

RECORDATION NO. 11465 Filed 1425

No. 0-032A104
Date FEB 1 1980
Fee \$ 50.00

FEB 1 1980 - 2 40 PM

INTERSTATE COMMERCE COMMISSION
Mellon Bank N.A.

Mellon Square
Pittsburgh, Pennsylvania 15230

ICC Washington, D. C.

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

Re: Security Agreement dated as of January 31,
1980 between J. J. Finnigan Industries and
Mellon Bank, N.A.

Gentlemen:

We enclose herewith for recording three original copies of the captioned security agreement. Also enclosed is a check to the order of the Commission in the amount of \$50.00 for the recording fee.

J. J. Finnigan Industries, a Virginia general partnership ("Finnigan"), having its principal place of business at Old Peachtree Road, Duluth, Georgia 30136 and Mellon Bank, N.A., a national banking association (the "Bank") having its principal office at Mellon Square, Pittsburgh, Pennsylvania 15230 have entered a Revolving Credit and Term Loan Agreement dated January 31, 1980 (the "Agreement"). In order to secure payment by Finnigan of amounts advanced under the Agreement, Finnigan and the Bank have entered the captioned security agreement. Finnigan is or will be the owner of certain railcars in which the Bank has a security interest and which are identified in the captioned security agreement as follows:

Number of Items	Description of Items	Identification Numbers (Both Inclusive)	J. J. Finnigan Manufacturer's Serial Numbers (Both Inclusive)
50	50 foot 6 inch 70 ton standard XM boxcars	PAM 1016 - PAM 1065	00001 - 00050

Additionally, the partners of Finnigan, George M. Bunker, James R. Dempsey, Frank M. Ewing and Frank M. Ewing, Co., Inc. have or will guarantee payment of Finnigan's obligations to the Bank.

After the enclosed documents have been recorded, please return one original with recording information to the undersigned.

Very truly yours,

MELLON BANK, N.A.

By *Donald M. Lynch*
Title *Vice President*

cc: Daniel P. Gallagher, Jr., Esquire (w/o enclosures)
Lee J. Dixon, Esquire (w/o enclosures)

counterpart

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Donald M. Lynch
Vice President
Mellon Bank, N. A.
Mellon Square
Pittsburgh, Pennsylvania 15230

Dear Sir:

The enclosed document (s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/1/80 at 2:40PM, and assigned re-
recording number (s). 11465.

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure (s)

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FEB 1 1980 -2 40 PM

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT

THIS AGREEMENT, dated as of January 31, 1980, by and between J. J. FINNIGAN INDUSTRIES, a Virginia general partnership (the "Company"), and MELLON BANK, N.A., a national banking association (the "Bank");

W I T N E S S E T H :

WHEREAS, the Company has requested the said Bank to extend credit to it in aggregate principal amount not exceeding \$2,000,000;

WHEREAS, the Bank is willing to extend such credit upon the condition, among others, that the Company execute and deliver this Agreement as security therefor;

NOW THEREFORE, for and in consideration of the Debt referred to below and other good and valuable considerations paid to the Company by the Bank, the receipt of which is hereby acknowledged by the Company, and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

1. Certain Definitions. In addition to the other words and terms defined herein, the following words and terms shall have the following meanings, respectively, as used herein unless otherwise required by the context:

"Agreement" shall mean this Security Agreement as from time to time hereafter amended or supplemented.

"Bank Credit Agreement" shall mean the Revolving Credit and Term Loan Agreement of even date by and between the Company and the Bank, as amended, modified or supplemented from time to time.

"Code" shall mean the Georgia Uniform Commercial Code as in effect on the date of this Agreement and as the same may be amended from time to time hereafter.

"Debt" shall mean, collectively, (i) all indebtedness of the Company to the Bank incurred at any time pursuant to the provisions of the Bank Credit Agreement, both principal and interest, (ii) all extensions, renewals, refinancings and refundings of any of such indebtedness in whole or in part, (iii) all other sums at any time payable by the Company under the provisions of any of the Bank Credit Agreement or any Note, indenture or other agreement (including without limitation this Agreement) from time to time evidencing or securing the Debt or any part thereof, (iv) all future advances made by the Bank for the protection or preservation of any portion of the Collateral (as herein defined), (v) all costs and expenses incurred by the Bank in the collection of any of the aforementioned indebtedness, advances and other sums and (vi) all other existing and future indebtedness and obligations, however arising, of the Company to the Bank.

