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PARKER, POE, ADAMS & BERNSTEIN
2600 CHARLOTTE PLAZA
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TELEPHONE 704-372-9000 FACSIMILE 704-334-4706

15998 ^A
RECORDATION NO _____ FILED 1425

SEP 10 1990 - 12 05 PM

15998 ^B
RECORDATION NO _____ FILED 1425

SEP 10 1990 - 12 05 PM
INTERSTATE COMMERCE COMMISSION

September 7, 1990

RALEIGH OFFICE
PO BOX 389
ONE EXCHANGE PLAZA
RALEIGH, NORTH CAROLINA 27602-0389
TELEPHONE 919-828-0564
FACSIMILE 919-834-4564

RESEARCH TRIANGLE PARK OFFICE
PO BOX 13039
RESEARCH TRIANGLE PARK, N C 27709
TELEPHONE 919-544-4500
FACSIMILE 919-544-2798

SOUTHPARK OFFICE
6525 MORRISON BLVD, SUITE 330
CHARLOTTE, NORTH CAROLINA 28211
TELEPHONE 704-366-7038
FACSIMILE 704-365-8619

0-253A014

VIA FEDERAL EXPRESS

Ms. Mildred Lee
Interstate Commerce Commission
12 & Constitution Avenues, N.W.
Washington, DC 20423

15998
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FILE NUMBER

Re: ICC Filings

Dear Ms. Lee:

DIRECT DIAL

Enclosed are the following documents for filing with the Interstate Commerce Commission:

- 1. Security Agreement (original and two (2) copies).
- 2. Collateral Assignment of Leases (original and two (2) copies).
- 3. Equipment Loan Agreement (Original and two (2) copies).

Please note that this filing relates to one locomotive unit. The Republic Works RL-100 Remanufactured switching locomotive, Serial No. 061, which is referred to in Schedule A to the Security Agreement.

Also enclosed is the filing fee in the amount of \$45.00. Please place these documents of record and return one (1) "stamp-filed" copy of each to the undersigned.

I appreciate your attention to this matter.

Sincerely yours,

Lynn Payne

Lynn S. Payne
Real Estate Paralegal

LSP/ss
Enclosures

cc: John L. Hazlehurst, Esq.

16998/A
RECORDING NO. FILED 1425

SEP 10 1990 12 05 PM

INTERSTATE COMMERCE COMMISSION

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

COLLATERAL ASSIGNMENT OF
EQUIPMENT LEASE AGREEMENTS

THIS ASSIGNMENT, made as of the 31st day of July, 1990, by EQUIPMENT LEASING PARTNERS, a North Carolina general partnership (hereinafter referred to as "Assignor"), to FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association (hereinafter referred to as "Assignee");

W I T N E S S E T H:

A. Assignor is maker under that certain Promissory Note dated the same date hereof in the face amount of \$3,764,000.00 (the "Note") issued to Assignee and which evidences the payment obligations of Assignor under that certain Equipment Loan Agreement with Assignee dated the same date hereof (the "Loan Agreement"), and the Note is partially secured by that certain Security Agreement dated the same date hereof (the "Security Instrument").

B. The Security Instrument grants a security interest in that certain personal property and equipment which is more particularly described in Exhibit A attached hereto (the "Equipment").

NOW, THEREFORE, in consideration of the foregoing premises, Assignor hereby grants, conveys, transfers and assigns to Assignee all of the right, title and interest of Assignor in and to any and all existing and future lease agreements relating to the Equipment (these agreements are sometimes hereinafter collectively referred to as the "Lease Agreements"), together with any and all amendments, extensions, renewals and replacements thereof, if any, and also together with the right (but not the obligation) to collect all of the rental proceeds and other sums which may become due under the Lease Agreements.

THIS ASSIGNMENT IS MADE FOR THE PURPOSE OF SECURING payment of the indebtedness evidenced by the Note, together with all other such sums with interest becoming due and payable to Assignee under the provisions hereof or under the Note, the Security Instrument, or the Loan Documents (as defined in the Loan Agreement), and for securing the performance and discharge of the other obligations, covenants and agreements of the Assignor contained herein or in the other Loan Documents.

THE ASSIGNOR WARRANTS that it is the sole owner of the entirety of the "Lessor's" interest under the Lease Agreements;

that the Lease Agreements are valid and enforceable and that the certified copy of the form of Lease Agreement delivered herewith has not been altered, modified or amended in any manner whatsoever; that no party is in default under any of the terms, covenants or conditions thereof; that no rental proceeds under said Lease Agreements have been assigned or anticipated.

