OSTER
Researching Services
12897 Colonial Dr. • Mt. Airy, Md. 21771
301-253-6040

221867 A

June 7, 1999

RECORDATION NO. 221867 FILED

JUN 7 '99 9-00AM

Mr. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recording with the Surface Transportation Board is a Master Lease Agreement dated 5/12/99 between the following parties:

Lessor: U.S. Bancorp Leasing & Financial
7659 SW Mohawk Street
P. O. Box 2177
Tualatin, OR 97062

Lessee: Agile Stone Systems, Inc.
6435 South Pontiac Court
Englewood, CO 80111

Lessee: Rock & Rail, Inc. (Same Address)

Please record this agreement as a primary document.

Also enclosed is a Schedule to Lease Agreement dated 5/12/99 to be filed as a secondary document to the Master Lease Agreement dated 5/12/99. The equipment included in this agreement is as follows:

Equipment: 1,GP-30 Locomotive / RRRR 301

The filing fee of $52 is enclosed. Thank you for your assistance.

Sincerely,

Mary A Oster

Mary Ann Oster
Research Consultant

Enclosure

Mary A Oster

MASTER LEASE AGREEMENT

usbancorp
Leasing & Financial
PHONE (612) 973-0939
FAX (612) 973-0833

DATED AS OF: May 12, 1999

LESSOR: **U.S. Bancorp Leasing & Financial**
7659 SW Mohawk Street PO Box 2177
Tualatin OR 97062-2177

RECORDATION NO. 22186 FILED

JUN 7 '99 9-00AM

LESSEE: **Agile Stone Systems, Inc. and Rock & Rail, Inc.**
[Notice/Billing Address]
6435 South Pontiac Court
Englewood CO 80111-
County: Arapahoe

LESSOR AND LESSEE COVENANT AND AGREE AS FOLLOWS:

1. **PROPERTY LEASED.** Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the personal property together with any replacements, additions, repairs, now or hereafter incorporated therein or affixed or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries (collectively, the "Property") as described in any Schedule to Master Lease Agreement ("Schedule") now or hereafter executed by the parties hereto, the terms of which are incorporated herein.

2. **TERM.** This Lease shall become effective on the execution hereof by Lessor. The Term of this Lease shall consist of an "Interim Term" and a "Base Term" in regard to each Schedule. The Interim Term for each Schedule shall begin on the date that Lessee executes a Delivery and Acceptance Certificate in connection with any item of Property listed on each Schedule or provides to Lessor written approval for payment for such item of Property. The Interim Term shall continue until the Base Term Commencement Date set forth in each Schedule. The Base Term shall begin on the Base Term Commencement Date and shall continue for the period specified in each Schedule. During the Interim Term, if any, Lessee shall pay rental ("Pro Rata Rental") in the amount set forth in each Schedule plus applicable tax thereon.

3. **RENT, PAYMENT AND TAXES.** Rental payments are specified in each Schedule. All rents shall be payable by Lessee on or before the payment date shown in each Schedule at Lessor's address herein, or as otherwise directed by Lessor, without notice or demand and without abatement, set-off, deferment, reduction, counterclaim, recoupment or deduction of any amount whatsoever for any reason. For any payment due hereunder which is not paid within ten (10) days after the date such payment is due, Lessee agrees to pay a late charge calculated thereon at a rate of five percent (5.0%) of such overdue amount. Payments received shall be applied first to delinquent amounts due, including late charges, then to current installments. If any such rental payment is made by check and such check is returned to Lessor for any reason, including without limitation, insufficient funds in Lessee's account, then Lessee shall be assessed a fee of $25.00 in addition to any other late charge or any other fee which may be applicable.

