

OSTER
Researching Services

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

June 7, 1999

RECORDATION NO. 22187 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 is a Security Agreement dated 5/21/99 between the following parties:

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

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

Debtor: Rock and Rail, Inc.
6435 South Pontiac Court
Englewood, CO 80111

Collateral: 38, 100-ton 3209 cf Open-top Hoppers
HMJX (See Document)

1, Used Komatsu Wheel Loader
S/N 020895

Please record this agreement as a primary document. The filing fee of \$26 is enclosed.

Thank you for your assistance.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosures

Mary Ann Oster

SECURITY AGREEMENT

RECORDATION NO. **22187**

FILED

**Leasing & Financial**

PHONE (612) 973-0939

FAX (612) 973-0833

JUN 7 '99

9-00AM

1.0 PARTIES, COLLATERAL AND OBLIGATIONS

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agile Stone Systems, Inc. and Rock and Rail, Inc., (hereinafter called "Debtor") with offices at 6435 South Pontiac Court, Englewood, Colorado 80111, intending to be legally bound, hereby grants a security interest in and assigns, transfers and sets over to U.S. BANCORP LEASING & FINANCIAL, an Oregon corporation having offices at 7659 SW Mohawk Street, P.O. Box 2177, Tualatin, Oregon 97062-2177 (hereinafter called "Secured Party"), and to the successors and assigns thereof, the property specified in Section 7.0 wherever located, and any and all proceeds thereof, insurance recoveries, and all replacements, additions, accessions, accessories and substitutions thereto or therefor (hereinafter called the "Collateral"). The security interest granted hereby is to secure payment of any and all liabilities or obligations of Debtor to the Secured Party, matured or unmatured, direct or indirect, absolute or contingent, heretofore arising, now existing or hereafter arising, and whether under this Agreement or under any other writing between Debtor and Secured Party (all hereinafter called the "obligations" and/or the "liabilities"). In the event there is more than one Debtor, all obligations shall be considered as joint and several obligations of all Debtors regardless of the source of Collateral or the particular Debtor with which the obligation originated.

2.0 WARRANTIES AND COVENANTS OF DEBTOR Debtor hereby represents, warrants and covenants that:

2.1 Business Organization Status and Authority. (i) Debtor is duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified to do business in all states and countries in which such qualification is necessary; (ii) Debtor has the lawful power and authority to own its assets and to conduct the business in which it is engaged and to execute and comply with the provisions of this Agreement, the Note of even date herewith (the "Note") and any related documents; (iii) the execution and delivery of this Agreement, the Note and any related documents have been duly authorized by all necessary action; (iv) no authorization, consent, approval, license or exemption of, or filing or registration with, any or all of the owners of Debtor or any governmental entity was, is or will be necessary to the valid execution, delivery, performance or full enforceability of this Agreement, the Note, and any related documents. Except as specifically disclosed to Secured Party, Debtor utilizes no trade names in the conduct of its business and/or has not changed its name within the past five years.

2.2 Merger; Transfer of Assets. Debtor will not consolidate or merge with or into any other entity, liquidate or dissolve, distribute, sell, lease, transfer or dispose of all of its properties or assets or any substantial portion thereof other than in the ordinary course of its business, unless the Secured Party shall give its prior written consent, and the surviving, or successor entity or the transferee of such assets, as the case may be, shall assume, by a written instrument which is legal, valid and enforceable against such surviving or successor entity or transferee, all of the obligations of Debtor to Secured Party or any affiliate of Secured Party.

2.3 No Violation of Covenants or Laws. Debtor is not party to any agreement or subject to any restriction which materially and adversely affects its ability to perform its obligations under this Agreement, the Note and any related documents. The execution of and compliance with the terms of this Agreement, the Note and any related documents does not and will not (i) violate any provision of law, or (ii) conflict with or result in a breach of any order, injunction, or decree of any court or governmental authority or the formation documents of Debtor, or (iii) constitute or result in a default under any agreement, bond or indenture by which Debtor is bound or to which any of its property is subject, or (iv) result in the imposition of any lien or encumbrance upon any of Debtor's assets, except for any liens created hereunder or under any related documents.

2.4 Accurate Information. All financial information submitted to the Secured Party in regard to Debtor or any shareholder, officer director, member, or partner thereof, or any guarantor of any of the obligations thereof, was prepared in accordance with generally accepted accounting principles, consistently applied, and fairly and accurately depicts the financial position and results of operations of Debtor or such other person, as of the respective dates or for the respective periods, to which such information pertains. Debtor had good, valid and marketable title to all the properties and assets reflected as being owned by it on any balance sheets of Debtor submitted to Secured Party as of the dates thereof.

