

Interstate Commerce Commission  
Washington, D.C.

NO. 199A 104  
JUL 18 1977  
Date ..... RECORDATION NO. 8888 Filed & Recorded  
Fee \$ 50 JUL 18 1977 3 20 PM  
ICC Washington INTERSTATE COMMERCE COMMISSION

Gentlemen:

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and counterparts of a Security Agreement dated as of June 15, 1977.

A general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Debtor under Security Agreement:

ASARCO Incorporated  
120 Broadway Avenue  
New York, New York 10005

Secured Party under Security Agreement:

Sun Life Assurance Company  
of Canada  
One Sun Life Executive Park  
Wellesley Hills, Massachusetts

The undersigned is the Debtor under the Security Agreement and has knowledge of the matters set forth therein.

Please return the original and copies of the Security Agreement to Robert Nash, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

ASARCO INCORPORATED

By SOMELOAN  
Its ASSISTANT TREASURER

DEBTOR AS AFORESAID

Enclosures

RECEIVED  
JUL 18 3 18 PM '77  
I.C.C.  
FEE OPERATION BR.

*C. J. Kammer*  
*C. Dunlap*

Description of Equipment

Seventy-five (75) 13,640-gallon, 100-ton capacity mild steel unlined tank cars bearing road numbers ASTX 2001 to 2075, both inclusive, manufactured by ACF Industries, Inc.

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

7/18/77

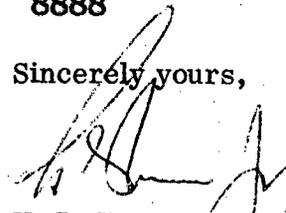
OFFICE OF THE SECRETARY

Robert Nash  
Chapman & Cutler  
111 W. Monroe St.  
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 7/18/77 at 3:20pm, and assigned recordation number(s) 8888

Sincerely yours,



H.G. Homme, Jr.  
Acting Secretary

Enclosure(s)

SE-30-T  
(6/77)

JUL 12 1977

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RECORDATION NO. .... Filed & Recorded

JUL 18 1977 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT

Dated as of June 15, 1977

FROM

ASARCO INCORPORATED

Debtor

TO

SUN LIFE ASSURANCE COMPANY OF CANADA

Secured Party

Relating to

\$2,100,000 8-1/4% Secured Notes  
Due August 31, 1989

SECURITY AGREEMENT

SECURITY AGREEMENT dated June 15, 1977 between ASARCO Incorporated, a New Jersey corporation, whose principal office is at 120 Broadway Avenue, New York, New York 10005, hereinafter called the Debtor, and Sun Life Assurance Company of Canada, whose principal office is at One Sun Life Executive Park, Wellesley Hills, Massachusetts 02181, hereinafter called the Secured Party.

WHEREAS, the Debtor and the Secured Party have entered into a Note Agreement dated as of June 15, 1977 (the "Note Agreement") providing for the commitment of the Secured Party to purchase not exceeding \$2,100,000 in aggregate principal amount of the 8-1/4% Secured Notes (the "Notes") of the Debtor, expressed to bear interest at the rate of 8-1/4% per annum prior to maturity, payable semi-annually on February 28 and August 31 in each year commencing in the year 1978 and to be expressed to mature not later than August 31, 1989, and to be otherwise substantially in the form attached as Exhibit A to the Note Agreement.

WHEREAS, the Debtor is purchasing from ACF Industries, Inc., hereinafter called the Manufacturer, seventy-five (75) 13,640-gallon 100-ton capacity mild steel unlined tank cars for rail hauling sulfuric acid from the Debtor's non-ferrous metals smelter at East Helena, Montana and other plants, and to be built by the

Manufacturer per specifications numbered 76-OEO-261; the said tank cars (collectively the "cars" or "Equipment" or the "Items" and individually "Item" or "car" or "Item of Equipment"), described in Schedule A attached hereto and made a part hereof; to be delivered to the Debtor at the works of the Manufacturer at Milton, Pennsylvania during the months of June, July and August, 1977.

