

WINSTEAD, MCGUIRE, SECHREST & TRIMBLE

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

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DALLAS, TEXAS 75201
214/742-1700

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PETER WINSTEAD

November 13, 1980

0-323A132

12442
RECORDATION NO. Filed 1425

No. NOV 18 1980

Date.....
Fee \$ 20.00 30

ICC Washington, D. C.

Secretary of the Interstate
Commerce Commission
Washington, D.C. 20428 INTERSTATE COMMERCE COMMISSION

NOV 18 1980 -3 15 PM

Gentlemen:

In accordance with Section 11303 of the Interstate Commerce Act, we enclose for filing with the Commission an original and two counterparts each of the following document:

Security Agreement and Chattel Mortgage

Debtor: Kenneth W. Harbin
1700 West Loop South, Suite 1500
Houston, Texas 77027

Secured Party: Mercantile National Bank at Dallas
Post Office Box 225415
Dallas, Texas 75265

Collateral: One (1) railroad tank car described on
Exhibit "A" to the Security Agreement

- RTM X

Enclosed is a check in the necessary amount to cover the recordation fee.

Please return by mail one executed copy of the Security Agreement and Chattel Mortgage, with filing date noted thereon, following recordation, to the undersigned. A self-addressed, stamped envelope is enclosed for this purpose.

Very truly yours,

WINSTEAD, MCGUIRE, SECHREST & TRIMBLE

INTERSTATE
COMMERCE COMMISSION
RECEIVED

NOV 17 1980

4
ADMINISTRATIVE SERVICES
MAIL UNIT

BRANCH
DOCKET FILES
NOV 18 1980
By: [Signature]
08. [Signature]

Interstate Commerce Commission
Washington, D.C. 20423

12/12/80

OFFICE OF THE SECRETARY

T. Randall Matthews
Winstead, McGuire, Sechrest & Trimble
1700 Mercantile Dallas Building
Dallas, Texas 75201

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 **11/18/80** at **3:15pm**, and assigned re-
recording number(s). **12442**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

NOV 18 1980 -3 15 PM

SECURITY AGREEMENT AND CHATTEL MORTGAGE
INTERSTATE COMMERCE COMMISSION

KENNETH W. HARBIN, a resident of Harris County, Texas, hereinafter called "Debtor" and MERCANTILE NATIONAL BANK AT DALLAS, a national banking association located at Main and Ervay Streets, Dallas, Texas 75201, hereinafter called "Secured Party", agree as follows:

WHEREAS, the Debtor has executed and delivered to the Secured Party a promissory note (the "Note") dated of even date herewith, in the principal amount of \$51,620.00, payable in a single installment, said Note evidencing funds advanced by the Secured Party to Debtor to pay the balance of the purchase price owing for the Equipment (hereinafter defined); and

WHEREAS, the Debtor has agreed to grant to Secured Party a security interest in certain railroad equipment (hereinafter called the "Equipment") owned by Debtor and described in Exhibit "A" hereto as security for payment of the Note;

NOW, THEREFORE, in consideration of the advance under the above described Note and the promises contained herein, the parties hereto hereby agree as follows:

Section I. Creation of Security Interest.

Debtor hereby grants to Secured Party a security interest and chattel mortgage in the Collateral described in Section II of this Security Agreement to secure performance and payment of (i) the Note described above, and (ii) all renewals, rearrangements and/or extensions of the Note.

Section II. Collateral.

The Collateral granted by this Security Agreement is all of the right, title and interest of Debtor in and to the Equipment described on Exhibit "A" hereto and the proceeds of such Equipment.

Section III. Payment Obligations of Debtor.

(1) Debtor shall pay to Secured Party any such sum or sums due or which may become due pursuant to the Note or any other promissory note or notes now or hereafter executed by Debtor to evidence Debtor's indebtedness to Secured Party in accordance with the terms of such Note or other promissory note or notes and the terms of this Security Agreement.

(2) Debtor shall pay to Secured Party on demand all expenses and expenditures, including reasonable attorneys' fees and other expenses incurred or paid by Secured Party in exercising or protecting its interests, rights and remedies under this Security Agreement, plus interest thereon at the maximum rate of interest permitted by applicable law with respect to Debtor. It is the intention of the Debtor and the Secured Party to contract in strict compliance with the usury laws of the State of Texas from time to time in effect. In furtherance thereof, the Debtor and the Secured Party stipulate and agree that none of the terms and provisions contained in this Agreement or the Note shall ever be construed to create a contract to pay interest for the use, forbearance or detention of money at a rate in excess of the maximum interest rate permitted to be charged by applicable law from time to time in effect. In the event the Secured Party shall charge and/or collect monies which are deemed to constitute interest which would otherwise increase the effective rate on the

Note to a rate in excess of that permitted to be charged by applicable law, then all such sums deemed to constitute interest in excess of the maximum rate permitted by applicable law shall be immediately returned to the Debtor upon such determination or shall be deemed applied to the principal as a prepayment, at Secured Party's election.