2.5 Judgments; Pending Legal Action. There are no judgments outstanding against Debtor, and there are no actions or proceedings pending or, to the best knowledge of Debtor, threatened against or affecting Debtor or any of its properties in any court or before any governmental entity which, if determined adversely to Debtor, would result in any material adverse change in the business, properties or assets, or in the condition, financial or otherwise, of Debtor or would materially and adversely affect the ability of Debtor to satisfy its obligations under this Agreement, the Note and any related documents.

2.6 No Breach of Other Agreements; Compliance with Applicable Laws. Debtor is not in breach of or in default under any loan agreement, indenture, bond, note or other evidence of indebtedness, or any other material agreement or any court order, injunction or decree or any lien, statute, rule or regulation. The operations of Debtor comply with all laws, ordinances and governmental rules and regulations applicable to them. Debtor has filed all Federal, state and municipal income tax returns which are required to be filed and has paid all taxes as shown on said returns and on all assessments billed to it to the extent that such taxes or assessments have become due. Debtor does not know of any other proposed tax assessment against it or of any basis for one.

2.7 Sale Prohibited. Debtor will not sell, dispose of or offer to sell or otherwise transfer the Collateral or any interest therein without the prior written consent of Secured Party.

2.8 Location of Collateral. The Collateral will be kept at:
40245 West Highway 50
Canon City, CO 81212
County: Fremont

and Debtor will promptly notify Secured Party of any change in the location(s) of the Collateral. Debtor will not remove the Collateral from said location(s) without the prior written consent of Secured Party.

2.9 Collateral not a Fixture. The Collateral is not attached, and Debtor will not permit the Collateral to become attached, to real estate in such a way that it would be considered part of the realty or designated a "fixture." Notwithstanding any presumption of applicable law, and irrespective of any manner of attachment, the Collateral shall not be deemed real property but shall retain its character as personal property. However, Debtor will at the option of Secured Party furnish the latter with a waiver or waivers in recordable form, signed by all persons having an interest in the real estate, of any interest in the Collateral which is or might be deemed to be prior to Secured Party's interest.

2.10 Perfection of Security Interest. Except for (i) the security interest granted hereby and (ii) any other security interest previously disclosed by Debtor to Secured Party in writing, Debtor is the owner of the Collateral free from any adverse lien, security interest or encumbrance. Debtor will defend the Collateral against all claims and demands of all persons at any time claiming any interest therein. Except as previously disclosed in writing to Secured Party, no financing statement covering any Collateral or any proceeds thereof is on file in any public office. At the request of Secured Party, Debtor will execute, acknowledge and deliver to Secured Party in recordable or fileable form, any document or instrument required by Secured Party to further the purposes of this Agreement, or to perfect its interest in the Collateral or to maintain such perfected interest in full force and effect, including (without limitation) any fixture filings and financing statements and any amendments and continuation statements thereto pursuant to the Uniform Commercial Code, in form satisfactory to Secured Party, and will pay the cost of filing the same or filing or recording this Agreement in all public offices wherever filing or recording is deemed by Secured Party to be necessary or desirable. Debtor hereby agrees that this Agreement shall be and constitute a financing statement for purposes of the Uniform Commercial Code.

2.11 Insurance. Unless otherwise agreed, Debtor will have and maintain insurance from financially sound carriers at all times with respect to all Collateral against risks of fire (including so-called extended coverage), theft, collision, flood, earthquake, "mysterious disappearance" and such other risks as Secured Party may require, containing such terms, in such form, for such periods and written by such companies as may be satisfactory to Secured Party; each insurance policy shall name Secured Party as loss payee and shall be payable to Secured Party and Debtor as their interests may appear; all policies of insurance shall provide for ten days' written minimum cancellation notice to Secured Party; Debtor shall furnish Secured Party with certificates or other evidence satisfactory to Secured Party of compliance with the foregoing insurance provisions.

