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RECORDED 13947

JAN 13 1983 -3 35 PM

INTERSTATE COMMERCE COMMISSION

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COUNSELLORS AT LAW  
190 ELM STREET

WESTFIELD, NEW JERSEY 07091

3-013A046

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P.O. Box 669

FEDERAL EXPRESS

JAN 13 1983  
50.00

January 11, 1983

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

Re: Thomas/Mallard Transportation Company

Gentlemen:

In accordance with 49 U.S.C. 11303 and telephone instructions received this date, I forward to you for recordation original and copy of Security Agreement in the Nature of a Chattel Mortgage executed by H. Emerson Thomas, Gordon B. Thomas and H. E. Thomas, Jr., and Fidelity Union Bank pursuant to which the latter institution has been granted a security interest in the railroad cars Class DOT112J 340W, bearing Serial Nos. MTCX 5010 through 5029, respectively, by H. Emerson Thomas and his sons, Gordon B. Thomas and H. E. Thomas, Jr. from Mallard Transportation Company.

Also enclosed is a check in the sum of \$50 in payment of the filing fee. The original document should be returned to the undersigned after it has been marked to evidence filing with your Agency.

Should you require any further information with respect to this transaction, please advise.

Sincerely,

Neale F. Hooley

RECEIVED  
JAN 13 3 30 PM '83  
FEE OPERATION BR.

NFH:kc  
Enc.

cc Fidelity Union Bank  
Boulder Bank & Trust Co.  
Mr. H. Emerson Thomas et al.  
Allen E. Molnar, Esq.  
Donald B. Atkins, Esq.

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

OFFICE OF THE SECRETARY

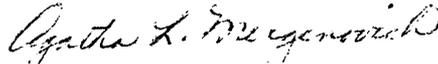
Neale F. Hooley  
Hooley, Butler, Di Francesco  
& Kelly-Counsellors At Law  
190 Elm Street  
Westfield, New Jersey 07091

January 13, 1983

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 1/13/83 at 3:35PM, and assigned re-  
recording number (s) 13907, 8082-C, 8300-D, 10304-A, 10687-A,  
& 13613-A

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure (s)

RECORDATION NO. 13907  
FILED 1426

JAN 13 1983 -3 25 PM

INTERSTATE COMMERCE COMMISSION SECURITY AGREEMENT IN THE NATURE  
OF A CHATTEL MORTGAGE

AGREEMENT MADE this 17 day of Dec, 19 82, between and among H. EMERSON THOMAS, GORDON THOMAS, H. EMERSON THOMAS, JR., jointly and severally, having an office at 200 North Avenue East, Westfield, New Jersey 07091 (jointly and severally referred to as the "Borrower"), and FIDELITY UNION BANK, a New Jersey corporation, having its main office at 765 Broad Street, Newark, New Jersey 07101 (the "Bank");

WHEREBY, in consideration of the payment of TEN DOLLARS (\$10.00), lawful money of the United States, paid by each to the other, receipt whereof is hereby acknowledged, the mutual undertakings hereinafter set forth, and other good and valuable consideration;

IT IS HEREBY AGREED that:

1. THE LOAN.

1.1 Undertaking. To induce the Bank to enter into a loan agreement, of even date herewith, (as now and hereafter modified, (the "Agreement") with the Borrower, and to make to the Borrower the loan provided for by the Agreement, (the "Loan"), and to secure the full and complete performance of the Company pursuant to its guaranty of payment of the Loan and any other payments now or hereafter due under the Agreement and all documents delivered in connection with the Agreement (the "Loan Documents"), and full and complete performance of all obligations under the Loan Documents, (all of the aforesaid obligations, the "Obligations"), the Borrower hereby grants to and creates in the Bank a security interest in the Tank Cars listed on Schedule A (the "Equipment"), together with all accessions, additions, and improvements to, and substitutions and replacements for the Equipment, and insurance policies and proceeds and other rights with respect to the Equipment.

1.2 Further Security. As further security for the Obligations, the Borrower hereby grants the Bank a security interest in all sums standing to the credit of the Borrower on the books of the Bank and any property of the Borrower in the possession of the Bank and, notwithstanding anything else in this Agreement to the contrary, the Bank may, at any time it deems itself insecure with respect to all or part of the Obligations, withdraw or otherwise setoff against all balances or other sums standing to the credit of the Borrower on such books and may take possession and dispose of all property of Borrower in such possession.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS.