"Equipment" shall mean the railroad cars which are identified on Exhibit B attached hereto, together with the official identification numbers of such cars.

"Event of Default" shall mean any of the Events of Default described in the Bank Credit Agreement at any particular time, including any period of grace provided with respect thereto.

"Management Agreement" shall mean the Management Agreement made and entered into December 6, 1979 by and between RAILCAR-PARKER, INC., a Georgia corporation, and the Company with respect to the management of the Equipment, as heretofore or hereafter amended, modified or supplemented.

"Manager" shall mean RAILCAR-PARKER, INC., a Georgia corporation.

"Note" or "Notes" shall mean a promissory note or the promissory notes, as the case may be, of the Company, executed and delivered under the Bank Credit Agreement.

2. Assignment. As security for the full and timely payment of the Debt in accordance with the terms of the Bank Credit Agreement and the Notes, indentures and other agreements (including without limitation this Agreement) from time to time evidencing or securing the Debt or any part thereof, the Company hereby assigns, pledges, transfers and sets over unto the Bank all of the right, title and interest of the Company in and to all fees and other monies now due or hereafter becoming due the Company pursuant to the provisions of the Management Agreement, an executed counterpart of which has been delivered to the Bank simultaneously herewith. Such fees and other monies are hereinafter sometimes collectively called the "Management Fees".

3. Security Interest. As further security for the full and timely payment of the Debt as aforesaid, the Company hereby agrees that the Bank shall have, and there is hereby granted to and created in favor of the Bank, a security interest under the Code in and to the Equipment and the Management Fees and the proceeds (as defined by the Code), both cash and non-cash, thereof. The Equipment and the Management Fees and the proceeds (as defined by the Code), both cash and non-cash, thereof are collectively referred to as the Collateral. The Company will faithfully preserve and protect the Bank's security interest created hereunder and will, at the expense of the Company, cause said security interest to be perfected and continued perfected so long as any portion of the Debt is outstanding and unpaid; and for such purposes the Company will

from time to time at the Bank's request execute and deliver or cause to be filed or recorded, as appropriate, such documents, instruments and notices, including without limitation the recording of this Agreement and any amendments, modifications or supplements hereto and all financing statements, continuation statements and further assignments with respect to the Collateral, as the Bank may deem necessary or advisable from time to time in order to perfect and continue perfected said security interest and to preserve the priority thereof. The Company will pay all filing fees with respect to said security interest.

4. Certain Representations and Agreements. The Company represents and warrants that:

(i) The executed counterpart copy of the Management Agreement delivered by the Company to the Bank herewith is a true and complete copy of said contract as in effect on the date hereof.

(ii) The Management Agreement is presently in full force and effect and there is no material existing default thereunder on the part of the Company or the Manager.

(iii) No person, firm or corporation (other than the Company) has any right, title or interest in or lien on any portion of the Collateral or the proceeds thereof, other than the security interest of the Bank created hereunder.

(iv) The chief place of business of the Company, and the office of the Company in which its records with respect to the Collateral are kept, is located at the Company's office on Old Peachtree Road, Duluth, Georgia 30136.

The Company covenants and agrees that:

(a) The Company will perform and discharge all of its agreements and undertakings under the Management Agreement.

(b) On request by the Bank at any time the Company, at its cost and expense, will enforce or secure the performance of each and every obligation and undertaking of the Manager under the Management Agreement, and will appear in and prosecute or defend any action or proceeding arising in connection with the Management Agreement or the Company's interest therein.

(c) The Company will not, without the prior written consent of the Bank, assign, transfer or encumber the Collateral in any manner (except for the security interests created hereunder).

(d) The Company will not relocate its office where its records concerning the Collateral are kept or its chief place of business is located, without the prior written consent of the Bank.

