

LAW OFFICES OF
PARKER, POE, ADAMS & BERNSTEIN

2600 CHARLOTTE PLAZA
CHARLOTTE, NORTH CAROLINA 28244
TELEPHONE 704-372-9000 FACSIMILE 704-334-4706

15998 A
RECORDATION NO _____ FILED 1425

15998 B
RECORDATION NO _____ FILED 1425

SEP 10 1990 - 12 02 PM
INTERSTATE COMMERCE COMMISSION

SEP 10 1990 - 12 02 PM

September 7, 1990

INTERSTATE

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
RECORDATION NO _____ FILED 1425

Re: ICC Filings

SEP 10 1990 - 12 03 PM

FILE NUMBER

Dear Ms. Lee:

INTERSTATE COMMERCE COMMISSION

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.

RECORDATION NO. 18998-3 FILED 1990

SEP 10 1990 -12 05 PM

EQUIPMENT
LOAN AGREEMENT INTERSTATE COMMERCE COMMISSION

THIS LOAN AGREEMENT, dated as of the 31st day of July, 1990 (the "Loan Agreement") is made by and between

EQUIPMENT LEASING PARTNERS, a North Carolina general partnership having its principal place of business in Charlotte, North Carolina (the "Company"); and

FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association, existing under the laws of the United States (the "Bank").

W I T N E S S E T H:

A. The Company has applied to the Bank for a loan of Three Million Seven Hundred Sixty-Four Thousand Dollars (\$3,764,000.00) for the purchase by Company, from time to time, of certain business equipment as more particularly set forth herein (the "Loan").

B. The Bank is willing to make the Loan for the purpose stated hereinabove based on the terms and conditions set forth in this Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the Bank hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

1.1 For the purposes hereof:

(a) "Closing Date" means the date as of which this Loan Agreement is executed by the Company and the Bank;

(b) "Cogentrix" means Cogentrix, Inc., a North Carolina corporation;

(c) "Cogentrix Subsidiary" means respectively: Cogentrix of Richmond, Inc., a North Carolina corporation, Cogentrix of Rocky Mount, Inc., a North Carolina corporation, Cogentrix of Pennsylvania, Inc., a Delaware corporation, and ReUse Technology, Inc., a North Carolina corporation (collectively the "Cogentrix Subsidiaries").

(d) "Collateral" means (i) all business equipment acquired by Company through the use, directly or indirectly, of the Loan proceeds advanced under this Agreement a schedule of which equipment is attached hereto as Exhibit A, and all additions accessions and substitutions for and repairs or replacements of the same, and proceeds thereof, including insurance proceeds, and (ii) all leases, accounts, general intangibles, and choses in action arising from the equipment and collateral described in Subparagraph (i);

(e) "Collateral Assignment" means that certain Collateral Assignment of Equipment Leases dated as of the same date hereof, executed and delivered to the Bank by Company, as well as any other collateral assignment executed by Company in substitution, amendment, replacement, extension, or renewal of any such collateral assignment;

(f) "Commitment" as used herein shall mean and refer to that certain Loan Commitment and Agreement dated May 29, 1990, issued by Bank and entered into by Company.

(g) "Consistent Basis" in reference to the application of Generally Accepted Accounting Principles, means that the accounting principles observed in the period referred to are comparable in all material respects to those applied in the most recent preceding period except as to any changes required by the American Institute of Certified Public Accountants or the Financial Accounting Standards Board (except there shall be no instance any provision allowing either (a) upward reevaluation of assets or (b) write-downs of deferred income taxes);

(h) "Equipment Draws" means draw applications submitted by Company to Bank from time to time during the term of this Agreement, in form and content satisfactory to Bank, and including without limitation all of the following supporting documentation: (i) equipment vendor invoice, (ii) purchase order submitted by Company to the respective equipment vendor, (iii) a sworn statement by an authorized representative of Company that (A) the applicable equipment has been delivered to the respective operational site, has been inspected by Company and is in good working order and repair and free from any liens or apparent, material defects of any kind or nature whatsoever, or (B) where progress payments shall be required by the equipment vendor invoice, such documentation as Bank shall deem reasonably necessary to demonstrate the appropriateness of payment, and (iv) an executed Equipment Lease Agreement, in form and

content previously approved by Bank, fully executed by Company and the applicable Cogentrix Subsidiary;

(i) "Equipment Lease" means the form of Equipment Lease previously approved by Bank, for use by Company in leasing the Collateral to the respective Cogentrix Subsidiary;

(j) "Final Draw Date" means November 1, 1991, the last date upon which Company may submit Equipment Draws to Bank.