2.1. General. The Borrower hereby makes the representations and warranties and enters into the covenants provided for in this

Paragraph 2. Unless otherwise specified, all representations and warranties shall be true and all covenants shall be met in accordance with their terms, at the time this Agreement is executed and at all times thereafter until the Obligations are fully paid.

2.2 General Representations. The Borrower represents to the Bank that:

A. This Security Agreement constitutes the Borrower's legal, valid and binding obligation enforceable against the Borrower (and each person so referred to, jointly and severally) in accordance with its terms, without defense, setoff or counterclaim; and

B. All financial statements now or hereafter furnished to the Bank by the Borrower are, or will be, true, accurate and correct as of the date thereof. Such financial statements do, or will, accurately represent the financial condition of the Borrower, as of the date of such statements, and there has been no adverse change, financial or otherwise, in the Borrower's condition since the date of the last financial statements furnished by the Borrower to the Bank; and

C. No Event of Default has occurred; and

D. Any and all Collateral provided by the Borrower as security for any loans shall comply with the representations with respect thereto contained herein.

2.3 Representations and Covenants with Respect to Equipment. The Borrower represents to and covenants with the Bank with respect to its Equipment, which is Collateral hereunder, that:

A. The Collateral is used primarily in business and the Bank has a Perfected First Lien thereon; and

B. Except for the security interest granted hereby and the subordinate interest of Mallard Transportation Company or otherwise as specified on Schedule B attached, the Borrower is the owner of all such Collateral free from any adverse lien, security interest and encumbrance; and the Borrower will defend the same against all claims and demands of all persons at any time claiming the same or any interest therein; and

C. No prior or senior financing statement covering the Collateral or any proceeds thereof is on file in any public office, and, at the request of the Bank, the Borrower shall execute and deliver one or more instruments or documents, including financing statements and continuation statements, as the Bank may require; and

D. The Borrower will have and maintain insurance at all times with respect to the Collateral as provided in Section in such amounts, against such risks, in such form and with such insurers as shall be satisfactory to the Bank from time to time.

Each policy for (i) liability insurance shall provide for all losses to be paid on behalf of the Bank and the Borrower as their respective interests may appear and (ii) property damage insurance shall provide for all losses to be paid directly to the Bank. Each such policy shall also (i) name the Borrower and the Bank as insured parties thereunder (without any representation or warranty by or obligation upon the Bank) as their interests may appear, (ii) contain an agreement by the insurer that any loss thereunder shall be payable to the Bank notwithstanding any action or inaction by the Borrower and (iii) provide that there shall be no recourse against the Bank for payment of premiums or other amounts with respect thereto.

E. The Borrower will keep all Collateral free from any adverse prior or senior lien, security interest and encumbrance and in good order and repair and will not waste or destroy the same or any part thereof; and the Borrower will not use any such Collateral in violation of any statute or ordinance; and

F. The Borrower will pay promptly when due all taxes and assessments upon such Collateral, or for its use or operation; and

G. The Borrower will from time to time execute and deliver to the Bank such lists of lessees and recording instruments relating to such Collateral as the Bank may require; and

H. The Borrower shall not use such Collateral except in the ordinary course of its business, substantially in the same manner as presently conducted, nor sell the same, without prior written consent of the Bank.

2.4 Covenants. The Borrower covenants with the Bank that it will do all of the following:

A. Pay and discharge when due all personal taxes and other obligations.

B. Sign such financing statement or other documents in form satisfactory to the Bank which the Bank may at any time desire to file in order to protect or perfect its security interest in the Collateral and reimburse the Bank for the costs of filing the same and execute and deliver to the Bank any instrument, document, assignment or other writing which may be necessary or convenient to the Bank to carry out the terms of this Security Agreement and to perfect its security interest in and facilitate the collection of Collateral.

C. Deliver to the Bank with reasonable promptness such financial data as the Bank may reasonably request.

D. Promptly notify the Bank of the occurrence of a Event of Default and take such action with respect thereto as the Bank directs.

2.5 Negative Covenants. The Borrower covenants with the Bank that it will not do any of the following:

A. Create, incur, assume or allow to exist any indebtedness senior to the interest of Fidelity in the Collateral (including liability under a guaranty) except liability hereunder and charges and trade accounts incurred in the ordinary course of business, without the written consent of the Bank.

