

18821

DONELAN, CLEARY, WOOD & MASER, P. C.

RECORDATION NO. \_\_\_\_\_ FILED 1425

ATTORNEYS AND COUNSELORS AT LAW  
SUITE 850

MAY 26 1994 - 11 15 AM

1275 K STREET, N. W.

WASHINGTON, D. C. 20005-4078

INTERSTATE COMMERCE COMMISSION

TELEPHONE: (202) 371-9500

TELECOPIER: (202) 371-0900

May 26, 1994

The Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

FILED  
MAY 26 1994  
U.S. DEPT. OF JUSTICE  
COMMERCIAL AND CONSUMER PROTECTION DIVISION

Dear Secretary Strickland:

Enclosed for recordation, under the provisions of 49 U.S.C. § 11303(a) and the regulations thereunder are three (3) executed counterparts of a Security Agreement from Rail Co. VI, a Delaware corporation ("Debtor") to Wilmington Trust Company, a Delaware corporation as Security Trustee ("Secured Party"), a primary document, dated as of May 15, 1994.

The names and addresses of the parties to the enclosed documents are as follows:

DEBTOR: Rail Co. VI  
1209 Orange Street  
Wilmington, Delaware 19801

SECURED PARTY: Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890-0001

A general description of the railroad equipment covered by the enclosed documents is attached hereto as Schedule I.

The undersigned is the attorney-in-fact for purposes of this filing. Please return the extra copies of the enclosed documents to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, N.W., Washington, D.C. 20005-4078, or to the bearer hereof.

*counterparts - JKM - Maser*

DONELAN, CLEARY, WOOD & MASER, P. C.

Letter to Secretary Sidney L. Strickland, Jr.

May 26, 1994

Page 2

Also enclosed is a remittance in the amount of \$18.00 for the required recording fee.

A short summary of the document to appear in the index follows:

Security Agreement from Rail Co. VI, as Debtor, to Wilmington Trust Company, as Security Trustee, as Secured Party, dated as of May 15, 1994, covering four hundred seven (407) aluminum bodied covered hopper cars bearing identification numbers CLSX1001 through CLSX1407.

Very truly yours,

RAIL CO. VI  
WILMINGTON TRUST COMPANY

By:

  
\_\_\_\_\_  
John K. Maser III  
*Attorney-In-Fact*

Attachment  
120-14

## SCHEDULE I

### New Marks and Identification Numbers

Four hundred seven (407) aluminum bodied covered hopper cars with gravity type rack-and-pinion discharge gates and continuous through hatch roof opening having 4,750 cubic foot capacity, 286,000 pound gross load weight capacity, built by Transco Railway Products and to be remanufactured by Progress Rail Services Corporation and bearing identification numbers CLSX 1001 through CLSX 1407.

### Original and Subsequent Marks and Identification Numbers

From a series of four hundred eight (408) units originally and subsequently identified, as follows:

Original Marks and Numbers	Subsequent Marks and Numbers		
SOO	70451	SOO	70451
SOO	70453	CLSX	70453
SOO	70455	CLSX	70455
SOO	70457	CLSX	70457
SOO	70459	CLSX	70459
SOO	70461	SOO	70461
SOO	70463	SOO	70463
SOO	70465	CLSX	70465
SOO	70467	CLSX	70467
SOO	70469	SOO	70469
SOO	70475	SOO	70475
SOO	70477	SOO	70477
SOO	70479	CLSX	70479
SOO	70481	SOO	70481
SOO	70487	SOO	70487
SOO	70489	CLSX	70489
SOO	70491	CLSX	70491
SOO	70493	SOO	70493
SOO	70497	SOO	70497
SOO	70499	SOO	70499
SOO	70501	CLSX	70501
SOO	70503	CLSX	70503
SOO	70505	SOO	70505
SOO	70507	SOO	70507

Original Marks and Numbers		Subsequent Marks and Numbers	
S00	70509	S00	70509
S00	70511	CLSX	70511
S00	70515	S00	70515
S00	70517	S00	70517
S00	70519	S00	70519
S00	70521	S00	70521
S00	70523	S00	70523
S00	70525	CLSX	70525
S00	70527	S00	70527
S00	70529	CLSX	70529
S00	70531	S00	70531
S00	70533	S00	70533
S00	70537	CLSX	70537
S00	70539	S00	70539
S00	70541	S00	70541
S00	70543	CLSX	70543
S00	70547	S00	70547
S00	70549	S00	70549
S00	70551	S00	70551
S00	70553	CLSX	70553
S00	70561	CLSX	70561
S00	70563	CLSX	70563
S00	70565	S00	70565
S00	70567	CLSX	70567
S00	70569	CLSX	70569
S00	70571	S00	70571
S00	70575	S00	70575
S00	70577	CLSX	70577
S00	70581	S00	70581
S00	70585	S00	70585
S00	70587	CLSX	70587
S00	70589	CLSX	70589
S00	70591	S00	70591
S00	70593	CLSX	70593
S00	70597	S00	70597
S00	70599	S00	70599
S00	70603	S00	70603
S00	70605	CLSX	70605
S00	70607	CLSX	70607
S00	70609	S00	70609
S00	70611	CLSX	70611
S00	70617	CLSX	70617
S00	70619	CLSX	70619
S00	70621	CLSX	70621
S00	70623	CLSX	70623
S00	70629	CLSX	70629
S00	70631	CLSX	70631
S00	70633	S00	70633

Original Marks and Numbers		Subsequent Marks and Numbers	
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S00	70641	CLSX	70641
S00	70643	S00	70643
S00	70645	CLSX	70645
S00	70647	S00	70647
S00	70649	S00	70649
S00	70651	CLSX	70651
S00	70653	S00	70653
S00	70655	CLSX	70655
S00	70659	S00	70659
S00	70661	CLSX	70661
S00	70663	CLSX	70663
S00	70665	S00	70665
S00	70667	CLSX	70667
S00	70669	CLSX	70669
S00	70671	S00	70671
S00	70673	S00	70673
S00	70675	CLSX	70675
S00	70677	CLSX	70677
S00	70679	CLSX	70679
S00	70683	CLSX	70683
S00	70685	S00	70685
S00	70687	CLSX	70687
S00	70689	S00	70689
S00	70695	S00	70695
S00	70699	S00	70699
S00	70701	CLSX	70701
S00	70703	CLSX	70703
S00	70705	S00	70705
S00	70707	S00	70707
S00	70709	S00	70709
S00	70711	CLSX	70711
S00	70715	S00	70715
S00	70721	S00	70721
S00	70725	S00	70725
S00	70727	S00	70727
S00	70729	CLSX	70729
S00	70731	CLSX	70731
S00	70735	S00	70735
S00	70737	CLSX	70737
S00	70739	CLSX	70739
S00	70741	CLSX	70741
S00	70743	CLSX	70743
S00	70747	S00	70747
S00	70749	CLSX	70749
S00	70751	S00	70751
S00	70753	S00	70753
S00	70759	CLSX	70759

Original Marks and Numbers		Subsequent Marks and Numbers	
SOU	70761	SOU	70761
SOU	70763	SOU	70763
SOU	70767	CLSX	70767
SOU	70769	CLSX	70769
SOU	70771	SOU	70771
SOU	70773	SOU	70773
SOU	70775	CLSX	70775
SOU	70777	CLSX	70777
SOU	70779	SOU	70779
SOU	70781	SOU	70783
SOU	70783	CLSX	70785
SOU	70791	CLSX	70791
SOU	70791	CLSX	70793
SOU	70795	SOU	70795
SOU	70797	CLSX	70797
SOU	70799	CLSX	70799
SOU	70801	SOU	70801
SOU	70803	CLSX	70803
SOU	70807	SOU	70807
SOU	70809	CLSX	70809
SOU	70811	SOU	70811
SOU	70813	CLSX	70813
SOU	70817	SOU	70817
SOU	70819	SOU	70819
SOU	70821	SOU	70821
SOU	70823	CLSX	70823
SOU	70825	SOU	70825
SOU	70827	CLSX	70827
SOU	70831	CLSX	70831
SOU	70833	CLSX	70833
SOU	70835	SOU	70835
SOU	70839	CLSX	70839
SOU	70841	CLSX	70841
SOU	70843	CLSX	70843
SOU	70847	SOU	70847
SOU	70849	CLSX	70849
SOU	70851	SOU	70851
SOU	70853	SOU	70853
SOU	70855	CLSX	70855
SOU	70857	SOU	70857
SOU	70859	CLSX	70859
SOU	70861	CLSX	70861
SOU	70863	CLSX	70863
SOU	70865	SOU	70865
SOU	70867	CLSX	70867
SOU	70871	CLSX	70871
SOU	70873	SOU	70873
SOU	70875	CLSX	70875

Original Marks and Numbers		Subsequent Marks and Numbers	
S00	70877	CLSX	70877
S00	70879	CLSX	70879
S00	70881	CLSX	70881
S00	70883	CLSX	70883
S00	70885	CLSX	70885
S00	70887	S00	70887
S00	70889	CLSX	70889
S00	70891	S00	70891
S00	70893	CLSX	70893
S00	70895	CLSX	70895
S00	70897	S00	70897
S00	70899	CLSX	70899
S00	70901	CLSX	70901
S00	70903	S00	70903
S00	70905	S00	70905
S00	70907	CLSX	70907
S00	70909	S00	70909
S00	70911	CLSX	70911
S00	70913	S00	70913
S00	70915	CLSX	70915
S00	70917	S00	70917
S00	70919	S00	70919
S00	70921	S00	70921
S00	70923	CLSX	70923
S00	70925	CLSX	70925
S00	70927	CLSX	70927
S00	70931	S00	70931
S00	70933	CLSX	70933
S00	70935	S00	70935
S00	70937	CLSX	70937
S00	70939	CLSX	70939
S00	70941	CLSX	70941
S00	70943	CLSX	70943
S00	70945	CLSX	70945
S00	70947	S00	70947
S00	70949	S00	70949
S00	70951	CLSX	70951
S00	70953	S00	70953
S00	70957	S00	70957
S00	70959	CLSX	70959
S00	70961	S00	70961
S00	70963	CLSX	70963
S00	70967	CLSX	70967
S00	70969	S00	70969
S00	70971	CLSX	70971
S00	70973	S00	70973
S00	70975	CLSX	70975
S00	70977	S00	70977
S00	70979	S00	70979
S00	70981	S00	70981

Original Marks and Numbers		Subsequent Marks and Numbers	
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S00	70989	CLSX	70989
S00	70991	S00	70991
S00	70997	S00	70997
S00	70999	CLSX	70999
S00	71001	S00	71001
S00	71003	CLSX	71003
S00	71009	S00	71009
S00	71013	CLSX	71013
S00	71015	CLSX	71015
S00	71017	S00	71017
S00	71019	CLSX	71019
S00	71021	CLSX	71021
S00	71023	S00	71023
S00	71025	CLSX	71025
S00	71027	S00	71027
S00	71029	CLSX	71029
S00	71033	S00	71033
S00	71035	S00	71035
S00	71037	CLSX	71037
S00	71041	S00	71041
S00	71043	CLSX	71043
S00	71047	CLSX	71047
S00	71049	CLSX	71049
S00	71051	CLSX	71051
S00	71053	CLSX	71053
S00	71057	S00	71057
S00	71059	S00	71059
S00	71061	CLSX	71061
S00	71067	CLSX	71067
S00	71071	S00	71071
S00	71075	S00	71075
S00	71079	S00	71079
S00	71081	CLSX	71081
S00	71083	S00	71083
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S00	71087	CLSX	71087
S00	71089	S00	71089
S00	71091	CLSX	71091
S00	71093	S00	71093
S00	71095	CLSX	71095
S00	71097	S00	71097
S00	71099	CLSX	71099
S00	71101	CLSX	71101
S00	71103	CLSX	71103
S00	71105	CLSX	71105
S00	71107	S00	71107
S00	71109	S00	71109
S00	71111	S00	71111
S00	71113	S00	71113
S00	71115	CLSX	71115

<u>Original Marks and Numbers</u>		<u>Subsequent Marks and Numbers</u>	
S00	71117	CLSX	71117
S00	71121	S00	71121
S00	71123	S00	71123
S00	71127	S00	71127
S00	71129	S00	71129
S00	71131	S00	71131
S00	71135	CLSX	71135
S00	71137	S00	71137
S00	71139	CLSX	71139
S00	71143	CLSX	71143
S00	71145	CLSX	71145
S00	71147	CLSX	71147
S00	71149	CLSX	71149
S00	71151	S00	71151
S00	71153	S00	71153
S00	71155	S00	71155
S00	71157	S00	71157
S00	71159	CLSX	71159
S00	71161	S00	71161
S00	71163	CLSX	71163
S00	71165	CLSX	71165
S00	71167	CLSX	71167
S00	71169	S00	71169
S00	71171	CLSX	71171
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S00	71177	S00	71177
S00	71179	CLSX	71179
S00	71181	S00	71181
S00	71183	S00	71183
S00	71185	S00	71185
S00	71187	CLSX	71187
S00	71191	CLSX	71191
S00	71193	S00	71193
S00	71195	CLSX	71195
S00	71197	S00	71197
S00	71199	CLSX	71199
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S00	71207	CLSX	71207
S00	71209	CLSX	71209
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S00	71213	CLSX	71213
S00	71217	S00	71217
S00	71219	S00	71219
S00	71221	CLSX	71221
S00	71223	CLSX	71223
S00	71225	CLSX	71225

Original Marks and Numbers		Subsequent Marks and Numbers	
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S00	71235	CLSX	71235
S00	71237	CLSX	71237
S00	71239	CLSX	71239
S00	71243	CLSX	71243
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S00	71249	CLSX	71249
S00	71253	CLSX	71253
S00	71255	CLSX	71255
S00	71257	CLSX	71257
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S00	71265	CLSX	71265
S00	71269	CLSX	71269
S00	71273	CLSX	71273
S00	71279	CLSX	71279
S00	71281	CLSX	71281
S00	71283	CLSX	71283
S00	71285	CLSX	71285
S00	71287	CLSX	71287
S00	71289	CLSX	71289
S00	71291	S00	71291
S00	71293	CLSX	71293
S00	71299	S00	71299
S00	71301	CLSX	71301
S00	71303	CLSX	71303
S00	71305	CLSX	71305
S00	71307	CLSX	71307
S00	71309	CLSX	71309
S00	71311	CLSX	71311
S00	71313	CLSX	71313
S00	71317	CLSX	71317
S00	71319	CLSX	71319
S00	71323	CLSX	71323
S00	71325	S00	71325
S00	71327	CLSX	71327
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S00	71331	CLSX	71331
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S00	71335	CLSX	71335
S00	71337	CLSX	71337
S00	71339	CLSX	71339
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S00	71347	CLSX	71347
S00	71349	CLSX	71349
S00	71351	CLSX	71351
S00	71353	CLSX	71353
S00	71355	CLSX	71355
S00	71357	CLSX	71357

