

11031

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

RECORDATION NO. Filed 1425

NOV 8 1979 - 8 55 AM

INTERSTATE COMMERCE COMMISSION

COUNSEL

CARLYLE E. MAW
ALBERT R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER

11031

RECORDATION NO. Filed 1425

NOV 8 1979 - 8 55 AM

INTERSTATE COMMERCE COMMISSION

ROSWELL L. GILPATRICK
R. BRESLIN, JR.
GEORGE B. TURNER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON

PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 265-81-54
TELEX: 200530

33 THROUGHTON STREET
LONDON, EC2N 2ER, ENGLAND
TELEPHONE: 01-806-1421
TELEX: 8814901

TELETYPE ADDRESSES
CRAVATH, N. Y.
CRAVATH, PARIS
CRAVATH, LONDON E. C. 2

11031

RECORDATION NO. Filed 1425
NOV 8 1979 - 8 55 AM

INTERSTATE COMMERCE COMMISSION

No. 9-3124020

Date NOV 8 1979

Fee \$ 150.00

11031

RECORDATION NO. Filed 1425
NOV 8 1979 - 8 55 AM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION
November 7, 1979

Winchester and Western Railroad Company
Lease Financing Dated as of October 1, 1979

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Winchester and Western Railroad Company, for filing and recordation, counterparts of the following:

(1) (a) Conditional Sale Agreement dated as of October 1, 1979, between Merrill Lynch Leasing Inc. and Portec, Inc.; and

(b) Assignment of Conditional Sale Indebtedness dated as of October 1, 1979, among The Connecticut Bank and Trust Company, Merrill Lynch Leasing Inc. and Portec, Inc.;

(2) (a) Amended and Restated Lease of Railroad Equipment dated as of October 1, 1979, between Winchester and Western Railroad Company and Merrill Lynch Leasing Inc.; and

(b) Assignment of Lease and Agreement dated as of October 1, 1979, between The Connecticut Bank and Trust Company and Merrill Lynch Leasing Inc.;

NSC NO.

- A

- C

- D

C. J. Kessler
David [unclear]

-B (3) Security Agreement dated as of October 1, 1979, between Merrill Lynch Leasing Inc. and The Connecticut Bank and Trust Company ~~and~~

wey ~~(4) Purchase Agreement Assignment dated as of October 1, 1979, between ITEL Corporation and Merrill Lynch Leasing Inc.~~

The addresses of the parties to the aforementioned agreements are:

Agent:

The Connecticut Bank and Trust Company,
One Constitution Plaza,
Hartford, Connecticut 06115.

Manufacturer:

Portec, Inc.,
1800 Century Boulevard (Suite 6800),
Atlanta, Georgia 30345.

Lessee:

Winchester and Western Railroad Company,
In care of UNIMIN Corporation,
50 Locust Avenue,
New Canaan, Connecticut 06840.

Owner:

Merrill Lynch Leasing Inc.,
One Liberty Plaza,
165 Broadway,
New York, N. Y. 10080

Itel:

Itel Corporation,
Rail Division,
Two Embarcadero Center,
San Francisco, California 94111.

wrk The equipment covered by the agreements listed above at subparagraphs 1(a) ~~and~~ 1(b) ~~and~~ consists of 175 100-Ton, 4,000 Cubic Foot Covered Hopper Cars bearing the

road numbers of the Lessee WW3051-WW3225 (both inclusive). The equipment covered by the agreement listed above at subparagraph 3 consists of ~~20~~ 100-Ton, 4,000 Cubic Foot Covered Hopper Cars bearing the road numbers of the Lessee WW3001-WW3050 (both inclusive). The equipment covered by the agreements listed above at subparagraphs 2(a) and 2(b) consists of the units of equipment referred to in the next two preceding sentences. Each unit of such equipment bears the legend "Ownership Subject to a Security Interest Filed with the Interstate Commerce Commission". WRF

Please cross-reference the Security Agreement and the Amended and Restated Lease of Railroad Equipment with the Lease of Railroad Equipment dated as of June 25, 1979, between Merrill Lynch Leasing Inc. and Winchester and Western Railroad Company, Recordation No. 10585, filed on July 3, 1979, at 2:00 p.m.

Enclosed is our check for \$⁽¹⁵⁰⁾200 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt addressed to the undersigned. WRF

Very truly yours,

William R. Giusti

William R. Giusti
As Agent for Winchester and
Western Railroad Company.

Agatha L. Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

Encls.

- B

11031-³
RECORDATION NO. Filed 1425
NOV 8 1979-8 55 AM
INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT

between

MERRILL LYNCH LEASING INC.,

as Owner,

and

THE CONNECTICUT BANK AND TRUST COMPANY,

as Agent

Dated as of October 1, 1979

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
SECTION 1. DEFINITIONS	2
SECTION 2. CREATION OF SECURITY INTEREST	4
SECTION 3. RELEASE OF SECURITY INTEREST IN EQUIPMENT	5
SECTION 4. TAXES	6
SECTION 5. MAINTENANCE OF EQUIPMENT; CASUALTY OCCURRENCES	7
5.1 Maintenance and Repair	7
5.2 Casualty Occurrences	7
SECTION 6. REPORTS AND INSPECTIONS	8
SECTION 7. MARKING OF EQUIPMENT	9
SECTION 8. COMPLIANCE WITH LAWS AND RULES	10
SECTION 9. POSSESSION AND USE, ETC.	10
9.1 Possession and Use	10
9.2 Equipment Subject to Lease	10
SECTION 10. PROHIBITION AGAINST LIENS	11
SECTION 11. INDEMNITIES AND WARRANTIES; RISK OF LOSS	12
11.1 Owner's Indemnity	12
11.2 Risk of Loss on Owner	13
SECTION 12. ASSIGNMENTS	13
12.1 By the Owner	13
12.2 By the Agent, etc.	13
SECTION 13. EVENTS OF DEFAULT	14

