

RECEIVED
MAY 8 12 00 PM '72
I. C. C.
FEE OPERATION BR.

RECORDATION NO. _____ Filed & Recorded

MAY 8 1972 - 12 05 PM

INTERSTATE COMMERCE COMMISSION

CHATTEL MORTGAGE
(Railroad Car Security Agreement)

THIS CHATTEL MORTGAGE dated March 31, 1972, from CALUMET INDUSTRIES, INC., a Delaware corporation, having its office and chief place of business at 10 South La Salle Street, Chicago, Illinois 60603 (the "Mortgagor"), to NATIONAL BOULEVARD BANK OF CHICAGO, having its place of business at 400-410 North Michigan Avenue, Chicago, Illinois 60611 (the "Mortgagee"),

W I T N E S S E T H:

WHEREAS, the Mortgagor is truly and justly indebted to the Mortgagee in the principal amount of \$120,000.00 as evidenced by that certain Note of the Mortgagor (the "Note") dated the date of this Mortgage, payable to the order of the Mortgagee in said principal amount and expressed to bear interest on the principal amount from time to time remaining unpaid thereon prior to the maturity thereof at the rate of 8% per annum and to bear interest after maturity at the rate of 8% per annum until paid and to mature as to principal in 12 quarter-annual installments of \$10,000.00 each, commencing on June 30, 1972, and ending on March 31, 1975; and

WHEREAS, said Note and the principal and interest thereon and any and all extensions or renewals thereof in whole or in part and all other sums at any time due or owing from or required to be paid by the Mortgagor under the terms hereof or of said Note are hereinafter referred to as "indebtedness hereby secured";

NOW, THEREFORE, the Mortgagor, to secure the payment of all the indebtedness hereby secured and the performance and observance of all covenants and agreements in said Note or in this Mortgage provided to be performed or observed by the Mortgagor, does hereby grant, bargain, sell, convey, confirm, transfer, mortgage and set over unto the Mortgagee, its successors and assigns, forever, and grant to said Mortgagee a security interest in, all and singular the following described properties, rights and interests and all of the estate, right, title and interest of the Mortgagor therein, whether now owned or hereafter acquired:

Eighteen (18) 20,000 gallon railroad tank cars, such cars bearing CRCX reporting marks and being numbered, respectively, 20100 to 20114, both inclusive, and 20300 to 20302, both inclusive; and

all accessories, equipment, parts and appurtenances appertaining or attached to any of the tank cars hereinabove described, whether now owned or hereafter acquired, and all substitutions, renewals and replacements of and additions, improvements, accessions and accumulations to any and all of said tank cars, including all additions thereto which are now or shall hereafter be incorporated therein, and all rents, issue, income, profits and avails thereof;

TO HAVE AND TO HOLD all of such properties hereby mortgaged, assigned and pledged or intended so to be and all of the right, title and interest of the Mortgagor therein (hereinafter collectively referred to as "mortgaged property") unto the Mortgagee, its successors and assigns, forever, for the uses and purposes herein set forth; provided, however, that if the Mortgagor performs the covenants herein

and pays to the Mortgagee, its successors or assigns, the full amount of both principal of and interest on the indebtedness hereby secured, then this instrument shall be and become void and of no further force and effect; otherwise this Mortgage to remain in full force and effect.

SECTION 1. COVENANTS AND WARRANTIES:

The Mortgagor covenants, warrants and agrees as follows:

1.1. The Mortgagor is the owner and is lawfully seized and possessed of the mortgaged property hereinabove conveyed to the Mortgagee, and has good right, full power and authority to convey, transfer and mortgage the same to the Mortgagee and that such property is free from any and all liens and encumbrances prior to or on parity with the lien of this Chattel Mortgage and will warrant and defend the title thereto against all claims and demands whatsoever (except for the lien granted by a certain Chattel Mortgage, and any supplements thereto, dated March 15, 1966 to the Harris Trust and Savings Bank, which lien shall be discharged contemporaneously with the execution and delivery of the Note and this Chattel Mortgage).

1.2. The Mortgagor will do, execute, acknowledge and deliver all further acts, deeds, conveyances, transfers and assurances necessary or proper for the better assuring, conveying, assigning and confirming unto the Mortgagee all of the mortgaged property, or property intended so to be, whether now owned or hereafter acquired.