Original Marks and Numbers		Subsequent Marks and Numbers	
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S00	71361	CLSX	71361
S00	71363	CLSX	71363
S00	71365	S00	71365
S00	71367	CLSX	71367
S00	71369	CLSX	71369
S00	71371	CLSX	71371
S00	71373	CLSX	71373
S00	71375	CLSX	71375
S00	71377	CLSX	71377
S00	71379	S00	71379
S00	71381	CLSX	71381
S00	71385	CLSX	71385
S00	71391	CLSX	71391
S00	71393	CLSX	71393
S00	71395	S00	71395
S00	71397	S00	71397
S00	71399	CLSX	71399
S00	71401	CLSX	71401
S00	71403	CLSX	71403
S00	71405	CLSX	71405
S00	71407	CLSX	71407
S00	71409	CLSX	71409
S00	71411	CLSX	71411
S00	71413	CLSX	71413
S00	71415	CLSX	71415
S00	71417	CLSX	71417
S00	71419	CLSX	71419
S00	71421	CLSX	71421
S00	71423	CLSX	71423
S00	71425	CLSX	71425
S00	71427	CLSX	71427
S00	71429	CLSX	71429
S00	71431	CLSX	71431
S00	71433	CLSX	71433
S00	71437	CLSX	71437
S00	71439	CLSX	71439
S00	71441	CLSX	71441
S00	71443	CLSX	71443
S00	71445	CLSX	71445
S00	71447	CLSX	71447
S00	71449	CLSX	71449

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

MAY 26, 1994

JOHN K. MASER III  
DONELAN, CLEARY, WOOD & MASER, P.C.  
1275 K STREET, NW SUITE 850  
WASHINGTON DC 20005-4078

Dear Mr. Maser:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on MAY 26 1994 at 11:15AM, and assigned  
recordation number(s). 18820, 18820-A, 18821 .

Sincerely yours,

Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

RECORDATION NO. 18821 FILED 1425

MAY 26 1994 - 11 15 AM

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT

From

RAIL CO. VI  
as Debtor

to

WILMINGTON TRUST COMPANY,  
not in its individual capacity,  
but solely as Security Trustee

Dated as of May 15, 1994

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THIS SECURITY AGREEMENT, dated as of May 15, 1994 (herein, together with amendments and supplements hereto, called this Security Agreement), between RAIL CO. VI, a Delaware corporation (herein, together with its successors and assigns as debtor and any Subsequent Owner as defined herein, called the Owner), having an address at 1209 Orange Street, Wilmington, Delaware 19801, as debtor, and WILMINGTON TRUST COMPANY, a Delaware corporation not in its individual capacity, but solely as Security Trustee as hereinafter provided, as secured party (herein, together with its successors, in trust, and assigns as secured party hereunder, called the Security Trustee), having an address at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-0001, Attention: Corporate Trust Administration.

#### PRELIMINARY STATEMENT

The defined terms used herein but not otherwise defined have the meanings set forth in Article 1.

Security Trustee, Massachusetts Mutual Life Insurance Company (Purchaser) and Owner have entered into a Note Purchase Agreement dated as of the date hereof providing for the issuance by Owner and purchase by the Purchaser of certain Secured Notes Due 2015, all as more particularly described in said Note Purchase Agreement.

The Owner is duly authorized to issue the Notes and the Owner is duly authorized to execute and deliver this Security Agreement, and all actions required by law and all actions of the Owner required therefor have been duly taken.

#### GRANTING CLAUSE

NOW, THEREFORE, THIS SECURITY AGREEMENT WITNESSETH that, to secure the prompt payment of the principal and interest on, and all other amounts due with respect to, all Notes from time to time outstanding hereunder and the performance and observance by Owner of all the agreements, covenants and provisions contained herein and in the Note Agreement and the Notes for the benefit of Security Trustee, the Purchaser and any future holders of a Note, and the prompt payment of all amounts from time to time owing under the Notes by Owner to the Purchaser and any such holders and for the uses and purposes and subject to the terms and provisions hereof, and in consideration of the premises and of the covenants herein contained, and of the acceptance of the Notes by the Purchaser, and for good and valuable consideration the receipt and adequacy whereof is hereby acknowledged, Owner has granted, bargained, sold, assigned, transferred, conveyed, mortgaged, pledged and confirmed, and does hereby grant, bargain, sell, assign, transfer, convey, mortgage, pledge and confirm, unto Security Trustee, its successors and assigns, for the

security and benefit of Security Trustee and the holders from time to time of a Note, a first priority security interest in all right, title and interest of Owner in, to and under the following described property, rights and privileges, other than Excluded Amounts and Excepted Rights, to wit:

- (1) The Equipment (together with all additions thereto, replacements thereof and substitutions therefor in which Owner shall from time to time acquire an interest as provided herein and in the Lease and each Lease Supplement), all as more particularly described in the Lease Supplements, or any such replacements or substitutions therefor, as provided in this Security Agreement (the Equipment, the insurance proceeds described in clause (5) below and all other proceeds with respect to the Equipment are collectively referred to as the Equipment Collateral);
- (2) All right, title and interest of Owner under the Lease and each Lease Supplement and the Agency Agreement and all amounts payable under any thereof, including, without limitation, (a) all Interim Rent, Basic Rent and Supplemental Payments and any other income, revenues, profits, insurance proceeds, condemnation awards or other amounts payable thereunder, except any Excluded Amounts, (b) the right to make all waivers and agreements and to give and receive all notices and other communications under the Lease and the Agency Agreement, and (c) the right to take any action upon the occurrence of a default or Event of Default under the Lease or by law (subject to the terms hereof) (herein collectively referred to, together with the property and rights described in subsections (3) and (4) below, as the Other Collateral);
- (3) The Rebuild Agreement and all bills of sale, invoices and other documents and all right, title and interest of Owner hereunder now or hereafter delivered by the Remanufacturer or the manufacturer or seller with respect to any Unit or Units of Equipment, including, without limitation any documents transferring any interest in any patent indemnification or in any warranty or other intangible rights associated with any Unit or Units of Equipment;
- (4) All payments, issues, profits, revenue and other income of the property subjected or required to be subjected to the lien of this Security Agreement;
- (5) All insurance proceeds with respect to the Equipment, including but not limited to the insurance required under Section 17 of the Lease, but excluding insurance

proceeds included in the definition of Excluded Amounts; and

(6) All proceeds of any of the foregoing.

Concurrently with the delivery hereof, Owner is delivering to Security Trustee the original executed counterpart of the Lease.

TO HAVE AND TO HOLD all and singular the aforesaid property unto Security Trustee, and its successors and assigns hereunder, IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit, security and protection of all present and future holders of the Notes without preference, priority or distinction of any Note over any other Note by reason of priority at the time of issue, sale, negotiation, date of maturity thereof or otherwise for any cause whatsoever; provided always, however, that these presents are upon the express condition that if (i) the Owner shall pay or cause to be paid all the Notes and all other obligations secured hereby, (ii) the Owner shall pay or cause to be paid all the Equity Notes and all other obligations secured by the Loan and Security Agreement, and (iii) the Owner shall observe, keep and perform all the terms and conditions, covenants and agreements contained herein and in the Note Purchase Agreement and the Notes, then these presents and the estate hereby granted and conveyed shall cease and this Security Agreement shall become null and void; otherwise, this Security Agreement shall remain in full force and effect.

Notwithstanding the Granting Clause or any of the preceding paragraphs, there is hereby excluded from the foregoing sale, transfer, assignment, grant, pledge and security interest all Excluded Amounts and Excepted Rights.

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the Notes are to be secured, and the Collateral is to be held by the Security Trustee, upon and subject to the covenants and conditions set forth herein.

#### ARTICLE 1 Definitions

Capitalized terms herein not otherwise defined herein shall have the respective meanings ascribed thereto in the Note Agreement or the Lease. Unless the context otherwise requires, the following terms have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms:

Affiliate means, with respect to any Person, a Person which, directly or indirectly through one or more intermediaries,

controls, or is controlled by or is under common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

Allocable Portion of the Notes means at any date with respect to any Unit of Equipment, the amount calculated by multiplying the aggregate outstanding principal amount of the Notes by a fraction, the numerator of which fraction shall be the Estimated Residual Value (as defined in the Lease) for such Unit of Equipment and the denominator of which fraction shall be the Estimated Residual Value with respect to all Units of Equipment then subject to this Security Agreement.

Assignment means the Assignment of Lease, dated as of the date hereof, from the Owner to the Security Trustee and consented to by Lessee, and as amended or supplemented from time to time as permitted hereby or thereby, relating to the Lease.

Bankruptcy Act has the meaning specified in Section 6.1.

Bankruptcy Laws has the meaning specified in Section 6.1.

Basic Term has the meaning specified in the Lease.

Business Day has the meaning specified in the Lease.

Closing Date has the meaning specified in the Note Agreement.

Collateral means the property subject or intended to be subject at any time to the lien hereof, including, without limitation, the Equipment Collateral and Other Collateral described in the Granting Clause.

Default means any act or occurrence which, with notice, lapse of time or both, would constitute an Event of Default.

Equipment means the personal property described in Exhibit A hereto, which is being or will be leased under the Lease, as described in the Lease Supplements.

Equipment Collateral shall have the meaning assigned in the Granting Clause.

Event of Default means any act or occurrence of the character specified in Section 6.1(a) through 6.1(k).

Event of Loss has the meaning specified in the Lease.

Excepted Rights means the right to receive and to demand, collect, sue for or otherwise obtain all of the Excluded Amounts.

Exchange Note has the meaning specified in Section 2.14.

Excluded Amounts means (i) indemnity payments payable directly to the Owner or Wilmington Trust Company in its individual capacity by Lessee pursuant to Sections 18 or 19 of the Lease, (ii) amounts payable directly to the Owner or Wilmington Trust Company in its individual capacity under the Lease in respect of insurance awards or proceeds, and (iii) amounts payable directly to the Owner or Wilmington Trust Company in its individual capacity by Lessee pursuant to Section 31 of the Lease.

Expiration Date has the meaning specified in Section 3.1.

Holder means the registered owner of any Note.

Installment Payments has the meaning specified in the Notes.

Institutional Investor means an "accredited investor" under Rule 501(a) of the Securities Act of 1933, as amended, which is either a bank, insurance company, mutual fund, trust company, employee benefit plan (as defined in ERISA), or savings and loan company, in each case having total assets of at least \$200,000,000 and which is not a person or entity (excluding financial services organizations) that, directly or indirectly or through any affiliates, is engaged in industrial or agricultural businesses similar to those engaged in by the Lessee and the Lessee's affiliates as reasonably determined by the Lessee.

Interim Note has the meaning specified in the Note Agreement.

L/C Issuer means BOT Financial Corporation, a Delaware corporation.

Lease means the Equipment Leasing Agreement, dated as of May 15, 1994, between the Owner, as lessor, and Lessee, as lessee, and as amended and supplemented from time to time as permitted hereby or thereby, relating to the Equipment.

Lease Supplement means the Lease Supplement substantially in the form attached to the Lease as Exhibit B thereto, to be executed by Lessee and Owner with respect to a Unit or Units of Equipment evidencing that such Unit or Units have been unconditionally accepted by Lessee for lease and are leased under, and subject to the terms of, the Lease.

Lessee means Cargill, Incorporated, a Delaware corporation, together with its successors and assigns as lessee under the Lease.

Lessee Default has the meaning specified in Section 6.1.

Lessor means the Owner, as defined herein, and its permitted successors and assigns.

Lien means any lien, mortgage, encumbrance, pledge, charge and security interest of any kind.

Lien of this Security Agreement and terms of like import mean the security title or security interest or other interest or charge granted to the Security Trustee hereby or subsequently granted hereunder or pursuant hereto to the Security Trustee (whether made by the Owner or any other Person) or otherwise created, which title, interest, or charge effectively constitutes any property as a part of the security held by the Security Trustee as secured party hereunder.

Maturity Date has the meaning specified in the Note Agreement.

Maximum Lessor Risk Amount has the meaning specified in the Lease.

Net Proceeds of Sale has the meaning specified in the Lease.

Note Agreement means the Note Purchase Agreement, dated as of May 15, 1994, as the same may be amended from time to time, among the Purchaser, the Security Trustee and the Owner, relating to the issuance and sale of the Notes.

Notes means, collectively, the Interim Notes and the Permanent Notes, and individually, either an Interim Note or a Permanent Note.

Other Collateral shall have the meaning assigned in the Granting Clause.

Overall Transaction means all of those transactions referred to in, provided for in, or contemplated by, the Principal Documents, including, without limitation, the manufacture, purchase, refurbishment, remanufacture, ownership, financing, leasing, operation and management of the Equipment.

Overdue Rate means 1% over the interest rate on the Notes, but in no event greater than the maximum rate permitted by applicable law.

Owner has the meaning specified in the first paragraph of this Security Agreement.

Owner's Cost means the Acquisition Cost of each Unit of Equipment (as the term Acquisition Cost is defined in the Lease) as shown on the invoice or bill of sale rendered by the seller of such Unit and as set forth on the Lease Supplement for such Unit.

Owner Lien means a Lien arising as a result of an independent act of or claim against Owner which (i) is other than the Lien arising under this Security Agreement or the Reimbursement Security Agreement and (ii) is not a Lien that Lessee is required to remove or indemnify against under any of the Principal Documents.

Permanent Notes means, as of any particular time, the then outstanding Secured Notes due 2015 issued by the Owner in connection herewith and any Notes issued from time to time in exchange or substitution therefor.

Person has the meaning specified in the Lease.

Principal Documents has the meaning specified in the Note Agreement.

Recordable Documents has the meaning specified in Section 2.3.

Register has the meaning specified in Section 2.14.