(k) "Financing Statements" mean the financing statements and all renewals and amendments thereto, whereby the Bank perfects its security interest in all of the collateral described in the Security Agreement and Collateral Assignment;

(l) "Generally Accepted Accounting Principles" means those principles of accounting set forth in pronouncements of the Financial Accounting Standards Board, the American Institute of Certified Public Accountants or which have other substantial authoritative support and are applicable in the circumstances as of the date of a report, as such principles are from time to time supplemented and amended;

(m) "Loan Documents" means this Loan Agreement, the Note, the Security Agreement, the Collateral Assignment, the Financing Statements, the Commitment, and all other documents and exhibits required thereby with respect to each of the foregoing;

(n) "Note" means the future advances promissory note issued by the Company dated as of the Closing Date in favor of the Bank in the original face amount of Three Million Seven Hundred and Sixty-Four Thousand Dollars (\$3,764,000.00) as well as any promissory note or notes issued by the Company in substitution, replacement, extension, renewal or amendment of any such promissory note or notes;

(o) "Partner" means, respectively each partner of Company, to wit: George T. Lewis, Jr., Robert W. Lewis, David J. Lewis and James F. Lewis (collectively the "Partners");

(p) "Person" means an individual, partnership, corporation, trust, unincorporated organization, association, joint venture or a governmental or agency or political subdivision thereof; and

(q) "Security Agreement" means that certain Security Agreement dated as of the same date hereof whereby the Company grants to the Bank a first priority security interest in the Collateral, as well as any other security agreements entered into by Company in substitution, amendment, replacement, extension, or renewal of the Security Agreement.

1.2 All accounting terms not specifically defined herein shall be construed in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis.

ARTICLE II

THE LOAN

2.1 Equipment Draws. Commencing as of the Closing Date and continuing through Final Draw Date, Bank shall advance Loan amounts upon accepted Equipment Draws in the face amount of the presented invoice, up to an amount which, when added to the outstanding Loan balance, (principal and accrued interest), shall not exceed Three Million Seven Hundred Sixty-Four Thousand Dollars (\$3,764,000.00).

2.2 Repayment. The repayment terms for the Loan are set forth in the Note. If not sooner repaid, the entire outstanding indebtedness, principal and accrued interest, shall be due and payable on November 1, 1996.

2.3. Commitment Fee. At the Closing Company will pay the Bank a commitment fee equal to one percent (1%) of the face amount of the Note, to wit: the sum of Thirty Seven Thousand Six Hundred Forty and No/100 Dollars (\$37,640.00), which commitment fee shall have become due and payable upon Company's acceptance of the Commitment, but which may be financed from Loan proceeds at the Closing, at Company's option. Provided however, unless and until Cogentrix of Richmond, Inc. shall have closed its construction loan to fund the proposed 220 megawatt cogeneration facility to be built in Richmond, Virginia (providing DuPont steam and providing VEPCO with electricity; the "Richmond Construction Loan"), there shall only be due and payable the commitment fee amount of twenty-one thousand dollars (\$21,000.00). Upon the earlier to occur of (a) the closing of the Richmond Construction Loan, or (b) the request by Company to make any Equipment Draws associated with Cogentrix of Richmond (see Exhibit A), the entirety of the remaining commitment fee shall become due and payable, without further notice or demand, and if the Richmond Construction Loan is not closed (or no associated Equipment Draw made) then no further commitment fee is payable.

2.4. Further Documentation. Anything contained in this Loan Agreement or the Commitment to the contrary notwithstanding, as of the date hereof the following closing documentation has not been completed:

- (a) UCC-11 searches at the locations set forth in Exhibit C;
- (b) Filing of UCC Financing Statements at all locations set forth in Exhibit C;
- (c) Receipt of Lender Estoppels from BANQUE PARIBAS and FUJI BANK; and
- (d) Opinion Letter from Moore & Van Allen, opining on behalf of the Company.

(collectively those documents are referred to as the "Remaining Documentation").

Concurrent with the execution and delivery of this Agreement, Bank is funding the initial Equipment Draw. The parties stipulate and agree that no further Equipment Draws shall be made available unless and until the Remaining Documentation shall have been received by Bank. In addition, in the event for any reason Company shall fail or refuse to furnish the remaining documentation on or before October 1, 1990 this Loan Agreement, the Note, and all sums payable thereunder, may, at Bank's sole option, become immediately due and payable.

ARTICLE III

SECURITY

3.1 Collateral Documents. In order to secure payment when due of the principal and interest under the Note, and all other obligations of the Company to the Bank under the Loan Documents, the Company agrees to deliver to the Bank on or before the Closing Date, the Security Agreement, the Collateral Assignment, and the Financing Statements, granting to Bank a first priority security interest in the Collateral, Equipment Leases, and other collateral covered thereby.