1.3. The Mortgagor will promptly pay the indebtedness hereby secured as and when the same or any part thereof becomes due (whether by lapse of time, declaration, demand or otherwise); provided that at any time and from time to time the Mortgagor shall have the right to prepay the Note in full or to make partial prepayment thereof in the amount of One Thousand Dollars (\$1,000) or any multiple thereof, with interest accrued upon the principal prepaid to the date of prepayment and without premium, except that in case the funds used to make a prepayment are derived from borrowings (including the issuance and sale of debentures or other evidences of indebtedness) other than borrowings from the Mortgagee, the Mortgagor shall pay in addition a premium computed at the rate of one percent (1%) upon the principal amounts so prepaid. Any partial prepayment upon the Note shall be applied to the prepayment of installments of principal in the inverse order of their maturities.

1.4. The Mortgagor will cause the mortgaged property and each and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, and will from time to time make all necessary and proper repairs, renewals, and replacements so that the value and efficiency of such property shall not be impaired and also to the extent required from time to time by the Code of Rules of the Association of American Railroads for continuing the railroad cars in interchange service and by applicable laws and regulations of any state or governmental body.

1.5. The Mortgagor will duly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges lawfully imposed upon or against the mortgaged property or any part thereof, and will not suffer to exist any mechanics', laborers', statutory or other lien on the mortgaged property or any part thereof; provided, however, that nothing herein contained

shall be deemed to require the Mortgagor to pay any tax, assessment, charge or lien, or any claim or demand of mechanics, laborers or others, prior to the due date thereof, or to require the Mortgagor to pay or discharge any tax, assessment, lien, claim or charge (whether or not due or delinquent) the validity or amount of which is being contested in good faith by appropriate proceedings, provided that the mortgaged property shall not thereby be or become subject to forfeiture or seizure.

1.6. The Mortgagor will at its own expense insure and keep insured the mortgaged property in amounts and with insurers satisfactory to the Mortgagee against loss or damage by fire and against other loss or damage, the risk of which is customarily insured against by companies owning and operating similar properties, in such manner and in such proportion of the value thereof as is customarily insured by companies owning and operating similar properties. All such policies providing for such casualty insurance shall have attached thereto loss payable clauses to the effect that loss, if any, shall be payable to the Mortgagee as its interest may appear and shall provide that such insurance may not be cancelled without 10 days' advance notice to the Mortgagee, all such policies or certificates therefor to be deposited by the Mortgagor with the Mortgagee. The proceeds of any such insurance shall be paid over to the Mortgagee and upon proof satisfactory to the Mortgagee of the proper repair of the mortgaged property which is the subject matter of the loss for which such proceeds were paid, such proceeds shall be applied by the Mortgagee to the payment of the cost of such repair or to reimburse the Mortgagor to the extent of such proceeds for payments made by it in respect of such repair. In case any of the mortgaged property is lost or damaged beyond repair, the proceeds of any insurance payable in respect thereto shall, when received by the Mortgagee, be applied by the Mortgagee to the prepayment required under the provisions of Section 1.11 hereof.

1.7. The Mortgagor will not sell, transfer, lease, assign, part with the possession of, mortgage or hypothecate the mortgaged property, either directly or indirectly, without the written consent of the Mortgagee; provided, however, that nothing herein contained shall be deemed to prevent the use of the mortgaged property in normal interchange service within the continental United States.

1.8. The Mortgagor will maintain a modern and standard system of accounting in accordance with accepted accounting practice and will furnish to the Mortgagee such financial information respecting its business and financial condition as the Mortgagee may from time to time reasonably request. Whenever the Mortgagee shall reasonably so require, the Mortgagor will furnish the report of an independent public accountant or accounting firm certifying that financial statements furnished pursuant to the terms of this Section have been prepared in conformity with generally accepted accounting principles consistently applied during the periods in question, and fairly present the financial position or information which they purport to represent. The Mortgagor hereby agrees to furnish the Mortgagee, if requested, once in every calendar year, an accurate inventory of the mortgaged property in service and, also, a report of inspection by a competent disinterested party satisfactory to the Mortgagee certifying that the mortgaged property has been properly maintained, is in good order and repair and is properly plated pursuant to Section 1.9 hereof.

1.9. The Mortgagor will cause each of the railroad cars constituting the mortgaged property to bear thereon in letters not less than 3/4 inch in height the following legend:

"Calument Industries, Inc. Owner;
National Boulevard Bank of Chicago Mortgagee"

1.10. If the Mortgagor shall fail to comply with the covenants herein with respect to the payment of taxes, assessments, and other charges, the insurance required hereunder, or the keeping of the mortgaged property in repair and free of other liens, the Mortgagee or the holder or holders of any of the indebtedness hereby secured may make advances to perform the same; and the Mortgagor agrees to repay all sums so advanced, with interest at the rate of 8% per annum, such sums to be added to the indebtedness hereby secured; but no such advance shall be deemed to relieve the Mortgagor from any default hereunder.

