

Thuet & Lynch

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TELEPHONE: 451-6411
AREA CODE: 612

RECORDATION NO. ⁹⁶⁶⁵ Filed & Recorded August 24, 1978

AUG 29 1978 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Office of the Secretary
Washington, D. C. 20423

Re: Werner's, Inc. - Wisconsin Life Ins. Company

Gentlemen:

I am enclosing herewith three copies of a Security Agreement to be duly recorded relative to Werner's, Inc.

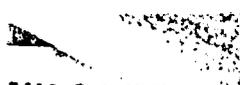
I am enclosing our check in the amount of \$50.00 for the recordation fees and would appreciate your acknowledging the recordation.

Very truly yours,

THUET & LYNCH

By: *Paul A. Thuet, Jr.*
Paul A. Thuet, Jr.

8-241A091

No. 
Date AUG 29 1978
Fee \$ 50.00

ICC Washington, D. C.

PAT:sa
Enc.

RECEIVED
AUG 29 1 18 PM '78
I.C.C. DIVISION BR.
FEE OPERATION BR.

Interstate Commerce Commission
Washington, D.C. 20423

8/30/78

OFFICE OF THE SECRETARY

Paul A. Thuet, Jr.
Atty. & Counselors
833 Southview Blvd.
South St. Paul, Minnesota 55075

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 **8/29/78** at **1:25pm** and assigned recordation number(s) **9665**

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

9665

RECORDATION NO. Filed & Recorded

AUG 29 1978 -1 25 PM

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS THAT:

WERNER'S, INC., a Minnesota corporation, whose address is 10825 East Court House Boulevard, Inver Grove Heights, Minnesota, County of Dakota, State of Minnesota (hereinafter called Debtor), does hereby grant unto WISCONSIN LIFE INSURANCE COMPANY, a Wisconsin corporation (hereinafter called the Secured Party), its successors and assigns, a security interest in the following goods and equipment located at 10825 East Court House Boulevard, Inver Grove Heights, County of Dakota, State of Minnesota.

Twenty-one railroad tank cars which will be used in interstate commerce between several of the states of the United States of America and the Dominion of Canada, described as follows:

	<u>SGIX</u>	<u>CAPACITY</u>	<u>LIGHTWEIGHT</u>	<u>DESIGN (DOT)</u>
1.	7309	33,523 Gals.	84,600 Lbs.	112A340-W
2.	7310	33,510 Gals.	84,800 Lbs.	112A340-W
3.	7311	33,517 Gals.	85,800 Lbs.	112A340-W
4.	7312	33,512 Gals.	85,300 Lbs.	112A340-W
5.	7313	33,512 Gals.	85,200 Lbs.	112A340-W
6.	7314	33,521 Gals.	85,800 Lbs.	112A340-W
7.	7315	33,562 Gals.	85,200 Lbs.	112A340-W
8.	7316	33,509 Gals.	85,800 Lbs.	112A340-W
9.	6101	30,281 Gals.	111,100 Lbs.	112A400-W
10.	6102	30,281 Gals.	110,800 Lbs.	112A400-W
11.	6103	30,284 Gals.	110,700 Lbs.	112A400-W
12.	6104	30,354 Gals.	110,700 Lbs.	112A400-W
13.	6105	30,271 Gals.	110,900 Lbs.	112A400-W
14.	6106	30,277 Gals.	110,700 Lbs.	112A400-W
15.	6107	30,282 Gals.	110,100 Lbs.	112A400-W
16.	6108	30,291 Gals.	110,500 Lbs.	112A400-W

17. 7417	18,608 Gals.	74,900 Lbs.	112A400-W
18. 7418	18,609 Gals.	75,300 Lbs.	112A400-W
19. 7419	18,595 Gals.	74,700 Lbs.	112A400-W
20. 7420	18,602 Gals.	75,300 Lbs.	112A400-W
21. 7421	18,594 Gals.	75,100 Lbs.	112A400-W

together with all increases, parts, fittings, accessories, equipment, renewals and replacements of all or any part thereof, (all hereinafter called "Collateral"), and all proceeds of the Collateral, to secure prompt payment when due of a note of even date herewith, executed and delivered by Debtor to Secured Party in the sum of Four Hundred Eighty Thousand and no/100 (\$480,000.00) Dollars, with interest as therein provided, and any and all extensions and renewals thereof, and any and all future advances made by Secured Party to Debtor at Secured Party's option, together with all other liabilities of the Debtor to Secured Party (primarily, secondarily, direct, contingent, sole, joint, or several) due or to become due or which may be hereafter contracted or acquired and the performance by Debtor of all of the terms and conditions of this Security Agreement (hereinafter referred to as "Obligations").

