

RECORDATION NO. 14775
Filed 1425
AUG 19 1985 -3 05 PM
INTERSTATE COMMERCE COMMISSION

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July 5, 1985

*
Date 8/19/85
Fee \$ 30.00
ICC Washington, D.C.

Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423
Attention: Ms. Mildred Lee,
Railroad Documentation, Room 2303

Dear Ms. Lee:

Pursuant to the provisions of Section 1116.4 of Chapter X of the Regulations of the Interstate Commerce Commission and in accordance with your instructions, the following letter is hereby submitted.

The names and addresses of the parties to the transaction are as follows:

Mortgagor (Debtor):

Transportation Equipment, Inc.
12620 Interstate Highway 45 North
Suite 207
Houston, Texas 77060

Mortgagee (Secured Party):

Harris County Bank-Houston, N.A.
397 North Belt East
Houston, Texas 77060
Attention: William Charles Calvin

Guarantor:

Robert Huette and Hugo Helcamp

A general description of the railroad equipment is as follows:

Forty-one (41) 5250 cubic feet nominal capacity covered hopper cars, equipped with 20" round hatches, pneumatic outlets and interior linings bearing the following identifying marks and car numbers:

DYLY 1100 through DYLY 1118 and
DYLY 1120 through DYLY 1141.

Ltr to Interstate Commerce
Commission
July 5, 1985
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The owner of the aforementioned hopper cars is Transportation Equipment, Inc. Enclosed are two certified copies of the original Bill of Sale. Also enclosed is one executed and notarized original Security Agreement and one certified copy of the original.

The Mortgagee is also taking an assignment of all existing leases and future leases of the hopper cars. Enclosed is one executed and notarized original Assignment of Contracts and one certified copy of the original.

The original documents and the certified copy of the Bill of Sale should be returned to Harris County Bank-Houston, N.A., 397 North Belt East, Houston, Texas 77060, Attention: Mr. William Charles Calvin.

Please call the undersigned collect if you have any questions regarding this matter.

Very truly yours,

HARRIS COUNTY BANK-HOUSTON, N.A.

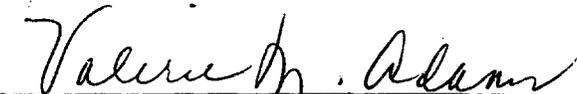
By: 
William Charles Calvin

WCC:djg
Enclosures
2095r

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 5th day of July, 1985 by William Charles Calvin, Executive Vice President of Harris County Bank-Houston, N. A., on behalf of said Bank.


NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

My Commission Expires:
4-19-89

Valerie M. ADAMS
Printed Name of Notary Public

AUG 19 1985 3 05 PM

SECURITY AGREEMENT & MORTGAGE

INTERSTATE COMMERCE COMMISSION

1. For good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, TRANSPORTATION EQUIPMENT, INC., a Texas corporation, whose address for notice is 12620 I-H 45 North, Suite 207, Houston, Texas 77060 (hereinafter called "Debtor"), hereby grants to HARRIS COUNTY BANK-HOUSTON, N.A., whose address is 397 North Belt, Houston, Texas 77060 (hereinafter called "Secured Party"), a security interest in and a general lien and mortgage upon the following property (all of which is hereinafter called the "Collateral"):

- (i) Forty-one (41) 5250 cubic feet nominal capacity covered hopper cars, equipped with 20" round hatches, pneumatic outlets and interior linings ("Hopper Cars") bearing the numbers set forth in Exhibit "A" attached hereto and made a part hereof for all purposes;
- (ii) All rights of Debtor under those certain Lease and Service Contracts (hereinafter individually and collectively called the "Agreements") as described in Exhibit "B" attached hereto and made a part hereof for all purposes, pertaining to lease and maintenance of the above-described Hopper Cars, and all amendments to such agreement and any and all new agreements pertaining to such Hopper Cars; and
- (iii) All equipment, inventory, general intangibles, accounts, chattel paper, accessions, substitutions, reporting marks, proceeds and products used in connection with or arising out of any of the foregoing. The term "proceeds" shall have the same meaning as used in Chapter Nine of the Uniform Commercial Code as now adopted in the State of Texas and shall include (without limitation) all accounts, general intangibles, instruments, documents, monies, insurance, chattel paper, income, and other property, benefits of whatever kind or nature arising from, attributable to or accruing from any and all sales, lease or other dispositions of any or all of the Collateral.

