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# CRAVATH, SWAINE & MOORE

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14938

RECORDATION #0. Filed 1425

APR 10 1986 - 12 40 PM

INTERNATIONAL COMMERCE COMMISSION

6-100A033

No.

Date APR 10 1986

Fee \$ 20.00

ICC Washington, D.C.

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*\$20.00 filing fee*

April 10, 1986

Borden, Inc.

Lease Financing Dated as of March 15, 1986  
10-3/4% Secured Notes Due July 1, 2001

Dear Mr. Bayne:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Borden, Inc. for filing and recordation counterparts of the following Agreement:

Security Agreement dated as of March 15, 1986, between Exchange National Bank of Chicago, as Trustee, and The Mutual Life Insurance Company of New York, as Secured Party.

Please cross-index the Security Agreement with the Lease Amendment and the Assignment of Lease and Agreement filed under Recordation No. 12645-B and 12645-C, respectively.

The names and addresses of the parties to the aforementioned Agreement are as follows:

(1) Trustee:

Exchange National Bank of Chicago  
120 South La Salle Street  
Chicago, Illinois 60603

*New number*  
*Paul D. [unclear]*  
*Charles [unclear]*

APR 15 12 05 PM '86

(2) Secured Party:

The Mutual Life Insurance Company of New York  
1740 Broadway  
New York, New York 10019

Please file and record the Agreement referred to in this letter and index it under the names of the Trustee and the Secured Party.

The equipment covered by the aforementioned document appears on Exhibit A attached hereto, and also bears the legend "Ownership Held By Exchange National Bank of Chicago, Trustee, as Owner-Lessor".

There is also enclosed a check for \$20 payable to the Interstate Commerce Commission representing the fee for recording the Security Agreement and requested cross-indexing.

Please stamp all counterparts of the enclosed Agreement with your official recording stamp. You will also wish to retain one copy of the instrument for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

*Laurance V. Goodrich*  
Laurance V. Goodrich  
As Agent for  
Borden, Inc.

Mr. James H. Bayne, Secretary,  
Interstate Commerce Commission,  
Washington, D.C. 20423

Encls.

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Specifi- cations</u>	<u>Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
30,000 gallon non-coiled non-insu- lated tank cars	TM	NA-18 as amended by NAC	Chicago Ridge, Illinois	50	BCD 601-650	\$56,500	\$2,852,000	December 1980 through February 1981 in Diboll, Texas

Interstate Commerce Commission  
Washington, D.C. 20423

4/10/86

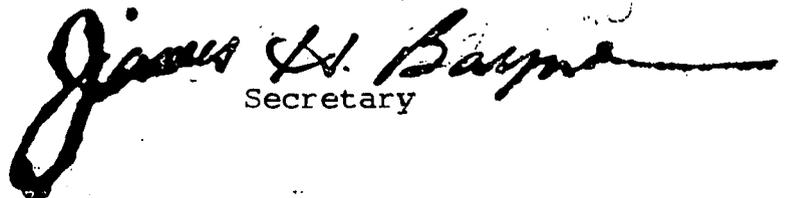
OFFICE OF THE SECRETARY

Laurance V. Goodrich  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

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 4/10/86 at 12:40pm and assigned re-  
recording number(s). 14938, 12645-B & 12645-C

Sincerely yours,

  
Secretary

Enclosure(s)

*New Number*

14938

RECORDATION F.O. Filed 1425

APR 10 1986 -12 30 PM

INTERSTATE COMMERCE COMMISSION

*V*

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[CS&M Ref.: 6197-003D]

SECURITY AGREEMENT

Dated as of March 15, 1986

Between

EXCHANGE NATIONAL BANK OF CHICAGO

as Trustee,

and

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,

as Secured Party.

---

*X*

*X*

SECURITY AGREEMENT dated as of March 15, 1986, between EXCHANGE NATIONAL BANK OF CHICAGO, not individually but solely as trustee ("Trustee") under a Trust Agreement ("Trust Agreement") dated as of September 15, 1980, between the Trustee and THE BANK OF NEW YORK ("Owner"), and THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK ("Secured Party").

WITNESSETH:

The Trustee has acquired the units of equipment described in Schedule A hereto ("Units").

Pursuant to a Note Purchase Agreement dated as of the date hereof ("Note Purchase Agreement") among the Owner Borden, Inc., ("Lessee"), The Mutual Life Insurance Company of New York (for itself and for a separate account) and Mony Pension Insurance Corporation (collectively the "Note Purchasers"), the Note Purchasers will refinance a portion of the cost of the Units delivered to the Trustee by purchasing the Trustee's 10-3/4% Secured Notes due July 1, 2001 ("Notes").

As security for the payment of the Notes, the Trustee has entered into an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") with the Secured Party, assigning to the Secured Party certain of the Trustee's rights in and to the Lease of Equipment dated as of September 15, 1980, as amended by Amendment No. 1 dated as of September 15, 1980, as amended as of March 15, 1986 ("Lease") between the Trustee and the Lessee.

The Lessee has consented to the Lease Assignment pursuant to a Consent and Agreement ("Consent") dated as of the date hereof.

The Lessee has agreed to indemnify the Owner against certain losses, liabilities and expenses pursuant to an Indemnity Agreement ("Indemnity Agreement") dated as of September 15, 1980, between the Lessee and the Owner.

The Trustee also desires to convey, warrant, mortgage, assign, pledge, deposit and grant the Secured Party a security interest in the Units and other collateral to secure payment of the Notes. The Secured Party is acting as such for its own account, for a separate account managed by it and for MONY Pension Insurance Corporation in accordance with their respective interests in the Notes.