2.12 Use of the Collateral. Debtor will use the Collateral for business purposes only and operate it by qualified personnel in accordance with applicable manufacturers' manuals. Debtor will keep the Collateral free from any adverse lien or encumbrance and in good working order, condition and repair and will not waste or destroy the Collateral or any part thereof; Debtor will keep the Collateral appropriately protected from the elements, and will furnish all required parts and servicing (including any contract service necessary to maintain the benefit of any warranty of the manufacturer); Debtor will not use the Collateral in violation of any statute, ordinance, regulation or order; and Secured Party may examine and inspect the Collateral and any and all books and records of Debtor during business hours at any time; such right of inspection shall include the right to copy Debtor's books and records and to converse with Debtor's officers, employees, agents, and independent accountants.

2.13 Taxes and Assessments. Debtor will pay promptly when due all taxes, assessments, levies, imposts, duties and charges, of any kind or nature, imposed upon the Collateral or for its use or operation or upon this Agreement or upon any instruments evidencing the obligations.

2.14 Financial Statements. Debtor shall furnish Secured Party within ninety (90) days after the close of each fiscal year of Debtor, its financial statements (including, without limitation, a balance sheet, a statement of income and surplus account and a statement of changes in financial position) for the immediately preceding fiscal year, setting forth the corresponding figures for the prior fiscal year in comparative form, all in reasonable detail without any qualification or exception deemed material by Secured Party. Such financial statements shall be prepared at least as a review by Debtor's independent certified accountants and, if prepared as an audit, shall be certified by such accountants. Debtor shall also furnish Secured Party with any other financial information deemed necessary by Secured Party. Each financial statement submitted by Debtor to Secured Party shall be accompanied by a certificate signed by the chief executive officer, the chief operating officer or the chief financial officer of Debtor, certifying that (i) such financial statement was prepared in accordance with generally accepted accounting principles consistently applied and fairly and accurately presents the Debtor's financial condition and results of operations for the period to which it pertains, and (ii) no event of default has occurred under this Agreement during the period to which such financial statement pertains.

3.0 EVENTS OF DEFAULT

3.1 The following shall be considered events of default: (i) failure on the part of Debtor to promptly perform in complete accordance with its representations, warranties and covenants made in this Agreement or in any other agreement with Secured Party, including, but not limited to, the payment of any liability, with interest, when due, or default by Debtor under the provisions of any other material agreement to which Debtor is party; (ii) the death of Debtor if an individual or the dissolution of Debtor if a business organization; (iii) a change in the present management of Debtor except to fill vacancies resulting from the death or disability of an individual; (iv) the filing of any petition or complaint under the Federal Bankruptcy Code or other federal or state acts of similar nature, by or against Debtor; or an assignment for the benefit of creditors by Debtor; (v) an application for a Receiver, Trustee or Conservator, or the appointment of a Receiver, Trustee or Conservator, voluntary or involuntary, by or against Debtor or for any substantial assets of Debtor; (vi) insolvency of Debtor under either the Federal Bankruptcy Code or applicable principles of equity; (vii) entry of judgment, issuance of any garnishment or attachment, or filing of any lien, claim or government attachment against the Collateral or which, in Secured Party's sole discretion, might impair the Collateral; (viii) the determination by Secured Party that a material misrepresentation of fact has been made by Debtor in this Agreement or in any writing supplementary or ancillary hereto; (ix) a determination by Secured Party that Debtor has suffered a material adverse change in its financial condition, business or operations from the date of this Agreement; or (x) bankruptcy, insolvency, termination, death, dissolution or default of any guarantor for Debtor.

4.0 REMEDIES

4.1 Upon the happening of any event of default which is not cured within ten (10) days or at any time thereafter: (i) all liabilities of Debtor shall, at the option of Secured Party, immediately become due and payable; (ii) Secured Party shall have and may exercise all of the rights and remedies granted to a secured party under the Uniform Commercial Code; (iii) Secured Party shall have the right, immediately, and without notice or other action, to set-off against any of Debtor's liabilities to Secured Party any money owed by Secured Party in any capacity to Debtor, whether or not due, and Secured Party shall be deemed to have exercised such right of set-off and to have made a charge against any such money immediately upon the occurrence of such default event though actual book entries may be made at some time subsequent thereto; (iv) Secured Party may proceed with or without judicial process to take possession of all or any part of the Collateral; Debtor agrees that upon receipt of notice of Secured Party's intention to take possession of all or any part of said Collateral, Debtor will do everything necessary to make same available to Secured Party (including, without limitation, assembling the Collateral and making it available to Secured Party at a place designated by Secured Party which is reasonably convenient to Debtor and Secured Party); and so long as Secured Party acts in a commercially reasonable manner, Debtor agrees to assign, transfer and deliver at any time the whole or any portion of the Collateral or any rights or interest therein in accordance with the Uniform Commercial Code and without limiting the scope of Secured Party's rights thereunder; (v) Secured Party may sell the Collateral at public or private sale or in any other commercially reasonable manner and, at the option of Secured Party, in bulk or in parcels and with or without having the Collateral at the sale or other disposition, and Debtor agrees that in case of sale or other disposition of the Collateral, or any portion thereof, Secured Party shall apply all proceeds first to all costs and expenses of disposition, including attorneys' fees, and then to Debtor's obligations to Secured Party; (vi) Secured Party may elect to retain the Collateral or any part thereof in satisfaction of all sums due from Debtor upon notice to Debtor and any other party as may be required by the Uniform Commercial Code. All remedies provided in this paragraph shall be cumulative. Secured Party may exercise any one or more of such remedies in addition to any and all other remedies Secured Party may have under any applicable law or in equity.