WHEREAS, upon delivery of each Item of Equipment, Debtor will accept delivery thereof and execute and deliver to the Secured Party, a Certificate of Acceptance, substantially in the form of Exhibit D attached to the Note Agreement. The Debtor's execution and delivery to the Secured Party of a Certificate of Acceptance with respect to each Item of Equipment shall conclusively establish that, as between the Secured Party and the Debtor, but without limiting or otherwise affecting either's rights, if any, against the Manufacturer, each Item of Equipment is acceptable to and accepted by the Debtor and that each Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any. The Debtor represents that upon execution and delivery of such Certificate of Acceptance, the Debtor shall have no knowledge of any such defect as of the date of such acceptance.

WHEREAS, the Debtor desires to enter into this Agreement for the purpose of creating a security interest in favor of the Secured Party in the Equipment.

NOW, THEREFORE, the Debtor, in order to secure (1) payment of the debt evidenced by the Note or Notes, including renewals and extensions thereof; (2) all costs and expenses incurred in collection thereof; (3) all future advances, if any, made by the Secured Party for taxes, levies, insurance and repairs to or maintenance of the Equipment; (4) all other money heretofore or hereafter advanced by the Secured Party to or for the account of the Debtor at the option of the Secured Party; (5) all other present or future direct or contingent liabilities of the Debtor to the Secured Party, together with interest on all of the foregoing; and (6) the performance and observance of all covenants and conditions in the Notes and in this Agreement and in the Note Agreement contained, hereby creates in favor of and grants to the Secured Party a security interest in the Equipment, together with all accessories, parts and appurtenances whether now owned or hereafter acquired, and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Equipment, together with all rents, issues, income, profits and avails therefrom. Until default hereunder, the Debtor shall be entitled to the possession of the Equipment and to use and enjoy the same.

1. The Debtor warrants and agrees that:

- (a) The Equipment is or will be owned by the Debtor and is not subject to any security interest except that created by this Agreement, or to any liens or encumbrances, and that the Debtor will defend the Equipment against the claims and demands of all persons.
- (b) The Debtor will not sell, exchange, lease (except for individual trip leases (as hereinafter defined) pursuant to conduct of Debtor's business), encumber or pledge the Equipment, create any lien, encumbrance, claim or security interest therein (except that created by this Agreement), or otherwise dispose of the Equipment or any of Debtor's rights therein or under this Agreement without the prior written consent of the Secured Party. The Debtor agrees that the Equipment will be used exclusively within the continental United States or Canada and that at no one time will more than ten of the cars be in Canada without the prior written consent of the Secured Party, which consent will not be unreasonably withheld.

Individual trip leases shall mean leases and car contracts between the Debtor and any lessee or user which (1) contain no provision relieving the Debtor of any of its obligations, liabilities or

duties under this Agreement (which shall be and remain those of a principal and not a surety), (ii) do not exceed six months in duration, and (iii) restrict use of the Equipment to the continental United States or Canada and prohibit more than ten of the cars to be in Canada at any one time without the prior written consent of the Secured Party, which consent will not be unreasonably withheld.

- (c) The Debtor will maintain the Equipment in good condition and repair, reasonable wear and tear excepted, suitable for use in interchange, and will pay and discharge all taxes, levies, and other impositions levied thereon as well as the cost of repairs to or maintenance of the same; if the Debtor fails to pay such sums, the Secured Party may do so for the Debtor's account, adding the amount thereof to the debt secured hereby,
- (d) The Debtor will either insure or self insure the Equipment against such risks and casualties and in such amounts as the Secured Party shall reasonably require; any insurance policy shall be written for the benefit of the Debtor and the Secured Party as their interests may appear, and such policies or certificates evidencing the same shall be furnished to the Secured Party. If the Debtor fails to pay

the premium on any such insurance, the Secured Party may do so for the Debtor's account adding the amount thereof to the debt secured hereby. The Debtor hereby assigns to the Secured Party any return or unearned premiums which may be due upon cancellation of any such policies for any reason whatsoever and directs the insurers to pay the Secured Party any amounts so due. The Secured Party is hereby appointed the Debtor's attorney-in-fact to endorse any draft or check which may be payable to the Debtor in order to collect such return or unearned premium or the proceeds of such insurance; any balance of insurance proceeds remaining after payment in full of all amounts secured hereunder shall be paid to the Debtor.