Reinvestment Premium means, for any Unit of Equipment, as of any date, the excess, if any, of (a) the net present value of the sum of (i) all Installment Payments due on the Notes relating to such Unit of Equipment remaining to be paid from and after such date through, but not including, the Maturity Date and (ii) the outstanding principal balance of the Notes relating to such Unit of Equipment on the Maturity Date immediately prior to payment of any amounts on such date, together with any interest due on such Maturity Date (together (i) and (ii) are for the purposes of this definition, referred to as the "Discounted Payments"), each discounted at a rate of 50 basis points over the then current yield for direct obligations of the United States having a maturity equal to the weighted average life of the Discounted Payments over (b) the outstanding principal balance of the Notes applicable to such Units on such date.

Renewal Term has the meaning specified in the Lease.

Rent has the meaning specified in the Lease.

Responsible Officer shall mean the President or a Vice President of Owner.

Required Alterations has the meaning specified in the Lease.

Security Trustee has the meaning specified in the first paragraph of this Security Agreement.

Subsequent Owner means (i) any and every future purchaser, assignee or transferee of the Equipment or any part thereof and (ii) any and every future purchaser, assignee or transferee of the interest of any owner in the Equipment, but upon the sale, assignment or transfer of all of such right, title and interest in and to the Equipment by a Subsequent Owner, such Subsequent Owner shall cease to be a Subsequent Owner.

Supplemental Payment has the meaning specified in the Lease.

Termination Date has the meaning specified in the Lease.

Unit of Equipment or Unit means a single railcar included in the Equipment.

## ARTICLE 2

### Particular Covenants

Anything in this Security Agreement or the Notes to the contrary notwithstanding, the Owner represents, warrants, covenants and agrees as follows:

#### Section 2.1 Owner's Authority; No Prior Financing Statements.

Owner has the right, power and authority to grant a security interest in and assign the Other Collateral and to grant a security interest in the Equipment Collateral to Security Trustee for the uses and purposes herein set forth, and there is no financing statement or other filed or recorded instrument filed with the Interstate Commerce Commission (ICC) or elsewhere in which Owner is named and which Owner has signed, as debtor or mortgagor, now on file in any public office covering any of the Collateral excepting the financing statements or other instruments filed or to be filed in respect of and for the security interest provided for herein.

#### Section 2.2 Further Assurances.

The Owner will, at its expense, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, instruments and reasonable assurances required by the Security Trustee for the better assuring, conveying, granting, confirming and protecting unto the Security Trustee its assignment and security interest in the Collateral

whether now owned or hereafter acquired or for carrying out the intention or facilitating the performance hereof.

Section 2.3 Recording.

(a) The Owner will, upon the execution and delivery hereof and thereafter from time to time, cause this Security Agreement, the Lease, the Assignment, each supplement and amendment to each of said instruments and financing statements with respect thereto (collectively called the Recordable Documents), to be filed, registered and recorded as the Security Trustee may request and as may be required by present or future law to publish notice of and create, perfect and protect the lien hereof upon the Collateral and to publish notice of and protect the validity of the Lease and the Assignment. The Owner will, from time to time, at the request of the Security Trustee, perform or cause to be performed any other act as required by law, including the filing of financing statements and continuation statements, and will execute or cause to be executed any and all further instruments requested by the Security Trustee for such creation, perfection, publication and protection (any such request to be in writing and accompanied by an execution form of the financing statement, continuation statement or further instrument to be executed). If the Owner shall fail to comply with this Section, the Security Trustee shall be and is hereby irrevocably appointed the agent and attorney-in-fact of the Owner to comply therewith (including the execution, delivery and filing of such financing statements and other instrument), but this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default. To the extent permitted by law, the Owner will pay or cause to be paid all filing, registration and recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgement of the Recordable Documents, any instruments of further assurance and the Notes.

(b) On or prior to February 26 in each of the years 1999, 2004, 2009 and 2014, the Security Trustee shall have caused the Owner to file continuation statements with respect to the financing statements originally filed hereunder and under the Lease or failing the same, the Security Trustee shall file such continuation statements prior to March 13 in each such year pursuant to the authority vested in the Security Trustee under Section 2.3(a) hereof and shall provide each holder of a Note with a report of all action taken by the Security Trustee under this Section 2.3(a) prior to March 26 in each such year.

Section 2.4 Payment of the Notes.

(a) The Owner will punctually pay the principal, interest, Reinvestment Premium, if any, and all other sums to become due in respect of the Notes to the Security Trustee at its principal

office, in lawful money of the United States of America, and in accordance with this Security Agreement and the Notes. Payment of principal and interest on the Notes shall be made only upon presentment or surrender of the Notes to the Security Trustee for notation thereon of the amount of such payment. Final payment of any Note shall be made only against surrender of such Note to the Security Trustee at the principal office of the Security Trustee. Any payment or prepayment or amounts due on the Notes in accordance with the terms thereof and hereof which is due on a date which is not a Business Day shall be payable, without any additional interest or late charges on such payment or prepayment, on the next succeeding Business Day.

(b) Notwithstanding the foregoing provisions of paragraph (a) of this Section 2.4, in the case of any Note which is held by the Purchaser, any Affiliate of the Purchaser, or any other Institutional Investor, or a nominee of any thereof, the Security Trustee shall, if so requested in writing by such holder (and the instructions set forth in Schedule A to the Note Purchase Agreement shall constitute such notice with respect to the Purchaser), make payment of interest on such Note, and shall make payments or prepayments of the principal thereof and any premium thereon by check, duly mailed, by first-class mail, postage prepaid, or delivered to such holder at its address appearing on the Register as defined in Section 2.14 hereof and such holder (or the person for whom such holder is a nominee) will, before selling, transferring or otherwise disposing of such Note, make a notation on such Note of the date to which interest has been paid thereof and of the amount of any prepayments made on account of the principal thereof and will present such Note to the Security Trustee for transfer and notation as provided in said Section 2.14 hereof. All payments so made shall be valid and effective to satisfy and discharge the liability upon such Note to the extent of the sums paid. The Security Trustee is authorized to act in accordance with the foregoing provisions and shall not be liable or responsible to any such holder or to the Owner or to any other person for any act or omission on the part of the Owner or such holder in connection therewith.

(c) Notwithstanding the foregoing provisions of paragraph (a) of this Section 2.4, so long as any Note is held by the Purchaser, any Affiliate of the Purchaser, or any other Institutional Investor or a nominee of any thereof, the Security Trustee will, upon written notice from such holder given not less than 20 days prior to the payment or prepayment of the Notes (and the instructions set forth in Schedule A to the Note Purchase Agreement shall constitute such notice with respect to the Purchaser) cause all subsequent payments and prepayments of the principal of, and interest and premium, if any, on the Notes held by the Purchaser, any Affiliate of the Purchaser, or any other Institutional Investor, or a nominee of any thereof, to be made to any bank in the continental United States as shall be

specified in such notice by wire transfer in immediately available Federal Reserve funds to such bank, on each such date such payment or prepayment is due, provided that such bank has facilities for the receipt of a wire transfer, and further provided, that the Security Trustee will consolidate into one wire payment to any holder of the Notes, all amounts to be wired to such holder in respect of the Notes held by such holder. The Security Trustee will transmit any such wire transfer, together with any and all amounts received by the Security Trustee and payable to the Purchaser or the Owner, as the case may be, pursuant to the terms hereof from its office not later than 1:00 P.M., Delaware time, on each such date payment or prepayment is due, provided that the Security Trustee has received Federal Reserve or other funds current and immediately available on such date prior to 11:00 A.M., Delaware time on such date. In the event that by reason of its negligence the Security Trustee does not transmit any such payment or prepayment to the Purchaser or the Owner in immediately available funds on such date (or, if such date is not a Business Day, on the next succeeding Business Day without any additional interest or late charges on such payment or prepayment) by 1:00 P.M., Delaware time, the Security Trustee shall pay interest on such payment or prepayment at the Overdue Rate.

Section 2.5     The Lease and the Assignment.

At all times the Equipment shall be leased to Lessee under the Lease, provided that such Equipment may be subleased and the Lease may be assigned by Lessee upon compliance with the terms and conditions of the Lease. The Owner will punctually perform all obligations, covenants and agreements by it to be performed as lessor under the Lease in accordance therewith, will at all times do all things necessary to compel performance by Lessee of all its obligations, covenants and agreements under the Lease and will give to the Security Trustee notice of all defaults under the Lease promptly after obtaining knowledge thereof. Except as specifically required in the Lease, the Owner will not amend the Lease without the prior written consent of the Security Trustee. The Owner will, at all times, maintain the validity and effectiveness of the assignment to the Security Trustee of the Lease and the Agency Agreement made by this Security Agreement and the Assignment, as appropriate, and (except as expressly permitted by the Lease, the Agency Agreement, this Security Agreement or the Assignment) will take no action, will give no consent or approval for action to be taken by others and will not omit to take any action, which action or omission would release Lessee from its obligations or liabilities under the Lease, the Agency Agreement or the Assignment, or would result in the termination, amendment or modification or impair the validity of the Lease, the Agency Agreement or the Assignment.

Section 2.6     Existence; Compliance with Laws; Owner Liens.

The Owner will (i) take such steps as may be necessary to preserve its corporate existence, and (ii) will take such steps as may be necessary to preserve its right to conduct business in all states or jurisdictions in which the nature of its business and operations require qualification to do business as a foreign corporation. The Owner will comply with or cause to be complied with (a) any law, statute, ordinance, regulation, order, rule, decree or similar requirement of the United States of America or of any other governmental authority, and (b) any contract (including insurance policies), agreement, other instrument or restrictions, in each case applicable to the Owner or the Collateral, including all such legal requirements, contracts, agreements and restrictions which involve Required Alterations to the Collateral. Nothing in this Section shall require the Owner to comply with any such law, statute, ordinance, regulation, order, rule, decree or similar governmental requirement so long as a contest of the validity thereof shall be made by Lessee or by the Owner in the manner provided in the Lease. The Owner will at all times keep the Collateral free from Owner Liens, other than the subordinate security interest granted to the L/C Issuer pursuant to the Reimbursement Security Agreement dated as of the date hereof between Owner and L/C Issuer.

#### Section 2.7 After-acquired Property.

All right, title and interest of the Owner in and to the Remanufacture of the Units and all extensions, improvements, renewals, alterations, substitutions, modifications and replacements of, and all additions and appurtenances to, the Equipment hereafter acquired by the Owner, whether pursuant to the Remanufacture or otherwise, immediately upon such acquisition and without any further act by the Owner, shall become part of the Equipment Collateral and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by the Owner and specifically described in the Granting Clause hereof; at any time the Owner will execute and deliver to the Security Trustee any such further assurances or as the Security Trustee may reasonably require to subject the same to the lien hereof.

#### Section 2.8 Taxes.

The Owner will do or cause to be done everything necessary to fully preserve the lien hereof without expense to the Security Trustee or the Purchaser, including, without limitation, paying and discharging or causing to be paid and discharged, whether or not payable directly by the Owner or subject to withholding at the source, (a) all taxes, assessments, levies, fees, and all other governmental charges, general, special, ordinary and extraordinary, foreseen or unforeseen, which are, at any time prior to or during the terms hereof imposed or levied upon or assessed against the Owner with respect to the Collateral, this

Security Agreement, the indebtedness secured hereby or the revenues, rents, issues, income and profits of the Collateral or which may arise in respect of the use, possession or operation thereof, (b) all income, excess profits, sales, gross receipts and other taxes; duties or imposts, whether similar or not in nature, assessed against, imposed or levied upon, by any governmental authority on the Owner, the Collateral or the revenues, rents, issues, income and profits of the Collateral (but excluding any net income, franchise, estate, inheritance, succession, transfer or profits taxes of the Security Trustee unless such tax is in lieu of or a substitute for any other tax or assessment with respect to the Collateral, which if such other tax or assessment were in effect, would be payable by the Owner), (c) all sales, use and similar taxes at any time levied, assessed or payable on account of the acquisition, leasing, or use of the Collateral and (d) all claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a lien on the Collateral or on the revenues, rents, issues, income and profits of the Collateral, (including any Remanufacturer Liens, except during the period before the Permanent Financing Date) unless a contest of the amount or the validity thereof shall be made in good faith by Lessee in accordance with the Lease. Lessee's compliance with Sections 15 and 18 of the Lease shall satisfy the Owner's obligations contained in this Section, to the extent that such taxes relate to the Collateral or the transactions contemplated hereby or by the Note Agreement.

Section 2.9      Insurance.

(a) The Owner will maintain or cause to be maintained with respect to the Equipment insurance of the character and with the coverage, provisions and endorsements required to be maintained pursuant to the Lease, whether or not the Lease shall have been terminated. Lessee's compliance with Section 17 of the Lease shall satisfy the Owner's obligations contained in this Section.

(b) Insurance claims by reason of damage to or destruction of any Unit of Equipment shall be adjusted by the Lessee or the Owner in accordance with the Lease.

(c) The Owner shall not obtain or carry any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 2.9 (other than any liability or worker's compensation policy) unless the Security Trustee (in its individual and trustee capacities) is included therein as named insured, with loss payable to the Security Trustee or its assigns as provided in the Lease. The Owner shall immediately notify the Security Trustee whenever any such separate insurance is taken out, specifying the insurer and full particulars as to the policies evidencing the same, and shall deliver to the Security Trustee certificates of insurers evidencing such insurance.

(d) The Owner shall deliver or cause to be delivered to the Security Trustee original or duplicate policies or certificates of insurers, satisfactory to the Security Trustee, evidencing the existence of all insurance which is required to be maintained hereunder, such delivery to be made (i) simultaneously with the execution and delivery hereof and (ii) not less than 15 Business Days prior to the expiration of any such insurance. The Owner shall immediately notify the Security Trustee whenever any such separate insurance is obtained by the Owner and shall deliver to the Security Trustee the policies evidencing the same. Any insurance required hereunder may be provided under blanket policies which comply with the provisions hereof and specify the coverage and amounts thereof with respect to the Equipment.

Section 2.10 Maintenance and Repair; Indemnity.

(a) The Owner will maintain the Equipment or cause the Equipment to be maintained in good order and operating condition, ordinary wear and tear excepted, and will make or will cause to be made all repairs which may be required to keep the Equipment in good order and operating condition, including but not limited to taking or causing to be taken actions necessary as set forth in Section 2.6 hereof. Lessee's compliance with Section 11 of the Lease will satisfy the Owner's obligations set forth in this Section.