4.2 Expenses; Disposition. Debtor shall pay all reasonable expenses of realizing upon the Collateral hereunder upon default and collecting all liabilities of Debtor to Secured Party, which reasonable expenses shall include attorneys' fees, whether or not litigation is commenced and whether incurred at trial, on appeal, or in any other proceeding. Any notification of a sale or other disposition of Collateral or of other action by Secured Party required to be given by Secured Party, will be sufficient if given personally, mailed, or delivered by facsimile machine or overnight carrier not less than five (5) days prior to the day on which such sale or other disposition will be made or action taken, and such notification shall be deemed reasonable notice.

5.0 MISCELLANEOUS

5.1 No Implied Waivers; Entire Agreement. The waiver by Secured Party of any default hereunder or of any provisions hereof shall not discharge any party hereto from liability hereunder and such waiver shall be limited to the particular event of default and shall not operate as a waiver of any subsequent default. No modification of this Agreement or waiver of any right of Secured Party hereunder shall be valid unless in writing and signed by an authorized officer of Secured Party. No failure on the part of Secured Party to exercise, or delay in exercising, any right, power, privilege or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. The provisions of this Agreement and the rights and remedies granted to Secured Party herein shall be in addition to, and not in limitation of those of any lease or other agreement with Secured Party or any other evidence of any liability held by Secured Party.

5.2 Choice of Law. This Agreement and the rights of the parties hereto shall be governed by the laws of the State of Oregon. Debtor agrees that any action arising out of this Agreement may be litigated under the laws of Oregon, and submitted to the jurisdiction of Oregon, and that service of process by certified mail, return receipt requested, will be sufficient to confer personal jurisdiction over the Debtor.

5.3 Late Charge. If any of the obligations remains overdue for more than ten (10) days, Debtor hereby agrees to pay on demand, as a late charge, an amount equal to the lesser of (i) five percent (5.0%) of each such overdue amount; or (ii) the maximum percentage of any such overdue amount permitted by applicable law as a late charge.

5.4 Protection of the Collateral. At its option, Secured Party may discharge taxes, liens or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party on demand for any payment made or any expense incurred by Secured Party pursuant to the foregoing authorization. Any payments made by Secured Party shall be immediately due and payable by Debtor and shall bear interest at the rate of fifteen percent (15%) per annum. Until default, Debtor may retain possession of the Collateral and use it in any lawful manner not inconsistent with the provisions of this Agreement and any other agreement between Debtor and Secured Party, and not inconsistent with any policy of insurance thereon.

5.5 Binding Agreement; Time of the Essence. This agreement shall take effect as a sealed instrument and shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors, and assigns. Debtor acknowledges that time is of the essence with respect to the performance of its obligations under this Agreement, and its obligation to promptly make all payments required by the Note or any other agreement between Debtor and Secured Party.

5.6 Enforceability. Any term, clause or provision of this Agreement or of any evidence of indebtedness from Debtor to Secured Party which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining terms or clauses of such provision or the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such term, clause or provision in any other jurisdiction.

5.7 Notices. Any notices or demands required to be given herein shall be given to the parties in writing by United States first class mail (express, certified or otherwise) at the addresses set forth on page 1 of this Agreement or to such other addresses as the parties may hereafter substitute by written notice given in the manner prescribed in this paragraph.