- (e) The Debtor will permit the Secured Party or any of its representatives, while the Secured Party or its nominee holds any Note, or the representatives of any other institutional holder of the Notes, at the Secured Party's or such holder's expense, to visit and inspect the Equipment, and (x) in the absence of an event of default hereunder, to examine all books of account, records, reports and other papers of the Company and its subsidiaries relating to the Equipment, to make copies and extracts therefrom and to discuss the same with the

officers of the Company, and (y) upon the occurrence of an event of default hereunder, to visit and inspect any of the properties of the Debtor or any of its subsidiaries and to examine all their books of account, records, reports and other papers, to make copies and extracts therefrom and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision, the Debtor authorizes said accountants to discuss the finances and affairs of the Debtor and its subsidiaries), all at such reasonable times and as often as may be reasonably requested. Without limiting the foregoing, the Debtor agrees to furnish the Secured Party and each other institutional holder of the Notes:

(1) As soon as available and in any event within 60 days after the end of each quarterly fiscal period (except the last) of each fiscal year, copies of:

(1) consolidated balance sheet of the Company and its subsidiaries as of the close of such period, and

(2) consolidated statement of income and retained earnings and changes in financial position of the Company and its subsidiaries

for the portion of the fiscal year ending  
with such period,

in each case setting forth in comparative form  
the figures for the corresponding period of the  
preceding fiscal year, all in reasonable detail  
and certified as complete and correct, subject to  
changes resulting from year-end adjustments, by  
an authorized financial officer of the Company;

(11) As soon as available and in any event  
within 120 days after the close of each fiscal  
year of the Company, copies of:

(1) the consolidated balance sheet of the  
Company and its subsidiaries as of the close  
of such fiscal year, and

(2) the consolidated statement of income and  
retained earnings and changes in financial  
position of the Company and its subsidiaries  
for such fiscal year,

in each case setting forth in comparative form the  
figures for the preceding fiscal year, all in  
reasonable detail and accompanied by an opinion  
thereon of a firm of independent public accountants  
of recognized national standing selected by the  
Company to the effect that the consolidated  
financial statements have been prepared in accord-  
ance with generally accepted accounting principles

consistently maintained (except for changes in which such accountants concur) and that the examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and accordingly, include such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) Promptly upon their becoming available, one copy of each financial statement, report, notice or proxy statement sent by the Company to stockholders generally and of each regular or periodic report and any registration statement or prospectus filed by the Company or any subsidiary with any securities exchange or the Securities and Exchange Commission or any successor agency;

(iv) With reasonable promptness and in the absence of an event of default hereunder, such other data and information as you or any such institutional holder may reasonably request relating to the Equipment, and upon the occurrence of an event of default hereunder, such other data and information generally as you or any such institutional holder may reasonably request; and

(v) Annually within 120 days of each fiscal year, a certificate of an authorized financial officer of the Company shall be furnished stating that he has reviewed the provisions of this Agreement and whether there existed as of the date of such financial statements and whether, to the best of his knowledge, there exists on the date of the certificate or existed at any time during the period covered by such financial statements any event of default under this Agreement and, if any such condition or event exists on the date of the certificate, specifying the nature and period of existence thereof.

(f) The Debtor will not after delivery of the Equipment permit any other security interest to attach to any of the Equipment, permit the Equipment to be levied upon under any legal process, or permit anything to be done that may impair the value of any of the Equipment or the security intended to be afforded by this Agreement.

(g) The Debtor will at its own expense pay all costs of filing this Agreement and any financing, continuation, or termination statement with respect to the security interest created by this Agreement; the Secured Party is hereby appointed the Debtor's attorney-in-fact to do all acts and

things which the Secured Party may deem necessary to perfect and continue perfected the security interest created by this Agreement and to protect the Equipment.

- (h) The Debtor shall cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Purchased with funds from an institutional investor, and subject to a Security Interest Recorded with the Interstate Commerce Commission."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security interest of the Secured Party in such Item of Equipment, its rights under this Agreement and the rights of any assignee hereof. The Debtor will not place any such Item of Equipment in operation or exercise any control or dominion over the same (except to the extent necessary to mark any such Item in accordance with the requirements of this section) until the required legend shall have been so marked on both sides thereof and will replace

promptly any such names and words which may be removed, defaced or destroyed. The Debtor will not change the road number of any Item of Equipment except with the prior written consent of the Secured Party (which consent will not be unreasonably withheld) and in accordance with a statement of new road numbers to be substituted therefor, which statement previously shall have been filed with the Secured Party by the Debtor and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

- (1) Except as above provided and except for individual trip leases, the Debtor will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Debtor or any party subleasing the Equipment with the prior written consent of the Secured Party may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Debtor or its affiliates or such sublessee, as the case may be, on railroad equipment used by it of the same or a similar type for convenience of identification. The Debtor shall indemnify the Secured Party

against any liability, loss or expense incurred by the Secured Party as a result of the aforesaid marking of the Equipment with such name, initials or insignia.