(b) The Owner shall pay, and shall protect, indemnify and save harmless the Security Trustee (in its individual and trustee capacities) and the Purchaser from and against all liabilities, losses, damages, costs, expenses (including reasonable attorney's fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from injury to or death of any Person, or damage to or loss of property, or connected with the use, condition or operation of the Equipment. Lessee's compliance with Section 19 of the Lease shall satisfy the Owner's obligations contained in this Section.

Section 2.11 Advances by the Security Trustee.

If the Owner shall fail to perform or cause to be performed any of the covenants contained in Sections 2.3, 2.8, 2.9 or 2.10, the Security Trustee may make advances to perform the same on its behalf, and all sums so advanced shall be secured by the lien of this Security Agreement prior to the Notes; and the Owner will repay on demand all sums so advanced on its behalf with interest at the Overdue Rate, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment.

Section 2.12 Negative Covenants.

The Owner will not (i) engage, directly or indirectly, in any business other than the acquisition, refurbishment, remanufacture, ownership and leasing of the Equipment, (ii) create, assume, guarantee or suffer to exist any indebtedness other than the Notes, (iii) make or permit to remain outstanding, a loan or advance to, or own or acquire any stock or securities of any Person, (iv) sell, lease, transfer, convey, assign or otherwise dispose of the Collateral or any part thereof, except as permitted in Section 3.4 or in the Lease, (v) claim any credit on, or make any deduction from interest or Reinvestment Premium, if any, or on principal of the Notes by reason of payment of any taxes levied or assessed or to be levied or assessed on the Collateral or any part thereof, or (vi) create or suffer to be created, directly or indirectly, any mortgage, lien, encumbrance, charge or other exception to title or ownership upon or against the Collateral or any rents or other income arising therefrom, other than the Lease and Assignment, any Remanufacturer Liens during the period prior to the Permanent Financing Date, the subordinate security interest granted to the L/C Issuer, and as expressly permitted by this Security Agreement.

Section 2.13 Lease Basic Rent.

Each installment of Rent as defined in and payable under the Lease shall, on each date for the payment thereof (as set forth in the Lease), be sufficient to make payment of the Installment Payment due on or about such date. The purchase price which would be payable by Lessee upon the purchase of the interest of the Owner in the Equipment pursuant to Section 28(b) of the Lease shall not be less than the Allocable Portion of the Notes in respect of the Equipment so purchased plus accrued and unpaid interest thereon.

Section 2.14 The Register; Transfer, Exchange and Replacement of the Notes.

The Owner shall cause to be kept at its place of business, one or more books (the Register) for the registration of the Notes (including all transfers) and the names and addresses of the registered owner(s) of the Notes. Each Note shall be in fully registered form and shall be registered initially in the name of the first holder of such Note, and thereafter, upon surrender thereof as provided herein, in such names and payable at such locations as the registered owner of such Note may request. Upon surrender of a Note to the Owner (with instructions for transfer and with signatures guaranteed), the Owner will deliver to the registered owner thereof a new Note or Notes (the Exchange Note) in exchange for such Note, within a reasonable time after such request. The Exchange Note shall be (a) of the same tenor as the surrendered Note, (b) in any denomination requested by the registered owner of said surrendered Note not to exceed the outstanding balance of the

surrendered Note nor in an amount less than \$500,000 (or the unpaid principal amount, if less), (c) payable to such Person as such registered owner may request, and (d) dated such date as will result in no gain or loss of interest or principal. The Security Trustee shall mark on each Exchange Note (i) the date to which principal and interest have been paid on such surrendered Note, (ii) all payments and prepayments of principal previously made on such surrendered Note which are allocable to such Exchange Note, and (iii) the amount of each installment payment payable on such Exchange Note. Each installment payment payable on such Exchange Note on any date shall bear the same proportion to the installment payment payable on such surrendered Note on such date as the original principal amount of such Exchange Note bears to the original principal amount of such surrendered Note. Interest shall be deemed to have been paid on such Exchange Note to the date on which interest shall have been paid on such surrendered Note, and all payments and prepayments of principal marked on such Exchange Note, as provided in clause (ii) above, shall be deemed to have been made thereon. No service charge shall be made for any transfer or exchange of a Note. Any Exchange Note issued pursuant to this Section 2.14 shall evidence the same indebtedness as the Note having been transferred or exchanged and shall be entitled to the benefits and the security of all the security therefor. If a Note is lost, stolen or destroyed, or upon the surrender and cancellation of a mutilated Note, the Owner will, upon written request at the expense and upon the written request of the registered owner thereof, deliver to said registered owner, within a reasonable time after such request and in lieu of such lost, stolen, destroyed or mutilated Note, an Exchange Note of the same tenor and in a principal amount equal to the unpaid principal amount thereof. In the case of a lost, stolen or destroyed Note, the registered owner thereof shall furnish evidence of loss (which, so long as the registered owner of such Note is an Institutional Investor, may be an affidavit of an officer of such registered owner as to such loss) and such indemnity or other security as the Owner may reasonably require; provided, however, that so long as such registered owner is an Institutional Investor, such registered owner's unsecured agreement to indemnify the Owner shall constitute a sufficient indemnity for this purpose.

#### Section 2.15 Registered Owner.

The Owner shall deem and treat the registered owner of a Note as the absolute owner thereof (whether or not such Note shall be overdue) for all purposes, and the Owner shall not be affected by any notice to the contrary, and payment of the principal of, Reinvestment Premium, if any, and interest on the Notes shall be made only to or upon the order of such registered owner. All such payments so made shall be valid and effectual to satisfy and discharge the liability of the Owner upon the Notes to the extent of the sum or sums so paid.

Section 2.16 Books and Records; Notice of Defaults.

(a) The Owner will (i) keep adequate records and books of account reflecting all its financial transactions with respect to the Collateral and (ii) permit the Security Trustee or the Purchaser by either of their respective agents, accountants and attorneys, to inspect the Equipment and to examine the Owner's records and books of account, as they relate to the Collateral, and to discuss its affairs, finances and accounts, as they relate to the Collateral, at such reasonable times as may be requested by the Security Trustee or the Purchaser upon reasonable notice and at all times subject to the Lessee's rights set forth in Section 13 of the Lease.

(b) Promptly upon a Responsible Officer's obtaining knowledge thereof, the Owner will notify the Security Trustee and the Purchaser of the occurrence of any default or Event of Default under the Notes, this Security Agreement, or the Lease.

Section 2.17 Cancellation of Notes.

All Notes surrendered for the purpose of payment, redemption, transfer or exchange shall be delivered to the Security Trustee for cancellation and, if surrendered to the Security Trustee, shall be canceled by it, and no Notes shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Security Agreement. The Security Trustee shall deliver a certificate to the Owner specifying any cancellation of Notes which has been made, and all such canceled Notes shall be delivered to or disposed of as directed by the Owner.

Section 2.18 Security Trustee as Agent.

The Security Trustee is hereby appointed the agent for the Owner for the payment, registration, transfer and exchange of Notes. Subject to the provisions of Section 2.14 hereof, Notes may be presented for payment at, and notices or demands with respect to the Notes or this Security Agreement may be served or made at, the principal corporate trust office of the Security Trustee.

ARTICLE 3

Possession, Use and Release of the Property

Section 3.1 Purchase of the Property by Lessee.

(a) Within 5 days after receipt by the Owner of any notice from Lessee given pursuant to the Lease of the intention of Lessee to terminate the Lease or purchase any Equipment pursuant to Sections 28(a) or 28(b) of the Lease, the Owner shall furnish

to the Security Trustee and the Purchaser a copy of such notice and any offer by Lessee to purchase any Equipment. In the event that the Lessee elects to purchase any Equipment pursuant to Section 28(b) of the Lease, the Owner will comply with all applicable provisions of the Lease, so that the purchase of such Equipment by Lessee shall be duly consummated within the time period prescribed by the Lease. If the Owner shall fail to comply with the provisions of the Lease necessary to permit the consummation of the purchase of such Equipment by Lessee or cause the same to be complied with, the Security Trustee may, and shall have the right and power (which right and power are coupled with an interest) to, and is hereby irrevocably appointed the agent and attorney-in-fact of the Owner to, take all actions necessary to comply with said provisions, including, without limitation, the execution and delivery, in the name and on behalf of the Owner, of a bill of sale or other instrument of conveyance or assignment, conveying and assigning such Equipment to Lessee or its designee; but the provisions of this sentence shall not prevent any default in the observance or performance of any covenant, condition or agreement contained in this paragraph (a) from constituting an Event of Default. If Lessee shall purchase any Equipment pursuant to Section 28(b) of the Lease and shall make payment of the purchase price therefor to the Security Trustee pursuant to the Assignment, then the Security Trustee shall execute and deliver to the Owner a release of such Equipment and the Lease as it relates to such Equipment from the lien of this Security Agreement and any other security documents promptly after receipt of such payment, together with all other sums then due and payable under this Security Agreement and the Lease as such sums relate to such Equipment. Payments received by the Security Trustee pursuant to this Section 3.1(a) shall become part of the Collateral and shall be disposed of pursuant to Article 4. If such offer to purchase shall be received by the Security Trustee from Lessee, the Security Trustee shall furnish a copy thereof to the Owner, and the provisions of this Section shall be applicable to the same extent as if such offer to purchase had been received by the Owner from Lessee.

(b) Each bill of sale or other instrument of conveyance or assignment executed and delivered by the Security Trustee pursuant to this Section shall be binding upon the Owner and every future owner of any interest in the Equipment with the same effect as if the Owner and every such future owner had personally executed and delivered the same.

### Section 3.2 Condemnation.

Immediately upon a Responsible Officer's obtaining knowledge of any proceedings for the taking of any of the Equipment in condemnation or other eminent domain proceeding, the Owner shall notify the Security Trustee and the Purchaser of the pendency thereof. Any award or compensation payable in such proceedings

to the Owner or to the lessor under the Lease or assigned to such lessor by Lessee is hereby assigned to and shall be paid to the Security Trustee. The Security Trustee shall be under no obligation to question the amount of the award or compensation and may accept the same. Any award or compensation so received shall be disposed of pursuant to Article 4. For the purposes of this Section 3.2, any notifications required to be delivered to the Security Trustee by the Owner shall be considered delivered in accordance with the terms hereof if delivered to the Security Trustee directly by Lessee in accordance with the manner required hereby.

Section 3.3      Purchase of Equipment by Owner.

If Lessee shall have determined not to exercise its option to purchase Equipment on the Termination Date applicable to such Equipment in accordance with Section 28(b) of the Lease and Owner shall desire to purchase such Equipment, then on the thirtieth day preceding the Termination Date applicable to such Equipment, the Owner shall pay to the Security Trustee by bank wire transfer of immediately available federal funds an amount equal to the Allocable Portion of the Notes relating to such Equipment, together with accrued interest thereon to the date of such payment, plus, in the case of purchases which occur at the end of the Basic Term or any of the first eighteen Renewal Terms (as defined in the Lease) the Reinvestment Premium. Prior to the payment of the amount required to be paid by the Owner pursuant to the immediately preceding sentence, Owner shall not reject any bid received for the Equipment by any third party under Section 28(c) of the Lease without the written consent of the Security Trustee and the Purchaser. Upon payment of the Allocable Portion of the Notes with respect to any Equipment together with all other amounts then required to be paid by Owner hereunder the Security Trustee will release such Equipment from the lien of this Security Agreement in the manner set forth in Section 3.1.

Section 3.4      Sale of Equipment to Third Party; Termination Date Payments; Letter of Credit Drawing.

Except in the case of Equipment which shall have been purchased by Lessee pursuant to Section 28(b) of the Lease or in respect of which the Owner shall have made the payments permitted to be made pursuant to Section 3.3 hereof, on the Termination Date for any Equipment the Net Proceeds of Sale (as defined in the Lease), if any, derived from the sale of such Equipment shall be paid over to the Security Trustee on the applicable Termination Date, or such earlier date as the same shall be payable by Lessee under the Lease, by wire transfer of immediately available federal funds. If either such Equipment is not sold on the applicable Termination Date or the Net Proceeds of Sale are insufficient to pay in full the Allocable Portion of the Notes relating to such Equipment, and provided that Lessee is

not in default under the Lease (including, without limitation, with respect to Lessee's obligation to pay the amounts due pursuant to Sections 28 and 29 of the Lease), the Owner shall pay to the Security Trustee by wire transfer of immediately available federal funds (i) to the extent received from Lessee, all amounts owed by Lessee pursuant to Section 29 of the Lease (together with Lessee's payment of the Reinvestment Premium, if applicable pursuant to the Lease) and (ii) such additional amounts as may be required to pay the Allocable Portion of the Notes relating to such Equipment, but in no event an amount greater than the Maximum Lessor Risk Amount set forth in the Lease; provided, that the Security Trustee shall promptly effect a drawing under the Letter of Credit with respect to such Equipment, under the circumstances and for the amount described in such Letter of Credit and in the Drawing Certificate for such Letter of Credit, if the amounts described in the foregoing clauses (i) and (ii) are insufficient to pay the Notes, and in the event of any such drawing the Security Trustee shall promptly notify the Purchaser. Notwithstanding anything in this Security Agreement or the Notes to the contrary, in no event shall the Owner be required to make any payments to the Security Trustee in respect of the Reinvestment Premium except to the extent the same are received from Lessee.

Section 3.5      Transfer of the Owner's Interest in the Property.

In addition to the transfers by the Owner otherwise permitted by this Security Agreement, if no Event of Default shall have occurred and be continuing, the Owner and any Subsequent Owner may, with the prior written consent of Purchaser, sell, assign or otherwise transfer its interest in, to and under the Equipment in accordance with the Lease, subject to the lien hereof, of the Lease and of the Assignment; provided, however, that upon any such sale, assignment or transfer, and upon each and every succeeding sale, assignment or transfer, the Subsequent Owner shall execute and deliver to the Security Trustee and the Purchaser an instrument, in form and substance reasonably satisfactory to the Security Trustee and Purchaser, irrevocably appointing the Security Trustee as agent and attorney-in-fact to take all actions and do all things in its behalf of the character which the Security Trustee is authorized by this Security Agreement to do as agent and attorney-in-fact of the Owner, and to execute and deliver in its name and behalf any deed or other instrument which, pursuant to the terms hereof, the Security Trustee is authorized to execute and deliver in the name and behalf of the Owner; and provided, further, that each Subsequent Owner shall (a) expressly agree that the interest or estate so acquired is subject and subordinate to this Security Agreement, the Lease, and the Assignment, (b) expressly agree to be bound, subject to the terms of Section 7.1, by all of the obligations and undertakings of the Owner contained in this

Security Agreement applicable to the Equipment or the estate or interest therein acquired by such Subsequent Owner, (c) expressly agree to be bound by the provisions of Section 2.12, and (d) be an Institutional Investor.