2. This security interest and general lien and mortgage is granted to Secured Party to secure the prompt and unconditional payment of all obligations and liabilities of the undersigned to Secured Party, now or hereafter existing or arising, absolute or contingent, direct or indirect, secured or unsecured, due or to become due, whether originally contract with Secured Party or acquired in any matter (including by way of participation) by Secured Party, including without limitation, that certain note dated of even date herewith in the original principal amount of \$500,000.00, executed by Debtor and payable to the order of Secured Party and all renewals, rearrangments, modifications, extensions, and increases thereof (all of which are hereinafter called the "Indebtedness").

3. The Debtor will at all times maintain with Secured Party Collateral of a character and value satisfactory to Secured Party. If Secured Party shall have required the Debtor to deliver to Secured Party any or all of the Collateral and if the undersigned shall receive or become entitled to receive any rights, dividends (whether paid in cash or other property), distributions or payments of any kind or description with respect to or on account of such Collateral, the Debtor agrees to accept same as agent for Secured Party, to hold same in trust for Secured Party, and to forthwith deliver same to Secured Party in the form received, with the endorsement of the undersigned when necessary, to be held by Secured Party as Collateral hereunder.

4. With respect to Collateral held by Secured Party pursuant to paragraph 3 hereof and with respect to any of the Collateral consisting of accounts, chattel paper, general intangibles or instruments, at any

This is a certified
copy of the original.
Cheryl Dow

time, without notice, and at the expense of Debtor, Secured Party in its name or in the name of its nominee or in the name of Debtor may, but shall not be obligated to: (a) notify account debtors or the obligors on instruments to make payment to Secured Party; (b) collect by legal proceedings or otherwise, endorse, receive and receipt for all dividends, interest, principal payments and other sums now or hereafter payable upon or on account of the Collateral; (c) enter into any extension, reorganization, deposit, merger, composition, liquidation, recapitalization or consolidation agreement, or any agreement in any wise relating to or affecting the Collateral, and in connection therewith may deposit or surrender control of Collateral thereunder, accept other property in exchange for Collateral and take such action as it may deem proper, and any money or property received in exchange for Collateral shall be applied to the Indebtedness or thereafter held by it pursuant to the provisions hereof; (d) make any compromise or settlement it deems desirable with reference to Collateral; (e) insure, process and preserve Collateral; (f) cause Collateral to be transferred to its name or to the name of its nominee without disclosing that Secured Party is a secured party; (g) exercise as to Collateral all the rights, powers and remedies of an owner.

5. Debtor agrees to pay prior to delinquency all taxes, charges, liens and assessments against Collateral, and upon the failure of the Debtor to do so, Secured Party at its option may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same. Any such payment by Secured Party shall be immediately due and payable by the Debtor to Secured Party and shall become party of the Indebtedness secured hereby.

6. At the option of the Secured Party ~~and without necessity or demand or notice~~ all or any part of the Indebtedness shall immediately become due and payable irrespective of any agreed maturity or period of grace upon the happening of any of the following events: (a) any breach of payment of this agreement or any other agreement between the Secured Party and Debtor or any other party primarily or secondarily liable for all or any part of the Indebtedness (hereinafter collectively and individually called "Other Party"); (b) default in the payment of any of the Indebtedness when due; (c) the application for the appointment or the appointment of a receiver, conservator, rehabilitator, or similar individual, officer or committee of, or for any property of, Debtor or Other Party; (d) the commencement of any proceeding, suit or action under any provisions of the Bankruptcy Act, as amended, or any similar statute, for adjudication as a bankrupt reorganization, composition, extension, arrangement, wage earner's plan, receivership, liquidation or dissolution by or against Debtor or Other Party; or (e) failure by Debtor or Other Party, after demand, to furnish any financial information to Secured Party or to permit Secured Party to inspect books or records of account, making any misrepresentation to Secured Party for the purpose of obtaining credit, failure to pay when due any obligations, failure to pay any tax or failure to withhold, collect or remit any tax or tax deficiency when assessed or due.