(e) The Company will keep accurate and complete records of the Management Fees paid and payable to it from time to time and of the basis on which such Management Fees were calculated. The Bank may at any time during normal business hours of the Company review the books and records of the Company pertaining to the Collateral and may copy the same and make excerpts therefrom.

(f) On the date hereof the Company will cause the Manager to furnish to the Bank a telex or telegram in form and substance satisfactory to the Bank and its counsel to the effect that the Manager acknowledges and agrees to the assignment of the Management Fees, and, as soon as practical after the date hereof, the Company will furnish to the Bank the signed acknowledgement and agreement of the Manager in respect of the subject matter hereof, in form as hereto attached as Exhibit A hereof or in such other form as shall be acceptable to the Bank.

(g) The Company has and will have good and marketable title to the Equipment, free and clear of all liens, encumbrances, pledges and security interests (except for the security interests created hereunder) and will defend such title against the claims and demands of all persons whomsoever.

5. Rights Against Prior Parties. The Company assumes full responsibility for taking any and all necessary steps to preserve rights with respect to the Collateral against prior parties. The Bank shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if the

Bank takes such action for that purpose as the Company shall request in writing, provided that such requested action will not, in the judgment of the Bank, impair the Bank's security interest in the Collateral or the proceeds thereof or its rights in, or the value of, the Collateral or such proceeds, and provided further that such written request is received by the Bank in sufficient time to permit the Bank to take the requested action.

6. Disposition of Management Fees; Cash Collateral Account. (A) From and after the date hereof the Company shall cause the Manager to make payment of all Management Fees directly to the Bank at an address designated by the Bank for this purpose. In the event the Company receives Management Fees or other proceeds of the Management Agreement, it shall cause such Management Fees and proceeds to be delivered to the Bank forthwith upon receipt, in the original form in which received, bearing such endorsements or assignments by the Company as may be necessary to permit collection thereof by the Bank. For purposes of collection of Management Fees and proceeds, the Company hereby authorizes and empowers the Bank, its officers, authorized agents and employees, to endorse and sign the name of the Company on all checks, drafts and other media of payment so delivered to the Bank, and such endorsements and assignments shall for all purposes be deemed to have been made by the Company prior to any endorsement or assignment by the Bank. The Bank may use any convenient or customary means for the purpose of collecting any such checks, drafts or other media of payment.

(B) The Bank shall open and maintain at its principal office a non-interest bearing deposit account entitled "J. J. Finnigan Industries Cash Collateral Account" (hereinafter called the "Cash Collateral Account"). All cash proceeds arising out of the Management Fees received by the Bank shall be deposited in the Cash Collateral Account. The Bank shall have sole dominion and control over all funds deposited in the Cash Collateral Account, and such funds may be withdrawn therefrom only by the Bank.

(C) The collected funds from time to time on deposit in the Cash Collateral Account shall be debited in whole or in part by the Bank at any time and from time to time but not less often than monthly (each such monthly debit shall be made on or about the 20th day of such month), the amount of each such debit being applied by the Bank first to the payment of accrued and unpaid interest on the Notes, then to the payment or prepayment of principal then outstanding on the Notes, pro rata to the Notes then outstanding according to the outstanding principal amount thereof applied to the unpaid principal installments of the Notes in the order of their scheduled maturities (unless otherwise applied in accordance with the terms of the Bank Credit Agreement), or to the payment of such other sums (if any) as are then due and unpaid on the Debt. The Bank shall advise the Company at regular intervals of the amount of each such debit to the Cash Collateral Account and of the application thereof.

7. Possession, Use and Release of Equipment. (A)

While the Company is not in default hereunder it shall be suffered and permitted to remain in full possession, enjoyment and control of the Equipment and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto, provided always, that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Agreement. It is expressly understood that the use and possession of the Equipment by the Manager under and subject to the Management Agreement and pursuant to such other agreements which the Manager may from time to time enter as contemplated by the Management Agreement shall not constitute a violation hereof.

