

REGISTRATION NO. 14781/8  
AUG 30 1985 - 1 55 PM  
INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 1 entered into as of this 28<sup>th</sup> day of August, 1985, by and between MDFC EQUIPMENT LEASING CORPORATION, a Delaware corporation (hereinafter called "Lessor"), and ASARCO INCORPORATED a New Jersey corporation (hereinafter called "Lessee");

W I T N E S S E T H:

WHEREAS, the parties hereto have simultaneously herewith entered into an Equipment Lease Agreement dated 8/28/85, (the "Lease") providing for the lease by Lessor and the hire by Lessee of the equipment described therein; and

WHEREAS, the parties hereto now desire to amend said Lease to the extent hereinafter set forth;

NOW, THEREFORE, as a further consideration of the mutual covenants contained in the Lease, the parties hereto agree as follows:

1. Section 4 - Delete the word "and" as it appears in line eight of the section, and delete the language following the word "Lessor" which appears in the ninth line of the section through to the end of the parenthetical in the ~~tenth~~ <sup>eleventh</sup> line of the section. Insert in place of the language the following:

"...and (iii) taxes resulting from a transfer by Lessor of any interest in any Item of Equipment or this Agreement."

2. Section 6 - Delete the last sentence of the second paragraph of the section in its entirety. Insert in place of the deletion the following:

IDENTIFICATION MARKS - Lessee, at Lessee's expense, shall cause each unit of equipment to be kept numbered with its road number as set forth in the IER with respect thereto 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 unit of equipment in letters not less than one inch in height as follows:

"Owned by MDFC Equipment Leasing Corporation (Owner-Lessor) and subject to a Lease Agreement filed and recorded with the Interstate Commerce Commission pursuant to Section 11303 of the Revised Interstate Commerce Act"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such unit of equipment, its rights under this Lease and the rights of any assignee of Lessor hereof. The Lessee will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any unit of equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this lease shall have been filed, recorded or deposited. Except as above provided, Lessee 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. Lessee shall indemnify Lessor, and any assignee of Lessor hereof against any liability, loss or expense incurred by any of them as a result of the aforesaid marking of the equipment with such name, initials or insignia.

3. Section 10 -Insert the word "reasonable" prior to the word "times" in the first line of the section.

4. Section 12 - The following sentence is inserted prior to the second sentence of the section:

"Lessee may self insure for risk of physical loss on the Equipment, provided, however, if an Event of Default has occurred or is continuing or there has occurred a material adverse change in Lessee's financial condition, which impairs its abilities to adequately insure for risk of physical loss on the Equipment, Lessee shall be required to obtain and maintain in effect throughout the remaining lease term all-risk physical loss insurance on the Equipment."

The following sentences are added to the first paragraph of Section 12:

"Evidence of insurance coverage shall be in the form of a certificate of insurance furnished by the Lessee which lists applicable coverage, and is furnished to Lessor at the inception of the Lease."

5. Section 13(d) - Delete the words "which gave rise to such payment" as they appear in the fifth line of the subsection.

6. Section 14 - Insert the word "reasonable" prior to the word "attorneys" in the third line of the section.

7. Section 16(a)(2) - Insert the word "material" prior to the word "reduction" as it appears in the first line of the subsection and insert the words "primary liability" prior to the word "insurance" as it appears in the second line of the subsection.

Section 16(a)(3) - Insert the words "after receipt of written notice from Lessor specifying the default and demanding that such default be remedied" following the word "days" as it appears at the end of the subsection.

Section 16(a)(4) - Delete the words "any time" as they appear in the second line of the subsection and replace with the words "the time when made".

Section 16(a)(5) is deleted in its entirety.

8. Section 18 - Delete the word "without" and replace with the word "with telephonic notice confirmed in writing in accordance with the notice requirements of this lease" as it appears in the second line of the section. Delete the period at the end of the first sentence of the section, replace with a comma, and the following:

"...unless Lessee elects to withhold consent to such assignment. If Lessee so elects, Lessee shall give Lessor reasonable notice of such election, and Lessee agrees to purchase the Equipment for the greater of fair market value (for purposes of this section, fair market value shall be determined by an appraiser mutually agreed upon by Lessor and Lessee) or Stipulated Loss Value, such payment to be received by Lessor within five business days of such election. If Lessor is not so notified, or such sum is not received by Lessor within such time, Lessee shall be deemed to have consented to any such assignment."

9. Section 23 - Insert the word "reasonable" prior to the word "attorneys" as it appears in the second line of the section.

10. Section 28 - Delete subsection 28(a)(7) in its entirety.

Delete the words "In the event any of the Lessee's" at the beginning of the first paragraph following 28(b), and replace with the words "If as a direct result of any misrepresentation or breach by Lessee of any of the ..."

Delete the words "...prove incorrect for any reason whatsoever at anytime, and..." following "28" in the first and second lines of the paragraph, and insert the following language at the beginning of the paragraph:

"Notwithstanding anything herein to the contrary, any Loss that would otherwise be indemnified by Lessee hereunder shall not be subject to this indemnification to the extent that such Loss is <sup>caused solely by</sup> ~~the sole result~~ (1) the occurrence of an Event of Loss provided the Stipulated Loss Value is paid by or on behalf of Lessee or (2) any act or failure to act by the Lessor."