Lessee shall pay when due all taxes, fees, assessments, or other charges, however designated, now or hereafter levied or based upon the rentals, ownership, use, possession, leasing, operation, control, or maintenance of the Property, whether or not paid or payable by Lessor, excluding Lessor's income, franchise and business and occupation taxes, and shall supply Lessor with proof of payment satisfactory to Lessor upon request. At its option, Lessor may pay any tax, assessment, insurance premium, expense, repair, release, confiscation expense, lien, encumbrance, or other charge or fee payable hereunder by Lessee, and any amount so paid shall be repayable by Lessee on demand. If the Property is located in a jurisdiction which imposes any "Sales," "Use," or "Rental" tax, Lessor shall collect such tax from Lessee and remit such tax to the appropriate taxing authority or Lessee shall remit such tax directly to the appropriate taxing authority. Such requirement may only be waived if Lessee is exempt from such tax under applicable laws or regulations. Lessee is responsible for ensuring that such exemption is properly documented in accordance with such laws and regulations and that such documentation is provided to Lessor at the inception of each Schedule. If the Property is subject to Personal Property Taxes, both Lessee and Lessor are required to advise the proper taxing authorities of all leased property. Lessee agrees that it will report the Property as having an original cost as set forth on the Schedule and as Property leased from U.S. Bancorp Leasing & Financial. If Lessor receives an invoice from the taxing authorities for applicable Personal Property Taxes, Lessor shall pay any such taxes directly and Lessee agrees to reimburse Lessor for all such taxes paid by Lessor. If Lessee receives such invoice, Lessee agrees to promptly remit such tax directly to the taxing authority and maintain proof of payment. Upon termination of this Lease, Lessor will, if applicable, estimate Personal Property Taxes on the Property based upon the most recent tax assessment of the Property or on the tax rates and taxable value calculations as available from the appropriate taxing jurisdiction. In the event that the actual Personal Property Tax bill is within $500 of such estimate, then Lessor shall not seek reimbursement from Lessee for any underpayment, and Lessor may retain any overpayment. If the difference between such estimate and the actual tax bill exceeds $500, Lessor shall refund or Lessee shall remit the entire difference.

4. **OWNERSHIP, USE AND INSPECTION; PERSONAL PROPERTY.** Lessee transfers to Lessor all right, title and interest, including any and all ownership interest, which Lessee may have in or to the Property. Lessee represents and warrants that it has the legal right to make such transfer and that such transfer does not constitute a transfer of all or substantially all of the assets of Lessee, and that such transfer does not constitute all or a portion of a "bulk transfer" under the Uniform Commercial Code. It is agreed between the parties hereto that Lessor shall be the owner of, and hold title to, the

Property for all purposes throughout this Lease. So long as Lessee shall not be in default, Lessee shall be entitled to the possession, use, and quiet enjoyment of the Property during the Term specified in each Schedule. At its own risk, Lessee shall use or permit the use of the Property at the location specified in each Schedule (unless the Property is mobile in nature) and, Lessee shall not, without Lessor's prior written consent: i) remove the Property from such location (unless the Property is mobile in nature); ii) loan, sublet, part with possession of or otherwise dispose of the Property; iii) permit use or operation of the Property by any one other than Lessee's qualified employees; or, change or alter the Property. Lessee shall at its sole expense maintain the Property in good repair, appearance and functional order; and shall not use or permit the use of the Property in any unintended, injurious or unlawful manner. At any reasonable time during normal business hours, Lessee will make available to Lessor the Property and all manuals, records, certificates and documents regarding its use, maintenance, and repair, for such testing and inspection as Lessor may reasonably require. Lessee shall not create, cause, or permit any kind of claim, levy, lien or legal process on the Property, and shall forthwith satisfy, remove and procure the release thereof. The Property is and always shall remain personal property. Lessee shall not cause or permit the Property to be used or located in such a manner that it might be deemed a fixture. Lessee shall secure from each person not a party hereto who might secure an interest, lien or other claim in the Property, a waiver thereof. Lessee shall affix and maintain, at its expense, in a prominent and visible location, all reasonable notices or markings supplied by Lessor which reflect Lessor's interest in the Property.

5. NET LEASE. This is a fully net, noncancelable contract of lease which may not be terminated for any reason except as otherwise specifically provided herein. Lessee hereby acknowledges that the Property was selected by Lessee from Supplier(s) chosen by Lessee. Lessee is familiar with all Supply Contract rights provided by the Supplier(s) and is aware that the Supplier(s) may be contacted for a full description of any rights Lessee may have under any Supply Contract. Provided no Event of Default shall occur and continue hereunder, Lessor hereby assigns to Lessee without recourse, all rights arising under any warranties applicable to the Property provided by the manufacturer or any other person. All proceeds of any warranty claim from the manufacturer or any other person shall first be used to repair the affected Property.