B. Create, assume or allow to exist any mortgage, pledge, hypothecation, assignment, encumbrance, charge or other lien or security interest upon any of the Equipment on Schedule A except to the Bank in compliance with the terms of this Security Agreement.

C. Sell the Equipment except in the regular course of business, or sell on conditional sale, sale or return, guaranteed sale, consignment or other similar arrangement.

### 3. DEFAULTS.

3.1 Defaults. If any one or more of the following events (each, an "Event of Default") occurs, the entire unpaid balance of the principal and interest of the Loan and Obligations may, at the Bank's option, become immediately due and payable without notice, namely:

A. Any representation or warranty made herein or in the Loan Documents, or in connection with the making of the Loan or any certificate, statement or report made in compliance with this Security Agreement or the Agreement is false in any respect when made or when required to be true hereunder or by the Loan Document.

B. Failure by the Borrower to make any payment of interest or principal or other payment upon the Obligations, or any indebtedness to any third party in connection with the Collateral, when due, except with respect to indebtedness to any third party, where the Borrower has taken action to contest such liability.

C. Failure by the Borrower to perform or observe any term, condition, or covenant of this Security Agreement or the Agreement, or any document now or hereafter executed in connection herewith or with the Agreement.

D. Any adjudication that the Borrower is insolvent or bankrupt, or the filing of a petition by or against it for relief under any provisions of any statute or law relating to bankruptcy, or the making of any assignment for the benefit of creditors, or the appointment of a receiver or trustee or for all or any part of its property.

E. The Bank's determination, at any time or times hereafter, that it is insecure with respect to the Loan or performance under this Security Agreement or the Agreement, or any

document now or hereafter executed in connection herewith or the Agreement.

#### 4. REMEDIES.

4.1 Remedies. Upon the occurrence of any Event of Default, the Borrower will immediately repay, upon demand, all of the Obligations, and in addition to its rights at law, under the UCC or hereunder or under any other document, the Bank may:

A. Without further notice or demand or legal process take possession of the Collateral, all records and items relating to the Collateral and, at the Bank's request, the Borrower will assemble such records and deliver them to the Bank; and

B. Sell the Collateral, but the Bank shall give the Borrower reasonable notice of the time and place of any public sale of its Collateral or of the time after which any private sale or other intended disposition thereof is to be made. The requirement of reasonable notice shall be met if notice of the sale or other intended disposition is mailed, by certified mail, postage prepaid, to the Borrower at its address specified hereunder at least five days prior to the time of such sale or disposition. At such sale the Bank may sell the Collateral for cash or upon credit or otherwise, at such prices and upon such terms as it deems advisable and the Bank may bid or become purchaser at such sale, free of the right of redemption, which is hereby waived. The Bank may adjourn such sales at the time and place fixed therefor without further notice or advertisement, and may sell the Collateral as an entirety or in separate lots as it deems advisable, but the Bank shall not be obligated to sell all or any part of the Collateral at the time and place fixed for such sale if it determines not to do so.

4.2 Evidence. The books and records showing the correct accounts between the Bank and the Borrower shall be binding upon all for the purpose of establishing the items therein set forth and shall constitute prima facie proof thereof.

#### 5. MISCELLANEOUS.

5.1 Waivers, Etc. The Borrower hereby waives notice of any note evidencing all or any part of the Obligations, notice of presentment, demand for payment, protest and notice of protest for non-payment of the same and notice of any facts which might increase the Borrower's risk hereunder and all notices required by law, all defenses, setoffs and counterclaims and trial by jury. The Borrower hereby further agrees that its obligation to pay the Obligations and the Bank's rights against the Collateral are absolute joint and several shall in no way be impaired by the insolvency, dissolution, receivership or, if applicable, death or

incapacity, of it or anyone else obligated to pay the Obligations, the invalidity, illegality or unenforceability of all or part of this Security Agreement or the Agreement or any document now or hereafter executed in connection therewith or any note evidencing the Obligations, or the failure of the Bank to protect or perfect all or any part of the Collateral; and the Bank is hereby authorized to modify or surrender, in whole or in part, the Obligations, release anyone obligated for the payment therefor or release, surrender or exchange the Collateral. The Bank shall have no obligation with respect to any Collateral and in its sole discretion may proceed against all or any portion thereof or any one or more persons liable for payment of the Obligations in such order and in such manner it determines without obligation to marshal. No delay or failure by the Bank to exercise any right or privilege shall operate as a waiver of such or of any other right or privilege and no waiver shall be valid unless in writing and signed by the Bank.