	<u>Page</u>
SECTION 14. RIGHT TO CURE CERTAIN LEASE EVENTS OF DEFAULT	16
SECTION 15. REMEDIES	17
15.1 Taking Possession of Units	17
15.2 Assembly and Storage	18
15.3 Remedies Not Exclusive; No Waiver, etc.	19
15.4 Application of Proceeds	19
15.5 Costs and Expenses	20
15.6 Remedies Subject to Applicable Law .	20
SECTION 16. LIMITATION OF OWNER'S LIABILITY	20
SECTION 17. APPLICABLE STATE LAWS; WAIVERS	22
SECTION 18. FURTHER ASSURANCES; RECORDING	22
SECTION 19. NOTICES	23
SECTION 20. IMMUNITIES; SATISFACTION OF UNDERTAKINGS .	23
SECTION 21. MISCELLANEOUS	24
21.1 Waivers; Modifications	24
21.2 Binding Effect; Successors and Assigns	24
21.3 Captions; References	24
21.4 Execution	25
21.5 Governing Law	25
SCHEDULE A Equipment	

SECURITY AGREEMENT

SECURITY AGREEMENT; dated as of October 1, 1979, between MERRILL LYNCH LEASING INC., a Delaware corporation (the "Owner"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation (the "Agent"), not in its individual capacity but solely as agent under a Participation Agreement (the "Participation Agreement") dated as of the date hereof among the Owner, the Agent, Winchester and Western Railroad Company, Unimin Corporation and the Lenders referred to therein. Capitalized terms used herein without other definition are used with the meanings given in Section 1.

R E C I T A L S :

A. Pursuant to the Conditional Sale Agreement, the Manufacturer has agreed to deliver and sell to the Owner the Additional Equipment against payment in part by the Owner of the purchase price therefor, reserving to the Manufacturer a security interest in the Additional Equipment to secure the payment by the Owner of the balance of such purchase price and the performance by and compliance with the Owner of its covenants therein contained.

B. Pursuant to the Participation Agreement, each Lender has agreed to participate in the purchase of the Additional Equipment through investment in the Conditional Sale Indebtedness in the amount set forth in the Participation Agreement by depositing such amount with the Agent for payment to the Manufacturer for the assignment of such Conditional Sale Indebtedness.

C. As a condition to the participation in the Conditional Sale Indebtedness by the Lenders, the Owner has agreed to grant a security interest to the Agent, as agent for the Lenders, in the Equipment as further security for the Conditional Sale Indebtedness and other indebtedness secured under the Conditional Sale Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings hereinafter set forth, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

The following terms shall have the following meanings unless the context shall otherwise require:

Additional Equipment: the units of railroad equipment set forth in Schedule A to the Conditional Sale Agreement, subject to exclusion as provided in Section 3.1 of the Conditional Sale Agreement, together with all additions, modifications or improvements thereto or replacements thereof as contemplated by Section 4.2 of the Conditional Sale Agreement.

Aggregate Purchase Price: as defined in Section 4.1 of the Conditional Sale Agreement.

Assignment: the Assignment of Conditional Sale Indebtedness, dated as of the date hereof, among the Manufacturer, the Agent and the Owner, providing for the assignment by the Manufacturer to the Agent of its right, title and interest in and to the Conditional Sale Indebtedness and the Conditional Sale Agreement, and including therein the Owner's consent to such assignment, as from time to time amended, modified or supplemented in accordance with its terms.

Basic Rent: as defined in Section 3.1 of the Lease.

Casualty Occurrence: as defined in Section 7.1 of the Lease.

Casualty Value: as defined in Section 7.1 of the Lease.

Conditional Sale Agreement: the Conditional Sale Agreement, dated as of the date hereof, between the Manufacturer and the Owner, providing for the sale of the Additional Equipment to the Owner by the Manufacturer, as from time to time amended, modified or supplemented in accordance with its terms.

Conditional Sale Default: any event or condition which after the giving of notice or the lapse of time or both would become a Conditional Sale Event of Default.

Conditional Sale Event of Default: as defined in Section 17 of the Conditional Sale Agreement.

Conditional Sale Indebtedness: as defined in Section 4.1 of the Conditional Sale Agreement.

Declaration of Default: as defined in Section 13.

Down Payment: the portion of the cash purchase price for the Additional Equipment paid by the Owner under Section 4.1 of the Conditional Sale Agreement, as more fully defined therein.

Equipment: the units of railroad equipment set forth in Schedule A hereto, together with all additions, modifications or improvements thereto or replacements thereof as contemplated by Section 2.

Guarantor: Unimin Corporation, a Delaware corporation, and its successors and assigns.

Impositions: as defined in Section 4.

Lease: the Amended and Restated Lease of Railroad Equipment, dated as of the date hereof, between the Owner and the Lessee, providing for the lease of the Equipment by the Lessee, as from time to time amended, modified or supplemented in accordance with its terms.