(3) Debtor shall pay immediately upon Secured Party's declaration and demand the entire unpaid indebtedness of Debtor to Secured Party, whether created or incurred pursuant to the Note or this Security Agreement or otherwise, upon the occurrence of an Event of Default as defined in Section V of this Security Agreement.

Section IV. Debtor's Warranties, Representations and Agreements.

(1) The Collateral will meet the following requirements continuously from the time each part of the Collateral comes into existence until the indebtedness secured hereby is paid in full:

(a) The Equipment is not subject to any prior or subsequent assignment, claim, lien or security interest other than (i) that in favor of Secured Party, and (ii) lease agreements between Debtor as lessor, and the leases indicated on Exhibit "A" attached hereto.

(2) Debtor's principal offices is that appearing at the beginning of this Security Agreement. Debtor will promptly notify Secured Party of any change of location of his principal office.

(3) All information supplied and statements made by Debtor in any financial, credit or accounting statement or application for credit prior to, contemporaneously with or subsequent to the execution of this Security Agreement are and shall be true, correct, complete, valid and genuine in all material respects.

(4) Debtor is owner of the Collateral.

(5) The office where Debtor keeps its records concerning the Collateral covered by this Security Agreement is 1700 West Loop South, Houston, Texas 77027.

(6) Debtor shall pay prior to delinquency all taxes, charges, liens and assessments against the Collateral, and upon Debtor's failure to do so, Secured Party at its option may pay any of them and shall be the sole judge on the legality or validity thereof and the amount necessary to discharge the same. Such payment shall become part of the indebtedness secured by this Security Agreement and shall be paid to Secured Party by Debtor immediately upon demand, with interest thereon at the maximum rate of interest permitted by applicable law with respect to Debtor.

(7) Debtor shall notify Secured Party promptly in writing when any of the Collateral ceases to meet any of the requirements of this Security Agreement.

(8) Debtor shall not, voluntarily or involuntarily, subject the Collateral or its proceeds or allow the Collateral or its proceeds to be subjected to any interest of any transferee, buyer, secured party, encumbrancer or other third person, except as indicated in Paragraph (1) of Section IV hereof.

(9) Debtor shall, at its expense, do, make, procure, execute, and deliver all acts, things, writings and assurances as Secured Party may at any time require to protect, assure or enforce Secured Party's interests, rights and remedies created by, provided in or emanating from this Security Agreement.

(10) Debtor shall sign and execute alone or with Secured Party any Financing Statement or other document or procure any document, and pay all connected costs, necessary to protect the security interest under this Security Agreement against the rights or interests of third persons.

(11) If Secured Party should at any time be of the opinion that the Collateral is not sufficient or has declined or may decline in value, then Secured Party may call for additional Collateral satisfactory to Secured Party, and Debtor promises to furnish such additional security forthwith. The call for additional security may be oral or by telegram or by United States mail addressed to the address of Debtor shown at the beginning of this Agreement.

(12) Should any portion of the Equipment be damaged such that insurance proceeds are payable to Debtor due to such damage, Debtor shall fully utilize said insurance proceeds to either repair the Equipment or deliver the insurance proceeds in full to Secured Party for application to the Note or other notes secured hereby.

Section V. Events of Default.

Debtor shall be in default under this Security Agreement upon the happening of any of the following events or conditions (herein called an "Event of Default"):

(1) Debtor's failure to pay when due any indebtedness secured by this Security Agreement, either principal or interest.

(2) Default by Debtor in the punctual performance of any of the obligations, covenants, terms or provisions contained or referred to in this Security Agreement or in any note secured hereby.

(3) Debtor fails to fulfill or satisfy any warranty, representation or statement contained or referred to in this Security Agreement or in any note secured hereby.

(4) Any warranty, representation or statement contained in this Security Agreement made or furnished to Secured Party by or on behalf of Debtor in connection with this Security Agreement or to induce Secured Party to make a loan to Debtor proves to have been false in any respect when made or furnished or becomes false in any respect while any indebtedness secured hereby is outstanding.

(5) Loss, theft, substantial damage, destruction, sale or encumbrance of or to any of the Collateral, or the making or any levy, seizure or attachment thereof or thereon.

(6) Debtor's insolvency; or the appointment of a receiver of all or any part of the property of Debtor; or an assignment for the benefit of creditors by Debtor; or the calling of a meeting of creditors of Debtor; or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor.

(7) Any statement of the financial condition of Debtor to Secured Party submitted to Secured Party proves to be false.

Section VI. Secured Party's Rights and Remedies.

A. Rights Exclusive of Default.

(1) This Security Agreement, Secured Party's rights hereunder or the indebtedness hereby secured may be assigned in whole or in part, and in any such case the Assignee shall be entitled to all of the rights, privileges and remedies granted in this Security Agreement to Secured Party, and Debtor will assert no claims or defenses he may have against Secured Party against the Assignee except those granted in this Security Agreement.