Except as specifically provided in any Schedule, nothing herein or in any other document executed in conjunction herewith shall be construed as conveying or granting to Lessee any option to acquire any right, title or interest, legal or equitable, in or to the Property, other than use, possession and quiet enjoyment of the Property, subject to and upon full compliance with the provisions hereof. Lessee and Lessor agree that this Lease is a "Finance Lease" as defined by the Uniform Commercial Code Article 2A, the Uniform Personal Property Leasing Act. No filing made under the Uniform Commercial Code (the "UCC") or similar law in any jurisdiction shall be a factor in any determination as to whether this Lease is a "lease intended as security." Notwithstanding the foregoing, to the extent that this Lease is or shall be construed as a "lease intended as security," Lessee hereby grants to Lessor a security interest in and to the Property and any and all proceeds thereof (including insurance proceeds) as security for all Lessee's obligations to Lessor of every kind and nature.

6. LESSEE'S REPRESENTATIONS AND WARRANTIES. Lessee represents and warrants to Lessor that as of the date of this Lease and of each Schedule: (a) Lessee has adequate power and capacity to enter into this Lease and any other documents required to be delivered in connection herewith (collectively, the "Documents"); (b) the Documents have been duly authorized, executed and delivered by Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms; (c) there are no proceedings presently pending or threatened against Lessee which will impair its ability to perform under the Lease; (d) Lessee's entering into the Lease and leasing the Property does not and will not: (i) violate any judgment, order, or law applicable to the Lease, Lessee or Lessee's organizational documents; or (ii) result in the creation of any lien, security interest or other encumbrance upon the Property; (e) all information and representations furnished or to be furnished by Lessee to Lessor are complete, accurate and correct; (d) all financial data delivered to Lessor pertaining to Lessee or any consolidated group of companies of which Lessee is a member ("Lessee Group") have been prepared in accordance with generally accepted accounting principles applied on a consistent basis with prior periods and fairly present the financial position and results from operations of Lessee, or of the Lessee Group, as of the stated date and period(s); (f) since the date of the most recently delivered financial data, there has been no material adverse change in the financial or operating condition of Lessee or of the Lessee Group; and, (g) if Lessee is a corporation, limited liability company or partnership, it is and will be validly existing and in good standing under laws of the state of its incorporation or organization; the persons signing the Documents are acting with the full authority of its board of directors, members or partners and hold the offices indicated below their signatures which are genuine.

7. INDEMNIFICATION, INSURANCE AND RISK OF LOSS. Lessee assumes liability for, and agrees to defend, indemnify and hold Lessor harmless from any claim, liability, loss, cost, expense, or damage of every nature (including, without limitation, fines, forfeitures, penalties, settlements, and attorneys' fees) by or to any person whomsoever, regardless of the basis, including wrongful, negligent or improper act or misuse by Lessor, which directly or indirectly results from or pertains to the purchase, leasing, manufacture, delivery, ownership, use, possession, selection, performance, operation, inspection, condition (including without limitation, latent or other defects, and whether or not discoverable), improvements, removal, return or storage of the Property except arising while the Property is in the possession of Lessor or its agents. Upon request of Lessor, Lessee shall assume the defense of all demands, claims, or actions, suits and all proceedings against Lessor for which indemnity is provided and shall allow Lessor to participate in the defense thereof. Lessor shall be subrogated to all rights of Lessee for any matter which Lessor has assumed obligation hereunder, and may settle any such demand, claim, or action without Lessee's prior consent, and without prejudice to Lessor's right to indemnification hereunder.

Lessee shall fully insure the Property against all risks which are customarily insured against on the type of property leased hereunder. This requirement shall be waived if Lessee participates in Lessor's "Insurance Waiver Program." Pursuant to such program, Lessor would purchase satisfactory insurance for the mutual benefit of Lessor and Lessee as their interests may appear. Should Lessee decline to participate in such Program, then, at its expense, Lessee shall maintain in force, at all times from shipment of the Property to Lessee until surrender thereof, all risk property damage insurance for not less than the full replacement cost of the Property with such deductible and from such insurance carrier as shall be satisfactory to Lessor. Lessee shall also maintain liability insurance coverage of not less than $1,000,000.00 per occurrence. Such insurance policies must name Lessor as an additional insured and loss payee, and provide for ten (10) days advance written notice to Lessor of modification or cancellation. Lessee shall, upon request, deliver to Lessor satisfactory evidence of such insurance coverage. In the event Lessee fails to do so, Lessor may, at Lessor's option, in addition to any other rights available to Lessor, obtain coverage, and any sum paid therefor by Lessor (including any charges assessed by Lessor for such service) shall be immediately due and payable to Lessor by Lessee. No loss or damage to the Property shall impair any obligation of Lessee hereunder. Lessee assumes all risk of damage to or loss of the Property, however caused, while in transit and during the term hereof. If any Property is totally destroyed, Lessee shall immediately discharge its obligations hereunder by paying Lessor the amounts specified in Section 13 (e) or in any Stipulated Loss Table prepared in connection with any Schedule, less the amount of any recovery received by Lessor from any insurance or other source.