5.8 Additional Security. If there shall be any other collateral for any of the obligations, or for the obligations of any guarantor thereof, Secured Party may proceed against and/or enforce any or all of the Collateral and such collateral in whatever order it may, in its sole discretion, deem appropriate. Any amount(s) received by Secured Party from whatever source and applied by it to any of the obligations shall be applied in such order of application as Secured Party shall from time to time, in its sole discretion, elect.

6.0 ASSIGNMENT

6.1 SECURED PARTY MAY SELL OR ASSIGN ANY AND ALL RIGHT, TITLE AND INTEREST IT HAS IN THE COLLATERAL AND/OR ARISING UNDER THIS AGREEMENT AND/OR UNDER ANY INSTRUMENT EVIDENCING INDEBTEDNESS FROM DEBTOR TO SECURED PARTY. DEBTOR SHALL, UPON THE DIRECTION OF SECURED PARTY: 1) EXECUTE ALL DOCUMENTS NECESSARY TO EFFECTUATE SUCH ASSIGNMENT AND, 2) PAY DIRECTLY AND PROMPTLY TO SECURED PARTY'S ASSIGNEE WITHOUT ABATEMENT, DEDUCTION OR SET-OFF, ALL AMOUNTS WHICH HAVE BECOME DUE UNDER THE INSTRUMENTS ASSIGNED. SECURED PARTY'S ASSIGNEE SHALL HAVE ANY AND ALL RIGHTS, IMMUNITIES AND DISCRETION OF SECURED PARTY HEREUNDER AND SHALL BE ENTITLED TO EXERCISE ANY REMEDIES OF SECURED PARTY HEREUNDER. ALL REFERENCES HEREIN TO SECURED PARTY SHALL INCLUDE SECURED PARTY'S ASSIGNEE (EXCEPT THAT SAID ASSIGNEE SHALL NOT BE CHARGEABLE WITH ANY OBLIGATIONS OR LIABILITIES HEREUNDER OR IN RESPECT HEREOF). DEBTOR WILL NOT ASSERT AGAINST SECURED PARTY'S ASSIGNEE ANY DEFENSE, COUNTERCLAIM OR SET-OFF WHICH DEBTOR MAY HAVE AGAINST SECURED PARTY.

7.0 SCHEDULE OF COLLATERAL

THRITY-EIGHT (38), 100-TON, 3209 CUBIC FOOT CAPACITY, FOUR POCKET, ROLLER BEARING OPEN TOP HOPPER RAILCARS: HMJX 580791, HMJX 581016, HMJX 581112, HMJX 581270, HMJX 580154, HMJX 580531, HMJX 580405, HMJX 580736, HMJX 580789, HMJX 580795, HMJX 580940, HMJX 581074, HMJX 581297, HMJX 581378, HMJX 581387, HMJX 580131, HMJX 580360, HMJX 580521, HMJX 580620, HMJX 580647, HMJX 580658, HMJX 580712, HMJX 580786, HMJX 580912, HMJX 581011, HMJX 581027, HMJX 581076, HMJX 581086, HMJX 581376, HMJX 581406, HMJX 581535, HMJX 581599, HMJX 580173, HMJX 580942, HMJX 581142, HMJX 581222, HMJX 581265, HMJX 580400

AND

ONE (1) USED KOMATSU WA500-1 WHEEL LOADER, S/N: 020895

8.0 POWER OF ATTORNEY

8.1 Secured Party is hereby appointed Debtor's attorney-in-fact to sign Debtor's name and to make non-material amendments (including completing and conforming the description of the Collateral) on any document in connection with this Agreement (including any financing statement) and to obtain, adjust, settle, and cancel any insurance required by this Agreement and to endorse any drafts in connection with such insurance.

9.0 NOTICE

9.1 Under Oregon law, most agreements, promises and commitments made by Debtor after October 3, 1989, concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the Debtor's residence must be in writing, express consideration and be signed by Debtor to be enforceable.

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed the 21st day of May, 1999.

U.S. Bancorp Leasing & Financial
(LESSOR)

By: [Signature]
An Authorized Officer Thereof

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

[Signature] My Commission Expires: January 31, 2000
Notary Public



Agile Stone Systems, Inc.
(CO-LESSEE)

By: [Signature]
William H. Fehr, Chairman and CEO

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

[Signature] My Commission Expires: MY COMMISSION EXPIRES: June 8, 1999
Notary Public

Rock & Rail, Inc.
(CO-LESSEE)

By: [Signature]
William H. Fehr, President

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

[Signature] My Commission Expires: MY COMMISSION EXPIRES: June 8, 1999
Notary Public

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