NOW, THEREFORE, in consideration of the premises and agreements hereinafter contained and of the purchases and acceptances of the Notes and for other valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

I. GRANTING CLAUSE

1.1 Granting Clause. As security for the due and punctual payment of the principal of, premium, if any, and interest on the Notes and the performance and observance by the Trustee, the Lessee and the Owner of all their respective covenants for the benefit of the Secured Party contained herein, in the Note Purchase Agreement and in the Lease, the Trustee does hereby convey, warrant, mortgage, assign, pledge, deposit and grant a security interest in and confirm unto the Secured Party, and to its successors and assigns, the following described property (herein, together with the rights assigned to the Secured Party under the Lease Assignment, being collectively called "Collateral"):

(a) all the Trustee's estate, right, title and interest in and to the Units and the Lease and all proceeds thereof (except as otherwise provided in the Lease Assignment); and

(b) all the Trustee's estate, right, title and interest in and to all accessories, equipment, parts, appurtenances and other items of tangible personal property of any kind (and all proceeds thereof) acquired by the Trustee in connection with its acquisition of the Units, whether acquired by the Trustee at the time of its acquisition of the Units, or thereafter acquired pursuant to the provisions of the Lease or otherwise, and whether located on the Units or elsewhere, including all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Units, together with all rents, issues, income and profits therefrom;

provided, however, that any equipment which shall not have been duly delivered and accepted under the Lease shall be excluded from this Security Agreement and not included in the term "Units". All rights granted to the Secured Party hereunder shall be in addition to and shall in no way be construed to limit the rights of the Secured Party under the Lease Assignment.

1.2. Parity of Notes. Each and every Note executed and delivered pursuant to the Note Purchase Agreement shall have the same lien, and the principal of and premium, if any, and interest on every Note shall, subject to the terms hereof, be equally and proportionately secured hereby, as if it had been made, executed, delivered, sold and negotiated simultaneously with the execution and delivery hereof.

1.3. Release of Security Interests. The Secured Party shall have and hold the Collateral forever; provided that, if and when all the Notes shall have become due and payable (whether by lapse of time or by acceleration or otherwise), the Trustee shall pay or cause to be paid the full amount due for principal, premium, if any, and interest and if the Trustee shall also pay or cause to be paid all other sums payable to the Secured Party pursuant hereto and pursuant to the Note Purchase Agreement and the Trustee, the Lessee and the Owner shall observe, keep and perform all their respective covenants contained for the benefit of the Secured Party herein and in the Note Purchase Agreement and the Lease, then and in that case and upon the written request of the Trustee this Security Agreement and all agreements herein contained and the estate hereby granted and conveyed shall cease and terminate.

## II. COVENANTS AND AGREEMENTS BY THE TRUSTEE

2.1. Discharge of Liens. The Trustee will pay or discharge any and all claims, liens, charges or security interests (excluding, without limitation, those created by this Agreement and those which the Lessee is required to pay or discharge pursuant to § 15.2 of the Lease) claimed by any party from, through or under the Trustee and, to the extent that it receives funds sufficient for such purpose from the Owner, from, through or under the Owner, not arising out of the transactions contemplated hereby or by the other documents mentioned herein (but including all income taxes arising out of the receipt of rentals and other payments under the Lease and other proceeds from the Units) which, if unpaid, might become a lien, charge or security interest on or with respect to any Unit, or the Secured Party's interest in the Lease and the payments to be made thereunder, but the Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not

materially adversely affect the security interest of the Secured Party in the Collateral or otherwise under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

2.2. Further Assurances. The Trustee will, from time to time, do and perform any act and will execute, acknowledge, deliver and file, register and record any and all further instruments reasonably requested by the Secured Party for the purpose of the proper protection of the security interest of the Secured Party in the Collateral.

2.3. Notice of Default. The Trustee further covenants and agrees that it will give the Secured Party prompt written notice of any event or condition constituting an event of default under this Agreement or an Event of Default under the Lease of which an officer or employee in the Corporate Trust Department of the Trustee has actual knowledge.

### III. POSSESSION, USE AND RELEASE OF COLLATERAL

3.1. Possession of Collateral. So long as no event of default shall have occurred and be continuing hereunder, the Trustee shall be entitled to the possession and use of the Units, and to permit the use of the Units as provided in the Lease.

3.2. Release of Property. So long as no Event of Default or an event or condition which, with the passage of time or the giving of notice or both, would constitute such an Event of Default under the Lease has occurred and is continuing to the knowledge of the Secured Party, the Secured Party shall execute a release in respect of any Unit with respect to which a Casualty Occurrence (as defined in Section 7.1 of the Lease) or a Termination (as defined in Section 30 of the Lease) shall have occurred upon receipt from the Lessee of written notice designating the Unit in respect of which the Lease will terminate and the receipt from the Lessee of the Secured Party's portion of the Casualty Value (as defined in Section 7.4 of the Lease) or

the Termination Value (as defined in Section 30 of the Lease) for such Unit, as appropriate.

3.3. Transfers Prohibited. Except as permitted by the Trust Agreement, the Trustee will not sell, assign or transfer its rights under this Agreement or, except as provided in this Article III, transfer the right to possession of any Unit. The Trustee will not consent to any transfer of any of the right, title or interest of the Owner in and to the Trust Agreement or the Trust Estate to any institution, corporation or person under clause (c) of Section 6.01 of the Trust Agreement without the prior written consent of the Secured Party. The Trustee will not enter into any supplement, amendment or modification of the Trust Agreement except as provided in Section 8.01 thereof as amended and as in effect on the Settlement Date under the Note Purchase Agreement.

#### IV. APPLICATION OF ASSIGNED RENTALS AND CERTAIN OTHER MONEYS RECEIVED BY THE SECURED PARTY

4.1. Application of Rents and Other Payments. Pursuant to the Lease Assignment the Trustee has assigned to the Secured Party for security purposes rentals, profits, and other sums due and to become due under the Lease constituting part of the Collateral hereunder. So long as no event of default as defined in Section 5.1 hereof (or any event which, upon notice or lapse of time or both, would constitute such an event of default) has occurred and is continuing:

(a) The amounts from time to time received by the Secured Party which constitute payment by the Lessee under the Lease of the installments of rental pursuant to Section 3 of the Lease shall be applied, first, to the payment of the installments of principal and interest (and in each case first to interest and then to principal) of the Notes which have matured or will mature on or before the due date of the installments of rental which are received by the Secured Party, and then the balance, if any, of such amounts shall promptly be paid to or upon the order of the Trustee.