#### ARTICLE 4

##### Application of Moneys

##### Section 4.1 Moneys Under the Lease.

(a) Unless and until an Event of Default shall have happened and be continuing, moneys received by the Security Trustee pursuant to the Assignment as Rent under, and as defined in, the Lease and as interest on any overdue installment thereof shall be applied, first, to the Installment Payments (and for interest on any overdue amount thereof) due on or about the date on which such payment of Rent is due and second (if no default has occurred and is continuing under the Note or this Security Agreement), the excess after payment of the Equity Notes as contemplated by Section 4.4 hereof, if any, shall be paid to the Owner or upon its written order, free from the lien hereof.

(b) Any moneys received by the Security Trustee from the Lessee on account of any Event of Loss shall be applied to the payment of the Allocable Portion of the Notes relating to the Equipment which shall have suffered such Event of Loss, but without premium.

(c) Any moneys received by the Security Trustee as a Supplemental Payment (as defined in the Lease) or other sums under the Lease shall be applied to the purposes for which such moneys were paid pursuant thereto.

(d) Excess amounts received pursuant to the second sentence of the first paragraph of Section 29 of the Lease shall be retained by the Security Trustee to be applied to Owner's obligations pursuant to Section 3.4 hereof, and any excess following such application shall be promptly paid over by the Security Trustee to or upon the order of Owner.

##### Section 4.2 Purchase Prices; Certain Payments.

Moneys received by the Security Trustee (i) as the purchase price for the Equipment pursuant to Section 28 of the Lease, (ii) as the end of term adjustment by the Lessee pursuant to Section 29 of the Lease, or (iii) from the Owner or as applicable, from the proceeds of a drawing upon the Letter of Credit pursuant to Section 3.3 or 3.4 of this Security Agreement shall be applied promptly to the payment or prepayment of the entire unpaid principal amount of the Notes or an Allocable Portion of the Notes, as the case may be, at a price equal to 100% of the

principal amount thereof outstanding, plus accrued and unpaid interest thereon to the date fixed for payment, with Reinvestment Premium, if applicable; and if no Event of Default has occurred and is continuing hereunder, any balance shall be paid to the Owner within 10 days after the date of such payment.

Section 4.3 Proceeds of Insurance and Condemnation Awards.

Moneys received by the Security Trustee as payment for an Event of Loss under any policy of insurance or as an award or compensation for the taking, in condemnation or other eminent domain proceedings, of the Equipment, shall be applied to payment of the Allocable Portion of the Notes relating to such Equipment, or, if Lessee shall have paid the Estimated Residual Value of such Equipment and so long as no Event of Default shall exist under the Lease, such moneys shall be paid over to Lessee as and to the extent that Lessee is entitled to receive the same under the Lease. Any such moneys not so paid over or required to be paid over to Lessee shall be held as part of the Collateral.

Section 4.4 Payments to Equity Loan Security Trustee.

Any term of this Article 4 to the contrary notwithstanding, so long as any indebtedness shall be outstanding under the Loan and Security Agreement, Owner hereby requests and directs the Security Trustee to pay all amounts otherwise payable to the Owner (other than Excluded Amounts) to Wilmington Trust Company, as security trustee (the "Equity Loan Security Trustee") under that certain Loan and Security Agreement dated as of the date hereof among Summer Street Capital Corporation, the Equity Loan Security Trustee and the Purchaser. Each such payment to the Equity Loan Security Trustee shall indicate the section of the Lease pursuant to which such payment has been made by the Lessee.

## ARTICLE 5

### Prepayment

Section 5.1 Prepayment.

No prepayment of the Notes may be made except as provided in this Security Agreement, and all such prepayments shall be made in accordance with Articles 3, 4 and 5, as applicable.

Section 5.2 Notice of Prepayment.

At least 30 days prior to the date fixed for prepayment of the Notes, notice thereof shall be sent by the Owner to the Security Trustee and each registered owner of a Note by prepaid registered or certified mail. Any such notice so mailed shall

conclusively be presumed to have been given to the Security Trustee and such registered owners whether or not the Security Trustee actually received such notice. Such notice shall specify the date fixed for prepayment, the principal amount of the Notes to be prepaid and the premium to be paid, if any.

Section 5.3     Deposit of Moneys.

On or prior to the date fixed for each prepayment of the Notes, the moneys required therefor shall be deposited with the Security Trustee by the Owner. Interest on any principal designated for prepayment shall cease upon the date fixed therefor unless default shall be made in the payment of the price payable upon such prepayment.

Section 5.4     Allocation Among Noteholders.

In the event of any partial prepayment of the Notes, the aggregate principal amount of the Notes to be prepaid shall be prorated by the Security Trustee among the holders thereof in proportion to the unpaid principal amount of such Notes held by them, and the Security Trustee shall designate the portions of the Notes of each such holder to be prepaid and the principal amount of any amortization payment required to be made pursuant to the terms of the Notes shall be reduced in the same proportion that the principal amount of the Notes outstanding immediately preceding any such partial prepayment referred to in this Section 5.4 has been reduced by such partial prepayment, to the end that any remaining amortization payments required to be made pursuant to the terms of the Notes on each of the Notes outstanding will result in the same proportionate rate of amortization as if Notes had not been partially prepaid as referred to in this Section 5.4.

ARTICLE 6

Events of Default and Remedies

Section 6.1     Events of Default.

If one or more of the following Events of Default shall happen, that is to say:

- (a) if default shall be made in any Installment Payment due on the Notes, or in any other payment of principal, interest, or Reinvestment Premium, if any, on the Notes, whether at maturity, by acceleration or as part of any prepayment or otherwise, as in the Notes and this Security Agreement provided, and such default shall continue for 5 days;

- (b) if the Lease shall expire, cease to be effective or otherwise terminate or in any way be amended or modified (except as expressly provided for herein or therein other than a termination arising on account of the occurrence of an Event of Default under the Lease);
- (c) if any representation or warranty of the Owner, Lessee or Borrower set forth in this Security Agreement, the Lease, the Note Agreement, the Loan and Security Agreement, the Agency Agreement or the Assignment or set forth in any notice, certificate, instrument, demand or request delivered pursuant hereto or thereto shall prove to be incorrect or misleading in any material respect to the detriment of any Person to whom or for whose benefit the representation or warranty was made as of the time when the same shall have been made;
- (d) if a default by the Owner shall be made in the due observance or performance of any covenant or agreement contained in Section 2.12, Section 3, or in Section 4 or if the Owner shall fail to keep in place the casualty or general liability insurance required to be maintained by the terms of Section 2.9 hereof;
- (e) if the Owner shall default in the performance of any other covenant, agreement or obligation on the part of the Owner to be performed hereunder and such default shall continue for a period of 30 days after notice thereof, specifying such default, shall have been given to the Owner; provided, however, that in the case of a default which cannot with reasonable diligence be remedied by the Owner within a period of 30 days, if the Owner shall commence within such period of 30 days to remedy the default and thereafter shall prosecute the remedying of such default (including, without limitation, complying with any governmentally imposed plan for remediation or cleanup of environmental contamination) with all reasonable diligence, the period of time after the giving of such notice within which to remedy the default shall be extended for such period as may be necessary to remedy the same with all reasonable diligence, up to a maximum period of 120 days after notice of such default;
- (f) if an Event of Default shall occur under and as defined in the Lease;
- (g) if an Event of Default shall occur under and as defined in the Loan and Security Agreement;

- (h) if a payment default shall occur under the Letter of Credit or the Equity Letter of Credit (each as defined in the Note Agreement);
- (i) if a default shall occur under the Comfort Letter or the Equity Comfort Letter (each as defined in the Note Agreement);
- (j) if the Owner shall be adjudicated a debtor or bankrupt or be declared insolvent or file for an order of relief under the Federal Bankruptcy Code (the Bankruptcy Act) or any other federal or state law as now or hereafter in effect relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts (hereinafter collectively called Bankruptcy Laws), or if the Owner shall (i) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee, United States Trustee or liquidator (or other similar official) of the Collateral or of the Owner or of any substantial portion of the Owner's property, or (ii) generally not pay its debts as they become due, or admit in writing its inability to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of its creditors, or (iv) file a petition commencing a voluntary case under or seeking to take advantage of any Bankruptcy Law, or (v) fail to controvert in timely and appropriate manner, or in writing acquiesce to, any petition commencing an involuntary case against the Owner or otherwise filed against the Owner pursuant to any Bankruptcy Law, or (vi) take any action in furtherance of any of the foregoing; or
- (k) if an order for relief against the Owner shall be entered in any involuntary case under the Bankruptcy Act or any similar order against the Owner shall be entered pursuant to any other Bankruptcy Law, or if a petition commencing an involuntary case against the Owner or proposing the reorganization of the Owner under the Bankruptcy Act shall be filed in and approved by any court of competent jurisdiction and not be discharged or denied within 60 days after such filing, or if a proceeding or case shall be commenced in any court of competent jurisdiction seeking (i) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of the Owner, or (ii) the appointment of a receiver, custodian, trustee, United States Trustee or liquidator (or other similar official) of the Collateral or of the Owner or of any substantial portion of the Owner's property, or (iii) any similar relief as to the Owner pursuant to the Bankruptcy Act or any Bankruptcy Law, and any such

proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for 60 days;

provided, however, that if the only Event of Default which has occurred and is continuing hereunder is (1) an Event of Default described in clause (f) or any Event of Default which has resulted from an Event of Default described in clause (f) or (2) an Event of Default described in clause (c) which relates solely to a misrepresentation by Lessee (such Events of Default under (1) and (2) called Lessee Defaults) the Security Trustee shall not exercise any right or remedy pursuant hereto unless the Security Trustee is concurrently pursuing (subject to any legal constraints which would prohibit such action) one or more remedies available to the Security Trustee as assignee of the Owner's interest in the Lease, under the Lease. If the Security Trustee shall, in accordance with its rights hereunder, exercise its remedies under this Security Agreement without concurrently exercising its rights as assignee of the Owner's interest in the Lease (subject to any legal constraints which would prohibit such action), then the Owner's obligations with respect to the Maximum Lessor Risk Amount shall terminate and the Security Trustee shall have no further rights with respect thereto.

Then in every such case, during the continuance of any Event of Default:

I. The Security Trustee may, and upon (i) in the case of an Event of Default described in clause (a), the written request of any holder of a Note, (ii) the written request of the holders of at least 51% in principal amount of the Notes then outstanding or (iii) the occurrence of an Event of Default under Section 6.1(j) or (k) hereof, shall, by written notice to the Owner declare the entire principal amount of the Notes (if not then due and payable) and all accrued and unpaid interest thereon to be due and payable immediately, and upon any such declaration the principal of the Notes and said accrued and unpaid interest shall become and be immediately due and payable, anything to the contrary contained in the Notes or in this Security Agreement notwithstanding.

II. The Security Trustee personally, or by its agents or attorneys, to the extent permitted by applicable law may enter into and upon the premises of the Owner and the Lessee (to the extent not prohibited by the Lease) and take possession of the Equipment, and, may use, operate, manage and control the same, may maintain and repair the Equipment, may insure and reinsure the same and may make all necessary or proper repairs, renewals and replacements and any useful alterations, additions, and improvements thereto and thereon, all as it may deem advisable; and in every case the Security Trustee to the extent permitted by

applicable law shall have the right to manage and operate the Equipment and exercise all rights and powers of the Owner with respect thereto either in the name of the Owner or otherwise as the Security Trustee shall deem best; and to the extent permitted by applicable law the Security Trustee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Equipment and said earnings, revenues, rents, issues, profits and income are; in case an Event of Default shall happen, hereby assigned to the Security Trustee, its successors and assigns; and, after deducting the expenses of all maintenance, repairs, renewals, replacements, alterations, additions, and improvements and taxes, assessments, insurance and prior or other proper charges upon the Collateral, as well as reasonable compensation for the services of all attorneys, servants and agents by the Security Trustee properly engaged and employed, the Security Trustee shall apply the moneys arising as aforesaid as follows:

(1) in case an Event of Default, other than an Event of Default of the nature described in clause (a) of this Section, shall have happened, first to the payment of the Installment Payments and any other payments of the principal of the Notes and interest thereon, when and as the same shall become payable, and second to the payment of premium, if any, and any other sums required to be paid by the Owner under this Security Agreement, and third to the payment of the surplus, if any, to whomever shall be entitled thereto (provided, however, that in the event of any sale of the Collateral pursuant to paragraph III below, the proceeds of such sale shall be applied in the order of priorities and amounts set forth in Section 6.2(e)); or

(2) in case an Event of Default described in clause (a) of this Section shall have happened, in the order of priorities and amounts set forth in Section 6.2(e).

III. The Security Trustee, with or without entry, personally or by its agents or attorneys, may:

(1) sell, to the extent permitted by applicable law, all and singular the Collateral and all estate, right, title, interest, claim and demand therein and right of redemption thereof at one or more private or public sales, as an entirety or in parcels and at such times and places and upon such terms as the Security Trustee may specify in the notice or notices of sale to be given to the Owner or as may be required by law;

(2) institute proceedings for the complete or partial foreclosure hereof; or

(3) take all steps to protect and enforce its rights and remedies, whether by action, suit or proceeding in equity or at law (for the specific performance of any covenant, condition or

agreement in the Notes or in this Security Agreement contained or in aid of the execution of any power herein granted or for any foreclosure hereunder or for the enforcement of any other appropriate legal or equitable remedy) or otherwise as the Security Trustee shall deem most effectual to protect and enforce the same. To the extent not prohibited by applicable law, the Security Trustee may conduct any number of sales from time to time and 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 Owner hereunder shall have been paid.

IV. The Security Trustee shall have all rights and remedies provided to a secured party by the Uniform Commercial Code.

Section 6.2      Sale of Collateral; Application of Proceeds.

(a) To the extent permitted by applicable law the Security Trustee may postpone the sale of the Collateral by public announcement at the time and place of such sale, and from time to time thereafter may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement.

