

ANDREWS & KURTH

ATTORNEYS

REGISTRATION NO. 14251-A Filed 1425

TEXAS COMMERCE TOWER

HOUSTON, TEXAS 77002

(713) 220-4200

TELECOPIER: (713) 220-4295

TELEX: 79-1208

DALLAS OFFICE

ANDREWS, KURTH & RITCHIE

REPUBLICBANK BUILDING

DALLAS, TEXAS 75201

(214) 742-6285

INTERSTATE COMMERCE COMMISSION

WASHINGTON, D. C. OFFICE
ANDREWS & KURTH
1747 PENNSYLVANIA AVE., N. W.
WASHINGTON, D. C. 20006
(202) 861-7400

FEB 21 1985 - 1 45 PM

February 19, 1985

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

No.

Date FEB 21 1985

Fee \$ 10.00

ICC Washington, D.C.

5-052A189

Dear Sir:

I have enclosed two originals and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

This document is a Renewal Security Agreement between H & H Company and Texas Commerce Bank National Association, a primary document dated of even date herewith.

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

Debtor - H & H Company
1700 West Loop South
Houston, Texas 77027

Secured Party - Texas Commerce Bank National Association
712 Main Street
Houston, Texas 77002

A description of the equipment covered by the document is attached hereto as Schedule I and incorporated herein by this reference for all purposes.

A fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to Jan K. Holzinger, Andrews & Kurth, 4200 Texas Commerce Tower, Houston, Texas 77002.

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

Renewal Security Agreement between H & H Company ("Debtor") and Texas Commerce Bank National Association ("Secured Party") referring to Secured Party's loan to Debtor in the original principal sum of \$1,024,950.62 secured by all of Debtor's right, title and interest in and to the seventy-three (73) Railroad Tank Cars listed on Schedule I attached hereto and incorporated herein by this reference for all purposes.

Very truly yours,

Jan K. Holzinger

FEB 21 1 38 PM '85

Interstate Commerce Commission
Washington, D.C. 20423

2/21/85

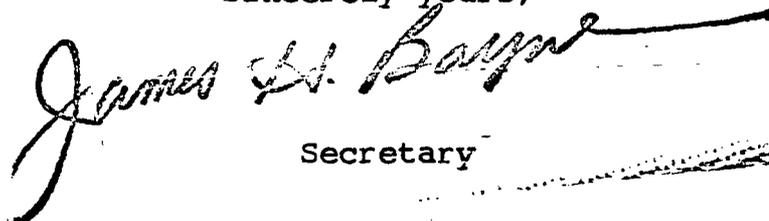
OFFICE OF THE SECRETARY

Jan K Holzinger
Andrew & Kurth
4200 Texas Commerce Tower
Houston, Texas 77002

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/21/85 at 1:45pm and assigned re-
recording number(s). 14251-A

Sincerely yours,


Secretary

Enclosure(s)

Next Time use the above Record.No. on all transactions concerning the document

Mrs. Lee

FEB 21 1985 - 1 45 PM

INTERSTATE COMMERCE COMMISSION

**RENEWAL
SECURITY AGREEMENT**

SECURITY AGREEMENT ("Agreement") dated Jan 31, 1985, between H & H COMPANY, a Texas limited partnership whose address is 1700 West Loop South, Houston, Texas 77027 (the "Debtor"), and TEXAS COMMERCE BANK NATIONAL ASSOCIATION with its office at 712 Main Street, Houston, Texas 77002, (the "Secured Party").

WITNESSETH:

WHEREAS, the Secured Party is making a loan to Debtor in the original principal sum of \$1,024,950.62 (the "H & H Company Loan") evidenced by H & H Company's promissory note (the "H & H Company Note") of even date herewith;

WHEREAS, the Secured Party is making a loan to Gemco Equipment Company in the original principal sum of \$500,000 (the "\$500,000 Gemco Loan") evidenced by Debtor's promissory note (the "\$500,000 Gemco Note") of even date herewith;

WHEREAS, the Secured Party is making a loan to Gemco Equipment Company in the original principal sum of \$1,500,000 (the "\$1,500,000 Gemco Loan") evidenced by Debtor's promissory note (the "\$1,500,000 Gemco Note") of even date herewith;