3.2 Further Instruments. At the request of the Bank, the Company will cause to be executed by its duly authorized representatives, alone or with the Bank, any certificate, instrument, statement or document and will procure any such certificate, instrument, statement or document (and pay all related costs) which the Bank reasonably deems necessary to preserve the security interests of the Bank contemplated hereby.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

4.1 The Company represents and warrants that:

(a) (i) The Company is a general partnership duly organized, validly existing and in good standing under the laws of the State of North Carolina;

(ii) Cogentrix and the Cogentrix Subsidiaries are corporations duly organized, validly existing and in good standing under the laws of the respective states of their formation;

(iii) the Company, Cogentrix, and the Cogentrix Subsidiaries have the power and authority to own their properties and assets and to carry on their business as now being conducted, and Company has taken all necessary action to transact business in the States of Pennsylvania, North Carolina, Georgia and Virginia;

(iv) the Company has the partnership power and authority to execute and perform this Loan Agreement, to borrow hereunder and to execute and deliver this Loan Agreement, the Note, the Security Agreement, the Collateral Assignment, the Financing Statements, the Commitment, and all other certificates, instruments and documents with respect to the indebtedness and responsibilities of the Company under the Loan Documents;

(b) the execution, delivery and performance of the Loan Documents:

(i) have been duly authorized by all requisite partnership action of the Company, as required for the lawful creation and issuance thereof;

(ii) do not violate any provisions of law, any order of any court or other agency of government or the general partnership agreement of Company or the charter documents or bylaws of the Cogentrix Subsidiaries, where applicable, or any provisions of any indenture, agreement or other instrument to which the Company, Cogentrix, or the Cogentrix Subsidiaries are parties or to which the properties or assets of the Company, Cogentrix, or the Cogentrix Subsidiaries are bound;

(iii) will not be conflict with, result in a breach of or constitute an event of default nor an event which, upon notice or lapse of time, or both, would constitute such an event of default under any indenture, agreement or other instrument to which the Company, Cogentrix, or the Cogentrix Subsidiaries is a party;

(iv) will not result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the properties or assets of the Company, Cogentrix, or the Cogentrix Subsidiaries except the liens created by such Loan Documents;

(c) (i) Company has heretofore furnished the Bank with balance sheets of Cogentrix (consolidated) as at June 30, 1989, and of Company as of _____ and the related statements of income, retained earnings and changes in financial position for the fiscal year then ended. Such financial statements are true and correct and have been prepared in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis throughout the period involved; such balance sheets present fairly the financial position of Company and Cogentrix (consolidated) as of the date thereof, and such statements of income, retained earnings and changes in financial position present fairly the results of the operations of Company and Cogentrix (consolidated) for the periods indicated, and such balance sheets show all known liabilities of Company and Cogentrix (consolidated), direct or contingent, as of the date thereof which are required to be shown or disclosed in accordance with Generally Accepted Accounting Principles;

(ii) Since June 30, 1989, there has been no material adverse change in the condition, financial or otherwise, of the Company, Cogentrix, or Cogentrix Subsidiaries or in the business and properties of the Company, Cogentrix, or Cogentrix Subsidiaries.

(d) except as set forth in Exhibit B attached hereto, there is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or agency or arbitral body now pending, or to the knowledge of the Company, threatened, against the Company, Cogentrix, or Cogentrix Subsidiaries or any properties or rights of the Company, Cogentrix, or Cogentrix Subsidiaries which, if adversely determined, would materially impair the right of

the Company, Cogentrix, or Cogentrix Subsidiaries to carry on their respective businesses substantially as now conducted, or would materially adversely affect the financial condition, business or operations of the Company, Cogentrix, or Cogentrix Subsidiaries;

(e) except as set forth in Exhibit B attached hereto, neither the Company, Cogentrix nor any Cogentrix Subsidiary is:

(i) a party to any judgment, order, decree or any agreement or instrument or subject to corporate or partnership restrictions materially adversely affecting its/his business, properties or assets, operations or condition (financial or otherwise);

(ii) in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party, which default shall materially adversely affect its business or operations.