(b) Upon the completion of any sale made by the Security Trustee under or by virtue of this Article, the Security Trustee shall execute and deliver to the purchaser good and sufficient bills of sale and other instruments conveying, assigning and transferring all its estate, right, title and interest in and to the property and rights sold. The Security Trustee is hereby irrevocably appointed the true and lawful attorney of the Owner and any Subsequent Owner to make, in its own name and stead or in the name of the Owner or such Subsequent Owner, all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold and for that purpose the Security Trustee may execute all necessary deeds and instruments of assignment and transfer and may substitute Persons with like power, the Owner and such Subsequent Owner hereby ratifying and confirming all that his said attorney or such substitutes shall lawfully do by virtue hereof. Nevertheless, the Owner and any Subsequent Owner, if so requested in writing by the Security Trustee, shall ratify and confirm any such sale by executing and delivering to the Security Trustee or to such purchasers any instrument which, in the judgment of the Security Trustee, is suitable or appropriate therefor. Any such sale made under or by virtue of this Article, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Owner and any Subsequent Owner in and to the property and rights so sold, and

shall be a perpetual bar at law and in equity against the Owner and any Subsequent Owner, and their respective successors, assigns and any and all Persons who claim or may claim the same from, through or under any of them.

(c) The receipt of the Security Trustee for the purchase money paid as a result of any such sale shall be a sufficient discharge therefor to any purchaser of the Collateral sold as aforesaid; and no such purchaser or its representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any purpose hereof, shall be answerable in any manner whatsoever for any loss, misapplication or non-application of any of such purchase money or shall be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(d) In the event of any sale made under or by virtue of this Article (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the entire principal of and interest on the Notes and Reinvestment Premium thereon, if any, and all other sums required to be paid by the Owner pursuant hereto, if not previously due and payable, shall immediately become due and payable, anything in the Notes or in this Security Agreement to the contrary notwithstanding.

(e) The purchase money, proceeds or avails of any sale made under or by virtue of this Article, together with any other sums which then may be held by the Security Trustee as part of the Collateral or the proceeds thereof, whether under the provisions of this Article or otherwise, shall, to the extent permitted by applicable law, be applied as follows:

FIRST: to the payment of the costs and expenses of such sale, including compensation to the Security Trustee, its agents and reasonable fees and expenses of counsel, and of any judicial proceeding wherein the same may be made and of all expenses, liabilities and advances made or furnished or incurred by the Security Trustee hereunder, together with interest at the Overdue Rate on all such advances and all taxes, assessments or other charges, 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 on the Notes in the following order: first, for interest and second, for principal;

THIRD: To the payment of premium, if any, and any other sums required to be paid by the Owner pursuant to any provisions of this Security Agreement or the Notes;

FOURTH: To the payment of the surplus, if any, to whosoever shall be lawfully entitled thereto.

(f) Upon any sale made under or by virtue of this Article (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), to the extent permitted by applicable law, the Security Trustee may bid for and acquire the Collateral and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Owner secured hereby the net proceeds of sale after the deduction of all costs, expenses, compensation and other charges to be paid therefrom as herein provided and any other sums which the Security Trustee is authorized to deduct hereunder. To the extent permitted by applicable law, the Person making such sale shall accept such settlement without requiring the production of the Notes, and without such production there shall be deemed credited thereon the pro rata share of the net proceeds of sale ascertained and established as aforesaid. To the extent permitted by applicable law, the Security Trustee, upon so acquiring the Collateral, shall be entitled to hold, lease, rent, operate, manage or sell the same in any lawful manner.

### Section 6.3 Voluntary Appearance; Receivers.

After an Event of Default and immediately upon the commencement of any action, suit or other legal proceeding by the Security Trustee to obtain judgment for the principal of or interest on the Notes and other sums required to be paid by the Owner pursuant hereto or of any other nature in aid of the enforcement of the Notes or of this Security Agreement, the Owner will, to the extent not prohibited by applicable law, (a) enter voluntary appearances in such action, suit or proceeding, and (b) if required by the Security Trustee, consent to the appointment of receivers of the Collateral and of all the earnings, revenues, rents, issues, profits and income thereof. After an Event of Default and during its continuance or upon the filing of a bill in equity to foreclose this Security Agreement or to enforce the specific performance hereof or in aid therefor or upon the commencement of any other judicial proceeding to enforce any right of the Security Trustee, the Security Trustee shall be entitled forthwith, as a matter of right and if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of the security of the Collateral either before or after declaring the unpaid principal of the Notes to be due and payable, to the appointment of such receivers. Any receivers so appointed shall have such

powers as the court making the appointment shall confer, which may be any or all of the powers which the Security Trustee is authorized to exercise by the provisions of Clause II of Section 6.1, and shall have the right to incur such obligations and to issue such certificates therefor as the court shall authorize.

Section 6.4     Retention of Possession.

Notwithstanding the appointment of any receiver, liquidator or trustee of the Owner or of any of its property or of the Collateral, the Security Trustee shall to the extent permitted by applicable law be entitled to retain possession and control of all or any part of the Collateral now or hereafter held by the Security Trustee hereunder.

Section 6.5     Remedies Cumulative.

No remedy herein conferred upon or reserved to the Security Trustee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Security Trustee to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Security Agreement to the Security Trustee may be exercised from time to time and as often as may be deemed expedient by the Security Trustee.

Section 6.6     Waiver of Rights.

To the extent such waiver shall not be prohibited by applicable law, the Owner agrees that it will not at any time insist upon, plead or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, wherever enacted or whenever hereafter in force, that may affect the covenants and terms of performance hereof; nor claim, take or insist upon any benefit or advantage of any law whenever hereafter in force providing for the valuation or appraisal of the Collateral prior to any sale or sales thereof which may be made pursuant hereto or pursuant to the decree, judgment or order of any court of competent jurisdiction, nor, after any such sale or sales, claim or exercise any right under any statute whenever or by whomever enacted to redeem the property so sold or any part thereof; and the Owner hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Security Trustee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Owner for itself and all who may claim under the Owner, waive, to the extent not prohibited by law, all

right to have the Collateral marshalled upon foreclosure hereof.

Section 6.7 Purchase of Note by Owner.

If an Event of Default caused solely by a default by Lessee in the payment of Rent or any Supplemental Payment has occurred and is continuing and Security Trustee shall have given notice of acceleration of the Notes pursuant to Section 6.1 and its intent to pursue its remedies against Lessee if so required then the Owner may, in its sole discretion, by written notice to the Security Trustee and the Purchaser elect to purchase all of the Notes at a price equal to the outstanding principal amount of the Notes, together with accrued and unpaid interest thereon with a premium equal to the Reinvestment Premium. The Owner shall give notice to the Security Trustee and the Purchaser of its election to purchase the Notes within 10 days after receipt of notice from the Security Trustee of its intent to so exercise its remedies, or it shall have been deemed to have waived its rights hereunder. The Owner shall specify in such notice the date of its purchase of the Notes, which date shall be a date occurring no more than 10 days after the date of such notice from the Owner.

Section 6.8 Amendment of Lease; New Lease of the Property.

So long as any obligations of Lessee remain outstanding under the Lease (a) the Owner shall be entitled to receive, and Security Trustee agrees to send to the Owner, copies of all notices, demands, consents, approvals and waivers which may, from time to time, be given or granted by Security Trustee to Lessee pursuant to the provisions of the Lease, the Agency Agreement or the Assignment, (b) unless an Event of Default other than a Lessee Default has occurred and is continuing, Security Trustee will not agree to any amendment or modification of, or grant any consent, approval or waiver with respect to, any of the terms, conditions or provisions of the Lease, the Agency Agreement or the Assignment without also obtaining (i) the written consent of the holders of at least 66-2/3% in aggregate principal amount of the Notes, (ii) evidence that the Owner has received the prior written consent of the L/C Issuer as contemplated by paragraph (2) of the Drawing Certificate for the Letter of Credit, and (iii) the agreement of the Owner to such amendment, modification, consent, approval or waiver, and (c) if a Lessee Default has occurred and is continuing, Security Trustee agrees that (i) it will not, without also obtaining the agreement of the Owner, agree to any amendment, modification or waiver of any of the provisions of Sections 18 or 19 of the Lease, the effect of which would be to reduce, modify or amend any indemnities payable by Lessee to the Owner (except to add additional indemnities by Lessee); and (ii) it will not, without the consent of the Owner, modify, amend or supplement the Lease or deliver notices,

consents, determinations, demands, approvals, directions or releases in respect of the Lease so as to release Lessee from any of its obligations under the Lease; provided, however, if Security Trustee waives the Owner's obligation to pay the Maximum Lessor Risk Amount hereunder, Security Trustee may accomplish any of the actions specified in this clause (c)(ii) without the Owner's consent.

## ARTICLE 7

### Supplemental Owner Security Agreement; Waivers

#### Section 7.1 Supplemental Agreements Without Noteholders' Consent.

The Owner and the Security Trustee from time to time and at any time, subject to the restrictions in this Security Agreement contained, may enter into an agreement or agreements supplemental hereto and which thereafter shall form a part hereof for any one or more or all of the following purposes (provided that the Security Trustee shall have determined, in good faith, that such actions shall not adversely affect the interests of the holders of the Notes):

(a) to add to the covenants and agreements to be observed by, and to surrender any right or power reserved to or conferred upon the Owner;

(b) to subject to the security interest of this Security Agreement additional property hereafter acquired by the Owner and intended to be subjected to the security interest of this Security Agreement, and to correct and amplify the description of any property subject to the security interest of this Security Agreement; or

(c) to permit the qualification of this Security Agreement under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect, except that nothing herein contained shall permit or authorize the inclusion of the provisions referred to in Section 316(a)(2) of said Trust Indenture Act of 1939 or any corresponding provision in any similar Federal statute hereafter in effect;

and the Owner covenants to perform all requirements of any such supplemental agreement. No restriction or obligation imposed upon the Owner may, except as otherwise provided in this Security Agreement, be waived or modified by such supplemental agreements, or otherwise.

Section 7.2      Waivers and Consents by Noteholders;  
Supplemental Agreements with Noteholders'  
Consent.

Upon the waiver or consent of the holders of at least 66-2/3% in aggregate principal amount of the Notes (a) the Owner may take any action prohibited, or omit the taking of any action required, by any of the provisions of this Security Agreement or any agreement supplemental hereto, or (b) the Owner and the Security Trustee may enter into an agreement or agreements supplemental hereto for the purpose of adding, changing or eliminating any provision of this Security Agreement or of any agreement supplemental hereto or modifying in any manner the rights and obligations of the holders of the Notes and the Owner; provided, however, that no such waiver or supplemental agreement shall (i) impair or affect the right of any holder to receive payments or prepayments of the principal of and payments of the interest and premium, if any, on its Note, as therein and herein provided, without the consent of such holder, (ii) permit the creation of any lien or security interest with respect to any of the Collateral, without the consent of the holders of all the Notes at the time outstanding, (iii) effect the deprivation of the holder of any Note of the benefit of the security interest of this Security Agreement upon all or any part of the Collateral without the consent of such holder, (iv) reduce the aforesaid percentage of the aggregate principal amounts of Notes, the holders of which are required to consent to any such waiver or supplemental agreement pursuant to this Section, without the consent of the holders of all of the Notes at the time outstanding, (v) modify the rights, duties or immunities of the Security Trustee, without the consent of the holders of all of the Notes at the time outstanding or (vi) change the term of payment of the Notes or extend the Maturity Date, without the consent of the holders of all the Notes at the time outstanding.

Section 7.3      Notice of Supplemental Security Agreements.

Promptly after the execution by the Owner and the Security Trustee of any supplemental agreement pursuant to the provisions of Section 7.1 or 7.2 hereof, the Security Trustee shall give written notice, setting forth in general terms the substance of such supplemental agreements, together with a conformed copy thereof, mailed, first-class, postage prepaid, to each holder of the Notes at its address set forth in the Register. Any failure of the Security Trustee to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental agreement.

Section 7.4      Opinion of Counsel Conclusive as to  
Supplemental Security Agreements.

The Security Trustee is hereby authorized to join with the Owner in the execution of any such supplemental agreement authorized or permitted by the terms of this Security Agreement and to make the further agreements and stipulations which may be therein contained, and the Security Trustee may receive an opinion of counsel as conclusive evidence that any supplemental agreement executed pursuant to the provisions of this Section 7 complies with the requirements of this Section 7.

## ARTICLE 8

### Security Trustee

Wilmington Trust Company in its individual capacity accepts the trusts hereunder, and in its capacity as Security Trustee agrees to perform the same, but only upon the terms and conditions hereof, including the following, to all of which the Owner and the respective holders of the Notes at any time outstanding by their acceptance thereof agree:

#### Section 8.1 Duties of Security Trustee.

The Security Trustee undertakes (a) except while an Event of Default under this Security Agreement shall have occurred and be continuing, to perform such duties and only such duties as are specifically set forth in this Security Agreement, and (b) while an Event of Default under this Security Agreement shall have occurred and be continuing, to exercise such of the rights and powers as are vested in it by this Security Agreement. Wilmington Trust Company, in its individual capacity, shall not be answerable or accountable under any circumstances except for the willful misconduct or negligence of the Security Trustee, except for the Security Trustee's failure to use ordinary care to disburse funds and except for liabilities that may result from the inaccuracy of any representation or warranty of Wilmington Trust Company in its individual capacity (or from the failure by Wilmington Trust Company in its individual capacity to perform any covenant) in any of the Principal Documents.

The Security Trustee upon receipt of instruments furnished to the Security Trustee pursuant to the provisions of this Security Agreement, shall examine the same to determine whether or not such instruments conform to the requirements of this Security Agreement.