Lease Assignment: the Assignment of Lease and Agreement, dated as of the date hereof, between the Owner and the Agent, granting to the Agent a security interest in and assigning all the Owner's right, title and interest in, to and under the Lease, as from time to time amended, modified or supplemented in accordance with its terms.

Lease Default: any event or condition which after the giving of notice or the lapse of time or both would become a Lease Event of Default.

Lease Event of Default: any of the events or conditions defined as "Events of Default" in Section 16.1 of the Lease.

Lessee: Winchester and Western Railroad Company, a Virginia corporation, and its successors and assigns.

Lien: any mortgage, pledge, lien, charge, encumbrance, retention of title, security interest or claim.

Manufacturer: Portec, Inc., a Delaware corporation, and its successors and assigns.

Officers' Certificate: as to any corporation, a certificate signed by the Chairman of the Board or the President or any Vice President and by any other Vice President or the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of such corporation.

Payment Date: as defined in Section 4.1 of the Conditional Sale Agreement.

Permitted Liens: Liens of taxes, assessments or governmental charges or levies, in each case not due and delinquent; inchoate mechanics', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business and not delinquent; and any Lien created by the Security Documents.

Purchase Price: \$43,025 per Unit.

Security Agreement Default: any event or condition which after the giving of notice or the lapse of time or both would become a Security Agreement Event of Default.

Security Agreement Event of Default: any of the events or conditions defined as "Security Agreement Events of Default" in Section 13.

Security Documents: the Conditional Sale Agreement, the Assignment, the Lease Assignment and this Agreement.

Unit: a unit of the Equipment.

SECTION 2. CREATION OF SECURITY INTEREST.

The Owner hereby grants the Agent a security interest in each Unit of the Equipment to secure the payment of the Conditional Sale Indebtedness and all other indebtedness and amounts payable by the Owner pursuant to the Conditional Sale Agreement and each other Basic Agreement to

which it is a party, to secure the performance by the Owner of all of its obligations and agreements contained in the Conditional Sale Agreement and each other Basic Agreement to which it is a party, and to secure all amounts payable by the Lessee under the Lease to any holders of the Conditional Sale Indebtedness or any agent therefor, notwithstanding the provisions of Section 16 of this Agreement limiting the liability of the Owner and notwithstanding the possession and use of the Units by the Owner and the Lessee as contemplated by the Conditional Sale Agreement and the Lease.

The security interest created by this Section 2 shall extend to any and all additions, modifications or improvements to the Equipment which become the property of the Owner pursuant to the Lease, and any and all replacements of the Equipment or of any part thereof shall constitute accessions to the Equipment, shall be subject to all terms and conditions of, and the security interest created by, this Agreement, and shall be included in the term "Equipment" as used in this Agreement.

SECTION 3. RELEASE OF SECURITY INTEREST IN EQUIPMENT.

When and (except as provided in Section 5.2) only when the Owner shall have paid and the Agent (or its assignee pursuant to Section 12.2) shall have received the full Conditional Sale Indebtedness, together with interest and all other indebtedness and payments as provided in this Agreement, the Conditional Sale Agreement and the Participation Agreement, and all the Owner's obligations contained in this Agreement, the Conditional Sale Agreement, the Assignment, the Lease Assignment and the Participation Agreement shall have been performed, the Agent's security interest in the balance of the Equipment then subject to such security interest shall be released without further transfer or action on the part of the Agent, or such assignee, provided that the Agent, or such assignee, if so requested by the Owner at that time, will at the Owner's expense (a) execute and deliver to the Owner a bill or bills of sale for such Equipment, in form reasonably satisfactory to the Owner, releasing its security interest therein to the Owner free of all Liens created by or retained in this Agreement, (b) execute and deliver to the Owner, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appro-

prate in order then to make clear upon the public records the release of the Agent's security interest in such Equipment and (c) pay to the Owner any money paid to the Agent (or such assignee) pursuant to Section 5.2 and not theretofore applied as therein provided. The Owner hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver any such bill or bills of sale or instrument or instruments or to file any such certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner.

SECTION 4. TAXES.

All payments to be made by the Owner hereunder will be free of expense to the Agent for collection or other charges and will be free of expense to the Agent with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, documentary stamp taxes, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being referred to herein as "Impositions") now or hereafter levied or imposed upon or in connection with or measured by this Agreement, the Conditional Sale Agreement or the Equipment or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which Impositions the Owner assumes and agrees to pay on demand in addition to the Conditional Sale Indebtedness and all other amounts payable by the Owner under the Conditional Sale Agreement. The Owner will also pay promptly all Impositions which may be imposed upon the Equipment or any Unit thereof delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Agent solely by reason of the Owner's ownership thereof or the Agent's security interest therein and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the security interest of the Agent or result in a Lien upon all or any part of the Equipment, provided

that the Owner shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith (after written notice to the Agent) and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Agent, adversely affect the security interest or rights of the Agent in or to the Equipment or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Agent directly and paid by the Agent, the Owner shall reimburse the Agent, as the case may be, upon presentation of an invoice therefor, and any amounts so paid by the Agent shall be secured by and under this Agreement, provided that the Owner shall not be obligated to reimburse the Agent for any Impositions so paid unless the Agent shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Agent) or unless the Owner shall have approved in writing the payment thereof. All amounts paid by the Owner pursuant to this Section 4 shall be grossed-up, so that the person to whom or for whose benefit the payment is made shall receive an amount which, net of any Impositions or other charges required to be paid by such person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

SECTION 5. MAINTENANCE OF EQUIPMENT; CASUALTY OCCURRENCES.

