FIRST CITY NATIONAL BANK
OF HOUSTON

RECORDATION NO. 11582 Filed 1425

MAR 14 1980 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

I.C.C. FEE OPERATION BR.

MAR 14 11 43 AM '80

RECEIVED

March 7 1980

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

No. 0-074A041D
Date MAR 14 1980
Fee $ 50.00
ICC Washington, D. C.

Attention: Railroad Documentation

Gentlemen:

Pursuant to the provisions of Section 1116.4 of Chapter X of the Regulations of the Interstate Commerce Commission, the following letter is hereby submitted.

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

Mortgagor (Debtor):

Western Rail Road Company
P. O. Box 811
3000 Wald Road
New Braunfels, Texas 78130

Mortgagee (Secured Party):

First City National Bank of Houston
1001 Main Street
Houston, Texas 77002
Attn: Mr. James Davis, Vice President

Guarantors:
(1) William R. Parker, Jr.
(2) D. R. Parker
(3) B. K. Parker, Jr.
(4) R. H. Parker, Jr.
(5) W. D. Bankston

1001 MAIN STREET, HOUSTON, TEXAS 77001, TELEPHONE (713) 658-6011
MEMBER FIRST CITY BANCORPORATION OF TEXAS, INC.

A general description of the railroad equipment is as follows:

Fifty (50) 100 ton Rapid Discharge Aggregate Bottom Dump railroad cars, approximate 2300 cubic foot capacity, approximate overall length 44 feet, with the following identifying marks and car numbers:

WRRC 524 thru WRRC 573, both inclusive

The owner of the aforementioned railroad cars is Western Rail Road Company.

Enclosed are three executed counterparts of the security agreement as required by ICC Rules and a check for $50.00 to cover the filing fee.

The original document should be returned to First City National Bank of Houston, 1001 Main Street, Houston, Texas, 77002, Attn: Mr. James Davis, Metropolitan Department.

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

Yours very truly,

FIRST CITY NATIONAL BANK
OF HOUSTON

By _____

Print Name Ronald N. Brown

Vice President

Interstate Commerce Commission 3/18/80
Washington, D.C. 20423

OFFICE OF THE SECRETARY

First City Natl. Bank of Houston
1001 Main Street
Houston, Texas 77002
Attn: James Davis

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 3/14/80 at 11:50, and assigned re-recordation number(s). 11582

Sincerely yours,

Agatha L. Mergenovich
Acting Secretary

Enclosure(s)

SE-30
(7/79)

RECORDATION NO. 11582 Filed 1425

SECURITY AGREEMENT & MORTGAGE MAR 14 1980 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

1. For good and valid considerations, the receipt and sufficiency of which are hereby acknowledged, WESTERN RAIL ROAD COMPANY, a Texas corporation, whose address for notice is 5305 Navigation, Houston, Texas 77011 (hereinafter called "Debtor"), hereby grants to FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, whose address is 1001 Main Street, Houston, Harris County, Texas 77002 (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) Fifty (50) 100 ton Rapid Discharge Aggregate Bottom Dump railroad cars, approximate 2300 cubic foot capacity, approximate overall length 44 feet, with the following identifying marks and car numbers:

WRRC 524 thru WRRC 573, both inclusive

(ii) All rights of Debtor under that certain purchase order letter agreement dated August 3, 1978 and accepted August 25, 1978 by and between Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio 45208, as manufacturer, and Western Rail Road Company, as purchaser, pertaining to the above-described railroad cars; and

(iii) All equipment, inventory, general intangibles, accounts, chattel paper, accessions, substitutions, 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 or rights of whatever kind or nature arising from, attributable to or accruing from any and all sales, leases 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 (including all claims of every nature and description of Secured Party against the undersigned), now or hereafter existing or arising, absolute or contingent, direct or indirect, secured or unsecured, due or to become due, whether originally contracted with Secured Party or acquired in any manner (including by way of participation) by Secured Party, including, without limitation,

that certain note dated January 8, 1980, in the principal amount of $10,000,000, executed by Debtor and payable to the order of Secured Party in fifty-five (55) monthly installments beginning June 30, 1980 (the "Note"), and all renewals, rearrangements, modifications, and extensions thereof (all of which is hereinafter called the "Indebtedness").