7. If all or any part of the Indebtedness shall become due and payable as specified in paragraph 6, Secured Party may then, or at any time thereafter, apply, set-off, collect, sell in one or more sales, lease or otherwise dispose of, any or all of the Collateral, in its then condition or following any commercially reasonable preparation or processing, in such order as Secured Party may elect, and any such sale may be made either at public or private sale at its place of business or elsewhere, or at any brokers' board of securities exchange, either for cash or upon credit or for future delivery, at such price as Secured Party may deem fair, and Secured Party may be the purchaser of any or all Collateral so sold and hold the same thereafter in its own right free from any claim of Debtor or right of redemption. No such purchase or holding by the Secured Party shall be deemed a retention by the Secured Party in satisfaction of the Indebtedness. If notwithstanding the foregoing provisions, any applicable provision of the Uniform Commercial Code or other law requires Secured Party to give reasonable notice of any such sale or disposition or other action, five day's prior written notice shall constitute reasonable notice. Secured Party may require Debtor to

assemble the Collateral and make it available to Secured Party at a place designated by Secured Party which is reasonably convenient to Secured Party and Debtor. Any sale hereunder may be conducted by an auctioneer or any officer or agent of Secured Party.

8. The proceeds of any sale or other disposition of the Collateral and all sums received or collected by Secured Party from or on account of the Collateral shall be applied by Secured Party in the manner set forth in §9.504 of the Texas Uniform Commercial Code - Secured Transaction as presently in effect. Debtor shall remain liable to Secured Party for any indebtedness, advances, costs, charges and expenses, together with interest thereon remaining unpaid and shall pay the same immediately to Secured Party.

9. Upon default of Debtor and subsequent enforcement of its remedies hereunder, Secured Party shall not be liable for failure to collect or realize upon any or all of the Indebtedness or Collateral, or for any delay in so doing, nor shall Secured Party be under any duty to take any action whatsoever with regard thereto. Secured Party shall use reasonable care in the custody and preservation of any Collateral in its possession.

10. Debtor waives any right to require Secured Party to proceed against any person, exhaust any Collateral or pursue any other remedy in Secured Party's power; waives any and all notice of acceptance of this Agreement or of creation or modification of any of the Indebtedness; and waives any defense arising by reason of any disability or other defense of the Debtor or any other person, or by reason of the cessation from any cause whatsoever of the liability of Debtor or any Other Party.

11. Debtor represents, warrants and agrees that Debtor is the owner of the Collateral free of any adverse claim, security interest or encumbrance except for the security interest, lien and mortgage of Secured Party and unless otherwise agreed in writing, and Debtor agrees to defend the collateral against all claims of others and no security interest or lien has been created by Debtor or is known by Debtor to exist with respect to any Collateral and, to the best of Debtor's information and belief, no financing statement or other security instrument is on file in any jurisdiction covering such Collateral; Debtor will not create any such security interest or lien and will not file or permit to be filed any such financing statement or other security instrument without the prior written consent of Secured Party. Debtor will execute, deliver and file such financing statement, security agreements and other documents as may be requested by the Secured Party from time to time to conform, perfect and preserve the security interest, lien and mortgage created hereby. Debtor shall not sell or otherwise dispose of the Collateral without the prior written consent of Secured Party. If Debtor sells or transfers any or all of the Collateral without Secured Party's prior written consent, Secured Party may immediately accelerate the Indebtedness and proceed with its remedies available under this Security Agreement & Mortgage.

12. Debtor shall maintain, with financially sound and reputable insurers, insurance covering the Collateral in an amount at least equal to the value thereof. Policies evidencing any such property insurance shall contain a standard mortgagee's endorsement providing for payment of any loss to the Secured Party and shall provide for a minimum of ten days' prior written notice to Secured Party of any cancellation. Debtor shall furnish the Secured Party with certificates or other evidence of compliance with the foregoing insurance provisions. Secured Party shall apply any proceeds of such insurance which may be received by it in payment on account of the Indebtedness, whether due or not. If any insurance policy covering the Collateral expires or is cancelled before the Indebtedness is paid in full or Secured Party's obligation, if any, to advance additional money has terminated, at the Secured Party's option, the Secured Party may obtain replacement insurance which may, but need not, be single interest insurance in favor of the Secured Party. The Secured Party may pay the premiums thereunder and the amount of such premiums shall be a part of the Indebtedness.

13. The only office where Debtor keeps, or will at any time prior to final release hereof keep, records concerning any part of the Collateral which is "accounts" as that term is defined in the Texas Uniform Commercial Code is at the address of Debtor's principal executive office. Debtor shall send prompt notice to Secured Party of any change of its principal executive office.