5.1 Maintenance and Repair. The Owner agrees that, at its own cost and expense, it will maintain and keep each Unit in good operating order, repair and condition.

5.2 Casualty Occurrences. (a) The Owner shall promptly notify the Agent of a Casualty Occurrence with respect to any unit of the Additional Equipment or the Equipment, setting forth in such notice the Casualty Value of such unit as of the Payment Date next following the date of such notice. Notwithstanding any such Casualty Occurrence, the Owner shall continue making payment of all installments of principal and interest on the Conditional Sale Indebtedness due prior to or on such Payment Date, and on such Payment Date the Owner shall, subject to the provisions of Section 16, in addition, pay to the Agent a sum equal to such Casualty Value. Any amounts paid to the Agent pursuant to this Section 5.2 shall be applied on such Payment Date (after the payment of the interest and principal due and payable on the Conditional Sale

Indebtedness on such Payment Date) to prepay a portion of each of the remaining installments of the Conditional Sale Indebtedness then outstanding, but without premium in an amount equal to the amount of each such installment multiplied by the number of units subjected to such Casualty Occurrence and divided by the number of units of Equipment and Additional Equipment subject to the Lease immediately prior to such Casualty Occurrence, and any balance remaining of such payment of Casualty Value shall, subject to the Assignment and the Lease Assignment, be applied as the Owner may direct. Upon any such payment, the Owner will promptly furnish to the Agent and the Lessee a revised schedule of payments of principal and interest thereafter to be made in respect of the remaining Conditional Sale Indebtedness in such number of counterparts as the Agent may request.

(b) Upon payment by the Owner to the Agent of the Casualty Value of any Unit, the Agent's security interest in such Unit shall be released without further transfer or action on the part of the Agent, except that the Agent, if requested by the Owner, will execute and deliver to the Owner, at the expense of the Owner, an appropriate instrument confirming such release, in recordable form, in order that the Owner may make clear upon the public records the release of the Agent's security interest in such Unit, provided that, in the event of a Casualty Occurrence with respect to the last Unit still subject to this Agreement, such security interest shall not be released unless the conditions of Section 3 shall be met.

(c) The Agent shall be entitled to receive any insurance proceeds or condemnation payments in respect of any Unit and shall apply such proceeds or payments in accordance with the provisions of Section 3.2 of the Lease Assignment.

SECTION 6. REPORTS AND INSPECTIONS.

On or before March 31 in each year, commencing with the calendar year 1980, the Owner shall furnish or cause to be furnished to the Agent (a) the statement required to be delivered by such date by the Lessee under Section 8 of the Lease and (b) such other information regarding the condition and state of repair of the Equip-

ment as the Agent may reasonably request. The Agent shall have the right, by its agents, to inspect the Equipment and the Owner's records with respect thereto at such reasonable times as the Agent may request during the continuance of this Agreement.

SECTION 7. MARKING OF EQUIPMENT.

(a) The Owner will cause each Unit to be kept numbered with the identifying number as set forth in Schedule A to this Agreement, or, in the case of any Unit not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following legend: "Ownership Subject to a Security Interest Filed with the Interstate Commerce Commission", or other appropriate words designated by the Agent (including any assignee of the Agent pursuant to Section 12.2), with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Agent's security interest in such Unit and its rights under this Agreement. The Owner will not knowingly permit any Unit to be placed in operation or exercise any control over the same until such legend shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such legend which may be removed, obliterated, defaced or destroyed. The Owner will not knowingly permit the identifying number of any Unit to be changed unless and until a statement of the new number or numbers to be substituted therefor shall have been filed with the Agent and filed, recorded and deposited by the Owner in all public offices where this Agreement, or any Uniform Commercial Code financing statement or similar instrument relating thereto, shall have been filed, recorded and deposited.

(b) The Owner will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership, except as above provided and except that the Owner may allow the Equipment to be lettered with the names, trademarks, initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience

of identification of the rights of the Lessee or its affiliates to use the Equipment as permitted under the Lease.

SECTION 8. COMPLIANCE WITH LAWS AND RULES.

During the term of this Agreement, the Owner will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its or such lessees' operations involving any Unit may extend and with rules and regulations of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that any such law, rule or regulation requires any alteration, replacement or modification of or to any Unit or any part thereof, the Owner will comply with such law, rule or regulation at its own expense, provided that the Owner may, after giving written notice to the Agent, in good faith contest or cause to be contested the validity or application of any such law, rule or regulation in any reasonable manner which does not, in the opinion of the Agent, adversely affect the security interest or rights of the Agent in or to any Unit under this Agreement.

SECTION 9. POSSESSION AND USE, ETC.

9.1 Possession and Use. The Owner, so long as a Security Agreement Event of Default shall not have occurred and be continuing, shall be entitled to the possession of such Unit and the use thereof, but only upon and subject to all the terms and conditions of this Agreement, the Conditional Sale Agreement, the Assignment, the Lease Assignment and the Lease. The Owner shall not permit any Lessee or user of the Equipment to use any Unit in regular use, or assign any Unit for regular use, outside of the United States of America.