(b) Payments of Casualty Value and Termination Value (including all amounts of insurance or recoveries or condemnation or sale proceeds relating to a Casualty Occurrence or a Termination with respect to such Unit) from time to time received by the Secured Party in

respect of any Unit pursuant to the Lease shall be applied by the Secured Party as follows:

(i) first, an amount equal to the accrued and unpaid interest on that portion of the Notes to be prepaid pursuant to the following subparagraph (ii) shall be applied on the Notes;

(ii) second, an amount equal to the "Indebtedness" in respect of such Unit shall be applied to the prepayment of the Notes so that each of the remaining installments of each Note shall be reduced in the proportion that the principal amount of such "Indebtedness" bears to the aggregate unpaid principal amount of the Notes immediately prior to the prepayment; and

(iii) third, the balance, if any, of such amounts held by the Secured Party after making the applications provided for by the preceding subparagraphs (i) and (ii) shall be promptly released to or upon the order of the Trustee.

For purposes of this Section 4.1(b), the "Indebtedness" in respect of any Unit shall be an amount equal to the product of (A) a fraction, the numerator of which is an amount equal to the Purchase Price (as defined in § 3 of the Lease) of such Unit and the denominator of which is the aggregate Purchase Price of all Units then subject to the Lease (including the Unit which is the subject of the Casualty Occurrence or Termination) times (B) the aggregate unpaid principal amount of the Notes outstanding immediately prior to the prepayment provided for in this § 4.1(b) (after giving effect to all payments of installments of principal made on or prior to the date of prepayment provided for in this § 4.1(b)).

(c) Any proceeds of insurance received by the Secured Party with respect to damage to any Unit will be paid over to the Trustee to be applied by it as provided in the Lease.

4.2. Default. If an event of default as defined in Section 5.1 hereof has occurred and is continuing, all amounts received by the Secured Party referred to in Section 4.1 hereof shall be applied in the manner provided for in Article V in respect of proceeds of the Collateral. If an event which, upon notice or lapse of time or both, would

constitute such an event of default shall have occurred, all such amounts shall be held pending application under Section 4.1 or Article V.

4.3. Indemnity Payments Received by Secured Party. If any indemnity payments for the benefit of the Owner or the Trustee are received by the Secured Party from the Lessee pursuant to Section 6 or Section 12 of the Lease, the Secured Party shall pay over such payments to the Owner or the Trustee, as the case may be.

#### V. EVENTS OF DEFAULT AND REMEDIES

5.1. Events of Default. If any one or more of the following events of default shall occur and be continuing:

(a) if the Trustee shall default in the payment of any installment of principal, interest or premium, if any, on any of the Notes when the same shall become due and payable, whether at maturity or at a date fixed for payment or prepayment or by acceleration or otherwise (irrespective of the provisions of § 7.1 hereof and any other provision hereof limiting the liability of the Trustee), and such default shall continue for a period of ten days; or

(b) if the Trustee shall default in the performance of or compliance with any other covenant, condition or term contained in this Agreement, the Note Purchase Agreement, the Lease or the Lease Assignment (irrespective of the provisions of § 7.1 hereof and any other provision hereof limiting the liability of the Trustee) and such default shall continue for 30 days after the Secured Party shall have demanded in writing performance thereof;

(c) if the Owner shall default in the performance of or compliance with any covenant, condition or term contained in the Note Purchase Agreement or the Trust Agreement and such default shall continue for 30 days after the Secured Party shall have demanded in writing performance thereof; or

(d) any proceeding shall be commenced by or against the Trustee or the Owner for any relief which includes or might result in any modification of the obligations of the Trustee hereunder or under the Note

Purchase Agreement or the Notes or of the Owner under the Trust Agreement or of the Owner under the Note Purchase Agreement under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Trustee or the Owner, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or

(e) any proceeding shall be commenced by or against the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee under the Note Purchase Agreement, the Lease or the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or

(f) if an Event of Default (as defined in the Lease other than one involving the Indemnity Agreement) shall occur and be continuing under the Lease unless the Trustee shall have cured such Event of Default and the corresponding event of default hereunder within the expiration of the applicable grace period; provided, however, that if more than four Events of Default during the term of the Lease or if more than two consecutive Events of Default within twelve months shall have occurred under clause (A) of § 13.1 of the Lease which corresponds to an event of default under Section 5.1(a) hereof, any such Event of Default shall be an event of default hereunder whether or not the corresponding event of default hereunder is cured;

then in every such case the Secured Party may take any one or more of the following actions:

(i) the Secured Party may by notice in writing to the Trustee declare ("Declaration of Default") the entire unpaid principal balance of all the Notes then outstanding (if not then due and payable), together with all accrued and unpaid interest thereon, to be due and payable immediately, and upon any such declaration such principal balance of the Notes together with said accrued and unpaid interest shall become and be immediately due and payable, anything contained in the Notes or in the Note Purchase Agreement to the contrary notwithstanding; or

(ii) the Secured Party may,

(1) terminate the Lease; or

(2) subject to compliance with any applicable mandatory legal requirements, take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Trustee, and search for, take possession of, remove, keep and store the same, or use and operate or lease the same until sold; or

(3) sell, to the extent permitted by law, all and singular the Collateral, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales, as an entirety or otherwise, and at such time and place and upon such terms as the

Secured Party may fix and specify in the notice of sale to be given to the Trustee at least 10 days prior to the date of such sale, or as may be required by law; or

(4) institute proceedings for the complete or partial foreclosure of this Security Agreement under the provisions of the laws of the jurisdiction or jurisdictions in which the Collateral or any part thereof is located, or any other applicable provision of law; or

(5) take any action which is appropriate to enforce its rights under any instrument constituting Collateral, to the extent permitted thereby; or

(6) take all other steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law (for the specific performance of any covenant, condition or agreement in the Notes, the Note Purchase Agreement, the Lease, the Lease Assignment, or in this Security Agreement contained, or in aid of the execution of any power herein or therein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy) or otherwise as the Secured Party shall deem appropriate for the protection and enforcement of its rights hereunder or thereunder;

provided, however, that the Secured Party may not take any action under this paragraph (ii) (other than pursuant to item (6) thereof) unless the Secured Party shall have given notice of a Declaration of Default and the Owner shall not have purchased all the Notes from the holders thereof, at a purchase price equal to the entire unpaid balance of all the Notes then outstanding plus all accrued and unpaid interest thereon to the date of payment, within 15 days of such notice of Declaration of Default; and upon receipt of such payment by the holders thereof, the Owner shall succeed to all the right, title and interest of the holders thereof in the Notes.