(B) The Company may sell or otherwise dispose of any Equipment then subject to the security interest granted in favor of the Bank under this Agreement, and the Bank shall release its interest in the same from said security interest to the extent and on the terms and upon compliance with the conditions provided for in any written consent given thereto at any time or from time to time by the Bank.

8. Events of Default. If any one or more of the Events of Default shall occur and be continuing or shall exist, the Bank shall have such rights and remedies with respect to the Collateral and every part thereof as are provided by the Code and such other rights and remedies with respect thereto which it may

have at law or in equity or under this Agreement, including without limitation the right to sell all or any portion of the Collateral at public or private sale, without prior notice to the Company except as otherwise required by law (and if notice is required by law, after ten days' prior written notice), at such place or places and at such time or times and upon such terms, whether for cash or on credit, and in such manner as the Bank in its sole discretion may determine, and apply the proceeds of such sale, first, to the payment of the reasonable costs and expenses incurred by the Bank in connection with such sale, including reasonable attorneys' fees and legal expenses, second to the repayment of the Debt and other sums secured hereby, whether on account of principal or interest or otherwise as the Bank in its sole discretion may elect, and then to pay the balance, if any, as required by law.

9. Miscellaneous Provisions. (A) This Agreement is not intended and shall not be construed to obligate the Bank to take any action whatsoever with respect to the Management Agreement or any portion of the Collateral (except as otherwise expressly provided herein), or to incur expenses or perform or discharge and obligation, duty or liability of the Company under the Management Agreement.

(B) Upon payment in full of the Debt, this Agreement shall terminate and be of no further force and effect. Until such time, however, this Agreement shall bind the Company, its

successors and assigns, and shall inure to the benefit of the Agent and its successors and assigns.

(C) No delay or failure on the part of the Bank in exercising any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies of the Bank hereunder are cumulative and not exclusive of any rights or remedies which it would otherwise have.

(D) If any provision of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, but this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

(E) The descriptive headings of the several paragraphs of this Agreement are inserted for convenience only and are not intended to indicate all of the matter following them or to control or affect the construction of any of the provisions hereof.

(F) This Agreement shall be deemed to be a contract under the laws of the State of Georgia and for all purposes shall

be governed by and construed in accordance with the laws of said State.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the day and year first above written to be effective on the date of the initial loans to the Company as contemplated by the Bank Credit Agreement.

J. J. FINNICAN INDUSTRIES

By

Title

Address: Old Peachtree Road
Duluth, Georgia 30136

MELLON BANK, N.A.

By

Title

Address: Mellon Square
Pittsburgh, Pennsylvania
15230

[Letterhead of RAILCAR-PARKER, INC.]

February __, 1980

Mellon Bank, N.A.
Mellon Square
Pittsburgh, Pennsylvania 15230

Gentlemen:

This will acknowledge that RAILCAR-PARKER, INC. ("RAILCAR") has received from J. J. Finnigan Industries ("Finnigan") an executed counterpart copy of the Security Agreement dated as of January __, 1980 (the "Security Agreement") between Finnigan and you.

Commencing on the date of the Security Agreement, RAILCAR will pay you all fees and other monies thereafter becoming due from RAILCAR to Finnigan under the Management Agreement (as that term is defined in the Security Agreement), subject to defenses, offsets and counterclaims, at your above address or as you shall otherwise direct in writing.

This letter is delivered with the intention that Mellon Bank, N.A. may rely hereon in extending the credit referred to in the Security Agreement. It is understood that you may assign your rights under the Security Agreement and that, after written notice of such assignment given by you to RAILCAR, all of your rights hereunder shall be equally available to your assignee.

Very truly yours,

RAILCAR-PARKER, INC.

By _____

Title _____

Exhibit B

DESCRIPTION OF EQUIPMENT

<u>Number of Items</u>	<u>Description of Items</u>	<u>Identification Numbers (Both Inclusive)</u>	<u>J.J. Finnigan Manufacturer's Serial Numbers (Both Inclusive)</u>
50	50 foot 6 inch 70 ton standard XM boxcars	PAM 1016 - PAM 1065	00001 - 00050