14. All accounts receivable included within the Collateral are and shall be valid, genuine, arising out of a bona fide transaction and not subject to any offset, claim, charge, retainage or other reduction.

15. Secured Party may transfer any or all of the Indebtedness, and upon any such transfer Secured Party may transfer any or all of the Collateral and shall be fully discharged thereafter from all liability with respect to the Collateral so transferred, and the transferee shall be vested with all rights, powers and remedies of Secured Party hereunder with respect to Collateral so transferred; but with respect to any Collateral not so transferred Secured Party shall retain all rights, powers and remedies hereby given. Secured Party may at any time deliver any or all of the Collateral to Debtor, whose receipt shall be a complete and full acquittance for the Collateral so delivered, and Secured Party shall thereafter be discharged from any liability therefor.

16. All advances, charges, costs and expenses, including reasonable attorney's fees and legal expenses, incurred by Secured Party in exercising any right, power or remedy conferred by this Agreement or by law (including, but not limited to, attorney's fees and legal expenses incurred by Secured Party in the collection of instruments deposited with or purchased by Secured Party) shall become part of the Indebtedness secured hereunder and shall be paid to Secured Party by Debtor immediately and without demand, with interest thereon at ten percent per annum (or if such rate of interest shall not be lawful, then at the highest lawful rate of interest).

17. SECURED PARTY MAY ENFORCE ITS RIGHTS HEREUNDER WITHOUT PRIOR JUDICIAL PROCESS OR HEARING, AND DEBTOR EXPRESSLY WAIVES ALL LEGAL RIGHTS WHICH MIGHT OTHERWISE REQUIRE SECURED PARTY TO ENFORCE ITS RIGHTS BY JUDICIAL PROCESS. IN SO PROVIDING FOR NON-JUDICIAL REMEDIES, DEBTOR CONCEDES THAT SUCH REMEDIES ARE RESPONSIVE TO COMMERCIAL NECESSITY AND ARE THE RESULT OF BARGAIN AT ARM'S LENGTH. NOTHING HEREIN IS INTENDED TO PREVENT SECURED PARTY OR DEBTOR FROM RESORTING TO JUDICIAL PROCESS AT EITHER PARTY'S OPTION.

18. The term "Debtor" as used throughout this Agreement shall include the respective successors, personal representatives, heirs and assigns of Debtor.

19. The execution and delivery of this Agreement in no manner shall impair or affect any other security (by endorsement or otherwise) for the payment of the Indebtedness and no security taken hereafter as security for payment of the Indebtedness shall impair in any manner or affect this Agreement, all such present and future additional security to be considered as cumulative security.

20. This Agreement shall not be construed as relieving Debtor or any Other Party from full liability on the Indebtedness secured hereby and for any deficiency thereon.

21. Any notice or demand to Debtor hereunder or in connection herewith may be given and shall conclusively be deemed and considered to have been given and received upon the deposit thereof, in writing, duly stamped and addressed to the Debtor at the address of the Debtor appearing on the records of the Secured Party, in the U.S. mails, but actual notice, however given or received shall always be effective.

22. This is a continuing agreement and all the rights, powers and remedies of Secured Party hereunder shall continue to exist until (i) all Indebtedness shall have been paid in full, (ii) Secured Party has no further obligation to advance moneys to Debtor, or Other Party, and (iii) Secured Party, upon request of Debtor, has executed a written termination

statement. Otherwise, this Agreement shall continue irrespective of the fact that any or all of the Indebtedness may have become barred by any statute of limitations or that the personal liability of Debtor may have ceased, and notwithstanding the death or dissolution, incapacity or bankruptcy of Debtor or any other event or proceeding affecting Debtor. The rights, powers and remedies of Secured Party hereunder shall be in addition to all rights, powers and remedies given by statute or rule of law and furthermore, regardless of whether the Uniform Commercial Code is in effect in the jurisdiction where such rights, powers and remedies are asserted, Secured Party shall have the rights, powers and remedies of a secured party under the Texas Uniform Commercial Code, as amended. Secured Party may exercise its bankers' lien or right of set-off with respect to the Indebtedness in the same manner as if the Indebtedness were unsecured. No forbearance, failure or delay by Secured Party in exercising any right, power or remedy shall be deemed a waiver thereof or preclude any other or further exercise thereof; and no single or partial exercise of any right, power or remedy shall preclude any other or further exercise thereof, or the exercise of any other right, power or remedy.