2. The security interest in the Secured Party shall remain in full force and effect until all of the Notes of the Debtor to the Secured Party have been fully paid and all the obligations herein imposed upon the Debtor have been fully discharged.

3. In the event that any Item of Equipment is lost, destroyed or, in the opinion of the Debtor, irreparably damaged, or in the event any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise, the Debtor shall promptly inform the Secured Party of the occurrence of such event and in any such event the Company shall be entitled to a release of such Item of Equipment from the lien of this Agreement on the following terms and conditions:

(a) The Debtor shall give written notice to the Secured Party designating the Item of Equipment to be released and the date on which settlement will be made for such Item of Equipment (which date shall be the first day of the next succeeding month); and

(b) On the payment date designated for settlement the Company shall prepay and apply on the principal of the Notes an amount equal to the "Loan Value" (as hereinafter defined) of the Item of Equipment together with accrued interest on the amount of such prepayment to the date of settlement but without premium or penalty.

All prepayments pursuant to this Section 3 shall be applied to the prepayment of the installments of principal of the Notes in such manner so that after giving effect thereto the remaining installments of the Notes (including both principal and interest) shall be reduced in the same proportion that the principal amount of the prepayment bears to the unpaid principal amount of the Notes immediately prior to such prepayment.

"Loan Value" of an Item of Equipment as of any installment payment date on the Notes shall be an amount determined by multiplying the aggregate unpaid principal amount of the Notes immediately prior to such prepayment by a fraction in which the numerator is the Invoice Cost of such Item and the denominator is the Invoice Cost of all Items of Equipment which are subject to this Agreement immediately prior to such prepayment.

4. If at any time on or after September 1, 1985 all, but not less than all, of the Items of Equipment have become, in the good faith judgment of the President or any Vice President and the Secretary of the Debtor, obsolete or economically unserviceable, the Debtor shall promptly inform in writing the Secured Party of such judgment (detailing its reasons therefor) and in any such event the Debtor shall be entitled to a release of such Items of Equipment from the lien of this Agreement on the following terms and conditions:

(a) The Debtor shall give written notice to the Secured Party designating the Items of Equipment to be released and the date on which settlement will be made

for such Items (which date shall be the first day of the next succeeding month); and

(b) On the payment date designated for settlement, the Debtor shall prepay and apply on the principal of the Notes an amount equal to the "Loan Value" of such Items of Equipment together with accrued interest on the amount of such prepayment to the date of settlement but without premium or penalty.

All prepayments pursuant to this Section 4 shall be applied to the prepayment of the installments of principal of the Notes in such manner so that after giving effect thereto the remaining installments of the Notes (including both principal and interest) shall be reduced in the same proportion that the principal amount of the prepayment bears to the unpaid principal amount of the Notes immediately prior to such prepayment.

For the purposes of this Section 4, interest rates or similar finance charges payable by the Debtor in connection with the acquisition of similar equipment under conditional sales contracts, leases or other arrangements for deferred payment of the purchase price, shall be disregarded in the determination of obsolescence and economic unserviceability and the Debtor shall so certify in writing in connection with any such termination.