8. INCOME TAX INDEMNITY. Lessee hereby represents, warrants, and covenants to Lessor as follows:

This Lease will be a lease for Federal, state and local income tax purposes; Lessor will be treated as the purchaser, owner, lessor, and original user of the Property and Lessee will be treated as the lessee of the Property for such purposes. Lessor shall be entitled to depreciation deductions with respect to each item of Property as provided by Section 167(a) of the Internal Revenue Code of 1986, as amended (the "Code"), determined under Section 168 of the Code by using the applicable depreciation method, the applicable recovery period, and the applicable convention, all as specified on the applicable Schedule for the Property, and Lessor shall also be entitled to corresponding state and local depreciation deductions. For purposes of determining depreciation deductions, the Property shall have an income tax basis equal to Lessor's cost for the Property specified on the applicable Schedule, plus such expenses of the transaction incurred by Lessor as may be included in basis under Section 1012 of the Code. The maximum Federal, state and local income tax rates applicable to Lessor in effect on the date of execution and delivery of a Schedule with respect to an item or items of Property will not change during the lease term applicable to such Property.

If for any reason whatsoever any of the representations, warranties, or covenants of Lessee contained in this Lease or in any other agreement relating to the Property shall prove to be incorrect and (i) Lessor shall determine that it is not entitled to claim all or any portion of the depreciation deductions in the amounts and in the taxable years determined above, or (ii) such depreciation deductions are disallowed, adjusted, re-computed, reduced, or recaptured, in whole or in part, by the Internal Revenue Service, state or local tax authorities (such determination, disallowance, adjustment, re-computation, reduction, or recapture being herein called a "Loss"), then Lessee shall pay to Lessor as an indemnity and as additional rent such amount as shall, in the reasonable opinion of Lessor, cause Lessor's after-tax economic yield (the "Net Economic Return") to equal the Net Economic Return that would have been realized by Lessor if such Loss had not occurred. The amount payable to Lessor pursuant to this section shall be payable on the next succeeding rental payment date after written demand therefor from Lessor, accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable.

Further, in the event (i) there shall be any change, amendment, addition, or modification of any provision of the Code or regulations thereunder or interpretation thereof prior to the commencement date of the term of this Lease with respect to any Property or (ii) if at any time there shall be any change, amendment, addition, or modification of any provision of applicable state or local law or of the Code or regulations thereunder or interpretation thereof with respect to the maximum applicable income tax rates as set forth above, which results in a decrease in Lessor's Net Economic Return, then Lessor shall recalculate and submit to Lessee the modified rental rate required to provide Lessor with the same Net Economic Return as it would have realized absent such change and the lease shall thereupon automatically be deemed to be amended to adopt such rental rate and values.

9. INSPECTION AND REPORTS. Lessor shall have the right, at any reasonable time, to enter on Lessee's premises or elsewhere and inspect the Property or observe its use. Upon Lessor's request, but in no event later than thirty (30) days after such request, Lessee will deliver all information requested by Lessor which Lessor deems necessary to determine Lessee's current financial condition or faithful performance of the terms hereof. Lessee shall give Lessor notice and copy of all tax notices, reports, or inquiries, and of all seizure, attachment, or judicial process affecting or relating to the use, maintenance, operation, possession, or ownership of the Property.

10. ASSIGNMENT. LESSEE SHALL NOT ASSIGN OR IN ANY WAY DISPOSE OF ALL OR ANY OF ITS RIGHTS OR OBLIGATIONS UNDER THIS LEASE OR ENTER INTO ANY SUBLEASE OF ALL OR ANY PART OF THE LEASED PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR WHICH SHALL NOT BE UNREASONABLY WITHHELD. IN CONNECTION WITH THE GRANTING OF SUCH CONSENT AND THE PREPARATION OF NECESSARY DOCUMENTATION, A FEE SHALL BE ASSESSED EQUAL TO ONE PERCENT (1%) OF THE TOTAL REMAINING BALANCE THEN DUE HEREUNDER.