In addition, the Secured Party shall have all the rights at the time afforded a secured party under the Uniform Commercial Code of the State of New York.

The Secured Party may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more such sales as to any part of the Collateral remaining unsold, but shall continue unimpaired until all of the Collateral shall have been sold or the Notes and all indebtedness of the Trustee hereunder and under the Note Purchase Agreement shall have been paid.

5.2. Cumulative Remedies. No delay or omission of the Secured Party to exercise any right or power arising from any event of default shall exhaust or impair any such right or power or prevent its exercise during the continuance of such event of default. No waiver by the Secured Party of any such event of default shall extend to or be taken to affect any subsequent event of default, or to impair the rights resulting therefrom except as may be otherwise provided herein. No remedy hereunder is intended to be exclusive of any other remedy but each and every remedy given hereunder or otherwise existing; nor shall the giving, taking or enforcement of any other or additional security, collateral or guarantee for the payment of the indebtedness secured under this Security Agreement operate to prejudice, waive or affect the security of this Security Agreement or any rights, powers or remedies hereunder, nor shall the Secured Party be required to first look to, enforce or exhaust such other or additional security, collateral or guarantees.

5.3. Waiver by Trustee. To the extent permitted by law, the Trustee covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Security Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power

herein granted and delegated to the Secured Party, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

5.4. Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Trustee, the Owner and the Lessee in and to the property sold, shall be a perpetual bar, both at law and in equity, against the Trustee, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Trustee, its successors or assigns.

5.5. Application of Funds. The proceeds of any sale made under or by virtue of this Article V, together with any other sums which then may be held by the Secured Party under this Security Agreement or the Lease Assignment as part of the Collateral or the proceeds thereof, whether under the provisions of this Article V or otherwise, shall be applied as follows:

FIRST: To the payment of the costs and expenses of such sale, including the reasonable fees and expenses of the agents and counsel for the Secured Party, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Secured Party under this Security Agreement or the Lease Assignment, together with interest at the rate of 11-3/4% per annum on all advances made by the Secured Party, and all taxes or assessments, except any taxes, assessments or other charges subject to which the Collateral shall have been sold.

SECOND: To the payment of the whole amount then due, owing or unpaid upon the Notes for principal and interest and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the Notes, then first to interest and then to principal.

THIRD: To the payment of any other sums required to be paid by the Trustee pursuant to any provision of this Security Agreement, the Lease Assignment, the Note Purchase Agreement or of the Notes.

FOURTH: To the payment of the surplus, if any, to the Trustee.

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

## VI. REGISTRATION; SUBSTITUTION OF NOTES

6.1. Registration of Notes. The Trustee shall cause to be kept at its office listed in Section 7.7 a register for the registration and transfer of the Notes. The names and addresses of the holders of Notes, the transfer thereof and the names and addresses of the transferees of Notes shall be registered in the register. The person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes of this Agreement, and the Trustee shall not be affected by any notice or knowledge to the contrary.

6.2. Exchange of Notes. Upon surrender of any Note at the office of the Trustee listed in Section 7.7, the Trustee, at the request of the holder thereof, will execute and deliver, at the Trustee's expense (except as provided below), a reasonable number of new Notes in exchange therefor in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such person as such holder may request and shall be substantially in the form of the Note set out in Annex II to the Note Purchase Agreement. Each such new Note shall be dated and bear interest from the date to which interest has been paid on the surrendered Note or dated the date of the surrendered Note if no interest has been paid thereon. The Trustee may require payment by the transferor of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any transfer.

6.3. Replacement of Notes. Upon receipt by the Trustee of evidence reasonably satisfactory to it of the

ownership of and the loss, theft, destruction or mutilation of any Note and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of the Note is an insurance company with admitted assets of at least \$100,000,000, its own agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancelation thereof,

the Trustee at its expense will execute and deliver in lieu thereof a new Note of like tenor, dated and bearing interest from the date to which interest has been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest has been paid thereon.

## VII. MISCELLANEOUS

7.1. No Personal Liability of Trustee. Notwithstanding anything in this Agreement to the contrary, each representation, warranty and agreement herein made on the part of the financial institution acting as Trustee hereunder (except for the covenant set forth in Section 2.1 hereof) is made and intended not as a personal representation, warranty or agreement by said institution or for the purpose or with the intention of binding said institution personally, but is made and intended for the purpose of binding only the Collateral and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution (except as aforesaid) on account of any representation, warranty or agreement herein of the Trustee (except as aforesaid or in the case of its own gross negligence or wilful misconduct), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Secured Party and by all persons claiming by, through or under the Secured Party; provided, however, that the Secured Party or any person claiming by, through or under the Secured Party making claim hereunder may look to the Collateral for satisfaction of the same. Nothing contained in this Section 7.1 shall limit, restrict or

impair the rights of the Secured Party to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that the Trustee shall not have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Collateral) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Collateral, including the right to proceed against the Units or the Lessee under the Lease.

7.2. Appointment of Agent. The Secured Party may, and at or prior to the time of any transfer of less than all the Notes by the Note Purchasers to another person, the Secured Party shall appoint a bank or trust company located in the United States of America, having capital and surplus aggregating at least \$50,000,000 to act as agent and to hold the right, title and interest of the Secured Party under this Security Agreement and the Lease Assignment on behalf of the holders of the Notes. In such event the Secured Party shall assign, convey or transfer all of its right, title and interest under this Security Agreement and the Lease Assignment to such agent, and such agent shall become a party to this Security Agreement and the Lease Assignment and will agree to be bound by all the terms of this Security Agreement and the Lease Assignment and shall be deemed to be the "Secured Party" under this Security Agreement and the "Assignee" under the Lease Assignment. All fees and expenses of any such agent shall be paid as provided in § 4.8 of the Note Purchase Agreement.

7.3. Filing. The Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Trustee will from time to time perform any other act and will execute, acknowledge, deliver and file any and all further instruments required by law or reasonably requested by the Secured Party for the purpose of proper protection, to the satisfaction of counsel for the Secured Party, of its rights in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Secured Party certificates or other evidence of such filing satisfactory to the Secured Party.