9.2 Equipment Subject to Lease. The parties hereto acknowledge that the Owner simultaneously herewith is leasing the Equipment to the Lessee for use as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinate and

junior in rank to the rights, and shall be subject to the remedies, of the Agent under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Agent.

SECTION 10. PROHIBITION AGAINST LIENS.

The Owner will not directly or indirectly create or permit or suffer to be created or to remain, and will pay or discharge any and all sums claimed by any party from, through or under the Owner or its successors or assigns which, if unpaid, might become, a Lien on or with respect to any Unit or any part thereof, or the interest of the Owner, the Agent or the Lessee therein, or the Owner's interest in the Lease or the payments due and to become due thereunder, or any part thereof, other than Permitted Liens, and will promptly discharge any such Lien which arises, but shall not be required to pay or discharge any such claim or Lien so long as (i) the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner, (ii) prompt notice of such contest is given to the Agent, and (iii) the nonpayment or non-discharge of such Lien thereof does not, in the reasonable opinion of the Agent, materially adversely affect the interest of the Owner or the security interest or rights of the Agent in or to the Equipment or proceeds thereof or any other rights of the Agent under this Agreement or in and to the Lease and the payments due or to become due thereunder or any rights or interest of the Agent under any Security Document. The Agent may, in its discretion, discharge any Liens on or with respect to the Equipment or the Owner's interest in the Lease which have arisen in breach of this Section 10, and the Owner shall reimburse the Agent for any amounts paid by the Agent to discharge such Liens. Any such amounts so paid by the Agent and not reimbursed shall constitute additional indebtedness of the Owner to the Agent secured by and under this Agreement.

The foregoing provisions of this Section 10 shall be subject to the limitations set forth in Section 16, provided that the Owner will pay or discharge or cause to be paid or discharged any and all sums claimed by any party from, through or under the Owner or its successors or assigns, (a) arising out of any event or condition not

related to the transactions contemplated by this Agreement or (b) arising out of the failure of the Owner to pay net income or franchise taxes which in either case, if unpaid, might become a Lien on or with respect to any Unit or any part thereof, or the Owner's interest in the Lease and the payments due or to become due thereunder, or any part thereof, but the Owner shall not be required to pay or discharge or cause to be paid or discharged any such claim so long as the validity thereof shall be contested as provided in clauses (i) through (iii) of the preceding paragraph. For purposes of the foregoing proviso, the term "Owner" shall include any affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Owner is a member if consolidated returns are filed for such affiliated group for federal income tax purposes.

SECTION 11. INDEMNITIES AND WARRANTIES; RISK OF LOSS.

11.1 Owner's Indemnity. The Owner agrees to indemnify, protect and hold harmless the Agent from and against all losses, damages, injuries, liabilities, suits, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to reasonable counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance, or the enforcement of performance (whether or not suit is instituted), of this Agreement, the retention by the Agent of a security interest in the Equipment, the ordering, acquisition, use, operation, maintenance, condition, reconstruction, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, reconstruction, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title to or a security interest in the Equipment remains in the Agent, or the transfer of title to any Unit by the Agent pursuant to any of the provisions of this Agreement, excluding any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder or under the Purchase Agreement by the Agent. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness, and the release of the security interest in any or

all Units, as provided in Section 3, or the termination of this Agreement in any manner whatsoever.

11.2 Risk of Loss on Owner. The Owner will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units.

SECTION 12. ASSIGNMENTS.

12.1 By the Owner. The Owner will not (a) except as provided in Section 9.2, transfer the right to possession of any Unit or (b) sell, assign, transfer or otherwise dispose of its rights under the Purchase Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Agent hereunder (including, without limitation, rights and remedies against the Owner) and (ii) is made in accordance with the provisions, including those relating to permitted assignees, set forth or referred to in Section 17.4 of the Participation Agreement and the assignee expressly assumes, in writing, in form reasonably satisfactory to the Agent, all the obligations of the Owner under this Agreement.

12.2 By the Agent, etc. All or any of the rights, benefits and advantages of the Agent under this Agreement, including the right to receive the payments of principal of and interest on the Conditional Sale Indebtedness and the other payments herein provided to be made by the Owner, may be assigned by the Agent and reassigned by any assignee at any time or from time to time. No such assignment shall relieve the Owner of its obligations to the Agent or diminish the rights of the Owner contained or referred to in this Agreement.

Upon any such assignment by the Agent, either the assignor or the assignee shall give written notice to the Owner, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such

assignment. From and after the receipt by the Owner of the notification of any such assignment, all payments thereafter to be made by the Owner under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

SECTION 13. EVENTS OF DEFAULT.