(f) no part of the proceeds of any loan hereunder will be used to purchase or carry or to reduce or retire any loan incurred to purchase or carry, any "margin securities" (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any such margin stocks. Neither the Company, Cogentrix nor any Cogentrix Subsidiary is engaged, as one of its important activities, in extending credit for the purpose of purchasing or carrying such margin stock. If requested by the Bank, the Company and Cogentrix will furnish to the Bank in connection with any loan hereunder, a statement in conformance with the requirements of Federal Reserve Form U-1 referred to in said Regulation. In addition, no part of the proceeds of any loan hereunder will be used for the purchase of commodity future contracts (or margins therefor for short sales) for any commodity not required for the normal raw material inventory of the Company;

(g) none of the Loan Documents contains any misrepresentation or untrue statement of material fact or omits to state a material fact necessary in order to make any such representation or statement contained herein not misleading in any material respect;

(h) neither the nature of the Company, Cogentrix or the Cogentrix Subsidiaries, nor of their business or

properties, nor any relationship between any of these companies and any other Person, nor any circumstance in connection with the offer, issue, sale or delivery of the Note is such as to require a consent, approval or authorization of, or filing, registration or qualification with, any governmental authority on the part of the Company, Cogentrix, or any Cogentrix Subsidiaries, as a condition to the execution and delivery of this Loan Agreement, the Note or any other Loan Document;

(j) the offices and/or locations where Company or the Cogentrix Subsidiaries keep the Collateral and their books and records concerning the Collateral are at the locations set forth on Exhibit C attached hereto and the addresses specified on Exhibit C include and designate Company's and the Cogentrix Subsidiaries' chief executive offices and places of business;

(k) neither the Company, Cogentrix, nor any Cogentrix Subsidiary is subject to the renegotiation of any government contract (other than negotiations regarding modifications or alterations to existing licenses, permits, easements, rights of way, and similar agreements which will not materially adversely impair the conduct of the respective entity's business operations);

(l) neither the Company, Cogentrix, nor any Cogentrix Subsidiary has incurred or assumed any liability for any accumulated unfunded deficiency within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA") or has incurred any material liability to the Pension Benefit Guaranty Corporation ("PBGC") established under such Act (or any successor thereto under such Act) in connection with any employee benefit plan established or maintained by the Company.

ARTICLE V

AFFIRMATIVE COVENANTS

5.1 Financial Statements. The Company covenants and agrees that from the date hereof and until payment in full of the principal and interest on the Note, unless the Bank shall otherwise consent in writing, the Company will, or will cause Cogentrix, where applicable to:

(a) as soon as practicable following each fiscal year, deliver to the Bank a financial report, including a balance sheet of the Company as at the end of such fiscal year and the related statement of income and of changes in

financial position for such fiscal period, prepared in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis, as well as copies of federal and state income tax returns, and certified by the chief financial officer of the Company as presenting fairly the financial condition of the Company.

(b) as soon as practical and in any event not later than within ninety (90) days of the end of each fiscal year ending after the Closing Date, deliver to the Bank financial statements containing a consolidated balance sheet of Cogentrix at the end of such fiscal year, and the notes thereto, and the related statements of income, retained earnings and changes in financial position for such fiscal year and the notes thereto, setting forth in each case comparative financial information for the preceding period, all prepared in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis after an audit performed in accordance with generally accepted auditing standards by a firm of independent certified public accountants selected by Cogentrix and acceptable to the Bank together with the unqualified opinion of such accounting firm with respect to such statements;

(c) as soon as practical and in any event not later than forty-five (45) days after the end of each fiscal quarter (except the fourth and final fiscal quarter) deliver to the Bank a financial report including a consolidated and consolidating balance sheet of Cogentrix as at the end of such quarterly period and the related statements of income and retained earnings and of changes in financial position for such quarterly period, and for the period from the beginning of the current fiscal year to the end of such quarterly period, setting forth in each case comparative financial statements for the corresponding period in the preceding year, all prepared in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis and certified by the chief financial officer of Cogentrix as presenting fairly the financial condition of Cogentrix and the results of its operations for such quarterly period;

(d) together with each delivery of financial reports required by Sections 5.1(a), (b) and (c) hereof, deliver to the Bank a certificate signed by the chief financial officers of the Company and Cogentrix setting forth that, to the best of their knowledge, the Company has kept, observed, performed and fulfilled each and every agreement binding on it, contained in the Loan Documents and is not

at the time in material default in the keeping, observance, performance or fulfillment of any of the other terms, provisions and condition of any of the Loan Documents, and that no event of default specified in Article VIII hereof, nor any event, which, upon notice or lapse of time or both, would constitute such an event of default, has occurred, or if such event of default exists or would occur as the case may be, stating the nature thereof, the period of existence thereof and what action the Company proposes to take with respect thereto;

(e) on an annual basis, deliver currently prepared (within thirty (30) days) personal financial statements of the Partners;

(f) promptly, from time to time, deliver to the Bank such other information regarding the Company's operations business affairs and financial condition as the Bank may reasonably request. The Bank is hereby authorized to deliver a copy of any such financial information delivered hereunder to the Bank to any regulatory authority having jurisdiction over the Bank;