LESSEE AGREES THAT LESSOR MAY ASSIGN OR TRANSFER THIS LEASE OR LESSOR'S INTEREST IN THE LEASED PROPERTY WITHOUT NOTICE TO LESSEE. Any assignee of Lessor shall have all of the rights, but none of the obligations, of Lessor under this Lease and Lessee agrees that it will not assert against any assignee of Lessor, but may assert against Lessor, any defense, counter claim or offset that Lessee may have against Lessor. Lessee acknowledges that any assignment or transfer by Lessor will not materially change Lessee's duties or obligations under this Lease nor materially increase the burdens or risks imposed on Lessee. Lessee shall cooperate with Lessor in executing any documentation reasonably required by Lessor or any assignee of Lessor to effectuate any such assignment.

11. SURRENDER. On the expiration or termination of the Term set forth in each Schedule or at any other time that Lessee is required to deliver the Property to Lessor, Lessee shall, at its risk and expense and according to manufacturers recommendations, assemble, prepare for delivery, and deliver the Property and all manuals, records, certificates and documents regarding its use, maintenance, and repair to any location specified by Lessor within the continental United States. The Property shall be delivered unencumbered and free of any liens, charges, or other obligations (including delivery expense and sales or use taxes, if any, arising from such delivery) and shall be in working order, in the same condition, appearance, and functional order as when first leased hereunder, reasonable wear excepted. Any upgrades, parts or improvements may only be removed from the Property if their removal shall not impair the operation or value of the Property. Any upgrades or improvements which cannot be removed in accordance herewith shall become the property of Lessor. Holdover Rental shall be due and owing for each month beyond the Term hereof that Lessee fails to either surrender the Property or to remit the Purchase Option or TRAC Amount specified in the applicable Schedule. Any and all rental payments pursuant to this Paragraph shall be deemed solely to be payments for possession and use of the Property after the expiration of the Term, and shall not be credited to any other obligation of Lessee to Lessor.

12. DEFAULT. Time is of the essence under this Lease, and Lessee shall be in default in event of any of the following: ("Event of Default"): (a) any failure to pay when due the full amount of any payment required hereunder, including, without limitation, rent, taxes, liens, insurance, indemnification, repair or other charge; or (b) any misstatement or false statement in connection with, or non-performance of any of Lessee's obligations, agreements, or affirmations under or emanating from, this Lease; or (c) upon Lessee's death, dissolution, termination of existence; or (d) if any of the following actions or proceedings are not dismissed within sixty (60) days after commencement: Lessee's insolvency; becoming the subject of a petition in bankruptcy, either voluntary or involuntary; any other proceeding under federal bankruptcy laws; making an assignment for benefit of creditors; Lessee being named in, or the Property being subjected to a suit for the appointment of a receiver; or (f) any failure to pay, as and when due, any obligation of Lessee, whether or not to Lessor, arising independently of this Lease; or (g) if the Property should be lost, damaged, totally destroyed, removed, sold, transferred, sublet, encumbered, seized or levied upon or if Lessor shall determine that the Property is at risk; or (h) bankruptcy, insolvency, termination, or default of any

guarantor for Lessee; or (i) any default by Lessee on any agreement with an affiliate of Lessor. No express or implied waiver by Lessor of any default shall constitute a waiver of any other default by Lessee or a waiver of Lessor's rights.