#### Section 8.2 Security Trustee's Liability.

No provision of this Security Agreement shall be construed to relieve the Security Trustee from liability for its own negligence, or its own willful misconduct, except that:

(a) unless an Event of Default under this Security Agreement shall have occurred and be continuing, the Security Trustee shall not be liable except for the performance of such duties as are specifically set forth in this Security Agreement and no implied covenants or obligations shall be read into this Security Agreement against the Security Trustee but the duties and obligations of the Security Trustee shall be determined solely by the express provisions of this Security Agreement;

(b) in the absence of bad faith on the part of the Security Trustee, the Security Trustee may rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon, any resolution, certificate of a responsible officer, opinion of counsel, request, notice, consent, waiver, order, signature guaranty, notarial seal, stamp, acknowledgement, verification, appraisal, report, stock certificate or other paper or document believed by the Security Trustee to be genuine and to have been signed, affixed or presented by the proper party or parties;

(c) in the absence of bad faith on the part of the Security Trustee, whenever the Security Trustee, or any of its agents, representatives, experts or counsel, shall consider it necessary or desirable that any matter be proved or established, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively provided and established by a Certificate of a Responsible Officer; provided, however, that the Security Trustee, or such agent, representative, expert or counsel, may require but shall not be under any duty or obligation to require such further and additional evidence and make such further investigation as it or they may consider reasonable;

(d) the Security Trustee may consult with counsel and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered hereunder in good faith and in accordance with such advice or opinion of counsel;

(e) the Security Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any direction or request of the holders of the Notes;

(f) the Security Trustee shall not be liable for any error of judgment made in good faith by an officer of the Security Trustee unless it shall be proved that the Security Trustee was negligent in ascertaining the pertinent facts;

(g) whether or not an Event of Default under this Security Agreement shall have occurred, the Security Trustee shall not be under any obligation to take any action under this Security Agreement which may tend to involve it in any expense or liability, unless the Security Trustee shall have been indemnified by the holders of the Notes, in manner and form satisfactory to the Security Trustee, against any liability, cost or expense (including counsel fees and disbursements) which may be incurred in connection therewith; and

(h) whether or not an Event of Default under this Security Agreement shall have occurred, whenever it is provided in this Security Agreement that the Security Trustee consents to any act or omission by any person or that the Security Trustee exercise its discretion in any manner, the Security Trustee may (but need not) seek the written acquiescence of the holders of at least 66-2/3% in principal amount of the Notes then outstanding and, unless written evidence of such acquiescence has been received by the Security Trustee, it shall be fully justified in refusing so to consent or so to exercise its discretion; provided, however, holders of at least 66-2/3% in principal amount of the Notes from time to time outstanding shall have the right, upon furnishing to the Security Trustee such indemnification as the Security Trustee shall reasonably request, by an instrument in writing delivered to the Security Trustee, to determine which of the remedies herein set forth shall be adopted and to direct the time, method and place of conducting all proceedings to be taken under the provisions of this Security Agreement for the enforcement thereof or of the Notes, but the Security Trustee shall have the right to decline to follow any such direction if the Security Trustee shall be advised by counsel that the action or proceedings so directed may not lawfully be taken or would be unjustly prejudicial to the holders of the Notes not parties to such direction.

Section 8.3 No Responsibility of Security Trustee for Recitals.

The recitals and statements contained herein and in the Notes shall be taken as the recitals and statements of the Owner, and the Security Trustee assumes no responsibility for the correctness of the same, nor shall the Security Trustee have any responsibility for or any liability with respect to any disclosure, warranty, representation or concealment or failure to disclose in connection with the offering, solicitation, sale or distribution of the Notes by the Owner or by any other person.

The Security Trustee makes no representation as to the validity or sufficiency of this Security Agreement, or of the

Notes secured hereby, the security hereby or thereby afforded, the title of the Owner to the Collateral or the description thereof, or the filing or recording or registering of this Security Agreement or any other document.

In absence of willful misconduct or negligence, the Security Trustee shall not be concerned with or accountable to anyone for the use or application of any deposited moneys which shall be released or withdrawn in accordance with the provisions of this Security Agreement or of any property or securities or the proceeds thereof which shall be released from the security interest hereof in accordance with the provisions of this Security Agreement. The Security Trustee shall release no funds pursuant to the Principal Documents unless said funds have been received by the Security Trustee pursuant to said Principal Agreements.

Section 8.4 Certain Limitations on Security Trustee's Rights to Compensation and Indemnification.

Subject to Section 2.10(b), the Security Trustee agrees that it shall have no right against the Owner, the Purchaser, or any other holder of a Note for the payment of compensation for its services hereunder or any expenses or disbursements incurred in connection with the exercise and performance of its powers and duties hereunder or any indemnification against liabilities which it may incur in the exercise and performance of such powers and duties but on the contrary, shall look solely to the Lessee under Sections 18, 19 and 31 of the Lease for such payment and indemnification and that it shall have no lien on or security interest in the Collateral as security for such compensation, expenses, disbursements and indemnification except to the extent provided for in Sections 6.2(e) and 8.2(h) hereof.

Section 8.5 Status of Moneys Received.

All moneys received by the Security Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys, except to the extent required by law, and may be deposited by the Security Trustee under such general conditions as may be prescribed by law in the Security Trustee's general banking department, and the Security Trustee shall be under no liability for interest on any moneys received by it hereunder.

Section 8.6 Security Trustee May Hold Notes.

The Security Trustee and any affiliated corporation may become the owner of any Note secured hereby and be interested in any financial transaction with the Owner or any affiliated corporation, or the Security Trustee may act as depository or

otherwise in respect to other securities of the Owner or any affiliated corporation, all with the same rights which it would have if not the Security Trustee.

Section 8.7 Resignation of Security Trustee.

The Security Trustee may resign and be discharged from the trusts created hereby by delivering notice thereof, by first-class mail, postage prepaid, to the Owner and all holders of the Notes at the time outstanding, specifying a date (not earlier than 60 days after the date of such notice) when such resignation shall take effect.

Such resignation shall take effect on the day specified in such notice, unless previously a successor Security Trustee shall have been appointed as provided in Section 8.9 in which event such resignation shall take effect immediately upon the appointment of such successor Security Trustee; provided, however, that no such resignation shall be effective hereunder unless and until a successor Security Trustee shall have been appointed and shall have accepted such appointment as provided in Section 8.9.

Section 8.8 Removal of Security Trustee.

The Security Trustee may be removed at any time, for or without cause, by an instrument or instruments in writing executed by the holders of a majority in aggregate principal amount of the Notes at the time outstanding and delivered to the Security Trustee with a copy to the Owner, specifying the removal and the date when it shall take effect.

Section 8.9 Appointment of Successor Security Trustee.

In case at any time the Security Trustee shall resign or be removed or become incapable of acting, a successor Security Trustee may be appointed by the holders of a majority in aggregate principal amount of the Notes at the time outstanding, by an instrument or instruments in writing executed by such holders and filed with such successor Security Trustee.

Until a successor Security Trustee shall be so appointed by the holders of the Notes, the Owner shall appoint a successor Security Trustee to fill such vacancy, by an instrument in writing executed by the Owner and delivered to the successor Security Trustee. If all or substantially all of the Collateral shall be in the possession of one or more receivers, trustees, liquidators or assignees for the benefit of creditors, then such receivers, trustees, custodians, liquidators or assignees may, by an instrument in writing delivered to the successor Security Trustee, appoint a successor Security Trustee. Promptly after any such appointment, the Owner, or any such receivers, trustees,

custodians, liquidators or assignees, as the case may be, shall give notice thereof by first-class mail, postage prepaid, to each holder of Notes at the time outstanding.

Any successor Security Trustee so appointed by the Owner, or such receivers, trustees, custodians, liquidators or assigns shall immediately and without further act be superseded by a successor Security Trustee appointed by the holders of a majority in aggregate principal amount of the Notes then outstanding.

If a successor Security Trustee shall not be appointed pursuant to this Section within 60 days after a vacancy shall have occurred in the office of the Security Trustee, the holder of any Note or such retiring Security Trustee (unless the retiring Security Trustee is being removed) may apply to any court of competent jurisdiction to appoint a successor Security Trustee, and such court may thereupon, after such notice, if any, as it may consider proper, appoint a successor Security Trustee.

#### Section 8.10 Succession of Successor Security Trustee.

Any successor Security Trustee appointed hereunder shall execute, acknowledge and deliver to the Owner and the predecessor Security Trustee, an instrument accepting such appointment, and thereupon such successor Security Trustee, without any further act, deed, conveyance or transfer, shall become vested with a security interest in the Collateral, and with all the rights, powers, trusts, duties and obligations of the predecessor Security Trustee in the trust hereunder, with like effect as if originally named as Security Trustee herein.

Upon the request of any successor Security Trustee, however, the Owner and the predecessor Security Trustee shall execute and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Security Trustee a security interest in the Collateral and all such rights, powers, trusts, duties and obligations of the predecessor Security Trustee hereunder, and the predecessor Security Trustee shall also assign and deliver to the successor Security Trustee any property subject to the security interest of this Owner Security Agreement which may then be in its possession.

Any Security Trustee which has resigned or been removed shall nevertheless continue to retain the benefit of the priority with respect to the proceeds of the Collateral afforded to it by Section 6.2(e) hereof.

#### Section 8.11 Eligibility of Security Trustee.

The Security Trustee shall be a state or national bank or trust company in good standing organized under the laws of the

United States of America or any State thereof, having capital, surplus and undivided profits aggregating at least \$150,000,000, if there be such a bank or trust company willing and able to accept such trust upon reasonable and customary terms.

In case the Security Trustee shall cease to be eligible in accordance with the provisions of this Section, the Security Trustee shall resign immediately in the manner and with the effect specified in Section 8.7 hereof.

Section 8.12 Successor Security Trustee by Merger.

Any corporation into which the Security Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Security Trustee shall be a party, or any state or national bank or trust company in any manner succeeding to the corporate trust business of the Security Trustee as a whole or substantially as a whole, if eligible as provided in Section 8.11, shall be the successor of the Security Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything to the contrary contained herein notwithstanding.

Section 8.13 Co-Trustees.

At any time, for the propose of meeting any legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Owner and the Security Trustee jointly shall have the power and shall execute and deliver all instruments, to appoint one or more persons approved by the Security Trustee, to act as co-trustee, or co-trustees, of all or any part of the Collateral, and to vest in such person or persons, in such capacity, such title to the Collateral or any part thereof, and such rights, powers, duties, trusts or obligations as the Owner and the Security Trustee may consider necessary or desirable. If the Owner shall not have joined in such appointment within 15 days after the receipt by it of a request so to do, or in case an Event of Default under this Security Agreement shall have occurred and be continuing, the Security Trustee alone shall have power to make such appointment.

ARTICLE 9

Miscellaneous

Section 9.1 Immunity from Liability.

Anything in this Security Agreement or the Notes to the contrary notwithstanding, it is understood and agreed that (irrespective of any breach of any representation, covenant, agreement or undertaking of any nature whatsoever made in this

Security Agreement or the Notes by the Owner) no recourse shall be had under any rule of law, statute or constitution or by the enforcement of any assessments or penalties or otherwise for the payment of the principal of or interest or Reinvestment Premium, if any, due on the Notes or for any claim based thereon or otherwise in respect thereof or based on or in respect of this Security Agreement against (i) the Owner, or any past, present or future Affiliate, partner, officer, director, any shareholder, agent or employee of any thereof or of any partner thereof or its legal representatives, successors or assigns, (ii) any corporation, partnership (or any partner thereof), entity or individual to which ownership of the Collateral, or any part thereof, shall have been transferred, or (iii) any Person or party (other than the Lessee) on the ground that in entering into the transactions evidenced by this Security Agreement and the Notes, the Owner was acting as an agent for the account and benefit of such Person or party and that such Person or party was the principal of the Owner. It is expressly understood that by the acceptance of the Notes all such liability (a) of the Owner, or any past, present or future Affiliate, partner, officer, director, any shareholder, agent or employee thereof or director or shareholder thereof or director or shareholder of any partner thereof or any of its respective legal representatives, successors or assigns, (b) of any such corporation, partnership, individual or partner or (c) of such other Person or party is and is being expressly waived and released as a condition of and as a consideration for the execution of the Notes and this Security Agreement, that the Security Trustee, the registered owners of the Notes and their successors and assigns as registered owners of the Notes agree to look solely to the Collateral and to the sums due or to become due under the Lease (other than Excluded Amounts) for the payment of any such sum. Nothing contained herein or in the Notes, however, shall be taken to (i) prevent recourse to and the enforcement against the Collateral of all liabilities, obligations and undertakings contained herein and in the Notes and the Lease, (ii) limit, restrict or impair the right of any such registered owner to accelerate the maturity of the Notes upon the occurrence of an Event of Default hereunder other than as provided in Section 6.7 hereof, (iii) prevent the bringing of an action or obtaining of a judgment against the Owner, provided that neither the Owner, nor any past, present or future Affiliate, partner, officer, director, shareholder, agent or employee thereof or director or shareholder of any partner thereof or any of its respective legal representatives, successors or assigns or any corporation, partnership (or any partner thereof) or individual to which ownership of the Collateral shall have been transferred shall have any personal liability on such judgment and the satisfaction thereof shall be limited to said Collateral and the sums due and to become due under the Lease, (iv) prevent the bringing of an action or obtaining of a judgment to foreclose the lien hereof or otherwise realize upon the Collateral or the sums due or to become due

under the Lease, including the right to proceed against Lessee under the Lease, (v) prevent recourse against the Owner for the payment of net income, franchise, estate, inheritance, succession, transfer or profits taxes or the discharge of liens which Lessee is not obligated to pay or discharge under the Lease, (vi) prevent personal recourse against the Owner for the Maximum Lessor Risk Amount due pursuant to the terms of Section 3.4 or (vii) prevent personal recourse against the Owner for the breach of any representation or warranty contained in Section 6 of the Note Agreement or the breach of any covenants contained in Article 2 or 3 or Section 4.4 hereof.

Section 9.2 Notices; Modification; Waiver.

All notifications, notices, demands or requests herein provided for or made pursuant hereto shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested, and such notice, demand or other communication shall be deemed complete on the third Business Day after the same is deposited with a United States Post Office with postage charges prepaid or (ii) by reputable delivery service guaranteeing overnight delivery and the giving of notice shall be deemed complete on the immediately succeeding Business Day after the same is deposited with such delivery service to the Security Trustee or the Owner at the addresses first above set forth or at such other address as the party to be notified shall have specified, and such notifications, notices, demands or requests shall be deemed given on the date of receipt. This Security Agreement may not be modified or discharged except by an instrument in writing executed by the Owner and the Security Trustee. No requirement hereof may be waived at any time except by a writing signed by the Security Trustee, nor shall any waiver be deemed a waiver of any subsequent breach of default of the Owner.

Section 9.3 Illegal Provision.

If any provision herein or in the Notes contained shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Security Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 9.4 Maximum Interest Payable.

Neither this Security Agreement nor the Notes shall require the payment or permit the collection of interest in excess of the maximum not prohibited by law. If herein or in the Notes any excess of interest in such respect is provided for or shall be adjudicated to be so provided for, neither the Owner nor its successors or assigns shall be obligated to pay such interest in

excess of the maximum amount not prohibited by law, and the right to demand the payment of any such excess shall be and hereby is waived; and this provision shall control any other provision of this Security Agreement or the Notes.