(g) maintain or cause to be maintained all Collateral in good working order and condition (reasonable wear and tear excepted) and make all needed repairs, replacements and renewals as is necessary to conduct the Company's, businesses in accordance with prudent business practices;

(h) do or cause to be done all things necessary to preserve and keep in full force and effect the Company's, Cogentrix's, and the respective Cogentrix Subsidiary's partnership or corporate (as applicable) existence, rights, franchises, licenses, trademarks and tradenames the extent the same are material to the operation of such Person's respective business;

(i) comply with or contest in good faith all material statutes and governmental regulations and pay promptly, when due, all taxes, assessments, governmental charges, claims for labor, supplies, rent and any other obligation which if unpaid, might become a material lien against any of Company's, property except to the extent any such liabilities are being contested in good faith and with due diligence and against which, if requested by the Bank, reserves satisfactory to the Bank shall be established;

(j) at all times keep or cause to be kept the Collateral insured to such extent and against such risks, including, without limitation, property insurance against

loss or damage by fire and lightning, flooding and water damage (if applicable), and other hazards ordinarily included under uniform standard extended coverage policies at the time in use in the respective states, and Company shall maintain public liability insurance, worker's compensation and other insurance required by law, as is customary with companies of comparable size in the same or similar business unless higher limits or other types of coverage are reasonably required by the Bank. At the request of the Bank, the Company will provide the Bank with an outline of its existing insurance coverage as to carrier, policy number, expiration date, type and amount. The Company will deliver to the Bank's certificates (or endorsements) showing the Bank as loss payee for losses to Collateral exceeding \$25,000.00 resulting from any single insurance loss using a New York Standard Mortgage Clause of each insurer evidencing the hazard insurance coverage regarding the security granted to the Bank by the Company. Each such policy will require, and the certificates will state that no such policy will be terminated without at least thirty (30) days prior written notice having been delivered to the Bank. Unless the Bank shall have otherwise consented in writing, insurance proceeds from property securing the indebtedness hereunder shall be immediately applied to reduce such indebtedness; provided, however, if the Company should not cease substantial operations and if the insurance proceeds resulting from any single insurable loss are less than \$25,000.00, then the Company shall be entitled to the insurance proceeds to replace the insured property without the consent or endorsement of the Bank;

(l) keep true books of records and accounts in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis, and in which full, true and correct entries will be made of all of Company's dealings and transactions;

(m) permit any officer of the Bank designated in writing by the Bank, to visit and inspect any of Company's, Cogentrix's, or a respective Cogentrix Subsidiary's properties, corporate books and financial records at such times as the Bank may reasonably request upon reasonable notice and during ordinary business hours;

(n) upon the written request of the Bank, authorize any officer of the Bank to discuss the Company's, Cogentrix's, or any Cogentrix Subsidiary's financial statements and financial affairs at any time and from time to time with the Company's and Cogentrix's independent

certified public accountants upon reasonable notice and during ordinary business hours;

(o) continue to conduct and operate (or cause to be conducted, where applicable) the Company's, businesses substantially as conducted and operated (or contemplated to be conducted) during the current and prior fiscal years.

(p) notify the Bank in writing within five (5) business days of the occurrence of any of the following with respect to the Company:

(i) the pendency or commencement of any material action, suit or proceeding at law or in equity;

(ii) any event or condition which shall constitute an event of default under the Loan Agreement, the Loan Documents, or any other agreement for borrowed money or any known or potential material change in this or any other contractual agreement;

(iii) any levy of an attachment, execution or other process against its assets which may have a material adverse effect on the Company; and

(iv) any change in any existing agreement or contract which may materially adversely affect Company's business or affairs, financial or otherwise.

5.2 Depository Accounts. Company shall maintain its operating and depository accounts with the Bank, and shall take receipt of and deposit all income and rentals arising with respect to the Collateral and Equipment Leases into these accounts.

ARTICLE VI

NEGATIVE COVENANTS

6.1 Until payment in full of the principal and interest of the Note, the Company covenants that (without the prior written consent of the Bank) it will not, nor will it enter into any binding agreement to, nor will it permit any Cogentrix Subsidiary, where applicable, to:

(a) incur, create, assume or permit to exist any mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of the Company's assets which secure the obligations of the Company under the Loan Documents, whether now owned or hereafter acquired, other than:

(i) liens in favor of the Bank created under the Loan Documents;

(ii) any unfiled lien of materialmen, mechanics, workmen, warehousemen, carriers, landlords or repairmen, provided that if such a lien shall be perfected and shall not be contested in good faith, it shall be discharged of record immediately by payment, bond or otherwise; and

(iii) liens for ad valorem taxes which are not delinquent;

(b) consolidate or merge with any Person; and/or

(c) sell, lease, transfer or otherwise dispose of a substantial part of Company's properties and assets to any Person, except in connection with normal replacement and substitution business practices.