If any one or more of the following events or conditions ("Security Agreement Events of Default") shall occur and be continuing (without regard to any provision of this Agreement, including Section 16, limiting the liability of the Owner):

(a) any Lease Event of Default; or

(b) any Conditional Sale Event of Default; or

(c) the Owner shall fail to pay in full any sum payable by the Owner when payment thereof shall be due hereunder and such failure shall continue for more than ten days thereafter; or

(d) the Owner shall make any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Unit, or shall permit any Lien to arise with respect to any Unit in contravention of the provisions of Section 10; or

(e) the Owner shall, for more than 30 days after the Agent shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement or of the Participation Agreement, the Conditional Sale Agreement, the Lease, the Lease Assignment or any consent by the Owner to any assignment referred to in Section 12.2 hereof on its part to be kept and performed, or shall fail to make provision satisfactory to the Agent for such compliance; or

(f) the Owner shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement

or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, or (v) take corporate action for the purpose of any of the foregoing; or

(g) a court or governmental authority of competent jurisdiction shall enter an order, appointing, without consent by the Owner, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Owner, or if any such petition shall be filed against the Owner and such petition shall not be dismissed within 30 days; or

(h) any representation or warranty made by the Owner hereunder or under any consent by the Owner to any assignment referred to in Section 12.2 or under the Participation Agreement or any Basic Agreement to which it is a party, or by any officer or representative of the Owner in any document or certificate furnished to the Agent or any assignee thereof in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to have been incorrect in any material respect as of the date made;

then at any time after the occurrence of any such Security Agreement Event of Default and while it is continuing (unless, in the case of a Security Agreement Event of Default described in subdivision (a) of this Section 13, such Security Agreement Event of Default shall have been cured as provided in Section 14), and notwithstanding any limitations on the personal liability of the Owner contained in Section 16 or otherwise, the Agent may, upon written notice to the Owner and upon compliance with any legal requirements then in force and applicable to such action by the Agent, (i) cause the term of the Lease immediately upon such notice to terminate (and the Owner acknowledges the

right of the Agent to terminate the term of the Lease) but without affecting any indemnities or other agreements of the Lessee which by the provisions of the Lease survive the termination of its term and/or (ii) declare (referred to herein as a "Declaration of Default") the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness, and interest thereon, to the extent permitted by applicable law, shall bear interest from the date of such Declaration of Default at the rate for overdue payments specified in Section 4.1 of the Conditional Sale Agreement. Upon a Declaration of Default, the Agent shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness, with interest as aforesaid, and to collect such judgment out of any property of the Owner, subject to the limitations of Section 16, wherever situated. The Owner agrees to notify the Agent promptly of any event of which any of its officers responsible for the matters concerning this Agreement have knowledge which constitutes a Security Agreement Default or Event of Default.

The Agent may, at its election, waive any Security Agreement Event of Default and its consequences and rescind and annul any Declaration of Default or notice of termination of the term of the Lease by notice to the Owner in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if such Security Agreement Event of Default had not occurred and no Declaration of Default or notice of termination of the term of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Owner that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 14. RIGHT TO CURE CERTAIN LEASE EVENTS OF DEFAULT.

In the event that a Security Agreement Event of Default has occurred and is continuing solely by reason of the Lessee's failure to pay an installment of Basic Rent (as defined in the Lease) when due, which failure shall not constitute more than the twelfth consecutive failure, or

more than the twenty-fourth cumulative failure (and, in the case of the thirteenth or subsequent cumulative failure, if at least twelve consecutive payments of Basic Rent have been made by the Lessee or the Guarantor from its own funds following any such period of twelve consecutive failures), and so long as no other Security Agreement Event of Default shall have occurred and be continuing, the Agent shall not exercise any of the rights and powers or pursue any of the remedies pursuant to Section 16 of the Lease and Sections 13 and 15 of this Agreement if the Agent shall have received from the Owner, within five days after the occurrence of such Security Agreement Event of Default, the full amount of such installment, together with any interest due thereon. Upon any payment of Basic Rent by the Owner in accordance with this Section 14, the Owner shall (to the extent of any such payment made by it) be subrogated to the rights of the Agent to receive such payment of Basic Rent (and the payment of interest on account of its being overdue) and shall be entitled, if the Lessee shall pay such payment of Basic Rent (and interest) to the Agent and at such time no Conditional Sale Event of Default shall have occurred and be continuing (other than an Event of Default cured by the Owner as provided in this Section 14), to receive such payment upon its receipt by the Agent, provided that the Owner may not exercise any rights and powers or pursue any remedies pursuant to Section 16 of the Lease or otherwise which the Agent would have been entitled to exercise or pursue but for the preceding sentence.

SECTION 15. REMEDIES.

15.1 Taking Possession of Units. At any time during the continuance of a Declaration of Default, the Agent may, upon such further notice and action, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Agent, take or cause to be taken, by its agent or agents, immediate possession of any or all of the Equipment, without liability to return to the Owner or the Lessee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 15 expressly provided, and may remove the same from possession and use of the Owner, the Lessee or any other person and for such purpose may enter upon the premises of the Owner or the Lessee or any other premises where the Equipment may

be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner or the Lessee.

15.2 Assembly and Storage. In case the Agent shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Agent, the Owner shall, at its own expense and risk:

(i) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) cause any or all such Units to be transported to such location as shall be reasonably designated by the Agent and there assembled;

(ii) furnish and arrange for the Agent to store any or all the Units on any lines of railroad or premises approved by the Agent at the risk of the Owner without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Agent; and

(iii) cause any or all of the Units to be transported to such interchange point or points as shall be designated by the Agent upon any sale, lease, or other disposal thereof.

During any storage period, the Owner will, at its own cost and expense, insure, maintain and keep each such Unit in good order and repair and will permit the inspection of the Equipment by the Agent, the Agent's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Agent shall be entitled to a decree against the Owner requiring specific performance hereof. The Owner hereby expressly waives any and all claims against the Agent and its agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner.