WHEREAS, the Secured Party is making a loan to Nancy Goldston Herpin in the original principal sum of \$2,250,000 (the "Herpin Loan") evidenced by Nancy Goldston Herpin's promissory note (the "Herpin Note") of even date herewith;

WHEREAS, the \$500,000 Gemco Loan, the \$1,500,000 Gemco Loan, the Herpin Loan and the H & H Company Loan (collectively the "Loans"), and the \$500,000 Gemco Note, the \$1,500,000 Gemco Note, the H & H Company Note and the Herpin Note (collectively the "Notes") and all principal thereof and interest thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Debtor, Gemco Equipment Company ("Gemco") or Nancy Goldston Herpin ("Herpin") under the terms of the Notes and this Agreement or under any documents or instruments securing the Notes and any and all renewals, extensions and modifications thereof are hereinafter sometimes referred to as "indebtedness hereby secured"; and

WHEREAS, all of the requirements of law have been fully complied with and all other acts and things necessary to make this Agreement a valid, binding and legal instrument for the security of the indebtedness hereby secured have been done and performed;

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties hereto agree as follows:

Return to:
Jan K. Holzinger
Andrews & Kurth
4200 Texas Commerce Tower
Houston, Texas 77002

Section 1. Security Interest

In consideration of the Loans and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Notes and other indebtedness hereby secured and the prompt performance and observance of all the covenants and conditions contained in the Notes, in this Agreement and all other documents or instruments securing the Notes, the Debtor does hereby mortgage, assign, pledge and grant a security interest in, and hypothecate unto the Secured Party, its successors and assigns, the following described properties, rights, interests and privileges (all of which properties are hereinafter collectively referred to as the "Collateral"):

two
MS
All of Debtor's right, title and interest in and to the seventy-three (73) Railroad Tank Cars listed on Schedule 1 which is attached hereto and made a part hereof for all purposes and all accessions, additions and attachments thereto and the proceeds and the products thereof, including without limitation, all cash, 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 thereto or other proceeds of any sale or other disposition thereof.

The H & H Company Note is in renewal, extension and rearrangement, but not in extinguishment of the indebtedness of Debtor to Secured Party as evidenced by those certain promissory notes (the "Prior Notes") from Debtor to Secured Party in the following amounts: (i) \$524,990 dated August 1, 1983; (ii) \$92,000 dated September 29, 1976 as modified by that certain Modification Agreement dated October 1, 1980 and by that Second Modification Agreement dated October 1, 1984; (iii) \$162,000 dated March 13, 1977; (iv) \$111,375 dated May 31, 1981; (v) \$550,000 dated November 26, 1980; and (vi) \$250,000 dated March 29, 1983, which Prior Notes were secured by, among other things, that certain Security Agreement Equipment covering the Collateral dated March 16, 1984 from Debtor to Secured Party which Security Agreement Equipment is hereby renewed and extended and the security interests granted therein are hereby ratified, renewed and brought forward.

Section 2. Covenants and Warranties

The Debtor covenants, warrants and agrees as follows:

2.1 Warranty of Title. (i) The Debtor has full power and authority to grant a security interest in the Collateral to the Secured Party and (ii) the Debtor has good title to the Collateral, free and clear in each instance of all security interests, liens, claims and encumbrances whatsoever, arising by, through or under Debtor.

2.2 Further Assurances. The Debtor will, upon written direction from the Secured Party and at the Debtor's own expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances reasonably necessary for the better assuring, conveying, assigning and confirming unto the Secured Party all of the Collateral.

2.3 Recordation and Filing. The Debtor will, at the Debtor's own expense, cause all security agreements supplemental hereto, and all financing and continuation statements to be kept, recorded and filed in such manner and in such places within the United States as may be reasonably and specifically directed by the Secured Party in order to preserve and protect the rights of the Secured Party hereunder, and to maintain security interests in the Collateral created hereby as a prior perfected security interest subject to no other liens, security interests or other encumbrances. If the validity or priority of this Security Agreement or of any right, title, security interest or other interests created or evidenced hereby is attacked, endangered or questioned, or if any legal proceedings are instituted against Debtor with respect thereto, Debtor will give prompt written notice thereof to Secured Party, and at Debtor's own cost and expense, will diligently endeavor to cure any defect that may be developed or claimed, and will take any and all necessary and proper steps for the defense of such legal proceedings, and Secured Party is hereby authorized to take such additional steps as in its judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of the security interest granted hereby.