3. 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 any part or all of the 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 any of the Collateral consisting of accounts, chattel paper, general intangibles or instruments, at any time after an event of default which has not been cured within applicable grace periods, 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 part of the Indebtedness secured hereby.

6. At the option of Secured Party and without necessity of 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 (a) any breach 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") including without limitation the Loan

Agreement executed of even date with the Note by Debtor and Secured Party (the "Loan Agreement"), or (b) default in the payment of any of the Indebtedness when due. Upon the happening of any of the foregoing events any agreement for further financial accommodation by Secured Party shall terminate at its option.

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. All demands, notices and advertisements, and the presentment of property at sale, are hereby waived. 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 days' 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 Transactions 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. Secured Party shall be under no duty whatsoever to make or give any presentment, demand for performance, notice of nonperformance, protest, notice of protest, notice of dishonor, or other notice or demand in connection with any Collateral or the Indebtedness, or to preserve any rights against prior parties. 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 is possession but need not take any steps to keep the Collateral identifiable. Secured Party shall have no duty to comply with any recording, filing, or other legal requirements necessary to establish or maintain the validity, priority or enforceability of, or Secured Party's rights in or to, any of the Collateral.

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. All dealings between Debtor and Secured Party, whether or not resulting in the creation of Indebtedness, shall conclusively be presumed to have been had or consummated in reliance upon this Agreement. Until all Indebtedness shall have been paid in full: Debtor shall have no right to subrogation, and Debtor waives any right to enforce any remedy which Secured Party now has or may hereafter have against Debtor or against any other person and waives any benefit of and any right to participate in any Collateral or security whatsoever now or hereafter held by Secured Party. Debtor authorizes Secured Party, without notice or demand and without any reservation of rights against Debtor and affecting his liability hereunder or on the Indebtedness, from time to time to (a) renew, extend for any period, accelerate, modify, compromise, settle or release the obligation of Debtor or any Other Party with respect to any or all of the Indebtedness, or Collateral; (b) take and hold security, other than the Collateral, for the payment of any or all of the Indebtedness, and exchange, enforce, waive and release any or all of the Collateral or other security; (c) apply the Collateral or other security and direct the order or manner of sale thereof as Secured Party in its discretion may determine; and (d) release or substitute Debtor or any Other Party.

11. Debtor represents, warrants and agrees that, except for the security interests, liens and mortgages in favor of Secured Party and unless otherwise agreed in writing, 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; 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, and in addition, hereby authorizes the Secured Party to execute on behalf of Debtor, deliver and file such financing statements, security agreements and other documents without the signature of Debtor, all at the expense of Debtor.

12. Debtor shall maintain, with financially sound and reputable insurers such insurance on the Collateral as is required under the Loan Agreement. If for any reason, Secured Party pays the premiums on such insurance, the amount of such premiums shall be a part of the Indebtedness.

13. The only offices 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 (i) at the address of Debtor shown at the beginning of this Agreement, which office is the principal executive office of Debtor and (ii) 3000 Wald Road, New Braunfels, Texas.

14. Subject to any regulatory approval which may be necessary, 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.

15. All advances, charges, costs and expenses, including reasonable attorneys' fees and legal expenses, incurred by Secured Party in connection with the transaction which gives rise to this Agreement and in exercising any right, power or remedy conferred by this Agreement or by law (including, but not limited to, attorneys' 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).

16. 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.

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

18. 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.

19. 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.

20. 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.

21. 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, 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 forebearance, 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.

22. 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.

23. At Secured Party's election all 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."

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the 3rd day of March, 1980.

WESTERN RAIL ROAD COMPANY

By John M. Mills

Name: John M. Mills
Title: Vice President

FIRST CITY NATIONAL BANK OF HOUSTON

By R. Brown

Name: Ronald N. Brown
Title: Vice President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared John M. Mills, Vice President of WESTERN RAIL ROAD COMPANY, a Texas corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 3rd day of March, 1980.

Notary Public in and for
Harris County, Texas

My Commission expires:
4-30-81

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Ronald N Brown, Vice President of FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act and deed of said corporation and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 7th day of March, 1980.

Frances A. Spell
Notary Public in and for
Harris County, Texas

My Commission expires:
8/25/80

FRANCES A. SPELL
Notary Public in and for Harris County, Texas
My Commission Expires 8/25, 1980