This Security Agreement is made on the following terms and conditions, to which the parties hereto agree:

1. Debtor represents and warrants that:

a. Debtor is or will be the owner of the Collateral clear of all liens, encumbrances and security interests, except the security interest granted hereby:

b. Debtor has the right to make this Agreement;

c. All twenty-one railroad cars described herein have been delivered to the Debtor at 10825 East Court House Boulevard, Inver Grove Heights, Minnesota, all of them for use solely within the continental limits of the United States of America and the Dominion of Canada.

2. Debtor will:

a. Pay the Secured Party all amounts payable on the note or notes mentioned above and all other notes held by the Secured Party as and when the same shall be due and payable, whether at maturity, by acceleration or otherwise, and will perform all terms of said notes and this or any other security or loan agreement between Debtor and Secured Party, and will discharge all said liabilities;

b. Defend the Collateral against all persons claiming an interest adverse to that of the Secured Party and pay promptly when due all taxes and assessments upon the Collateral;

c. Keep the Collateral insured at all times against loss by fire and/or other hazards concerning which, in the judgment of the Secured Party, insurance protection is reasonably necessary, in a company or companies satisfactory to the Secured Party and in amounts sufficient to protect Secured Party against loss or damage to said Collateral and will pay the premiums therefor; that such policy or policies of insurance will be delivered to and held by the Secured Party, together with loss payable clauses in favor of the Secured Party as its interest may appear, in form satisfactory to the Secured Party; and Secured Party may act as attorney for Debtor in obtaining, adjusting, settling and canceling such insurance and endorsing any drafts;

d. Keep the Collateral in good condition and repair, reasonable wear and tear excepted, and will permit Secured Party to enter upon any lands owned, leased or otherwise controlled by the Debtor at reasonable times for the purpose of examining the Collateral;

e. Pay as part of the debt hereby secured all amounts, including reasonable attorneys' fees and legal expenses, with interest thereon, paid by Secured Party (i) for taxes, levies, insurance,

repairs to, or maintenance of the Collateral, and (ii) in taking possession of, disposing of or preserving the Collateral after any default hereinafter described;

f. Immediately notify Secured Party of any change in Debtor's residence or place of business;

g. Stencil upon each side of said tank cars a plate bearing in letters not less than one inch in height the words "The Wisconsin Life Insurance Company, Madison, Wisconsin, Secured Party and Mortgagee", or otherwise plainly and visibly mark such words on each side of said cars.

h. Upon demand by the Secured Party, the Debtor shall, within forty-eight hours, advise Secured Party of the exact whereabouts of each of the railroad cars referred to in this agreement, it being understood that at all times such railroad cars shall be within the computer system identified by SGIX number of any and all railroad companies over whose tracks the said cars may be traveling. The Debtor agrees that the Secured Party may at any time use such computer system, which is a part of the Telex Corporation computer system, in the event that the Debtor does not advise the Secured Party of the whereabouts of such cars within the forty-eight hour period as stated herein. An executed copy of this Agreement shall serve as the Secured Party's license to utilize such system.

i. Debtor hereby authorizes Secured Party at Debtor's expense, to do all acts and things which Secured Party may deem necessary to perfect and continue perfected the security interest created by this Security Agreement and to protect the Collateral.

3. The Debtor will not:

a. Without the prior written consent of Secured Party (i) permit any liens or security interests (other than the security interest granted hereby) to attach to any of the Collateral; (ii)

permit any of the Collateral to be levied upon or attached by legal process; (iii) sell or otherwise transfer the Collateral; (iv) remove or permit the Collateral to be removed from the location or locations set forth above; or (v) do or permit anything to be done that may impair the value of any of the Collateral;

b. Permit the name of any corporation or other party except the name of Werner's, Inc., to be placed on any of said twenty-one secured cars in such a manner that such name might be interpreted as a claim of ownership or interest in said car by any persons other than the Debtor, Werner's, Inc.

4. General terms:

a. Any notice from Secured Party to Debtor, if mailed, shall be deemed given when mailed, postage prepaid, addressed to Debtor either at Debtor's address specified above, or such other address of Debtor as may from time to time be shown on Secured Party's records.

b. No financing statement covering the Collateral is on file in any public office, and at request of Secured Party, Debtor will join with Secured Party in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to Secured Party and will pay the cost of filing the same in all public offices wherever filing is deemed to be necessary or desirable by Secured Party.

c. UNTIL DEFAULT, Debtor may retain possession of the Collateral and use it in any lawful manner not inconsistent with the agreements herein, or with the terms and conditions of any policy of insurance thereon.