13. REMEDIES. Upon the occurrence of any Event of Default arising pursuant to Sections 12 (b) and 12 (g) or not less than ten (10) days after the occurrence and failure to cure of any other Event of Default and at any time thereafter, Lessor shall have all remedies provided by law; and, without limiting the generality of the foregoing and without terminating this Lease, Lessor, at its sole option, shall have the right at any time to exercise concurrently, or separately, without notice to Lessee (unless specifically stated), any one or all of the following remedies: (a) Request Lessee to assemble the Property and make it available to Lessor at a reasonable place designated by Lessor and put Lessor in possession thereof on demand; (b) Immediately and without legal proceedings, enter the premises, take possession of, remove and retain the Property or render it unusable (any such taking shall not terminate this Lease); (c) Declare the entire amount of rent and other sums payable hereunder immediately due and payable; however, in no event shall Lessor be entitled to recover any amount in excess of the maximum permitted by applicable law; (d) Terminate the leasing of any or all items of Property. Such termination shall occur only upon notice by Lessor and only as to such items of Property as Lessor specifically elects to terminate. This Lease shall continue in full force and effect as to any remaining items; (e) Recover the sum of: (i) any accrued and unpaid rent; plus, (ii) the present value of all future rentals reserved in the Lease and contracted to be paid over the unexpired term of the Lease, discounted at the rate of six percent (6%); plus, (iii) the anticipated residual value of the Property as of the expiration of this Lease or any renewal thereof; (iv) any indemnity payment, if then determinable; and, (v) all commercially reasonable costs and expenses incurred by Lessor in any repossession, recovery, storage, repair, sale, re-lease or other disposition of the Property, including reasonable attorneys' fees (whether incurred at trial, on appeal or in any other proceeding) and costs incurred in connection therewith or otherwise resulting from Lessee's default; plus interest on each of the foregoing at a rate of eighteen percent (18.0%) per annum; and, (f) Lessor may, but is not required to, re-lease or sell any or all of the Property at a public or private sale on such terms and notice as Lessor shall deem reasonable. The proceeds of any sale or lease will be applied in the following order of priorities: (i) to pay all of Lessor's expenses in taking, removing, holding, repairing and disposing of Property; then (ii) to pay any late charges and interest accrued at the rate set forth in this paragraph; then (iii) to pay accrued but unpaid rent together with the anticipated residual value, future rent, interest and all other due but unpaid sums (including any indemnification and sums due under other Leases or agreements in default). Any remaining proceeds will reimburse Lessee for payments which it made to reduce the amounts owed to Lessor in the preceding sentence. Lessor will keep any excess. If the proceeds of any sale or lease are not enough to pay the amounts owed to Lessor under this Section, Lessee will pay the deficiency. No remedy referred to in this paragraph is intended to be exclusive, but shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.

14. LESSEE'S WAIVERS. To the extent permitted by applicable law, Lessee hereby waives any and all rights and remedies now or hereafter conferred by statute or otherwise including but not limited to Lessee's rights to: (i) cancel or repudiate this Lease; (ii) reject or revoke acceptance of the Property; (iii) recover damages from Lessor for any breaches of warranty; (iv) claim, grant or permit a security interest in the Property in Lessee's possession or control for any reason; (v) deduct all or part of any claimed damages resulting from Lessor's default, if any, under this Lease; (vi) accept any partial delivery of the Property; (vii) "cover" by making any purchase or lease of or contract to purchase or lease property in substitution for the Property; (viii) commence legal action for specific performance, replevin, sequestration, claim and delivery or the like for the Property.

15. NOTICES, PAYMENTS AND GOVERNING LAW. All notices and payments shall be mailed or delivered to the respective parties at the addresses specified in the Schedule, or such other address as a party may provide in writing from time to time. This Lease shall be considered to have been made in the State of Oregon and shall be interpreted, and the rights and liabilities of the parties determined, in accordance with applicable Federal Law and the Laws of the State of Oregon. In the event of suit enforcing this Lease, Lessee agrees that venue may, at Lessor's option, be laid in the county of Lessor's address below. LESSOR AND LESSEE EACH WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED TO THIS LEASE.

16. SEVERABILITY, NO UNLAWFUL INTENT, SURVIVAL. If any of the provisions of this Lease are contrary to, prohibited by, or held invalid under applicable laws, regulations or public policy of any jurisdiction in which it is sought to be enforced, then that provision shall be considered inapplicable and omitted but shall not invalidate the remaining provisions. In no event shall this Lease be enforced in any way which permits Lessor to collect interest in excess of maximum lawful rate. Should interest collected exceed such rate, Lessor shall refund such excess interest to Lessee. In such event, Lessee agrees that Lessor shall not be subject to any penalties provided by law for contracting for or collecting interest in excess of the maximum lawful rate. All of Lessor's rights, privileges and indemnities contained herein shall survive the expiration or other termination of the Lease and the rights, privileges and indemnities contained herein are expressly made for the benefit of, and shall be enforceable by Lessor, its successors and assigns.