2.4 Retention of Title. The Debtor will not sell, assign or otherwise dispose of any interest in the Collateral or permit any encumbrance arising by, through or under Debtor to exist thereon except as provided herein, without the prior written consent of Secured Party and, in any event, any purchaser or assignee from Debtor shall take any interest in the Collateral subject and subordinate to the interests of the Secured Party hereunder and shall execute such documents as may be required by Secured Party to evidence such assumption and subordination. The Collateral shall remain in Debtor's possession and control at Debtor's risk of loss.

2.5 Due Organization. The Debtor is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas and has full power and authority to own and operate its properties, to carry on its business as currently conducted and to enter into and perform its obligations under this Agreement and the H & H Company Note.

2.6 Due Authorization; Enforceability. The H & H Company Note and this Agreement have been duly authorized, executed and delivered by Debtor and are the legal, valid and binding obligations of the Debtor enforceable against the Debtor in accordance with their terms except as may be limited by applicable bankruptcy, insolvency and similar laws affecting creditors rights generally. The execution, delivery and performance by Debtor under the H & H Company Note and and this Agreement are not and will not constitute a breach of Debtor's limited partnership agreement and do not and will not contravene any law or governmental rule or regulation, judgment or order applicable to Debtor and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other agreement to which Debtor is a party or by which it is bound.

2.7 Lien Priority. The security interest created hereby is a prior perfected security interest in the Collateral subject to no liens, security interests, claims or encumbrances. Debtor shall take all action as may be reasonably directed by the Secured Party to maintain the security interest created hereby in the Collateral as a prior perfected security interest subject to no liens, security interests, charges, claims or other encumbrances.

2.8 Taxes and Other Claims. Debtor will pay or discharge or cause to be paid or discharged before the same become delinquent (i) all taxes, assessments and governmental charges levied or imposed upon it or upon its income, profits or properties and (ii) all lawful claims for labor, materials and supplies which if unpaid might by law become a lien upon the Collateral; provided that Debtor shall not be required to pay or discharge or cause to be paid and discharged any such tax, assessment, charge or claim the amount, applicability or validity of which is being contested in good faith by appropriate proceedings.

2.9 Name, Address and Location of Collateral. The chief executive office or chief place of business (as either of such terms is used in Article 9 of the Uniform Commercial Code) of Debtor is located at 1700 West Loop South, Houston, Texas 77027. Debtor shall not change its name, its chief executive office or chief place of business unless it shall first obtain the written consent of the Secured Party.

2.10 Payment by Secured Party. 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.

2.11 Insurance. Debtor shall keep said Collateral insured, if insurable to the full insurable value of the Collateral or the original amount of the indebtedness hereby secured, whichever is the lesser, against loss or damage by fire, windstorm and theft and any other hazard as may be required by Secured Party from time to time, in such form and with such insurance companies as may be approved by Secured Party.

Section 3. Possession of Collateral. While the Debtor is not in default hereunder it shall be permitted to remain in full possession, enjoyment and control of the Collateral and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided, always, that the possession, enjoyment, control and use of the Collateral shall at all times be subject to the observance and performance of the terms of this Agreement.

Section 5. Defaults and Other Provisions

5.1 Events of Default. The term "Event of Default" for the purpose hereof shall mean any (a) failure of Debtor, Gemco or Herpin to pay when due any interest on or any principal installment of principal of any of the Notes, (b) one or more defaults by Debtor under the terms and conditions of the H & H Company Note, this Agreement, or any other documents securing the H & H Company Loan or performance by Debtor of any covenant, condition or agreement required to be

observed or performed by Debtor pursuant to the terms of this Agreement, or any other documents securing the H & H Company Loan (c) the breach by Debtor of any representation, warranty or agreement contained in this Agreement or any other documents securing the H & H Company Loan (c) one or more defaults by any party under the terms and conditions of the Herpin Note, the \$1,500,000 Gemco Note, or the \$500,000 Gemco Note, or a default in the due observance or performance by any party of any covenant, condition or agreement required to be observed or performed pursuant to any document securing the Herpin Loan, the \$500,000 Gemco Loan or the \$1,500,000 Gemco Loan or the breach of any representation, warranty or agreement contained in any document securing the Herpin Loan or the \$500,000 Gemco Loan or the \$1,500,000 Gemco Loan (d) the loss, theft, substantial damage, destruction, sale of or to any of the Collateral, or the making of any levy, seizure, condemnation or attachment thereof or thereon (e) Debtor's dissolution, termination of existence, insolvency or business failure or the commencement by or against the Debtor of any proceeding under any bankruptcy arrangement, reorganization, insolvency or similar law for the relief of Debtor (f) any default by a guarantor for Debtor in any obligation or liability to Secured Party.