d. The Debtor shall have the right to lease said secured railroad cars for use in the continental United States of America and/or the Dominion of Canada, provided, however, that in

the event such lease is entered into, the Debtor shall promptly notify the Secured Party and deliver to the Secured Party a copy of such lease, together with an Assignment of the proceeds of the rentals in the event of default under this instrument. The Assignment of the proceeds of the rentals shall be effective in the event of default under this instrument of any of the terms and conditions of paragraph e, subdivisions (i) through (vii), page 6 of this instrument, and shall be effective by delivery of notice of default directed to the Lessee by Certified Mail addressed to the Lessee at his address as it appears on the Lease Agreement. It is further provided that the Lessee shall not obliterate the markings or designations on said cars as herein stated. The Lessee may place his own identification on the cars; however, the Lessee shall clearly identify that he is the Lessee and not the owner of said tank cars. Any lease of the secured cars shall contain a provision that such lease is subordinate and subject to this Security Agreement.

e. DEFAULT - Debtor shall be in default under this agreement upon the happening of any of the following events: (i) nonpayment, when due, of any amounts payable on any of the liabilities or failure to observe or perform any term hereof; (ii) if any covenant, warranty or representation shall prove to be untrue in any material respect; (iii) the Debtor becomes insolvent or unable to pay debts as they mature or makes an assignment for the benefit of creditors, or any proceeding is instituted by or against Debtor alleging that such Debtor is insolvent or unable to pay debts as they mature; (iv) entry of any judgment against the Debtor; (v) dissolution, merger or consolidation, or transfer of a substantial part of the property of the Debtor which is a corporation; (vi) loss, theft, substantial damage, destruction or encumbrance of any of the collat-

eral; (vii) any guarantor of the obligation stated in this agreement becomes insolvent or unable to pay his debts as they may mature or makes an assignment for the benefit of creditors; or any proceeding is instituted by or against guarantor alleging that such guarantor is insolvent or unable to pay debts as they mature.

In the event of a default, Secured Party shall have the right, at its option, after ten (10) days notice in writing to the Debtor of said default and if said default is not remedied by the Debtor within such ten (10) day period, to declare all or any part of the obligations immediately due and payable; and in addition, Secured Party may exercise, in addition to the rights and remedies granted hereby, all of the rights and remedies of a Secured Party under the Uniform Commercial Code or any other applicable law, whether statutory or common law. Debtor agrees in the event of a default, to make the Collateral available to Secured Party at a place to be designated by Secured Party which is reasonably convenient and hereby gives permission to the Secured Party to take possession thereof and to allow said Secured Party to keep any Collateral upon any lands owned or leased by the Debtor free of any charge. Debtor further agrees to pay all costs and expenses of Secured Party, including reasonable attorneys' fees, in the collection of any of the obligations or the enforcement of any of Secured Party's rights. If any notice of sale, disposition or other intended action by Secured Party is required by law to be given to Debtor, such notice shall be deemed reasonably and properly given if mailed to Debtor at the address specified above, or at such other address of Debtor as may be shown on Secured Party's records, at least ten (10) days before such sale, disposition or other intended action. Waiver of any default hereunder by Secured Party shall not be waiver of any other default or of a same default on a

later occasion. No delay or failure by Secured Party to exercise any right or remedy shall be a waiver of such right or remedy and no single or partial exercise by Secured Party of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy at any other time.

f. This agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of Minnesota. If any part of this contract shall be adjudged invalid, the remainder shall not thereby be invalidated.

g. If more than one party shall sign this Security Agreement, the term "Debtor" shall mean all such parties and each of them and all such parties shall be jointly and severally obligated hereunder. All rights of Secured Party shall inure to the benefit of its successors and assigns, and all obligations of Debtor shall bind Debtor's heirs, executors, administrators, successors and assigns.

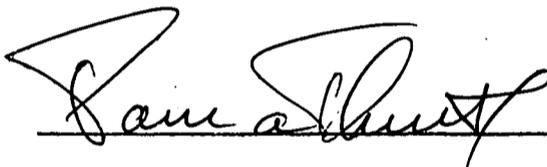
DATED this 8th day of August, 1978.

WERNER'S, INC., Debtor

By Richard J. Werner
RICHARD J. WERNER, President

STATE OF MINNESOTA)
 :SS
COUNTY OF DAKOTA)

On this 8th day of August, 1978, before me, a Notary Public within and for said County personally appeared RICHARD J. WERNER, to me personally known, being by me duly sworn did say that he is the President of WERNER'S, INC., the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said RICHARD J. WERNER acknowledged said instrument to be the free act and deed of said corporation.



PAUL A. THUET, JR.
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
My Comm. Expires Jan. 4, 1981