7.4. Governing Law. This Security Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of New York.

7.5. Severability of Invalid Provisions. Any provision of this Security Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

7.6. Counterpart Execution. This instrument and any amendment or supplement to this instrument may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Fully executed sets of counterparts shall be delivered to, and retained by, the Trustee and the Secured Party.

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

(a) if to the Trustee, at 120 South LaSalle Street, Chicago, Illinois 60603, Attention of Corporate Trust Department, with a copy thereof to the Owner at its address for notices under the Note Purchase Agreement and with a copy to the Secured Party; and

(b) if to the Secured Party, to at 1740 Broadway New York, N.Y. 10019, Attention of Securities Investment Department;

or to any such party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

7.8. Amendments. This Security Agreement may, from time to time and at any time, be amended or supplemented by an instrument or instruments, in writing, executed by the parties hereto.

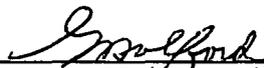
7.9. Release. The Secured Party shall, upon request of the Trustee, release this Security Agreement and the security interest granted hereby by proper instrument or instruments upon presentation of satisfactory evidence that



STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this 8 day of April 1986, before me personally appeared Michael D. Goodman, to me personally known, who, being by me duly sworn, says that he is a ~~First~~ Vice President of EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, that one of the seals affixed to the foregoing instrument is the corporate seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association 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 national banking association.

[Notarial Seal]

  
\_\_\_\_\_  
Notary Public

My Commission expires 7-22-86

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

On this day of April 1986, before me personally appeared Michael Kouvaras, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, 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]

\_\_\_\_\_  
Notary Public

My Commission expires

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[CS&M Ref.: 6197-003D]

SECURITY AGREEMENT

Dated as of March 15, 1986

Between

EXCHANGE NATIONAL BANK OF CHICAGO

as Trustee,

and

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,

as Secured Party.

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SECURITY AGREEMENT dated as of March 15, 1986, between EXCHANGE NATIONAL BANK OF CHICAGO, not individually but solely as trustee ("Trustee") under a Trust Agreement ("Trust Agreement") dated as of September 15, 1980, between the Trustee and THE BANK OF NEW YORK ("Owner"), and THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK ("Secured Party").

WITNESSETH:

The Trustee has acquired the units of equipment described in Schedule A hereto ("Units").

Pursuant to a Note Purchase Agreement dated as of the date hereof ("Note Purchase Agreement") among the Owner Borden, Inc., ("Lessee"), The Mutual Life Insurance Company of New York (for itself and for a separate account) and Mony Pension Insurance Corporation (collectively the "Note Purchasers"), the Note Purchasers will refinance a portion of the cost of the Units delivered to the Trustee by purchasing the Trustee's 10-3/4% Secured Notes due July 1, 2001 ("Notes").

As security for the payment of the Notes, the Trustee has entered into an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") with the Secured Party, assigning to the Secured Party certain of the Trustee's rights in and to the Lease of Equipment dated as of September 15, 1980, as amended by Amendment No. 1 dated as of September 15, 1980, as amended as of March 15, 1986 ("Lease") between the Trustee and the Lessee.

The Lessee has consented to the Lease Assignment pursuant to a Consent and Agreement ("Consent") dated as of the date hereof.

The Lessee has agreed to indemnify the Owner against certain losses, liabilities and expenses pursuant to an Indemnity Agreement ("Indemnity Agreement") dated as of September 15, 1980, between the Lessee and the Owner.

The Trustee also desires to convey, warrant, mortgage, assign, pledge, deposit and grant the Secured Party a security interest in the Units and other collateral to secure payment of the Notes. The Secured Party is acting as such for its own account, for a separate account managed by it and for MONY Pension Insurance Corporation in accordance with their respective interests in the Notes.

NOW, THEREFORE, in consideration of the premises and agreements hereinafter contained and of the purchases and acceptances of the Notes and for other valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

I. GRANTING CLAUSE

1:1 Granting Clause. As security for the due and punctual payment of the principal of, premium, if any, and interest on the Notes and the performance and observance by the Trustee, the Lessee and the Owner of all their respective covenants for the benefit of the Secured Party contained herein, in the Note Purchase Agreement and in the Lease, the Trustee does hereby convey, warrant, mortgage, assign, pledge, deposit and grant a security interest in and confirm unto the Secured Party, and to its successors and assigns, the following described property (herein, together with the rights assigned to the Secured Party under the Lease Assignment, being collectively called "Collateral"):

(a) all the Trustee's estate, right, title and interest in and to the Units and the Lease and all proceeds thereof (except as otherwise provided in the Lease Assignment); and

(b) all the Trustee's estate, right, title and interest in and to all accessories, equipment, parts, appurtenances and other items of tangible personal property of any kind (and all proceeds thereof) acquired by the Trustee in connection with its acquisition of the Units, whether acquired by the Trustee at the time of its acquisition of the Units, or thereafter acquired pursuant to the provisions of the Lease or otherwise, and whether located on the Units or elsewhere, including all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Units, together with all rents, issues, income and profits therefrom;

provided, however, that any equipment which shall not have been duly delivered and accepted under the Lease shall be excluded from this Security Agreement and not included in the term "Units". All rights granted to the Secured Party hereunder shall be in addition to and shall in no way be construed to limit the rights of the Secured Party under the Lease Assignment.

1.2. Parity of Notes. Each and every Note executed and delivered pursuant to the Note Purchase Agreement shall have the same lien, and the principal of and premium, if any, and interest on every Note shall, subject to the terms hereof, be equally and proportionately secured hereby, as if it had been made, executed, delivered, sold and negotiated simultaneously with the execution and delivery hereof.

1.3. Release of Security Interests. The Secured Party shall have and hold the Collateral forever; provided that, if and when all the Notes shall have become due and payable (whether by lapse of time or by acceleration or otherwise), the Trustee shall pay or cause to be paid the full amount due for principal, premium, if any, and interest and if the Trustee shall also pay or cause to be paid all other sums payable to the Secured Party pursuant hereto and pursuant to the Note Purchase Agreement and the Trustee, the Lessee and the Owner shall observe, keep and perform all their respective covenants contained for the benefit of the Secured Party herein and in the Note Purchase Agreement and the Lease, then and in that case and upon the written request of the Trustee this Security Agreement and all agreements herein contained and the estate hereby granted and conveyed shall cease and terminate.