Section 9.5     Satisfaction.

If, prior to the declaration pursuant to Clause I of Section 6.1 of the principal of and interest and Reinvestment Premium, if any, on the Notes to be due and payable, the Owner shall well and truly pay or cause to be paid (provided such payment is permitted or required hereby) the full amount of the principal, interest and Reinvestment Premium, if any, on the Notes as and when the same shall become due and payable and the Owner shall do and perform all covenants and obligations to be done and performed by the Owner hereunder, then and in that case the Security Trustee shall, at the cost and expense of the Owner, satisfy and cancel this Security Agreement and execute and delivery such instruments as reasonably shall be demanded by the Owner to satisfy and discharge the lien hereof.

Section 9.6     Binding Effect.

The covenants, conditions and agreements herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular shall include the plural, the plural include the singular and the use of any gender shall include all genders.

Section 9.7     Counterparts.

This Security Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument.

Section 9.8     Table of Contents; Headings.

The table of contents contained herein and the headings of the various Articles and Sections herein have been inserted for reference only and shall not to any extent have the effect of modifying or amending the express terms and provision hereof.

Section 9.9     Governing Law.

This Security Agreement shall be governed by the laws of the State of Delaware.

Section 9.10    Estoppels.

At any time and from time to time upon not less than 15 days' prior written request by any party hereto, the other party

hereto shall furnish a certificate certifying that this Security Agreement is in full force and effect (or that this Security Agreement is in full force and effect as modified and setting forth the modifications) to the best knowledge of the signer of such certificate after due inquiry and investigation, whether or not the Owner is in default under any of its obligations hereunder (and, if so, the nature of such alleged default), and such other matters as may reasonably be requested.

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IN WITNESS WHEREOF, the Owner has executed this Security Agreement as of the date first above written.

RAIL CO. VI

By: Mark A. Ferrucci  
Name: MARK A. FERRUCCI  
Title: PRESIDENT

WILMINGTON TRUST COMPANY,  
not in its individual capacity  
except as otherwise expressly  
provided, but solely as Security  
Trustee

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Owner has executed this Security Agreement as of the date first above written.

RAIL CO. VI

By: \_\_\_\_\_  
Name:  
Title:

WILMINGTON TRUST COMPANY,  
not in its individual capacity  
except as otherwise expressly  
provided, but solely as Security  
Trustee

By:  \_\_\_\_\_  
Name:  
Title: CAROLYN C. DANIELS  
ASSISTANT VICE PRESIDENT

STATE OF DELAWARE            )  
  ) SS:  
COUNTY OF NEW CASTLE        )

On this 16TH day of May, 1994 before me personally appeared MARK A. FERRUCCI, the PRESIDENT of RAIL CO. VI, a Delaware corporation, and acknowledged that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public Camilia M. Denny

[Seal]

My commission expires 9/22/95

STATE OF DELAWARE )  
 ) ss.  
COUNTY OF NEW CASTLE )

On this 17 day of May, 1994, before me personally appeared Carolyn C. Daniels, to be personally known, who being by me duly sworn, says that (s)he is a ~~Assistant Vice President~~ WILMINGTON TRUST COMPANY, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Paula M. Sulecki  
Notary Public

[Seal]

My commission expires \_\_\_\_\_

PAULA M. SULECKI  
NOTARY PUBLIC  
My commission expires April 14, 1995

## EXHIBIT A

New Marks and Identification Numbers

Four hundred seven (407) aluminum bodied covered hopper cars with gravity type rack-and-pinion discharge gates and countinuous through hatch roof opening having 4,750 cubic foot capacity, 286,000 pound gross load weight capacity, built by Transco Railway Products and to be remanufactured by Progress Rail Services Corporation and bearing identification numbers CLSX 1001 through CLSX 1407.

Together with all modifications, attachments, improvements, replacements and substitutions therefor and thereto.

Original and Subsequent Marks and Identification Numbers

From a series of four hundred eight (408) units originally and subsequently identified, as follows:

<u>Original Marks and Numbers</u>		<u>Subsequent Marks and Numbers</u>	
SDD	70451	SDD	70451
SDD	70453	CLSX	70453
SDD	70455	CLSX	70455
SDD	70457	CLSX	70457
SDD	70459	CLSX	70459
SDD	70461	SDD	70461
SDD	70463	SDD	70463
SDD	70465	CLSX	70465
SDD	70467	CLSX	70467
SDD	70469	SDD	70469
SDD	70475	SDD	70475
SDD	70477	SDD	70477
SDD	70479	CLSX	70479
SDD	70481	SDD	70481
SDD	70487	SDD	70487
SDD	70489	CLSX	70489
SDD	70491	CLSX	70491
SDD	70493	SDD	70493
SDD	70497	SDD	70497
SDD	70499	SDD	70499
SDD	70501	CLSX	70501
SDD	70503	CLSX	70503
SDD	70505	SDD	70505
SDD	70507	SDD	70507

Original Marks and Numbers		Subsequent Marks and Numbers	
S00	70509	S00	70509
S00	70511	CLSX	70511
S00	70515	S00	70515
S00	70517	S00	70517
S00	70519	S00	70519
S00	70521	S00	70521
S00	70523	S00	70523
S00	70525	CLSX	70525
S00	70527	S00	70527
S00	70529	CLSX	70529
S00	70531	S00	70531
S00	70533	S00	70533
S00	70537	CLSX	70537
S00	70539	S00	70539
S00	70541	S00	70541
S00	70543	CLSX	70543
S00	70547	S00	70547
S00	70549	S00	70549
S00	70551	S00	70551
S00	70553	CLSX	70553
S00	70561	CLSX	70561
S00	70563	CLSX	70563
S00	70565	S00	70565
S00	70567	CLSX	70567
S00	70569	CLSX	70569
S00	70571	S00	70571
S00	70575	S00	70575
S00	70577	CLSX	70577
S00	70581	S00	70581
S00	70585	S00	70585
S00	70587	CLSX	70587
S00	70589	CLSX	70589
S00	70591	S00	70591
S00	70593	CLSX	70593
S00	70597	S00	70597
S00	70599	S00	70599
S00	70603	S00	70603
S00	70605	CLSX	70605
S00	70607	CLSX	70607
S00	70609	S00	70609
S00	70611	CLSX	70611
S00	70617	CLSX	70617
S00	70619	CLSX	70619
S00	70621	CLSX	70621
S00	70623	CLSX	70623
S00	70629	CLSX	70629
S00	70631	CLSX	70631
S00	70633	S00	70633

Original Marks and Numbers		Subsequent Marks and Numbers	
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S00	70641	CLSX	70641
S00	70643	S00	70643
S00	70645	CLSX	70645
S00	70647	S00	70647
S00	70649	S00	70649
S00	70651	CLSX	70651
S00	70653	S00	70653
S00	70655	CLSX	70655
S00	70659	S00	70659
S00	70661	CLSX	70661
S00	70663	CLSX	70663
S00	70665	S00	70665
S00	70667	CLSX	70667
S00	70669	CLSX	70669
S00	70671	S00	70671
S00	70673	S00	70673
S00	70675	CLSX	70675
S00	70677	CLSX	70677
S00	70679	CLSX	70679
S00	70683	CLSX	70683
S00	70685	S00	70685
S00	70687	CLSX	70687
S00	70689	S00	70689
S00	70695	S00	70695
S00	70699	S00	70699
S00	70701	CLSX	70701
S00	70703	CLSX	70703
S00	70705	S00	70705
S00	70707	S00	70707
S00	70709	S00	70709
S00	70711	CLSX	70711
S00	70715	S00	70715
S00	70721	S00	70721
S00	70725	S00	70725
S00	70727	S00	70727
S00	70729	CLSX	70729
S00	70731	CLSX	70731
S00	70735	S00	70735
S00	70737	CLSX	70737
S00	70739	CLSX	70739
S00	70741	CLSX	70741
S00	70743	CLSX	70743
S00	70747	S00	70747
S00	70749	CLSX	70749
S00	70751	S00	70751
S00	70753	S00	70753
S00	70759	CLSX	70759

Original Marks and Numbers		Subsequent Marks and Numbers	
S00	70761	S00	70761
S00	70763	S00	70763
S00	70767	CLSX	70767
S00	70769	CLSX	70769
S00	70771	S00	70771
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S00	70775	CLSX	70775
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S00	70779	S00	70779
S00	70781	S00	70783
S00	70785	CLSX	70785
S00	70791	CLSX	70791
S00	70793	CLSX	70793
S00	70795	S00	70795
S00	70797	CLSX	70797
S00	70799	CLSX	70799
S00	70801	S00	70801
S00	70803	CLSX	70803
S00	70807	S00	70807
S00	70809	CLSX	70809
S00	70811	S00	70811
S00	70813	CLSX	70813
S00	70817	S00	70817
S00	70819	S00	70819
S00	70821	S00	70821
S00	70823	CLSX	70823
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S00	70851	S00	70851
S00	70853	S00	70853
S00	70855	CLSX	70855
S00	70857	S00	70857
S00	70859	CLSX	70859
S00	70861	CLSX	70861
S00	70863	CLSX	70863
S00	70865	S00	70865
S00	70867	CLSX	70867
S00	70871	CLSX	70871
S00	70873	S00	70873
S00	70875	CLSX	70875

Original Marks and Numbers		Subsequent Marks and Numbers	
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S00	70879	CLSX	70879
S00	70881	CLSX	70881
S00	70883	CLSX	70883
S00	70885	CLSX	70885
S00	70887	S00	70887
S00	70889	CLSX	70889
S00	70891	S00	70891
S00	70893	CLSX	70893
S00	70895	CLSX	70895
S00	70897	S00	70897
S00	70899	CLSX	70899
S00	70901	CLSX	70901
S00	70903	S00	70903
S00	70905	S00	70905
S00	70907	CLSX	70907
S00	70909	S00	70909
S00	70911	CLSX	70911
S00	70913	S00	70913
S00	70915	CLSX	70915
S00	70917	S00	70917
S00	70919	S00	70919
S00	70921	S00	70921
S00	70923	CLSX	70923
S00	70925	CLSX	70925
S00	70927	CLSX	70927
S00	70929	S00	70929
S00	70931	S00	70931
S00	70933	CLSX	70933
S00	70935	S00	70935
S00	70937	CLSX	70937
S00	70939	CLSX	70939
S00	70941	CLSX	70941
S00	70943	CLSX	70943
S00	70945	CLSX	70945
S00	70947	S00	70947
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S00	70955	S00	70955
S00	70957	S00	70957
S00	70959	CLSX	70959
S00	70961	S00	70961
S00	70963	CLSX	70963
S00	70965	CLSX	70965
S00	70967	CLSX	70967
S00	70969	S00	70969
S00	70971	CLSX	70971
S00	70973	S00	70973
S00	70975	CLSX	70975
S00	70977	S00	70977
S00	70979	S00	70979
S00	70981	S00	70981

Original Marks and Numbers		Subsequent Marks and Numbers	
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S00	70989	CLSX	70989
S00	70991	S00	70991
S00	70997	S00	70997
S00	70999	CLSX	70999
S00	71001	S00	71001
S00	71003	CLSX	71003
S00	71009	S00	71009
S00	71013	CLSX	71013
S00	71015	CLSX	71015
S00	71017	S00	71017
S00	71019	CLSX	71019
S00	71021	CLSX	71021
S00	71023	S00	71023
S00	71025	CLSX	71025
S00	71027	S00	71027
S00	71029	CLSX	71029
S00	71033	S00	71033
S00	71035	S00	71035
S00	71037	CLSX	71037
S00	71041	S00	71041
S00	71043	CLSX	71043
S00	71047	CLSX	71047
S00	71049	CLSX	71049
S00	71051	CLSX	71051
S00	71053	CLSX	71053
S00	71057	S00	71057
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S00	71093	S00	71093
S00	71095	CLSX	71095
S00	71097	S00	71097
S00	71099	CLSX	71099
S00	71101	CLSX	71101
S00	71103	CLSX	71103
S00	71105	CLSX	71105
S00	71107	S00	71107
S00	71109	S00	71109
S00	71111	S00	71111
S00	71113	S00	71113
S00	71115	CLSX	71115

Original Marks and Numbers		Subsequent Marks and Numbers	
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S00	71123	S00	71123
S00	71127	S00	71127
S00	71129	S00	71129
S00	71131	S00	71131
S00	71135	CLSX	71135
S00	71137	S00	71137
S00	71139	CLSX	71139
S00	71143	CLSX	71143
S00	71145	CLSX	71145
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S00	71177	S00	71177
S00	71179	CLSX	71179
S00	71181	S00	71181
S00	71183	S00	71183
S00	71185	S00	71185
S00	71187	CLSX	71187
S00	71191	CLSX	71191
S00	71193	S00	71193
S00	71195	CLSX	71195
S00	71197	S00	71197
S00	71199	CLSX	71199
S00	71201	CLSX	71201
S00	71203	S00	71203
S00	71205	CLSX	71205
S00	71207	CLSX	71207
S00	71209	CLSX	71209
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S00	71213	CLSX	71213
S00	71217	S00	71217
S00	71219	S00	71219
S00	71221	CLSX	71221
S00	71223	CLSX	71223
S00	71225	CLSX	71225

Original Marks and Numbers		Subsequent Marks and Numbers	
S00	71233	CLSX	71233
S00	71235	CLSX	71235
S00	71237	CLSX	71237
S00	71239	CLSX	71239
S00	71240	CLSX	71243
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S00	71347	CLSX	71347
S00	71349	CLSX	71349
S00	71351	CLSX	71351
S00	71353	CLSX	71353
S00	71355	CLSX	71355
S00	71357	CLSX	71357

Original Marks and Numbers		Subsequent Marks and Numbers	
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S00	71361	CLSX	71361
S00	71363	CLSX	71363
S00	71365	S00	71365
S00	71367	CLSX	71367
S00	71369	CLSX	71369
S00	71371	CLSX	71371
S00	71373	CLSX	71373
S00	71375	CLSX	71375
S00	71377	CLSX	71377
S00	71379	S00	71379
S00	71381	CLSX	71381
S00	71385	CLSX	71385
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S00	71443	CLSX	71443
S00	71445	CLSX	71445
S00	71447	CLSX	71447
S00	71449	CLSX	71449