ARTICLE VII

CONDITIONS PRECEDENT

7.1 The obligation of the Bank to make the Loan is subject to the conditions precedent that the Bank shall have received, on the Closing Date, in form and substance satisfactory to the Bank, the following:

(a) the favorable written opinion of counsel to the Company, dated the Closing Date, addressed to the Bank and satisfactory to Parker, Poe, Adams & Bernstein, special counsel to the Bank;

(i) confirming the accuracy and substance of the representations and warranties as to the Company set forth in Sections 4.1(a), (b), (d) and (e) hereof;

(ii) to the effect that no registration with or consent or approval of or other action by any Federal, or North Carolina authority or regulatory body is required for the execution and delivery by the Company of the Loan Documents, and the borrowings thereunder;

(iii) to the effect that the security interests granted to the Bank by Company under the Security Agreement, and Collateral Assignment together with the Financing Statements, when filed, constitute a perfected, and continuing security interest in the collateral described therein subject to no prior UCC

Financing Statement filings of record in the offices shown on Exhibit C attached hereto;

(iv) to the effect that the Collateral Assignment creates a valid lien as against the leasehold interests of the respective Cogentrix Subsidiary's property described therein subject to no other UCC Financing Statements filed of record in the office shown on Exhibit C attached hereto;

(vi) as to such other matters as the Bank may reasonably request;

The opinion of counsel may, with respect to the enforceability of any instrument, be made subject as to the enforcement of remedies to applicable bankruptcy, reorganization, insolvency and similar laws and to moratorium laws from time to time in effect. As to matters of fact, such opinions may be qualified to the extent of the knowledge of such counsel based upon reasonable investigation;

(b) executed copies of all Loan Documents;

(c) such resolutions, certifications, and copies of organizational documents relating to Company, Cogentrix and any Cogentrix Subsidiary's, as Bank and its counsel shall require, in their sole discretion; and

(d) Company shall furnish the results of an environmental audit of the emissions control and residual ash disposal systems utilized by Cogentrix, which environmental audit shall be in form and content satisfactory to Bank.

ARTICLE VIII

EVENTS OF DEFAULT AND ACCELERATION

8.1 Any of the following shall be Events of Default hereunder:

(a) failure by the Company to pay, or cause to be paid when due, the principal or interest on the Note, which failure shall continue for a period of five (5) days after the Bank's giving Company written notice of such default

(b) at any time any material representation, warranty or statement made by Company in any of the Loan Documents shall be incorrect or misleading in any material respect;

(c) failure by the Company to observe and perform, or to cause Cogentrix or any Cogentrix Subsidiary, where applicable, to observe or perform, any covenant, condition or agreement on the Company's part to be observed or performed in the Loan Documents, other than as referred to in subsections (a) or (b) above, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Bank.

(d) the dissolution or liquidation of the Company;

(e) the commencement by the Company, Cogentrix, or any Cogentrix Subsidiary, of any case, proceeding or other action relating to any of them in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts, or for any other relief, under dissolution arrangement, composition, readjustment of debtor or other similar act or law of any jurisdiction, now or hereafter existing; or the application by the Company, Cogentrix, or any Cogentrix Subsidiary for a receiver, custodian or trustee of it or for all or a substantial part of its property; or the making by the Company, Cogentrix, or any Cogentrix Subsidiary of any assignment for the benefit of creditors; or the taking of any action by the Company or Cogentrix, or any Cogentrix Subsidiary indicating any of their consent to, approval of or acquiescence in, or in the furtherance of, any of the foregoing;

(f) the commencement against the Company, Cogentrix, or any Cogentrix Subsidiary of any case, proceeding or other action in bankruptcy or seeking reorganization liquidation, dissolution, winding-up, arrangement, composition or readjustment of either's debts, or any other relief, under any bankruptcy, insolvency, composition, readjustment of debt or other similar act or law of any jurisdiction, now or hereafter existing; or the appointment of a receiver, custodian or trustee of the Company, Cogentrix, or any Cogentrix Subsidiary or for all or a substantial part of its property or the issuance of a warrant of attachment, execution or restraint, or similar process against any substantial part of the property of the Company, Cogentrix, or any Cogentrix Subsidiary; and which in each such case such condition shall continue for a period of 30 days undismissed, undischarged or unbonded;