## II. COVENANTS AND AGREEMENTS BY THE TRUSTEE

2.1. Discharge of Liens. The Trustee will pay or discharge any and all claims, liens, charges or security interests (excluding, without limitation, those created by this Agreement and those which the Lessee is required to pay or discharge pursuant to § 15.2 of the Lease) claimed by any party from, through or under the Trustee and, to the extent that it receives funds sufficient for such purpose from the Owner, from, through or under the Owner, not arising out of the transactions contemplated hereby or by the other documents mentioned herein (but including all income taxes arising out of the receipt of rentals and other payments under the Lease and other proceeds from the Units) which, if unpaid, might become a lien, charge or security interest on or with respect to any Unit, or the Secured Party's interest in the Lease and the payments to be made thereunder, but the Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not

materially adversely affect the security interest of the Secured Party in the Collateral or otherwise under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

2.2. Further Assurances. The Trustee will, from time to time, do and perform any act and will execute, acknowledge, deliver and file, register and record any and all further instruments reasonably requested by the Secured Party for the purpose of the proper protection of the security interest of the Secured Party in the Collateral.

2.3. Notice of Default. The Trustee further covenants and agrees that it will give the Secured Party prompt written notice of any event or condition constituting an event of default under this Agreement or an Event of Default under the Lease of which an officer or employee in the Corporate Trust Department of the Trustee has actual knowledge.

### III. POSSESSION, USE AND RELEASE OF COLLATERAL

3.1. Possession of Collateral. So long as no event of default shall have occurred and be continuing hereunder, the Trustee shall be entitled to the possession and use of the Units, and to permit the use of the Units as provided in the Lease.

3.2. Release of Property. So long as no Event of Default or an event or condition which, with the passage of time or the giving of notice or both, would constitute such an Event of Default under the Lease has occurred and is continuing to the knowledge of the Secured Party, the Secured Party shall execute a release in respect of any Unit with respect to which a Casualty Occurrence (as defined in Section 7.1 of the Lease) or a Termination (as defined in Section 30 of the Lease) shall have occurred upon receipt from the Lessee of written notice designating the Unit in respect of which the Lease will terminate and the receipt from the Lessee of the Secured Party's portion of the Casualty Value (as defined in Section 7.4 of the Lease) or

the Termination Value (as defined in Section 30 of the Lease) for such Unit, as appropriate.

3.3. Transfers Prohibited. Except as permitted by the Trust Agreement, the Trustee will not sell, assign or transfer its rights under this Agreement or, except as provided in this Article III, transfer the right to possession of any Unit. The Trustee will not consent to any transfer of any of the right, title or interest of the Owner in and to the Trust Agreement or the Trust Estate to any institution, corporation or person under clause (c) of Section 6.01 of the Trust Agreement without the prior written consent of the Secured Party. The Trustee will not enter into any supplement, amendment or modification of the Trust Agreement except as provided in Section 8.01 thereof as amended and as in effect on the Settlement Date under the Note Purchase Agreement.

#### IV. APPLICATION OF ASSIGNED RENTALS AND CERTAIN OTHER MONEYS RECEIVED BY THE SECURED PARTY

4.1. Application of Rents and Other Payments. Pursuant to the Lease Assignment the Trustee has assigned to the Secured Party for security purposes rentals, profits, and other sums due and to become due under the Lease constituting part of the Collateral hereunder. So long as no event of default as defined in Section 5.1 hereof (or any event which, upon notice or lapse of time or both, would constitute such an event of default) has occurred and is continuing:

(a) The amounts from time to time received by the Secured Party which constitute payment by the Lessee under the Lease of the installments of rental pursuant to Section 3 of the Lease shall be applied, first, to the payment of the installments of principal and interest (and in each case first to interest and then to principal) of the Notes which have matured or will mature on or before the due date of the installments of rental which are received by the Secured Party, and then the balance, if any, of such amounts shall promptly be paid to or upon the order of the Trustee.

(b) Payments of Casualty Value and Termination Value (including all amounts of insurance or recoveries or condemnation or sale proceeds relating to a Casualty Occurrence or a Termination with respect to such Unit) from time to time received by the Secured Party in

respect of any Unit pursuant to the Lease shall be applied by the Secured Party as follows:

(i) first, an amount equal to the accrued and unpaid interest on that portion of the Notes to be prepaid pursuant to the following subparagraph (ii) shall be applied on the Notes;

(ii) second, an amount equal to the "Indebtedness" in respect of such Unit shall be applied to the prepayment of the Notes so that each of the remaining installments of each Note shall be reduced in the proportion that the principal amount of such "Indebtedness" bears to the aggregate unpaid principal amount of the Notes immediately prior to the prepayment; and

(iii) third, the balance, if any, of such amounts held by the Secured Party after making the applications provided for by the preceding subparagraphs (i) and (ii) shall be promptly released to or upon the order of the Trustee.

For purposes of this Section 4.1(b), the "Indebtedness" in respect of any Unit shall be an amount equal to the product of (A) a fraction, the numerator of which is an amount equal to the Purchase Price (as defined in § 3 of the Lease) of such Unit and the denominator of which is the aggregate Purchase Price of all Units then subject to the Lease (including the Unit which is the subject of the Casualty Occurrence or Termination) times (B) the aggregate unpaid principal amount of the Notes outstanding immediately prior to the prepayment provided for in this § 4.1(b) (after giving effect to all payments of installments of principal made on or prior to the date of prepayment provided for in this § 4.1(b)).

(c) Any proceeds of insurance received by the Secured Party with respect to damage to any Unit will be paid over to the Trustee to be applied by it as provided in the Lease.

4.2. Default. If an event of default as defined in Section 5.1 hereof has occurred and is continuing, all amounts received by the Secured Party referred to in Section 4.1 hereof shall be applied in the manner provided for in Article V in respect of proceeds of the Collateral. If an event which, upon notice or lapse of time or both, would

constitute such an event of default shall have occurred, all such amounts shall be held pending application under Section 4.1 or Article V.

4.3. Indemnity Payments Received by Secured Party. If any indemnity payments for the benefit of the Owner or the Trustee are received by the Secured Party from the Lessee pursuant to Section 6 or Section 12 of the Lease, the Secured Party shall pay over such payments to the Owner or the Trustee, as the case may be.