(2) Upon the occurrence of an Event of Default or at any time thereafter, Secured Party may take any steps which Secured Party deems necessary or advisable to collect any or all Collateral, or to sell, transfer, compromise, discharge or extend the whole or any part of the Collateral, and apply the proceeds thereof to Debtor's indebtedness to Secured Party in accordance with this Security Agreement.

(3) In protecting, exercising or assuring its interests, rights and remedies under this Security Agreement, Secured Party may sign and endorse negotiable and other instruments for the payment of money, documents of title or other evidences of payment, shipment or storage for any form of Collateral or proceeds on behalf of and in the name of Debtor.

(4) Secured Party may call at Debtor's place or places of business at intervals to be determined by Secured Party and, without hindrance or delay, inspect, audit, check and make extracts from the books, records, journals, orders, receipts, correspondence and other data relating to the Collateral or to any transaction between Debtor and Secured Party, and Debtor shall assist Secured Party in making any such inspection.

(5) Secured Party may take any demand upon or give any notice to Debtor by its deposit in the mails or with a telegraph company, addressed to Debtor at Debtor's principal office at the beginning of this Security Agreement, or to the change of such address of which Debtor has last notified Secured Party in writing.

(6) At its option, Secured Party may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party on demand for any such payment made or any expense incurred by Secured Party pursuant to the foregoing authorization, plus interest thereon at the maximum rate of interest permitted by applicable law with respect to Debtor.

(7) Secured Party may render and send to Debtor a statement of account showing loans made, all other charges, expenses and items chargeable to Debtor, payment made by Debtor against the loans, proceeds collected and applied to the loans, other appropriate debts and credits, and the total of Debtor's indebtedness on the loans as of the date of the statement of account, and the statement of account shall be considered correct in all respects and accepted by and conclusively binding upon Debtor, except for specified objections which Debtor makes in writing to Secured Party within fifteen (15) days from the date upon which the statement of account is sent.

B. Remedies in the Event of Default.

(1) Upon the occurrence of an Event of Default and at any time thereafter, Secured Party may declare all indebtedness secured hereby immediately due and payable, and shall have the rights and remedies of a secured party under the Uniform Commercial Code of Texas, including without limitation thereto, the right to sell, lease or otherwise dispose of any or all of the Collateral and the right to take possession of the Collateral, and for that purpose Secured Party may enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending reasonable notice shall be met if such notice is mailed, postage prepaid, to Debtor at the address designated at the beginning of this Security Agreement at least five (5) days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling or the like shall include Secured Party's reasonable attorneys' fees and expenses, and Debtor agrees to pay such fees and expenses, plus interest thereon at the maximum rate of interest permitted by applicable law with respect to Debtor. Debtor shall remain liable for any deficiency.

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

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

Section VII. Additional Agreements.

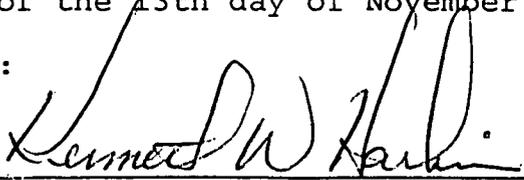
(1) "Secured Party" and "Debtor" as used in this instrument include the heirs, executors or administrators, successors, representatives, receivers, trustees and assigns of those parties.

(2) The section headings appearing in this instrument have been inserted for convenience only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this instrument. Terms used in this instrument which are defined in the Uniform Commercial Code of Texas are used with the meanings as therein defined.

(3) The law governing this secured transaction shall be that of the State of Texas in force as of the date of this instrument. This Security Agreement shall be performable in Dallas, Dallas County, Texas.

EXECUTED AND EFFECTIVE as of the 13th day of November, 1980.

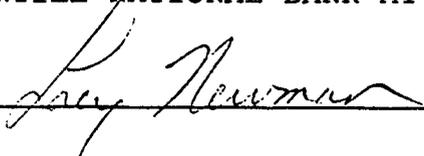
DEBTOR:



Kenneth W. Harbin

SECURED PARTY:

MERCANTILE NATIONAL BANK AT DALLAS

By: 

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 KENNETH W. HARBIN, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 10th day of November, 1980.

Adelia M. Castro
Notary Public in and for
Harris County, Texas

My Commission Expires:
ADELIA M. CASTRO
Notary Public in and for the State of Texas
My Commission Expires March 6, 1984

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Lacy Newman, 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 of the said MERCANTILE NATIONAL BANK AT DALLAS, a national banking institution, and that he executed the same as the act of such bank for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of November, 1980.

Sandra Christian
Notary Public in and for
Dallas County, Texas.
SANDRA CHRISTIAN

My Commission Expires:
9-8-84

EXHIBIT "A"

RAILWAY EQUIPMENT

One (1) 23,500 gallon nominal capacity tank car, Serial Number RTMX 13232, DOT 111A100W3, exterior coiled and insulated; 100-ton roller bearing trucks, together with all accounts receivable and contract rights relating to such tank car, together with all rights of Debtor in and to any and all lease or rental agreements covering such equipment.