15.3 Remedies Not Exclusive; No Waiver, etc.

Each and every power and remedy hereby specifically given to the Agent shall be in addition to every other power and remedy hereby specifically given to the Agent or now or hereafter existing at law or in equity (including those remedies set forth in Section 6 of the Lease Assignment), and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Agent. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Agent in the exercise of any such power or remedy and no renewal or extension of any payments due under this Agreement shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment under this Agreement or other indulgence duly granted to the Owner shall not otherwise alter or affect the Agent's rights or the Owner's obligations under this Agreement. The Agent's acceptance of any payment after it shall have become due under this Agreement shall not be deemed to alter or affect the Owner's obligations or the Agent's rights under this Agreement with respect to any subsequent payments or default therein.

15.4 Application of Proceeds. All sums of money realized by the Agent under the remedies provided in this Section 15 or which are otherwise held by the Agent during the continuance of a Declaration of Default shall be applied as set forth in Section 3 of the Lease Assignment.

If, after applying all sums of money realized by the Agent under the remedies provided in this Section 15, there shall remain any amount due to the Agent under the provisions of this Agreement, the Conditional Sale Agreement or the Participation Agreement, the Owner shall, subject to the provisions of Section 16, pay the amount of such deficiency to the Agent upon demand, together with interest from the date of such demand to the date of payment, at the rate for overdue payments specified in Section 4.1 of the Conditional Sale Agreement and, if the Owner shall fail to pay such deficiency, the Agent may bring suit therefor and shall, subject to Section 16, be entitled to recover a judgment therefor against the Owner. If, after applying as aforesaid all sums realized by the Agent, there shall remain a surplus in the possession of the Agent, such surplus shall be paid to the Owner.

15.5 Costs and Expenses. The Owner will pay all reasonable expenses, including attorneys' fees and legal expenses, incurred by the Agent in connection with the Agent's enforcing its remedies under the terms of this Agreement and such expenses shall constitute additional indebtedness secured hereunder. In the event that the Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Agent may recover reasonable expenses, including reasonable attorneys' fees and legal expenses, and the amount thereof shall be included in such judgment.

15.6 Remedies Subject to Applicable Law. The foregoing provisions of this Section 15 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

SECTION 16. LIMITATION OF OWNER'S LIABILITY.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Sections 13 and 15), the Agent agrees that the liability of the Owner for all payments to be made by it under the Conditional Sale Agreement and the Assignment with the exceptions only of the Down Payment to be made pursuant to Section 4.1(b) of the Conditional Sale Agreement and the obligations set forth in the proviso to Section 14 of the Conditional Sale Agreement, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment and the Additional Equipment", which term shall mean (a) if a Security Agreement Event of Default shall have occurred and be continuing, so much of the following amounts as are held or received by the Agent or the Owner at any time after any such event and during the continuance thereof: (i) all amounts of rent and amounts in respect of Casualty Occurrences paid for or with respect to the Equipment and the Additional Equipment pursuant to the Lease and any and all other payments made pursuant to Section 16 of the Lease or any other provision of the Lease and (ii) any and all payments or proceeds made or received pursuant to the Lease or for or with respect to the Equipment and the Additional Equipment as the result of the sale, lease or other disposition thereof; and (b) at any other time, only that portion of the amounts referred to in the foregoing clauses (i) and (ii) as are held or received by the Agent or the Owner and as shall be required to discharge the portion of the Conditional Sale Indebtedness (in-

cluding prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall be required to discharge any other payments then due and payable under this Agreement; provided that the term "income and proceeds from the Equipment and the Additional Equipment" shall in no event include Excepted Payments (as such term is defined in the Lease Assignment). Notwithstanding anything to the contrary contained in Sections 13 and 15, the Agent agrees and each other holder of any of the Conditional Sale Indebtedness by its acceptance thereof agrees, except with respect to judgments relating to the Down Payment to be made by the Owner pursuant to Section 4.1(b) of the Conditional Sale Agreement or relating to the obligations of the Owner set forth in the proviso to Section 14 of the Conditional Sale Agreement, that any money judgment taken against the Owner under the Conditional Sale Agreement shall, by its terms, provide that the entry and docketing thereof (and the filing of any transcript with respect thereto) shall not constitute or create a lien, or be enforceable, against any real property of the Owner, that the judgment creditors in respect of any such judgment shall not be entitled to any of the rights and remedies provided to a judgment creditor by law to enforce the lien of any such judgment against any real property of the Owner wherever situated, that such judgment shall be enforceable only against the Equipment and the Additional Equipment and the income and proceeds from the Equipment and the Additional Equipment, and that no such judgment foreclosing any of the rights of the Owner with respect to the Equipment and the Additional Equipment and any other property constituting collateral security for the Conditional Sale Indebtedness shall contain any provision for a deficiency judgment in favor of the Agent or any other holder of any of the Conditional Sale Indebtedness except with respect to the Down Payment to be made by the Owner pursuant to Section 4.1(b) of the Conditional Sale Agreement or the obligations of the Owner set forth in the proviso to Section 14 of the Conditional Sale Agreement.

The limitations in this Agreement on the liability of the Owner shall not derogate from (a) the right of the Agent to proceed against the Equipment as provided for herein for the full amount of any unpaid portion of the Aggregate Purchase Price on the Additional Equipment and interest thereon and all other payments and obligations hereunder or under the Conditional Sale Agreement or the

Assignment, or to proceed against the Lessee under the Lease or the Consent, (b) the right of the Agent to proceed against the Additional Equipment under the Conditional Sale Agreement and the Assignment or (c) the rights of the Agent and the Lenders as contemplated by Section 12.2 of the Participation Agreement.