5. (a) The amounts received by the Secured Party from time to time which constitute proceeds of insurance maintained by the Debtor in respect of the Equipment, or which constitute payments

by carriers by reason of the loss or destruction of an Item of Equipment used in interchange, shall be held by the Secured Party as a part of the Equipment and shall be applied by the Secured Party from time to time to any one or more of the following purposes:

(1) Repair or Replacement. If no event of default hereunder has occurred and is continuing, the proceeds of such insurance shall, if the Items of Equipment which were lost, damaged or destroyed are to be repaired or replaced, be released to the Debtor, to reimburse the Debtor for expenditures made for such repair, restoration or replacement of such Items of Equipment upon receipt by the Secured Party of: (A) a certificate of the President, the Treasurer or a Vice President of the Debtor showing in reasonable detail the purpose for which the expenditures were made and the actual cash expenditures made for such purpose and stating that no event of default hereunder has occurred and is continuing, and (B) a supplement hereto sufficient, as shown by an opinion of counsel in form and content satisfactory to the Secured Party (which may be counsel for the Debtor), to grant a security interest in any additions to or substitutions for the Items of Equipment to the Secured Party, which opinion shall also cover the filing and/or recording of such supplement (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) so as to perfect the security interest in such additions or substitutions, or in the

alternative, an opinion that no such supplement is required for such purpose; and

(ii) Application to Notes. If the insurance proceeds shall not have been released to the Debtor pursuant to the preceding Section 5(a) within 6 months from the receipt thereof by the Secured Party, then so long as no event of default hereunder has occurred and is continuing, the insurance proceeds shall be applied by the Secured Party as follows:

(A) First, to the prepayment of the Notes, all in the manner provided for by Section 3(b) hereof; and

(B) Second, the balance, if any, of such insurance proceeds held by the Secured Party after making the applications provided for by the preceding subparagraph (A) shall be released to or upon the order of the Debtor.

(b) If an event of default hereunder has occurred and is continuing, all amounts received by the Secured Party under this Agreement may, at the option of the Secured Party, be applied in the manner provided for in Section 8 in respect of proceeds and avails of the Equipment.

6. In case any one or more of the following events occurs:

(a) Default in payment of an installment of the principal of, or interest on, any Note when and as the

same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise and such default shall continue for five business days; or

(b) Default on the part of the Debtor in the due observance or performance of any covenant condition or agreement to be observed or performed by the Debtor under this Security Agreement; or

(c) Any representation or warranty made herein or in the Note Agreement or in any report, certificate, financial or other statement furnished in connection with this Agreement, or the Note Agreement, or the transactions contemplated herein or therein shall prove to be untrue in any material respect as of the date of the issuance or making thereof; or

(d) The Company becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors, or the Company applies for or consents to the appointment of a trustee or receiver for the Company or for the major part of its property; or

(e) A trustee or receiver is appointed for the Company or for the major part of the property of the Company and is not discharged within 30 days after such appointment; or

(f) Any judgments, writs or warrants of attachment or of any similar process in an amount aggregating in excess of \$3,000,000 shall be entered or filed against the Company or against any of the property or assets of the Company and remain unpaid, unvacated, unbonded or unstayed for a period of 30 days; or

(g) Bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company and, if consented to or are not dismissed within 60 days after such institution;

then and in any such event, the Secured Party may exercise any one or more or all, and in any order, of the remedies hereinafter set forth:

(A) The Secured Party may, by notice in writing to the Debtor, declare the entire unpaid balance of the Notes 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 Secured Party, its successors and assigns shall have the right at its or their option, by its or their agents, employees or attorneys, to take immediate and exclusive possession of and remove any or all of said cars which may have been delivered to the Debtor, and

for that purpose may pursue each and every one of said cars wherever the same may be found, and may for that purpose enter upon the premises of the Debtor, its successors or assigns, and the Debtor, for itself, its successors and assigns, hereby agrees to furnish to the Secured Party, its successors and assigns, all the facilities and assistance in the recovery of said cars which the Secured Party may require. In the event the Secured Party shall demand possession of the Equipment then, without limiting the provisions of paragraph (A) hereof, the Debtor shall forthwith deliver possession of the Equipment to the Secured Party in good order and repair, ordinary wear excepted. For the purpose of delivering possession of any Equipment to the Secured Party as above required, the Debtor shall, at its own cost and expense, forthwith:

(x) assemble such Equipment and place them upon storage tracks within 25 miles of New York, New York (or such other place or places as the parties hereto shall agree in writing) as the Secured Party shall designate;

(y) provide storage at the risk of the Debtor for such Equipment on such tracks or cause the same or any thereof to be transported to any place or places on lines of a railroad within a 25-mile radius of such storage tracks on which the Equipment has been assembled, all as directed by the Secured Party.