17. LESSOR'S DISCLAIMERS. The Property has been acquired based on specifications furnished by the Lessee. Lessor does not deal in property of this kind or otherwise hold itself or its agents out as having knowledge or skill peculiar to the Property. Lessee acknowledges that it has relied on its own skill and experience in selecting property suitable to the Lessee's particular needs or purposes and has neither relied upon the skill or judgment of Lessor nor believes that Lessor or its agents possess any special skill or judgment in the selection of property for Lessee's particular purposes. Further, Lessee has not notified Lessor of Lessee's particular needs in using the Property. Lessee understands and agrees that neither the Supplier(s) nor any salesman or any agent of the Supplier(s) is an agent of Lessor. No salesman or agent of supplier is authorized to waive or alter any term or condition of this Lease, and no representation as to the Property or any other matter by the Supplier shall in any way affect Lessee's duty to pay the rent and perform its obligations as set forth in this Lease. Lessor shall not be liable to Lessee for any incidental, consequential, or indirect damages or for any act, neglect, omission, breach or default by any third party.

LESSOR ASSUMES NO RESPONSIBILITY FOR AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, CONDITION, QUALITY, WORKMANSHIP, OR THE SAFETY, SUITABILITY, ADEQUACY, OPERATION, USE OR PERFORMANCE OF THE PROPERTY OR AS TO ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR AS TO PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT. ANY DELAY IN DELIVERY SHALL NOT AFFECT THE VALIDITY OF THIS LEASE. LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY REPRESENTATION, CLAIM, BREACH OF WARRANTY, EXPENSE OR LOSS DIRECTLY OR INDIRECTLY CAUSED BY ANY PERSON, INCLUDING LESSOR, OR IN ANY WAY RELATED TO THE PROPERTY.

18. ENTIRE AGREEMENT, WAIVERS, SUCCESSORS. This Lease and each Schedule contain the entire agreement of the parties and shall not be qualified or supplemented by course of dealing. No waiver or modification by Lessor of any of the terms or conditions hereof shall be effective unless

in writing signed by an officer of Lessor. No waiver or indulgence by Lessor of any deviation by Lessee of any required performance shall be a waiver of Lessor's right to subsequent or other full and timely performance. This Lease shall be binding on the parties hereto and their respective successors and assigns and shall inure to the benefit of such successors and assigns. Paragraph headings shall not be considered a part of this Lease.

BY INITIALING AND DATING THIS SECTION, LESSEE ACKNOWLEDGES THAT LESSEE HAS READ THE ABOVE PARAGRAPHS CAPTIONED "LESSOR'S DISCLAIMERS" AND "ENTIRE AGREEMENT," AND FULLY UNDERSTANDS THEIR CONTENTS.

INITIALED: _____

19. POWER OF ATTORNEY. Lessee hereby authorizes and appoints Lessor as its attorney-in-fact to complete and execute on Lessee's behalf UCC financing statements in connection with this Lease and to conform the description of the Property (including serial numbers) in any such financing statements or other documentation. Lessee will also promptly execute and deliver to Lessor such further documents and take further action as Lessor may request to protect Lessor's title to and interest in the Property and to more effectively carry out the intent and purpose of this Lease.

IN WITNESS WHEREOF, LESSOR AND LESSEE HAVE EACH CAUSED THIS LEASE TO BE DULY EXECUTED AS OF THE 21st **DAY OF** May**, 1999.**

U.S. Bancorp Leasing & Financial
(LESSOR)

By: _____
An Authorized Officer Thereof

Subscribed and sworn to before me this the 26 day of May, 1999.

Notary Public

My Commission Expires: January 31, 2000

KERRI S. HANVELT
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2000

Agile Stone Systems, Inc.
(CO-LESSEE)

By _____
William H. Fehr, Chaiman and CEO

Subscribed and sworn to before me this the 21st day of May, 1999.

Notary Public

My Commission Expires: ~~MY COMMISSION EXPIRES:~~ **June 8, 1999**

Rock & Rail, Inc.
(CO-LESSEE)

By _____
William H. Fehr, President

Subscribed and sworn to before me this the 21st day of May, 1999.

Notary Public

My Commission Expires ~~MY COMMISSION EXPIRES:~~ **June 8, 1999**

THIS LEASE SHALL NOT BE BINDING UPON LESSOR UNLESS EXECUTED BY AN AUTHORIZED OFFICER THEREOF

Address for All Notices:
U.S. Bancorp Leasing & Financial
7659 SW Mohawk Street PO Box 2177
Tualatin OR 97062-2177