SECTION 17. APPLICABLE STATE LAWS; WAIVERS.

Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement, provided that, if the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner to the full extent permitted by law.

Except as otherwise provided in this Agreement, the Owner, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Agent's rights under this Agreement and any and all rights of redemption, and agrees that it will not assert against the Agent any claim or defense which it may now or hereafter have against the Manufacturer.

SECTION 18. FURTHER ASSURANCES; RECORDING.

The Owner will cause to be done, executed, acknowledged and delivered all such further acts, conveyances and assurances as the Agent shall reasonably require for accomplishing the purposes of this Agreement. The Owner will take, or cause to be taken, such action with respect to the recording, filing, re-recording and re-filing of this Agreement or any amendments and supplements to this Agreement, and any financing statements, continuation statements or other instruments as is necessary, or as shall be reasonably required by the Agent or any holder from time to time of any of the Conditional Sale Indebtedness or counsel for the Agent or any such holder to establish, perfect, preserve and protect, so long as any Conditional Sale Indebtedness shall remain outstanding, the security interests created by this Agreement. The Owner will,

promptly after any change of name of the Owner or any successor, or any change of location of its principal place of business, the office where it keeps its records concerning the Equipment or any contracts relating thereto or its chief executive office, furnish to the Agent information with respect to any such change.

SECTION 19. NOTICES.

All notices, requests, demands and other communications required or contemplated by the provisions of this Agreement shall, unless otherwise specified, be in writing or by telex or telegraph, and shall be deemed to have been given or made on the fifth Business Day after deposit thereof in the United States mails, certified, first-class postage prepaid, or when received if sent by telex or telegraph or delivered by hand, addressed as follows:

If to the Agent:

The Connecticut Bank and
Trust Company
One Constitution Plaza
Hartford, Connecticut 06115
Attention: Corporate Trust
Department

If to the Owner:

Merrill Lynch Leasing Inc.
One Liberty Plaza
165 Broadway
New York, New York 10080
Attention: John C. Murphy
Vice President

or, as to any party or any assignee of any party, to such other address as such party or such assignee may from time to time specify by notice hereunder.

SECTION 20. IMMUNITIES; SATISFACTION OF UNDERTAKINGS.

(a) No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein,

against any incorporator, stockholder, beneficiary, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, beneficiaries, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

(b) The obligations of the Owner under Sections 4, 5.1, 5.2 (except the first and fourth sentences of subdivision (a) to the extent such sentences require delivery of notices and payment schedules), 6, 7, 8, 9, 10 (except the proviso thereto), 11.1, 15.2, 15.4, 15.5 and 18 (except the last sentence) shall be deemed in all respects satisfied by performance by the Lessee of its undertakings contained in the Lease. The Owner shall not have any responsibility for the Lessee's failure to perform any such obligations, but if the same shall not be performed they shall constitute the basis for a Security Agreement Event of Default pursuant to Section 15.

SECTION 21. MISCELLANEOUS.

21.1 Waivers; Modifications. No term or provision of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party hereto against which enforcement of the change, waiver, discharge or termination is sought; no such instrument shall be effective unless a signed copy thereof shall have been delivered to the Owner and the Agent.

21.2 Binding Effect; Successors and Assigns. The terms and provisions of this Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and (to the extent assignments are permitted by this Agreement and the Participation Agreement) assigns.

21.3 Captions; References. The captions in this Agreement and in the table of contents are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. References herein to sections and subdivisions without reference to the

document in which they are contained are references to this Agreement.

21.4 Execution. This Agreement may be executed by the parties hereto on separate counterparts and all such counterparts shall together constitute but one and the same instrument. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments attached hereto.

21.5 Governing Law. This Agreement is being made and delivered in, and shall be governed by and construed in accordance with the laws of, the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

[Seal]

Attest:

Michael J. Foran
Title ASST SECY

MERRILL LYNCH LEASING INC.

By John C. Murphy
Title: Vice President

[Seal]

Attest:

J. Kelly
Authorized Officer

THE CONNECTICUT BANK AND TRUST COMPANY, as Agent

By P. L. Boyer
Authorized Officer

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 5th day of November, 1979, before me personally appeared John C. Murphy, to me personally known, who, being by me duly sworn, says that he is Vice President of Merrill Lynch Leasing Inc., 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.

[NOTARIAL SEAL]

My Commission expires

Virginia J. Flandrau

VIRGINIA I. FLANDRAU
NOTARY PUBLIC, State of New York
No. 24-4669365
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1980

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 7th day of November, 1979, before me personally appeared P.L. Hargraves, to me personally known, who, being by me duly sworn, says that he is Vice President of The Connecticut Bank and Trust Company, 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.

[NOTARIAL SEAL]

My commission expires

Virginia J. Flandrau

VIRGINIA I. FLANDRAU
NOTARY PUBLIC, State of New York
No. 24-4669365
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1980

SCHEDULE A

Equipment = 4000 Cubic Foot,
100 Ton Covered Hopper Cars

Number of
Units

50

W&W
Serial Numbers

WW 3001 through
WW 3050
(both inclusive)