ASSIGNOR COVENANTS THAT IT WILL faithfully abide by, perform and discharge each and every obligation, covenant and agreement under the Lease Assignment required to be observed or performed by Assignor; to give prompt notice to Assignee of any notice of default under the Lease Agreements received by or given to Assignor, together with an accurate and complete copy of such notice of default; to enforce, at the sole cost and expense of Assignor, without terminating the Lease Agreements, the performance of each and every obligation, covenant, condition and agreement of the respective Lessee under the Lease Agreements; to assign and transfer to the Assignee any and all subsequent Lease Agreements for all or any part of the Equipment; and to execute and deliver at the request of the Assignee all such further assurances and assignments to effectuate this Assignment as the Assignee shall from time to time reasonably require.

ASSIGNOR FURTHER COVENANTS THAT IT hereby grants, assigns, and conveys a security interest in and to all of its right, title and interest in and to any and all earnest money deposits, binders, and escrows furnished by the respective Lessee under each Lease Agreement (collectively hereinafter referred to as the "Escrow Deposit"); and in the event for any reason during the term of the Note all or any portion of the Escrow Deposit shall be payable to Assignor or its assigns all such portions of the Escrow Deposit shall be paid directly to Assignee, and upon receipt Assignee shall apply same in accordance with the terms of Paragraph Two (2) hereof.

ASSIGNOR FURTHER COVENANTS THAT IT WILL NOT modify or in any way alter the terms of any Lease Agreement without the prior written consent of Assignee, which consent shall not be unreasonably withheld; cancel or terminate any Lease Agreement; do or permit anything to impair the security of any Lease Agreement; execute any other assignment of the Lessor's interest in the Lease Agreements or the Equipment; subordinate any Lease Agreement to any security interest, or any other encumbrance, or permit, consent or agree to any such subordination without Assignee's prior written consent; or consent to any assignment of or other transfer of Lessor's interest under any Lease Agreement (whether or not in accordance with its terms) without the prior written consent of the Assignee.

THIS COLLATERAL ASSIGNMENT is also made on the following terms, covenants and conditions:

1. Performance. So long as there shall have not occurred a "Lessor Default" (as defined in Paragraph 3 below), Assignor shall have the sole right and responsibility to perform and to exercise the rights and responsibilities and to enjoy the benefits of Lessor as set forth in the Lease Agreement.

2. Assignee's Remedies. Upon the occurrence of any Lessor Default (as defined in Paragraph Three (3) below), the Assignee may exercise all rights and remedies contained herein, in the Security Instrument, and in any other agreement securing the Note, and Assignee, without in any manner waiving such Lessor Default, may at its option, without notice and without regard to the adequacy of the security for said indebtedness (subject to the limitations hereinafter provided), either in person, by agent or by a receiver appointed by the court, take possession of the Equipment and exercise such rights and responsibilities of Lessor under the Lease Agreements on such terms and for such period of time as the Assignee may deem proper, and, either with or without taking possession of said Equipment, Assignee may demand, sue for or otherwise collect and receive all rental proceeds and profits payable by Lessees under the Lease Agreements, (which right may be exercised upon Assignee's giving written notice to a respective Lessee to make all rental payments directly to Assignee) and to apply such proceeds to the payment of (a) all expenses of owning, operating and renting the Equipment, including, but not limited to, the salaries, fees and wages of a managing agent and such other employees as the Assignee may deem necessary or desirable and all reasonable expenses of operating, renting and maintaining (as applicable) the Equipment, including, but not limited to, all taxes, charges, claims, assessments, and any other liens and premiums for insurance which the Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Equipment, (b) the expense of liquidating any liens, security interests, attachments or encumbrances superior to the security interests herein created, and (c) the indebtedness evidenced by the Note and secured hereby and by the Security Instrument, together with all costs and reasonable attorneys' fees actually incurred, as provided therein, in such order of priority as Assignee in its sole discretion may determine, notwithstanding any statute, law, custom or usage to the contrary. Exercise by Assignee of the option granted it in this paragraph and the collection of the rental proceeds, and the application thereof as herein provided, shall not be considered a waiver of any Event of Default under the Loan Documents. The possessory

rights granted to Assignee under the terms of this Assignment are intended to be remedies for Lessor Default in addition to those which are set forth in the Security Instrument.