The assembling, delivery, storage and transporting of the Equipment as hereinabove provided are of the essence of this Agreement, and upon application to any court of equity having a jurisdiction in the premises, the Secured Party shall be entitled to a decree against the Debtor requiring specific performance of the covenants of the Debtor so to assemble, deliver, store and transport the Equipment;

(C) The Secured Party shall have the right, 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 Debtor once at least ten days prior to the date of such sale, and any other notice which may be required by law if such ten days' notice is insufficient, to sell said cars at public or private sale, in one or more lots, at such price or prices, and on such terms as it may deem advisable, and at such sale the Secured Party may, if it so elects, become the purchaser of the cars.

(D) The Secured Party may proceed to protect and enforce this Agreement and said Notes by suit or suits or proceedings in equity, at law or in 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 Equipment or any part thereof, for the recovery of judgment for the indebtedness secured by this Agreement or for the enforcement of any other proper, legal or equitable remedy available under applicable law.

And in case of such default as aforesaid, all mileage earnings of said cars and each of them, which at the date of such default may be due or which shall thereafter become due shall thereupon be and become payable to the Secured Party, and shall be applied to the payment of any other indebtedness due hereunder from the Debtor to the Secured Party. Upon such default the Debtor shall forthwith notify the parties from whom such mileage earnings are due or to become due, to pay the same to the Secured Party, but such notice shall not be necessary in order to enable the Secured Party to collect or receive such earnings in case of such default.

And to facilitate the Secured Party in the event of such default in securing possession of said cars and the payment to it of said mileage earnings, said Debtor hereby appoints irrevocably the Secured Party its agent and attorney-in-fact of the Debtor and hereby authorizes the Secured Party as such agent and attorney-in-fact of the Debtor and in the name of the Debtor to give such instructions and directions, verbal or written, as the judgment of the Secured Party deems desirable or necessary to enable the Secured Party to obtain possession of said cars and the payment of such mileage earnings. The remedies herein granted in favor of the

Secured Party shall not be deemed exclusive, but shall be deemed cumulative and in addition to any and all other remedies existing at law or in equity upon the part of the Secured Party and that the Secured Party may in addition proceed to exercise one or more of the rights accorded by the Uniform Commercial Code in force in New York at the date of this Agreement. It is understood and agreed that this Agreement has been made and entered into pursuant to such Code and that the Secured Party has all the rights and remedies accorded thereby.

7. In the event of a sale made by the Secured Party as hereinafter provided, by reason of the default of the Debtor it is hereby expressly stipulated and agreed that it shall not be necessary to have present at such place or places where such sale or sales may be made, said cars or any one of said cars, and should the Secured Party become the purchaser at any such sale or sales, in lieu of paying in cash the purchase price bid, the Secured Party may apply the amount of such bid or bids as a credit upon said Notes or any of them due from the Debtor to the Secured Party under the terms of this Agreement. Any sale, 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, claiming the property sold or any part thereof.

8. In the event of a sale made as herein provided, the proceeds thereof shall be applied as follows: (a) to the payment

of the costs and expenses of the recovery, transportation, custody and disposition of said cars with all charges incidental thereto and of all taxes, assessments or liens superior to the lien of this Agreement; (b) to the payment of any balance of principal and interest that may be then due and owing in respect of the Notes or any of them or other indebtedness from the Debtor arising hereunder; (c) if the proceeds of such sale shall be more than sufficient to pay fully each and every of said Notes and interest thereon and all other indebtedness due hereunder from the Debtor to the Secured Party and all costs and expenses, then the surplus shall be paid to the Debtor, but if there should be a deficit then said Debtor shall pay such deficit upon the demand of the Secured Party.

9. To the extent now or at any time hereafter enforceable under applicable law, the Debtor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Equipment or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the Equipment so sold or any part thereof, and hereby expressly waives

for itself and on behalf of each and every person, except decree or judgment creditors of the Debtor acquiring any interest in or title to the Equipment or any part thereof subsequent to the date of this Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Secured Party, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

10. In case the Secured Party shall have proceeded to enforce any right under this Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then and in every such case the Debtor, the Secured Party and the holders of the Notes shall be restored to their former positions and rights hereunder with respect to the property subject to the security interest created under this Agreement.