#### V. EVENTS OF DEFAULT AND REMEDIES

5.1. Events of Default. If any one or more of the following events of default shall occur and be continuing:

(a) if the Trustee shall default in the payment of any installment of principal, interest or premium, if any, on any of the Notes when the same shall become due and payable, whether at maturity or at a date fixed for payment or prepayment or by acceleration or otherwise (irrespective of the provisions of § 7.1 hereof and any other provision hereof limiting the liability of the Trustee), and such default shall continue for a period of ten days; or

(b) if the Trustee shall default in the performance of or compliance with any other covenant, condition or term contained in this Agreement, the Note Purchase Agreement, the Lease or the Lease Assignment (irrespective of the provisions of § 7.1 hereof and any other provision hereof limiting the liability of the Trustee) and such default shall continue for 30 days after the Secured Party shall have demanded in writing performance thereof;

(c) if the Owner shall default in the performance of or compliance with any covenant, condition or term contained in the Note Purchase Agreement or the Trust Agreement and such default shall continue for 30 days after the Secured Party shall have demanded in writing performance thereof; or

(d) any proceeding shall be commenced by or against the Trustee or the Owner for any relief which includes or might result in any modification of the obligations of the Trustee hereunder or under the Note

Purchase Agreement or the Notes or of the Owner under the Trust Agreement or of the Owner under the Note Purchase Agreement under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Trustee or the Owner, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or

(e) any proceeding shall be commenced by or against the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee under the Note Purchase Agreement, the Lease or the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or

(f) if an Event of Default (as defined in the Lease other than one involving the Indemnity Agreement) shall occur and be continuing under the Lease unless the Trustee shall have cured such Event of Default and the corresponding event of default hereunder within the expiration of the applicable grace period; provided, however, that if more than four Events of Default during the term of the Lease or if more than two consecutive Events of Default within twelve months shall have occurred under clause (A) of § 13.1 of the Lease which corresponds to an event of default under Section 5.1(a) hereof, any such Event of Default shall be an event of default hereunder whether or not the corresponding event of default hereunder is cured;

then in every such case the Secured Party may take any one or more of the following actions:

(i) the Secured Party may by notice in writing to the Trustee declare ("Declaration of Default") the entire unpaid principal balance of all the Notes then outstanding (if not then due and payable), together with all accrued and unpaid interest thereon, to be due and payable immediately, and upon any such declaration such principal balance of the Notes together with said accrued and unpaid interest shall become and be immediately due and payable, anything contained in the Notes or in the Note Purchase Agreement to the contrary notwithstanding; or

(ii) the Secured Party may,

(1) terminate the Lease; or

(2) subject to compliance with any applicable mandatory legal requirements, take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Trustee, and search for, take possession of, remove, keep and store the same, or use and operate or lease the same until sold; or

(3) sell, to the extent permitted by law, all and singular the Collateral, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales, as an entirety or otherwise, and at such time and place and upon such terms as the

Secured Party may fix and specify in the notice of sale to be given to the Trustee at least 10 days prior to the date of such sale, or as may be required by law; or

(4) institute proceedings for the complete or partial foreclosure of this Security Agreement under the provisions of the laws of the jurisdiction or jurisdictions in which the Collateral or any part thereof is located, or any other applicable provision of law; or

(5) take any action which is appropriate to enforce its rights under any instrument constituting Collateral, to the extent permitted thereby; or

(6) take all other steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law (for the specific performance of any covenant, condition or agreement in the Notes, the Note Purchase Agreement, the Lease, the Lease Assignment, or in this Security Agreement contained, or in aid of the execution of any power herein or therein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy) or otherwise as the Secured Party shall deem appropriate for the protection and enforcement of its rights hereunder or thereunder;

provided, however, that the Secured Party may not take any action under this paragraph (ii) (other than pursuant to item (6) thereof) unless the Secured Party shall have given notice of a Declaration of Default and the Owner shall not have purchased all the Notes from the holders thereof, at a purchase price equal to the entire unpaid balance of all the Notes then outstanding plus all accrued and unpaid interest thereon to the date of payment, within 15 days of such notice of Declaration of Default; and upon receipt of such payment by the holders thereof, the Owner shall succeed to all the right, title and interest of the holders thereof in the Notes.

In addition, the Secured Party shall have all the rights at the time afforded a secured party under the Uniform Commercial Code of the State of New York.

The Secured Party may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more such sales as to any part of the Collateral remaining unsold, but shall continue unimpaired until all of the Collateral shall have been sold or the Notes and all indebtedness of the Trustee hereunder and under the Note Purchase Agreement shall have been paid.

5.2. Cumulative Remedies. No delay or omission of the Secured Party to exercise any right or power arising from any event of default shall exhaust or impair any such right or power or prevent its exercise during the continuance of such event of default. No waiver by the Secured Party of any such event of default shall extend to or be taken to affect any subsequent event of default, or to impair the rights resulting therefrom except as may be otherwise provided herein. No remedy hereunder is intended to be exclusive of any other remedy but each and every remedy given hereunder or otherwise existing; nor shall the giving, taking or enforcement of any other or additional security, collateral or guarantee for the payment of the indebtedness secured under this Security Agreement operate to prejudice, waive or affect the security of this Security Agreement or any rights, powers or remedies hereunder, nor shall the Secured Party be required to first look to, enforce or exhaust such other or additional security, collateral or guarantees.

5.3. Waiver by Trustee. To the extent permitted by law, the Trustee covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Security Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power

herein granted and delegated to the Secured Party, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

5.4. Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Trustee, the Owner and the Lessee in and to the property sold, shall be a perpetual bar, both at law and in equity, against the Trustee, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Trustee, its successors or assigns.

5.5. Application of Funds. The proceeds of any sale made under or by virtue of this Article V, together with any other sums which then may be held by the Secured Party under this Security Agreement or the Lease Assignment as part of the Collateral or the proceeds thereof, whether under the provisions of this Article V or otherwise, shall be applied as follows:

FIRST: To the payment of the costs and expenses of such sale, including the reasonable fees and expenses of the agents and counsel for the Secured Party, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Secured Party under this Security Agreement or the Lease Assignment, together with interest at the rate of 11-3/4% per annum on all advances made by the Secured Party, and all taxes or assessments, except any taxes, assessments or other charges subject to which the Collateral shall have been sold.