5.2 Construction. This Agreement shall be construed under New Jersey law, and federal law to the extent applicable, and references to the plural shall include the singular and others and references to the singular shall include the plural as the context requires. The invalidity, illegality or unenforceability of one or more provisions of this Agreement or any note evidencing the Obligations shall in no way affect the Bank's rights under the remaining portions of this Security Agreement or such note.

5.3 Notices. Notices to the Bank shall be effective only in writing when received by one of its officers and notices to the Borrower shall be effective when mailed to one of its officers by first class, certified mail, return receipt requested, postage prepaid to the Borrower at its address set forth in the introduction to this Agreement.

5.4 Counterparts. This Security Agreement may be executed in counterparts each of which shall be deemed to be an original and when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Bank and the Borrower have executed this Agreement the date first above written above.

FIDELITY UNION BANK

By: *Coast R. Eason*  
Title: ASSISTANT TREASURER

*H. Emerson Thomas* (L.S.)  
H. EMERSON THOMAS

*Gordon B. Thomas* (L.S.)  
GORDON THOMAS

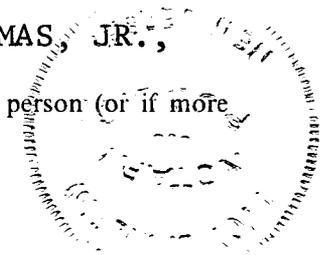
*H. Emerson Thomas Jr* (L.S.)  
H. EMERSON THOMAS JR

STATE OF NEW JERSEY, COUNTY OF UNION

SS.:

I CERTIFY that on December 17, 1982,  
H. EMERSON THOMAS, GORDON B. THOMAS and H. EMERSON THOMAS, JR.,  
personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more  
than one, each person):

- (a) is named in and personally signed the attached document; and
- (b) signed, sealed and delivered this document as his or her act and deed.



*Lucy L. Wilson*

(Print name and title below signature)

LUCY L. WILSON  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires April 25, 1987

Prepared by: Neale F. Hooley, Esq.

*Neale F. Hooley*

N.J.S.A.46:15-13 (Print signer's name below signature)  
Neale F. Hooley



**State of New Jersey**  
**County of ESSEX**

} ss.:

**Be it Remembered**, that on this **30<sup>th</sup>** day of **December** 19 **1982**, before me the subscriber, a Notary Public of New Jersey personally appeared **Gordon F. Eades** who, I am satisfied, is the person who signed the within instrument as **Assistant Treasurer** of

-- FIDELITY UNION BANK --

the corporation named therein and he thereupon acknowledged that the said instrument made by the corporation and sealed with its corporate seal, was signed, sealed with the corporate seal and delivered by him as such officer and is the voluntary act and deed of the corporation, made by virtue of authority from its Board of Directors.

*Jeanne T. McDonald*  
JEANNE T. McDONALD  
A NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Feb. 4, 1985

Prepared by: Allen Molnar, Esq.  
Riker, Danzig, Scherer & Hyland  
744 Broad Street, Newark, N.J. 07102

SCHEDULE A

Schedule of Mallard Transportation Tank Cars  
to be sold to H. Emerson Thomas, Gordon Thomas  
and H. Emerson Thomas, Jr.

<u>Car #</u>	<u>Specifications</u>	<u>Capacity</u>	<u>Year Built</u>
MTCX 5010	112J340W	34,000 Gals.	1969
MTCX 5011	"	"	1969
MTCX 5012	"	"	1969
MTCX 5013	"	"	1969
MTCX 5014	"	"	1969
MTCX 5015	"	"	1969
MTCX 5016	"	"	1969
MTCX 5017	"	"	1969
MTCX 5018	"	"	1969
MTCX 5019	"	"	1969
MTCX 5020	"	"	1969
MTCX 5021	"	"	1969
MTCX 5022	"	"	1969
MTCX 5023	"	"	1969
MTCX 5024	"	"	1969
MTCX 5025	"	"	1965
MTCX 5026	"	"	1966
MTCX 5027	"	"	1966
MTCX 5028	"	"	1966
MTCX 5029	"	"	1969