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11. Insert the following as a contest provision for Section 29:

(a) In the event a claim shall be made by the Internal Revenue Service which, if successful, would result in a Loss for which Lessee would have liability to Lessor pursuant to Section 28 of the Lease, Lessor hereby agrees to take such action, in good faith, in connection with contesting such claim as the Lessee shall reasonably request in writing, provided, that: (1) within thirty (30) days after notice by the Lessor to the Lessee of such claim the Lessee shall have requested that such claim be contested; (2) the Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the relevant taxing authority in respect of such claim (unless and to the extent that pursuance of any such appeal, proceeding, hearing or conference is required to secure judicial remedies, in which case Lessor shall be required to pursue the same) and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate forum selected by the Lessor or contest such claim in the appropriate forum selected by Lessor; (3) within thirty (30) days after notice by the Lessor to Lessee of such claim, the Lessee shall have furnished the Lessor with an opinion of independent tax counsel chosen by the Lessee and acceptable to the Lessor, both as to counsel and substance, which acceptance and consent shall not be unreasonably withheld, to the effect that there is a meritorious basis for contesting such claim; (4) the Lessee shall have indemnified the Lessor in a manner satisfactory to the Lessor for any reasonable cost, expenses or liability, which the Lessor may incur as a result of contesting such claim, and the Lessee shall agree to reimburse the Lessor, on demand, for all costs, expenses and liability which the Lessor

may incur in contesting the claim, and to pay all reasonable costs and expenses which Lessor may incur in contesting the claim. These costs and expenses shall include, without limitation, (a) reasonable attorneys' and accountants' fees and disbursements ("Fees and Disbursements"), and (b) the amount of any interest, penalties or additions to tax indemnified hereunder that may ultimately be payable as a result of contesting such claim. In the event that at any time Lessor shall pay the tax claimed and then seek a refund, the Lessee shall make an interest-free loan or loans to the Lessor in the amount of such tax and interest, additions to tax and penalties thereon, if any, but not in excess of the amount which the Lessee would be obligated to pay in respect of the related Loss under Section 28 hereof. Upon Final Determination of the liabilities of the Lessor, or the receipt of a refund by Lessor, the Lessor shall offset such interest-free loans previously made against the full amount due, if any, pursuant to the provisions of Section 28 and this Section 29, and either (1) the Lessee shall pay to the Lessor within 15 days after notice thereof, any excess of such full amount due, if any, over such interest-free loans, or (2) the Lessor shall repay to the Lessee within 15 days after the later of a receipt of such refund or notice of such Final Determination, any excess of such interest free loans over such full amount due.

Any interest received by Lessor in connection with any refund which is allocable to the indemnified taxes paid by Lessor in respect of which the Lessee had made an interest-free loan shall be for the account of the Lessee.

(b) In the case of any such claim, the Lessor agrees to notify the Lessee promptly in writing of such claim, agrees not to make payment of the tax or other liability claimed for at least thirty (30) days after the giving of such notice (unless specifically required to do so at an earlier date by the Internal Revenue Service), and agrees to cooperate with and inform the Lessee in good faith in order that such claim may be contested effectively. Lessee and its counsel shall have the right to consult with Lessor with regard to any audits or administrative proceedings. The Lessee and its counsel shall maintain confidentiality with respect to all such information insofar as is possible, consistent with the conduct of a contest hereunder.

(c) Lessor shall not enter into a settlement or other compromise with respect to, or otherwise concede, any claim without the written consent of Lessee, which consent shall not be unreasonably withheld, unless

Lessor waives its right to be indemnified with respect to such claim (but not with respect to any future claims) under Section 28 of the Lease. Lessee shall not be considered to have unreasonably withheld such consent if such consent shall be withheld as a result of Lessee's reasonable evaluation of the merits of the basis for contesting such claim and Lessee shall not be required to consider any issue or dispute not directly related to such claim.

(d) If Lessee requests Lessor to contest a claim and otherwise complies with its obligations under this Section 29, it shall have no obligation to pay any indemnity under Section 28 of the Lease resulting from such claim until a Final Determination occurs regarding the liability of Lessor in respect of the claim. Lessee's obligation to pay the indemnity shall become fixed upon such Final Determination and unless otherwise provided in this Section 29 shall be payable within 15 days after receipt by Lessee of written notice from Lessor as to the occurrence of a Final Determination. In all other cases, the liability of Lessee shall become fixed and payable as provided in the next to last paragraph of Section 28 of the Lease.

(e) For purposes of this Section 29, "Final Determination" shall mean a decision of a court of original jurisdiction with respect to such claim or other disposition of such claim in the manner contemplated herein.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed as of the date first written above by their officers or agents thereunto duly authorized.

MDFC EQUIPMENT LEASING  
CORPORATION

By: Daniel O. Anderson

Its: VICE PRESIDENT

ASARCO INCORPORATED

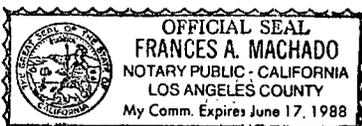
By: J. McDaniel

Its: V.P. & Treasurer

On this the 28th day of August 1985, before me, Frances A. Machado, the undersigned Notary Public, personally appeared Daniel O. Anderson, personally known to me to be the person who executed the within instrument as Vice President on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.

Frances A. Machado  
Notary Signature

(Notary Seal)



On this the 28th day of August 1985, before me, Meaghan C. Rock, the undersigned Notary Public, personally appeared Stephen P. McCandless, personally known to me to be the person who executed the within instrument as Vice President and Treasurer on behalf of ASARCO Incorporated, and acknowledged to me that the corporation executed it.

(Notary Seal)

**MEAGHAN C. ROCK**  
Notary Public, State of New York  
No. 36-4818487  
Qualified in Orange County  
Certified in New York County  
Commission Expires March 30, 1986

Meaghan C. Rock  
Notary Signature