(g) the occurrence of circumstances under which the Company, Cogentrix, or any Cogentrix Subsidiary is unable

or admits in writing its inability to pay its debts as they become due;

(h) the abandonment of business by the Company or Cogentrix;

(i) the entry of a final judgment (i.e. not stayed or under appeal) against the Company in the amount of \$25,000.00 or more which is not satisfied within thirty (30) days of the date of entry;

(j) the insolvency of the Company, Cogentrix, or any Cogentrix Subsidiary;

(k) the default by the Company, Cogentrix, or any Cogentrix Subsidiary in the payment of any other indebtedness which singly or in the aggregate exceeds \$1,000,000.00 and which default has resulted in the respective indebtedness having become accelerated by the lender thereunder;

(l) the receipt by the Company, Cogentrix, or any Cogentrix Subsidiary of a notice or notices of proposed deficiency (i.e. "30-day letter"), or notice or notices of deficiency (i.e. "90-day letter" or statutory notice), from the Internal Revenue Service, claiming or proposing deficiency(ies) in the payment of taxes by Company, Cogentrix, or any Cogentrix Subsidiary in an aggregate amount exceeding \$50,000.00 (including any interest or penalties stated therein or interest on the additional tax stated therein whether or not such interest is stated), or any similar notice or notices under the revenue laws or regulations of any state; provided that the Company, Cogentrix, or any Cogentrix Subsidiary does not establish an adequate reserve reasonably satisfactory to the Bank;

(m) the occurrence of a declared Event of Default (following the expiration of any applicable cure period) under any Equipment Lease (as defined therein);

(n) any "substantial change" in ownership of Company, Cogentrix, or any Cogentrix Subsidiary without Bank's prior written consent. As used herein the term "substantial change" shall mean the transfer of any partnership or shareholder interest, as applicable (including any conveyance of a security interest) in an amount representing ten percent (10%) or more of the then issued and outstanding stock (or outstanding partnership interests) of the respective company; provided, however, that nothing contained herein shall prohibit transfers of

ownership in interests amongst the Partners or members of their immediate family); and further provided that so long as (a) the Partners and their immediate family shall retain at least fifty percent (50%) ownership in each of these entities and (b) George Lewis shall remain as a partner and shareholder (as applicable) with at least a ten percent (10%) interest in each entity, such transfers shall be permitted; or

(o) the death or insolvency of any Partner of Company.

8.2 Upon the occurrence of any such Event of Default and unless the Bank agrees to waive in writing such an event of default:

(a) all of the obligations of the Company under the Loan Documents shall thereupon be immediately due and payable without the necessity of any other demand, presentment, protest or notice upon or to the Company, all of which are hereby expressly waived by the Company;

(b) regardless of the adequacy of the collateral, the Bank shall have the right, immediately and without further action by it, to set-off against the Note all money owed by the Bank in any capacity to the Company, whether or not due, and the Bank shall be deemed to have exercised such right of set-off and to have made a charge against any such money immediately upon the occurrence of such Event of Default even through such charge is made or entered on the books of the Bank subsequent thereto;

(c) the Bank may commence foreclosure proceedings upon the Collateral as authorized in the Loan Documents in order to satisfy any and all obligations of the Company to the Bank under and pursuant to all of the rights and powers and in the manner contained in the Loan Documents. The Company hereby agrees that the Bank shall have the right to bid and become a purchaser on its own behalf in any such foreclosure proceedings.

ARTICLE IX

MISCELLANEOUS

9.1 Any notice shall be conclusively deemed to have been received by either party hereto and be effective on the day on which delivered to such party at the address set forth below or such other address as such party shall specify to the other party in writing, or if sent prepaid by certified or registered mail (or by telegram or telex where the receipt of such message

is verified by return) on the third Business Day after the day on which mailed (or sent), addressed to such party at such address:

(a) if to the Company:

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

(b) if to the Bank:

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

Attention: Mary T. Mack

(with copy to:)

Parker, Poe, Adams & Bernstein
2600 Charlotte Plaza
Charlotte, North Carolina 28244

Attention: W. Samuel Woodard, Esquire

9.2 No failure or delay on the part of the Bank in the exercise of any right, power or privilege hereunder or under any other Loan Document shall operate as a waiver of any such right, power or privilege nor shall any preclude any other or further exercise thereof. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

9.3 All covenants, agreements, representations and warranties made herein and in the other Loan Documents shall survive both the making by the Bank of the Loan herein contemplated and the execution and delivery to the Bank of the Loan Documents, and shall continue in full force and effect so

long as any of the indebtedness of the Company to the Bank or any obligations of the Company to the Bank remain outstanding and unpaid. Whenever in this Loan Agreement, any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party and all covenants, provisions and agreements by or on behalf of the Company which are contained in the Loan Documents or this Loan Agreement shall inure to the benefit of the successors and assigns of the Bank.