1.11. In the event that any part of the mortgaged property shall be lost, destroyed or damaged beyond repair from any cause whatsoever, the Mortgagor shall promptly inform the Mortgagee and shall pay to the Mortgagee within 60 days after the occurrence of such loss or destruction an amount for each car so destroyed determined by dividing the number of railroad cars then subject to the lien of this Mortgage (including therein the lost or destroyed car or cars which are the subject matter of such payment) into the principal amount remaining unpaid on the indebtedness hereby secured as of the date of such payment, such payment to be a prepayment of the Note and to be applied to the payment of the principal thereof in accordance with Section 1.3 hereof. The Mortgagor shall be given credit on any such prepayment for the amount of insurance proceeds payable on account of the loss or destruction giving rise to such prepayment, and actually received and applied to such prepayment as set forth in Section 1.6 hereof. In the event that any such insurance proceeds are not received within the time that the Mortgagor is required to make the payment as set forth above, the Mortgagor shall nevertheless be required to make such payment and, so long as no event of default has occurred and is continuing, the Mortgagee will, upon the receipt of such proceeds, pay the same to the Mortgagor. Also, so long as no event of default has occurred and is continuing, the Mortgagee will, upon receipt of the payment required hereunder, release the lien of this Mortgage on, but only on, the lost or destroyed car or cars which were the subject matter of such payment. In the event any event of default shall occur and be continuing, all proceeds of insurance then or thereafter in the possession of the Mortgagee shall be taken and held as part of the mortgaged property and applied to the payment of the indebtedness hereby secured in the manner set forth in Section 2.3 hereof.

1.12. The Mortgagor shall retain possession of the mortgaged property, and at its own expense keep and use the same, until an event of default shall occur hereunder as hereinafter defined.

SECTION 2. DEFAULTS AND OTHER PROVISIONS:

2.1. The term "event of default" for the purpose hereof shall mean any one or more of the following:

- (a) Default for a period of 15 days in the payment of principal or interest on the Note as and when the same becomes due and payable;

(b) Default in the observance or performance by the Mortgagor of any covenant or agreement of the Mortgage contained in Section 1.7 or in Section 1.11 hereof;

(c) Default in the due observance or performance by the Mortgagor of any other covenant, condition or agreement required to be observed or performed by the Mortgagor by the terms of said Note or this Mortgage where such default is not remedied within 30 days after written notice thereof shall have been given to the Mortgagor by the Mortgagee;

(d) Any representation or warranty made by the Mortgagor to the Mortgagee in writing herein, or in any statement or certificate furnished by the Mortgagor to the Mortgagee pursuant to any terms of this Mortgage or in connection with the making of any loan or loans evidenced by the Note, proving untrue in any material respect as of the date of the issuance or making thereof;

(e) The Mortgagor becoming insolvent or bankrupt or admitting in writing its inability to pay its debts as they mature, or making an assignment for the benefit of creditors or applying or consenting to the appointment of a trustee or receiver for the Mortgagor or for the major part of its property;

(f) The appointment of a trustee or receiver for the Mortgagor or for the major part of its property; or

(g) The institution of bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors, by or against the Mortgagor.

2.2. When any such event of default has happened and is continuing, the Mortgagee shall have all of the rights, options and remedies of a secured party and the Mortgagor shall have all the duties and rights of a debtor under the Uniform Commercial Code of Illinois (regardless of whether such Code, or a law similar thereto, is in force in any jurisdiction where such rights and remedies are asserted); and, without limiting the foregoing, the Mortgagee may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Mortgagee may, by notice in writing to the Mortgagor, declare the entire unpaid balance of said Note to be immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon, shall be and become immediately due and payable;

(b) The Mortgagee, personally or by agents or attorneys, shall have the right (subject to compliance with any applicable mandatory legal requirements) to take immediate possession of the mortgaged property, or any portion thereof, and for that purpose may pursue

the same wherever it may be found, and may enter any of the premises of the Mortgagor, with or without notice, demand, process of law or legal procedure, and search for, take possession of, remove, keep and store the same, or use and operate the same until sold; it being understood, without limiting the foregoing, that the Mortgagee may, and is hereby given the right and authority to, keep and store said mortgaged property, or any part thereof, on the premises of the Mortgagor, and that the Mortgagee shall not thereby be deemed to have surrendered, or to have failed to take, possession of such mortgaged property;

(c) The Mortgagee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Mortgagor once at least 5 days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of said mortgaged property, or any part thereof, at public auction or private sale to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Mortgagee may determine, and at any place (whether or not it be the location of the mortgaged property or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further notice; and the Mortgagee or the holder or holders of said Note, or of any interest therein, may bid and become the purchaser at any such sale; and

(d) The Mortgagee may proceed to protect and enforce this Mortgage and said Note by suit or suits or proceedings in equity, at law or in pending bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the mortgaged property or any part thereof, or for the recovery of judgment for the indebtedness hereby secured, or for the enforcement of any other proper legal or equitable remedy available under applicable law.