3. Lessor Default. As set forth in Article VI of the Lease Agreement, Lessee has agreed to give Assignor notices of defaults by Lessor (a "Lessee Default Notice") (the occurrence of which Lessee Default Notice and the expiration of any cure period as may be set forth in the Lease Agreement is referred to herein as a "Lease Agreement Default"). In the event there shall occur either (a) Lease Agreement Default, or (b) an Event of Default (following the expiration of any applicable cure periods) as set forth in the Loan Agreement (sometimes these events are respectively referred to herein as a "Lessor Default"), the Assignee is hereby vested with full power to use all measures, legal and equitable, and take any action deemed by it necessary or proper to enforce this Assignment and to collect rental proceeds assigned hereunder, including the right (but not the obligation) to take possession of the Equipment to the extent necessary to effect the cure of any default on the part of the Assignor as Lessor under any Lease Agreement. Further provided, upon the occurrence of any Lessor Default Notice, Assignor hereby agrees that Assignee shall have the joint and several right (but not obligation) with Assignor to take such action and remedies as shall be necessary to cure such default, if any, and so long as any indebtedness shall remain outstanding under the Loan Documents, Assignor shall direct all lessees to give concurrent notice of default to Assignee.

4. No Obligation by Assignee. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Lease Agreement and Assignor shall and does hereby agree to indemnify the Assignee, its agents and employees, against and hold them harmless from any and all liability, loss or damage which they may or might incur under any Lease Agreement, or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against them by reason of any alleged obligation or undertaking on the part of Assignee to perform or discharge any of the terms, covenants or agreements contained in any Lease Agreement; provided however, that nothing contained herein shall require Assignor to indemnify Assignee for the gross negligence or willful misconduct of Assignee, its agents and employees. Should Assignee, its agents or employees, incur any such liability, loss or damage under any Lease Agreement or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees actually incurred, shall be secured hereby and by the Security Instrument above described, and Assignor shall reimburse the Assignee therefor within ten (10) days after written demand for reimbursement is made upon Assignor, and upon

failure of Assignor to do so, Assignee may at its option declare all sums secured hereby and by the Security Instrument immediately due and payable. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to consummate the re-rental or sale of the Equipment after a Lessor Default has occurred or from any other act or omission of Assignee in managing or seeking to sell, transfer or convey any Equipment after a Lessor Default has occurred unless such loss is caused by the gross negligence, willful misconduct or bad faith of the Assignee. It is further understood that this Assignment shall not operate to place responsibility upon Assignee for the control, care, operation or repair of the Equipment or for the carrying out of any one or more of the terms and conditions of any Lease Agreement, nor shall it operate to make Assignee responsible or liable for any waste committed with respect to the Equipment by the Assignor or any other persons, or for any dangerous or defective condition of the Equipment, or for any negligence in the operation, cleaning, upkeep, repair or control of the Equipment resulting in loss or injury or death to any lessee, licensee, employee or other person. Anything contained in this Paragraph to the contrary notwithstanding, in no event shall Assignor be responsible to indemnify or reimburse Assignee, its agents and employees, of and from any claims, expenses, costs or damages which may arise directly as a result of the gross negligence, willful misconduct or bad faith by Assignee, its agents or employees.

5. No Waiver. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The rights of Assignee to collect said indebtedness and to enforce any other security therefor may be exercised by Assignee either prior to, simultaneously with or subsequent to any action taken by it hereunder.

6. Binding Nature. This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Note and Security Instrument, and shall be binding upon Assignor and its successors and assigns and any subsequent owner of the Equipment. The Assignee shall have the right to assign all of its right, title and interest in the Lease Agreements to any subsequent holder of the Note and Security Instrument, subject to the provisions of this Assignment, and to assign the same to any person acquiring title to the Equipment, or any portion thereof, through foreclosure under the Security Instrument or otherwise. After the Assignor shall have been barred and foreclosed of any right, title and interest and equity of redemption in said Equipment, or any portion thereof,

no assignee of the Assignor's interest in the Lease Agreements shall be liable to account to the Assignor for the proceeds under the Lease Agreements.

7. Proceeds. All rental proceeds and profits received by Assignee under any Lease Agreement shall be applied in accordance with the application provisions set forth in Paragraph Two (2) above; provided however, following the disposal (by private or public sale, and at which public sale Assignee may be the purchaser) by Assignee of Assignor's interests under the Lease Agreement, either pursuant to the foreclosure provisions of this Assignment or under the Security Instrument, Assignor shall be barred and foreclosed of any right, title and interest and equity of redemption under the Lease Agreements, and Assignee shall have no further responsibility to account to Assignor for the proceeds under the Lease Agreements.

8. Release. The Assignee may take or release other security for the payment of the principal sum, interest and indebtedness evidenced by the Note, may release any party primarily or secondarily liable therefor, and may apply other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to its rights hereunder.

9. Cancellation. Upon payment in full of all indebtedness secured hereby, as may be evidenced by the filing of UCC Termination Statements covering the Equipment, this Assignment shall automatically become void and of no effect. Also, this Assignment may be cancelled by the Assignee indicating that it has been cancelled on its face and signing the same.