9.4 The Company will pay all costs and expenses in connection with the preparation, execution and delivery of the Loan Documents, including, without limitation, the reasonable fees and out-of-pocket expenses of special counsel to the Bank, and costs and expenses of the Bank in connection with the implementation and/or enforcement of the Loan Documents and this Loan Agreement, the management and control of the Collateral as well as any and all filing and recording fees and stamps and other taxes with respect thereto and Company agrees to hold the Bank harmless from any and all such costs, expenses and liabilities.

9.5 No approval, decision, opinion or action required of the Bank ("Approval") hereunder nor any modification, amendment or waiver ("Waiver") of any provision of this Loan Agreement or any other Loan Document, nor any consent to any departure by the Company therefrom ("Consent") shall in any event be effective unless the same shall be delivered in accordance with the provisions of Section 9.1 hereof, and then such Approval, Waiver or Consent shall be effective only in the specific instance and for the purpose for which given, but any such Approval, Waiver or Consent when so signed shall be effective and binding upon the Bank. No notice to or demand on the Company shall entitle the Company to any other or further notice or demand in the same, similar or other circumstances.

9.6 Interest, fees, and premiums hereunder shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days in the interest period.

9.7 Should any installment or other payment of the principal of or interest on the Note become due and payable on other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day thereafter and in the case of an installment of principal, interest shall be payable thereon at the rate per annum herein specified during such extension.

9.8 This Loan Agreement may be executed in any number of counterparts, each of which when so executed and delivered

shall be deemed an original, and it shall not be necessary in making proof of this Loan Agreement to produce or account for more than one such counterpart.

9.9 The terms hereof shall extend to any subsequent holder of the Note.

9.10 The term of this Loan Agreement shall be until payment in full of the unpaid principal and interest of the Note outstanding or payment in full of all other sums payable by the Company to the Bank, howsoever evidenced, whichever is later.

9.11 All documents executed pursuant to the transactions contemplated herein, including without limitation this Loan Agreement and the Note, shall be deemed to be contracts made under, and for all purposes shall be construed in accordance with, the internal laws and judicial decisions of the State of North Carolina. For the purposes hereof, the Company hereby submits to the jurisdiction of the state and federal courts in North Carolina, and agrees to cause Cogentrix and the respective Cogentrix Subsidiaries to do the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized representatives as of the day and year first above written.

EQUIPMENT LEASING PARTNERS, a
North Carolina general partnership [SEAL]
consisting of four (4) general partners, to
wit: George T. Lewis, Robert W. Lewis,
David J. Lewis, and James F. Lewis

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

FIRST UNION NATIONAL BANK OF
NORTH CAROLINA

By: Manjima
Title: Vice President

JLH:be/3577

EXHIBIT A
TO LOAN AGREEMENT
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/3687.1

EXHIBIT B
TO LOAN AGREEMENT
BETWEEN FIRST UNION NATIONAL BANK
OF NORTH CAROLINA
AND EQUIPMENT LEASING PARTNERS,
A NORTH CAROLINA GENERAL PARTNERSHIP

[insert here description of any pending or threatened litigation, judgments, contract defaults, etc., as described in Sections 4.1(d) and (e)]

EXHIBIT C
TO LOAN AGREEMENT
BETWEEN FIRST UNION NATIONAL BANK
OF NORTH CAROLINA
AND EQUIPMENT LEASING PARTNERS,
A NORTH CAROLINA GENERAL PARTNERSHIP

The following is a listing of the locations of offices and addresses for the Collateral and the books and record relating to the Collateral:

1. Rocky Mount, North Carolina.

Cogentrix of Rocky Mount, Inc.
Route 2, State Road 1400
Battleboro, North Carolina 27809

ReUse Technology, Inc.
Fountain Industrial Park
Rocky Mount, North Carolina 27801

2. Richmond, Virginia.

Adjacent to
DuPont Spruance Plant
Richmond, Virginia

3. Ringgold, Pennsylvania.

Cogentrix of Pennsylvania, Inc.
Highway LR 33001
Ringgold, Pennsylvania 15770

4. Kennesaw, Georgia.

ReUse Technology, Inc.
100 Chastain Center Boulevard
Suite 155
Kennesaw, Georgia 30144

5. Charlotte, North Carolina.

Cogentrix, Inc.
9405 Arrowpoint Boulevard
Charlotte, North Carolina 28273-8110

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.

Robert F. Weidaw (H. Adair)
Notary Public

My Commission Expires:

11/13/91

(NOTARY SEAL)