2.3. The purchase money proceeds and avails of any sale of the mortgaged property or any part thereof, and the proceeds and avails of any other remedy hereunder, or other realization of the security hereby given, shall be applied:

(a) First, to the payment of the cost and expenses of the sale, proceeding or other realization, including all costs and expenses and charges for pursuing, searching for, taking, removing, keeping, storing, advertising and selling or leasing such mortgaged property, the reasonable fees and

expenses of the attorneys and agents of the Mortgagee in connection therewith, and to the payment of all taxes, assessments, or similar liens on the mortgaged property which may at that time be superior to the lien of this Mortgage (unless such sale or other realization is subject to any such superior lien);

(b) Second, to the payment of all advances made by the Mortgagee hereunder and all other indebtedness (other than the Note) hereby secured;

(c) Third, to the payment of the whole amount remaining unpaid on said Note, both for principal and interest, so far as such proceeds may reach; and

(d) Fourth, to the payment of the surplus, if any, to the Mortgagor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

If there be a deficiency, the Mortgagor shall remain liable therefor and shall forthwith pay the amount of any such deficiency to the Mortgagee.

2.4. Any sale or sales pursuant to the provisions hereof, whether under the power of sale granted hereby or pursuant to any legal proceedings, shall operate to divest the Mortgagor of all right, title, interest, claim and demand whatsoever, either at law or in equity, of, in and to the mortgaged property so sold, and shall be free and clear of any and all rights of redemption by, through or under the Mortgagor, the Mortgagor hereby covenanting and agreeing that it will not at any time insist upon or plead, or take the benefit or advantage of or from, any law now or hereafter in force providing for a valuation or appraisal of the mortgaged property prior to any sale or sales thereof or providing for any right to redeem the mortgaged property or any part thereof. The receipt by the Mortgagee, or by any person authorized under any judicial proceeding to make any such sale, shall be a sufficient discharge to any purchaser of the mortgaged property, or of any part thereof, sold as aforesaid; and no such purchaser shall be bound to see to the application of such purchase money, or be bound to inquire as to the authorization, necessity or propriety of any such sale. In the event at any such sale the holder or holders of the Note is or are the successful purchaser or purchasers, such holder or holders of said Note shall be entitled, for the purpose of making settlement or payment, to use and apply said Note by crediting thereon the amount apportionable and applicable thereto out of the net proceeds of such sale.

SECTION 3. MISCELLANEOUS:

3.1. Any notice provided for hereby or by any applicable law to be given to the Mortgagor shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, registered, postage prepaid, addressed to the Mortgagor at its address set forth at the beginning of this Mortgage.

3.2. The failure or delay of the Mortgagee in any one or more instances to demand performance of any of the terms, covenants or conditions of this Mortgage, or to exercise any right, remedy or privilege herein conferred, shall not impair, or be construed as

thereafter waiving any such covenants, remedies, conditions or provisions; but every such term, condition and covenant shall continue and remain in full force and effect. Nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Mortgage operate to prejudice, waive or affect the security of this Mortgage or any rights, powers or remedies hereunder; nor shall the Mortgagee be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

3.3. The terms of the Mortgage and rights and obligations of the parties hereto shall be construed and determined under the laws of the State of Illinois, provided that this Mortgage is intended to, and shall have all the benefits provided under §20c of Part I of the Interstate Commerce Act. The unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the Mortgagor shall bind its successors and assigns whether so expressed or not.

IN WITNESS WHEREOF, the Mortgagor has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its officers thereunto duly authorized all as of the day and year first above written.

CALUMET INDUSTRIES, INC.

By [Signature]
President

(Corporate Seal)

ATTEST:

[Signature]
Asst. Secretary

STATE OF ILLINOIS }
COUNTY OF C O O K } SS.

On this 7 day of April, 1972, before me, a notary public in and for the County and State aforesaid, personally appeared [Signature] and [Signature], to me personally known, who being by me duly sworn, say that they are, respectively, the President and Secretary of Calumet Industries, Inc.; that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and they acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[Signature]
Notary Public

(SEAL)

My Commission Expires: 10 MONTHS
APR 10, 1973