23. This Agreement has been made in and shall be governed by the laws of the State of Texas in all respects, including matters of construction, validity, enforcement and performance, and may not be amended (nor may any of its terms be waived) except in writing duly signed by Secured Party or an authorized officer of Secured Party and by Debtor. Except as the context may otherwise require, any term used herein that is defined in Article 1 or Article 9 of the Texas Uniform Commercial Code - Secured Transactions shall have the meaning given therein. If any provision of this Agreement is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted legislation or by a decree of last resort, Debtor and Secured Party shall promptly meet and negotiate substitute provisions for those rendered illegal or unenforceable, but all of the remaining provisions shall remain in full force and effect.

24. Debtor agrees to give Secured Party written notice in the event that either Debtor or any lessee defaults under its obligations set forth in any of the Agreements. Debtor will promptly notify Secured Party of any termination, alteration, amendment, or change in the terms and conditions of any of the Agreements.

25. In the event Debtor defaults under its obligations set forth in any of the Agreements and any lessee advises Debtor of such default, Debtor shall immediately notify Secured Party, and Secured Party may, at its option, cure such default. Any sums so advanced or expenses paid by Secured Party on behalf of Debtor shall be secured hereby.

26. At Secured Party's election all Hopper Cars may be marked with Secured Party's name designating it as Secured Party and may bear the following inscription:

"Title to this car is subject to documents recorded under 20(c) of the Interstate Commerce Act."

27. It is the intention of Debtor and Secured Party to conform strictly to applicable usury laws. Accordingly, if the transactions contemplated hereby would be usurious under applicable law (including the laws of the State of Texas and the laws of the United States of America), then, in that event, notwithstanding anything to the contrary in any agreement entered into in connection with or as security for the note secured hereunder it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is contract for, charged or received under said note or under any of the other aforesaid agreements or otherwise in connection with said note shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on said note by the holder thereof (or, if said note shall have been paid in full, refunded to the Debtor); and (ii) in the event that maturity of said note is accelerated by reason of an election by the holder thereof resulting from any default hereunder or otherwise, or in the event of any required

THE STATE OF TEXAS

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COUNTY OF HARRIS

This instrument was acknowledged before me on this 5th day of
July, 1985 by Wm. Charles Calvin, Executive Vice President of
HARRIS COUNTY BANK-HOUSTON, N.A., on behalf of said Bank.

Valerie M. Adams

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires:
4-19-89

Valerie M. Adams
Printed Name of Notary Public

2223R

or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in said note or otherwise shall be cancelled automatically as of the date of such acceleration or prepayment and, if theretofore prepaid, shall be credited on said note (or if said note shall have been paid in full, refunded to the Debtor).

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the 5th day of July, 1985.

TRANSPORTATION EQUIPMENT, INC.

By: Robert R. Huette
Name: Robert R. Huette
Title: President

BY: Hugo C. Helmcamp
Name: Hugo C. Helmcamp
Title: Vice President & Sec.

HARRIS COUNTY BANK-HOUSTON, N.A.

By: William Charles Calvin
Name: William Charles Calvin
Title: Executive Vice President

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 5th day of May, 1985 by Robert R. Huette, President of TRANSPORTATION EQUIPMENT, INC., a Texas corporation, on behalf of said corporation.

Valerie M. Adams
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires:
4-19-89

Valerie M. Adams
Printed Name of Notary Public

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 5th day of July, 1985 by Hugo C. Helmcamp, V.P. & Sec. of TRANSPORTATION EQUIPMENT, INC., a Texas corporation, on behalf of said corporation.

Valerie M. Adams
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires:
4-19-89

Valerie M. Adams
Printed Name of Notary Public

E X H I B I T "A"

HOPPER CAR IDENTIFYING MARKS AND NUMBERS

DYLX 1100 through 1118

DYLX 1120 through 1141

E X H I B I T "B"

EXISTING AGREEMENTS

1. Hopper Car Lease and Servicing Contract, Contract No. L-261-84 dated May 7, 1984 by and between Transportation Equipment, Inc. and Mobil Oil Corporation, including Riders No. 2, 4 and 5.

2. Transportation Equipment, Inc. Lease No. L-281-84 dated September 26, 1984 by and between Transportation Equipment, Inc. and Ferro Corporation.