5.2 Acceleration. When any such event of default has occurred and is continuing, the indebtedness hereby secured shall, at the option of the Secured Party, become immediately due and payable and the Secured Party shall have the rights, options and remedies of a secured party and the Debtor shall have the rights, options and duties of a debtor under the Uniform Commercial Code regardless of whether such code or law similar thereto has been enacted in the jurisdiction wherein the rights or remedies are asserted.

5.3 Sale. Any sale by Secured Party whether under any power of sale hereby given or by virtue of judicial proceedings shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Debtor, its successors or assigns.

5.4 Proceeds of Sale. The proceeds of any sale of the Collateral or any part thereof, and the proceeds of any remedy hereunder shall be paid to and applied as follows:

(a) To the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and the reasonable compensation of the agents, attorneys and the counsel of the Secured Party and of all proper expenses, liabilities and advances incurred or made hereunder by the Secured Party, or the holder or holders of the Notes, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) To the payment to the holder or holders of the Notes of the amount then owing or unpaid on the Notes for principal and interest (ratably in proportion to the aggregate of such principal and interest); and in case any such proceeds shall be insufficient to pay the whole amount so due upon the Notes

then to the payment of such principal and/or interest then owing on the Notes as the Secured Party or the holders of such Notes shall elect; and

(c) To the payment to the Debtor of all sums remaining.

5.5 No Waiver. No delay or omission of the Secured Party, its successors or assigns, or of any holder of the Notes, to exercise any right or power arising from any default on the part of the Debtor shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Secured Party or any holder or holders of the Notes of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom, except as may be otherwise provided herein.

Section 6. Miscellaneous

6.1 Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Agreement contained by or on behalf of the Debtor or by or on behalf of the Secured Party, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

6.2 Release. The Secured Party shall at the expense of Debtor release this Agreement and the lien hereof by proper instrument or instruments at such time as all indebtedness secured hereby has been fully paid or discharged.

6.3 Notices. If any notice to the Debtor by the Secured Party is required at any time in connection with the pursuit of any of the Secured Party's remedies, such notice shall be deemed reasonably and properly given if mailed, postage prepaid, to the address of the Debtor set forth above.

6.4 No Waiver; Modifications in Writing. No failure or delay on the part of the Secured Party in exercising any right, power or remedy hereunder shall operate as a waiver hereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to the Secured Party at law or equity or otherwise. No amendment, modification, supplement, termination or waiver of, or to, any provision of this Agreement nor consent to any departure by the Debtor therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the Secured Party. Any waiver of any provision of this Agreement and any consent to any departure by Debtor from the terms hereof shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Debtor shall entitle Debtor to any other or further notice or demand for similar or other circumstances.

6.5 Further Assurances. Debtor agrees to do such further acts and things and to execute and deliver to the Secured Party such additional assignments, agreements, powers and instruments as the Secured Party may reasonably require or

deem advisable to carry into effect the purpose of this Agreement or to better assure and confirm unto the Secured Party its rights, powers and remedies hereunder.

6.6 Costs, Expenses and Taxes. Debtor agrees that all costs, and expenses (including, without limitation, attorneys' fees and expenses), if any, in connection with the enforcement of this Agreement, the Notes or any other agreement or document furnished in connection herewith or therewith shall be part of the indebtedness secured by the Collateral. If Debtor shall fail to do any act or thing which it has covenanted to do hereunder or any representation or warranty on the part of the Debtor contained herein shall be breached, the Secured Party may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach and may expend its funds, including, without limitation, attorneys' fees and expenses, for such purpose. Any and all amounts so expended by the Secured Party shall be repayable to it by Debtor immediately upon Secured Party's demand therefor, with interest at a rate equal to 1.5% per month.

