defaulting party of such default, and should such default not be corrected within thirty (30) days of such notification, the aggrieved party may, at its option, immediately terminate this Agreement.

11. Neither TCSI nor the Owner shall, by reason of the expiration or the termination of this Agreement in accordance with the terms and provisions hereof, be liable to the other for compensation, reimbursement or damages, either on account of present or prospective profits or on account of expenditures, investments or commitments made in connection therewith, or in connection with establishment, development or maintenance of the business or goodwill of TCSI or the Owner, or on account of any other cause or thing whatsoever; provided however, that such expiration or termination shall not affect the rights or liabilities of the parties with respect to any indebtedness owing by either party to the other; and further provided that such expiration or termination shall be subject to any then existing lease or leases of the Railway Equipment, and TCSI at its option, shall be entitled to continue, pursuant to the terms and conditions of this Agreement, the management and control of any of the Railway Equipment, covered by such lease or leases as may be necessary for TCSI to comply with such lease or leases, including the right to retain the Lease Fees, Management Fee and other sums as provided for herein, until the expiration or termination of such lease or leases. Except as may be otherwise expressly set forth herein, upon the expiration or termination of the Agreement, all obligations of the parties shall immediately cease. TCSI shall, however, provide at its expense and upon the Owner's request, all records, data and other information relating to the Railway Equipment and in assisting Owner in the implementation of such records, data and other information into Owner's operation.

12. In consideration of the services of TCSI hereunder, Owner shall pay to TCSI a management fee of ten percent (10%) of the total compensation collected for each railway car included in the Railway Equipment (the "Management Fee"). The Management Fee shall be deducted from the remittance due quarterly to Owner as otherwise provided herein.

13. TCSI will give written notice to Owner at least ten (10) days prior to the institution of legal proceedings by TCSI or not more than ten (10) days after being served with process in any legal proceedings against TCSI involving the Railway Equipment. Unless otherwise directed in writing by Owner, TCSI may, at its option, institute or defend, in its own name or in the name of the Owner, or both, but not against each other, and in all events at the expense of the Owner, any and all legal actions or proceedings it considers necessary hereunder, including those to collect charges, claims, rents or other income for the Railway Equipment, or lawfully oust or dispose lessees or other persons in possession thereof, or lawfully cancel, modify or terminate any lease, license or concession agreement for the breach thereof or default by a lessee, licensee or concessionaire or take any and all necessary action to protest or litigate to a final decision in any appropriate Court or other forum any violation, order, rule, regulation, suit, claim or other matter affecting the Railway Equipment. TCSI shall keep Owner currently advised of all legal proceedings brought pursuant to the foregoing authority.

* 14. This Agreement is not assignable by either party except with the written consent of the other party; provided however, (a) this Agreement together with the Railway Equipment may be transferred by Owner to his estate, heirs or devisees, or to any purchaser at a foreclosure sale where this Agreement and the related Railway Equipment are sold as collateral so long as such sale complies with applicable federal or state securities laws; (b) may be assigned by TCSI in connection with the merger or consolidation of TCSI into another corporation or as part of the sale of substantially all of the assets of TCSI, provided that notice of such merger, consolidation or sale shall be given to Owner prior to the effective date hereof; and (c) this Agreement together with the Railway Equipment may be assigned by the Owner to a financial institution as collateral for financing the Railway Equipment.

15. Owner and TCSI jointly and severally acknowledge, agree and covenant that TCSI is entering into this contract as an independent contractor, and neither party hereto shall take any action to alter such legal relationship. Owner shall have no right or authority, and shall not attempt to enter into contracts or commitments in the name, or on behalf of TCSI, or to bind TCSI in any manner or respect whatsoever. Further, Owner agrees to indemnify and hold TCSI harmless from any and all claims, demands, causes of action (at law or equity), costs, damages, reasonable attorney's fees, expenses and judgements, except those arising out of TCSI gross negligence or willfull misconduct, which may hereafter be made or caused by any third party based on or relating to the Railway Equipment or the operation including the leasing, thereof. TCSI agrees to indemnify and hold harmless Owner from and against any and all claims, attorney's fees, expenses, and judgements which may hereafter by made or caused by any third party based on actions taken by TCSI in connection with the Railway Equipment, which actions were authorized hereunder, but performed negligently, or were not specifically requested or approved by Owner.

16. Each party hereto shall promptly and duly execute and deliver to the other party such further documents, assurances, releases and other instruments, and take such further actions, including any necessary filings and the execution of a power of attorney of Owner, as the other party may reasonably request, in order to more fully carry out the intent and purpose of this Agreement and to indicate the ownership of the Railway Equipment during the continuance and upon termination of the Agreement.

17. It is understood that upon the expiration or termination of this Agreement as to any or all of the Railway Equipment, Owner shall no longer be entitled to use the Recording and UMLER Car Initials and Numbers and other designations (the "Designations") that are presently the property of TCSI. Accordingly, Owner agrees that it will promptly undertake upon such expiration or termination, at Owner's expense, all steps necessary to properly

change the Designations on the Railway Equipment no longer included under the Agreement and to execute any and all documents requested by TCSI to transfer to TCSI any rights Owner may have acquired to such Designations. TCSI agrees to prepare, at TCSI's expense, documentation as, in its opinion, is necessary to change all designations on the Railway Equipment from the Designations of TCSI to those adopted by owner, and to provide reasonable assistance to Owner, at Owner's expense in the filing of such documents.

18. Any notice or other communication by either party to the other shall be in writing, and shall be deemed to have been duly given if either delivered personally, or mailed, postage prepaid, registered or certified mail, addressed as follows:

TCSI: Tank Car Services, Inc.
N. 200 Mullan Road
Suite #201
Spokane, WA 99206

Owner: George B. Kelly
6 W. 11th Place
Houston, TX 77005

or to such other address, and to the attention of such other person or officer as either party may designate to the other in writing as provided by this Paragraph.

19. The Owner or his authorized representative shall be entitled to inspect the books and records of TCSI applicable to the Railway Equipment at any reasonable time during the office hours of TCSI.

20. TCSI hereby confirms that it will act as agent of the Owner in entering into and performing all obligations and duties of the lessor under any lease of the Railway Equipment and hereby assigns to Owner all rights of the lessor under any such lease, including any rights of indemnification of the lessor thereunder; provided, that such assignment shall not affect or modify the relationship between, or the respective rights, obligations, and duties of, TCSI and Owner pursuant to this Agreement.

21. This Agreement contains the entire agreement of the parties hereto pertaining to the management and operation of the Railway Equipment. Except as otherwise provided herein, this Agreement may not be modified or amended, except by express, written agreement signed by both parties hereto. Any waiver of any obligation of either party hereto shall not be construed as a continuing waiver of any such obligation under any provision hereof.

22. The terms and provisions of this Agreement shall be binding upon and insure to the benefit of, and be enforceable by the heirs, administrators, executors, successors and assigns, if any, of the parties hereto, subject to the provisions pertaining to the assignment hereof set forth in Paragraph 14.

23. This Agreement shall be construed in accordance with the laws of the State of Texas.

IN WITNESS THEREOF, the parties have hereunto set their names, effective this 30 day of October, 19 84.

OWNER
By: George B. Kelly
Title: _____

TANK CAR SERVICES, INC.
By: George M. Barty
Title: President