10. Notices. All notices required to be given hereunder shall be in writing and shall be deemed served at the earlier of (i) receipt or (ii) the third (3rd) business day after deposit in United States mail, registered or certified, postage prepaid and addressed to the parties at the following addresses, or such other addresses as may from time to time be designated by written notice given as herein required:

To Assignor:

Equipment Leasing Partners
9405 Arrowpoint Boulevard
Charlotte, North Carolina 28273-8110

Attention: Robert F. Weidaw, Treasurer

With Copy to:

Moore & Van Allen
3000 NCNB Plaza
Charlotte, North Carolina 28280

Attention: Stephen D. Hope, Esquire

To Assignee:

First Union National Bank of North Carolina
Corporate Banking Group - CCO-7-0145
301 S. Tryon Street
Charlotte, North Carolina 28288

Attention: Mary T. Mack

With Copy to:

Parker, Poe, Thompson, Bernstein, Gage & Preston
2600 Charlotte Plaza
Charlotte, North Carolina 28244

Attention: W. Samuel Woodard, Esquire

Any notice sent to the Assignor at its address set forth herein shall be deemed notice to all partners of Assignor. Personal delivery to a party or to any officer, partner, agent or employee of such party at its address herein shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. No notice of change of address shall be effective until the date of receipt thereof.

11. North Carolina Law. This Assignment shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and sealed in its name all by authority duly given, this the day and year first above written.

ASSIGNOR:

EQUIPMENT LEASING PARTNERS, a
North Carolina General Partnership
[SEAL]

By: Robert F. Weidaw [SEAL]
Robert Weidaw
Authorized Treasurer

JLH:be/3677

EXHIBIT A
TO COLLATERAL ASSIGNMENT
OF EQUIPMENT LEASE AGREEMENTS
FIRST UNION NATIONAL BANK OF NORTH CAROLINA
AND
EQUIPMENT LEASING PARTNERS,
A NORTH CAROLINA GENERAL PARTNERSHIP

Cogentrix of Richmond

<u>Equipment</u>	<u>Number of Units</u>	<u>Estimated Unit Cost</u>
Portable Conveyors	1	\$117,000
Locomotive	1	600,000
Front-End Loader	<u>1</u>	<u>95,000</u>
Total	3	\$812,000

<u>Equipment</u>	<u>Description</u>
Locomotive	Remanufactured locomotive
Portable Conveyor	U.S. Equipment loading hopper with radial stacking conveyor
Front-End Loader	Volvo-Michigan wheel loader, model L-90

Cogentrix of Rocky Mount

<u>Equipment</u>	<u>Number of Units</u>	<u>Estimated Unit Cost</u>
Portable Conveyors	1	\$117,000
Locomotive	1	550,000
Front-End Loader	<u>1</u>	<u>95,000</u>
Total	3	\$762,000

<u>Equipment</u>	<u>Description</u>
Locomotive	Republic Locomotive Works RL-100 Remanufactured switching locomotive, Serial No. 061 with a 100 H.P. diesel engine
Portable Conveyor	U.S. Equipment loading hopper with radial stacking conveyor
Front-End Loader	Volvo-Michigan wheel loader, model L-90

ReUse Technology

<u>Equipment</u>	<u>Number of Units</u>	<u>Estimated Unit Cost</u>
Dump Trucks	8	\$ 80,000
Tractor Trailer		
Dump Truck	1	100,000
Pneumatic Tankers		
w/tractor	3	110,000
D5 Dozer	1	135,000
D6 Dozer	1	135,000
Ten ton Compactor	1	65,000
Twenty ton Compactor	<u>1</u>	<u>85,000</u>
Total	16	\$1,490,000

Cogentrix of Pennsylvania

<u>Equipment</u>	<u>Number of Units</u>	<u>Estimated Unit Cost</u>
Tractor Trailer Truck	2	\$100,000
Peripheral Greenhouse		
Equipment	<u>1</u>	<u>500,000</u>
Total	3	\$700,000
	Total	\$3,764,000

JLH/3687.3

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 5th day of September, 1990 personally came before me Robert F. Weidaw, who being by me duly sworn, says he is the authorized Treasurer of EQUIPMENT LEASING PARTNERS, a North Carolina general partnership (the "Partnership"), and that the foregoing instrument was signed and sealed by him, on behalf of said Partnership by its authority duly given. And the said Robert W. Weidaw acknowledged the said writing to be the act and deed of the Partnership.

Steve M. Jule (Handwritten)
Notary Public

My Commission Expires:

11/15/91

(NOTARY SEAL)