11. No delay or omission of the Secured Party or of the holder of any Notes to exercise any right or power arising from any default, 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 the holder of any Note 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. The giving, taking or enforcement of any other or additional security, collateral

or guaranty for the payment of the indebtedness secured under this Agreement shall not operate to prejudice, waive or affect the security of this Agreement or any rights, powers or remedies hereunder, nor shall the Secured Party or any holder of the Notes be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

12. The Debtor hereby covenants and agrees for itself, its successors and assigns, to pay promptly as and when due the principal installments and interest on each and every of said Notes as and when they mature in manner and form as herein provided and as provided in the Notes and without default.

13. The Secured Party shall have full power and authority to sell, transfer, pledge or assign the whole or any portion of said Notes and this Agreement shall continue and remain as security for any Note so sold, transferred, pledged or assigned; and the Secured Party may assign, transfer or pledge this Agreement and all rights, powers, privileges and remedies hereunder at any time after payment of the full purchase price of the Equipment to the Manufacturer and from time to time and on such terms and conditions as it may deem proper. But in the event of the sale or transfer, assignment, or pledge, of said Notes or of either of them or of this Agreement, the rights, powers, privileges and remedies herein given to the Secured Party in case of default by the Debtor in the performance of any of the covenants or stipulations herein shall also still remain in the Secured Party to be exercised (as deemed best by the Secured Party as the trustee of an express trust), for the use and benefit of all parties in interest.

14. The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

15. All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to the Debtor: ASARCO INCORPORATED  
120 Broadway Avenue  
New York, New York 10005

Attention: Treasurer

If to the Secured  
Party:

SUN LIFE ASSURANCE COMPANY OF CANADA  
One Sun Life Executive Park  
Wellesley Hills, Massachusetts 02181

Attention: Investment Department  
Private Placement Section

or to the Debtor or the Secured Party at such other address as the Debtor or the Secured Party may designate by notice duly given in accordance with this Section to the other party. Communications to the holder of a Note shall be deemed to have been given (unless otherwise provided for by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed to such holder at its address set forth in the Register,

16. This Agreement and the Notes shall be construed in accordance with and governed by the laws of the State of New York; provided, however, that the Secured Party shall be entitled to all

the rights conferred by any applicable United States or Canadian Federal statute, rule or regulation.

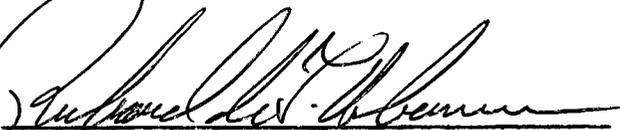
17. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Agreement.

18. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

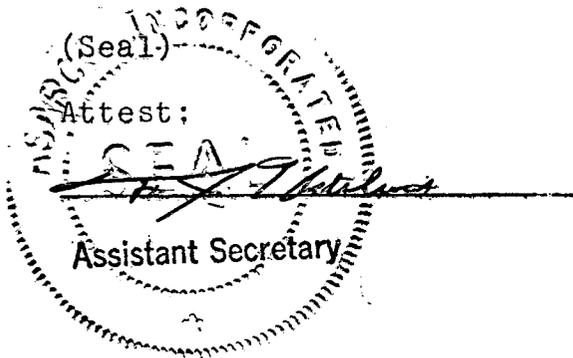
IN WITNESS WHEREOF, the Debtor has caused this instrument to be executed by its duly authorized officer and its corporate seal to be hereunto affixed as of the day and year first above written.

ASARCO Incorporated

By



Executive Vice President



STATE OF NEW YORK )  
                           ) SS.  
COUNTY OF NEW YORK)

On this 15<sup>th</sup> day of July, 1977, before me personally appeared Richard de J. Osborne, to me personally known, who being by me duly sworn, says that he is Executive Vice President of ASARCO INCORPORATED, that one of the seals 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Melanie L. Cobb  
Notary Public



My Commission expires:

**MELANIE L. COBB**  
Notary Public, State of New York  
No. 31-4527024  
Qualified in New York County  
Commission Expires March 30, 1978

Description of Equipment

Seventy-five (75) 13,640-gallon, 100-ton capacity mild steel unlined tank cars bearing road numbers ASTX 2001 to 2075, both inclusive, manufactured by ACF Industries, Inc.