SECOND: To the payment of the whole amount then due, owing or unpaid upon the Notes for principal and interest and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the Notes, then first to interest and then to principal.

THIRD: To the payment of any other sums required to be paid by the Trustee pursuant to any provision of this Security Agreement, the Lease Assignment, the Note Purchase Agreement or of the Notes.

FOURTH: To the payment of the surplus, if any, to the Trustee.

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

## VI. REGISTRATION; SUBSTITUTION OF NOTES

6.1. Registration of Notes. The Trustee shall cause to be kept at its office listed in Section 7.7 a register for the registration and transfer of the Notes. The names and addresses of the holders of Notes, the transfer thereof and the names and addresses of the transferees of Notes shall be registered in the register. The person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes of this Agreement, and the Trustee shall not be affected by any notice or knowledge to the contrary.

6.2. Exchange of Notes. Upon surrender of any Note at the office of the Trustee listed in Section 7.7, the Trustee, at the request of the holder thereof, will execute and deliver, at the Trustee's expense (except as provided below), a reasonable number of new Notes in exchange therefor in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such person as such holder may request and shall be substantially in the form of the Note set out in Annex II to the Note Purchase Agreement. Each such new Note shall be dated and bear interest from the date to which interest has been paid on the surrendered Note or dated the date of the surrendered Note if no interest has been paid thereon. The Trustee may require payment by the transferor of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any transfer.

6.3. Replacement of Notes. Upon receipt by the Trustee of evidence reasonably satisfactory to it of the

ownership of and the loss, theft, destruction or mutilation of any Note and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of the Note is an insurance company with admitted assets of at least \$100,000,000, its own agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancelation thereof,

the Trustee at its expense will execute and deliver in lieu thereof a new Note of like tenor, dated and bearing interest from the date to which interest has been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest has been paid thereon.

## VII. MISCELLANEOUS

7.1. No Personal Liability of Trustee. Notwithstanding anything in this Agreement to the contrary, each representation, warranty and agreement herein made on the part of the financial institution acting as Trustee hereunder (except for the covenant set forth in Section 2.1 hereof) is made and intended not as a personal representation, warranty or agreement by said institution or for the purpose or with the intention of binding said institution personally, but is made and intended for the purpose of binding only the Collateral and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution (except as aforesaid) on account of any representation, warranty or agreement herein of the Trustee (except as aforesaid or in the case of its own gross negligence or wilful misconduct), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Secured Party and by all persons claiming by, through or under the Secured Party; provided, however, that the Secured Party or any person claiming by, through or under the Secured Party making claim hereunder may look to the Collateral for satisfaction of the same. Nothing contained in this Section 7.1 shall limit, restrict or

impair the rights of the Secured Party to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that the Trustee shall not have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Collateral) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Collateral, including the right to proceed against the Units or the Lessee under the Lease.

7.2. Appointment of Agent. The Secured Party may, and at or prior to the time of any transfer of less than all the Notes by the Note Purchasers to another person, the Secured Party shall appoint a bank or trust company located in the United States of America, having capital and surplus aggregating at least \$50,000,000 to act as agent and to hold the right, title and interest of the Secured Party under this Security Agreement and the Lease Assignment on behalf of the holders of the Notes. In such event the Secured Party shall assign, convey or transfer all of its right, title and interest under this Security Agreement and the Lease Assignment to such agent, and such agent shall become a party to this Security Agreement and the Lease Assignment and will agree to be bound by all the terms of this Security Agreement and the Lease Assignment and shall be deemed to be the "Secured Party" under this Security Agreement and the "Assignee" under the Lease Assignment. All fees and expenses of any such agent shall be paid as provided in § 4.8 of the Note Purchase Agreement.

7.3. Filing. The Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Trustee will from time to time perform any other act and will execute, acknowledge, deliver and file any and all further instruments required by law or reasonably requested by the Secured Party for the purpose of proper protection, to the satisfaction of counsel for the Secured Party, of its rights in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Secured Party certificates or other evidence of such filing satisfactory to the Secured Party.

7.4. Governing Law. This Security Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of New York.

7.5. Severability of Invalid Provisions. Any provision of this Security Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

7.6. Counterpart Execution. This instrument and any amendment or supplement to this instrument may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Fully executed sets of counterparts shall be delivered to, and retained by, the Trustee and the Secured Party.

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

(a) if to the Trustee, at 120 South LaSalle Street, Chicago, Illinois 60603, Attention of Corporate Trust Department, with a copy thereof to the Owner at its address for notices under the Note Purchase Agreement and with a copy to the Secured Party; and

(b) if to the Secured Party, to at 1740 Broadway New York, N.Y. 10019, Attention of Securities Investment Department;

or to any such party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

7.8. Amendments. This Security Agreement may, from time to time and at any time, be amended or supplemented by an instrument or instruments, in writing, executed by the parties hereto.

7.9. Release. The Secured Party shall, upon request of the Trustee, release this Security Agreement and the security interest granted hereby by proper instrument or instruments upon presentation of satisfactory evidence that

all indebtedness secured hereby has been fully paid or discharged.

7.10. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto. In the event that the Secured Party shall transfer all the outstanding Notes to another person, the Secured Party may assign, convey or transfer all its right, title and interest under this Agreement and the Lease Assignment to such person, and such person shall be deemed to be the "Secured Party" under this Agreement and the "Assignee" under the Lease Assignment.

7.11. Headings. Any headings or captions preceding the text of the several Sections hereof are intended solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the Trustee and the Secured Party have each caused this instrument to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

[Seal]

Attest:

by

\_\_\_\_\_  
Title: Assistant Trust  
Officer

EXCHANGE NATIONAL BANK OF  
CHICAGO, not individually,  
but solely as Trustee,

by

\_\_\_\_\_  
Vice President

[Seal]

Attest:

by

Howard D. Buehler  
Title: Assistant Secretary

THE MUTUAL LIFE INSURANCE  
COMPANY OF NEW YORK,

by

Michael Korman  
Title: Assistant Vice  
President