6.7 Compliance. It is the intent of the parties hereto to comply at all times with all usury and other laws applicable to this Agreement, and the Notes. Accordingly, in the event that sums constituting interest and called for herein or under the Notes or contracted for, charged or received with respect to the Notes, produce interest in excess of what could be collected at the Highest Lawful Rate (hereinafter defined), then it is the express intent and agreement of the parties hereto that all amounts in excess of interest chargeable at the Highest Lawful Rate theretofore collected by the Secured Party, be, at its option either refunded to Debtor or credited on the unpaid principal amount of the Notes and the provisions hereof and of the Notes shall be immediately deemed reformed and amounts thereafter collectible hereunder and thereunder reduced without the necessity of the execution of any new documents so as to comply with then applicable law but so as to permit the recovery of the interest at the Highest Lawful Rate. In addition, in the event that the Notes are prepaid or the maturity of the Notes are accelerated by reason of an election by the Secured Party, earned interest may never include more than the amount calculated pursuant to the Highest Lawful Rate, and if unearned interest is provided for herein or in the Notes the same shall be deemed cancelled, and if the same has been theretofore paid, then the Secured Party may either return the same to the Debtor or credit said unearned interest on the outstanding principal amount of the Notes, whichever remedy may be elected by the Secured Party. The parties hereto further agree that the termination of the rate of interest for purposes of determining whether the Notes are usurious shall be made by amortizing, prorating, allocating and spreading in equal part during the period of the full stated term of the Notes all interest, including all sums not referred to as, but found to be, interest (at any time contracted for, charged or received) from Debtor in connection with the Notes or this Agreement. "Highest Lawful Rate" means the maximum nonusurious rate of interest permitted by applicable State or federal law whichever shall permit the higher nonusurious rate.

6.8 Governing Law. This Agreement and the Notes shall be deemed to be a contract made under the laws of the state of Texas and for all purposes shall be governed and construed in accordance with the laws of said state without regard to principles of conflicts of law.

6.9 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the

extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed all as of the day and year first above written.

DEBTOR:

H & H COMPANY

By: 
Name: JIM F. HERRING
Title: General Partner

SECURED PARTY:

TEXAS COMMERCE BANK NATIONAL
ASSOCIATION

By: 
Name: MICHAEL C. SLOCUM
Title: VICE PRESIDENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS INSTRUMENT was acknowledged before me on the 31st day of January, 1985, by Jim Herring, General Partner of H & H Company, a Texas limited partnership, on behalf of said limited partnership.

Joan C. Conwell
Notary Public in and for
the State of Texas

JOAN C. CONWELL
Printed Name of Notary

My Commission Expires:
2-14-87

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS INSTRUMENT was acknowledged before me on the 31st day of January, 1985, by Michael C. Slocum, Vice President of Texas Commerce Bank National Association, a national banking association, on behalf of said association.

Joan C. Conwell
Notary Public in and for
the State of Texas

JOAN C. CONWELL
Printed Name of Notary

My Commission Expires:
2-14-87

Schedule 1

^{two (72)}
Seventy-~~three (73)~~ railroad tank cars owned by H & H Company, described
by the following serial numbers:

GLNX 1300
GLNX 1301
GLNX 1302
GLNX 1303
GLNX 1304
GLNX 1305
GLNX 1306
GLNX 1307
GLNX 1308
GLNX 1309
GLNX 1310
GLNX 1311
GLNX 1312
GLNX 1313
GLNX 1314
GLNX 1315
GLNX 1316
GLNX 1317
GLNX 1320
GLNX 1321
GLNX 1322
GLNX 1323
GLNX 1324
GLNX 1325
GLNX 1326
GLNX 1327
GLNX 1328
GLNX 1329
GLNX 1331
~~GLNX 1332~~
GLNX 1334
GLNX 1335
GLNX 1336
GLNX 1338
GLNX 1339

GLNX 1340
GLNX 1341
GLNX 1342
GLNX 1343
GLNX 1344
GLNX 1345
GLNX 1346
GLNX 1347
GLNX 1348
GLNX 1349

RTMX 2262
RTMX 2263
RTMX 2264
RTMX 2265
RTMX 2266
RTMX 2267
RTMX 2268
RTMX 2269
RTMX 2270
RTMX 2271
RTMX 2445
RTMX 2448
RTMX 2449
RTMX 2536
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