

2-153A003

# Buchanan Ingersoll

DEBORAH B. WALRATH  
562-1472

PROFESSIONAL CORPORATION  
ATTORNEYS

58th FLOOR • 600 GRANT STREET  
PITTSBURGH, PA 15219  
412-562-8800  
TELEX 866514 (BIPC PGH)  
TELECOPIER 412-562-1041

June 1, 1992

17808  
RECORDATION RD FILED 1025

JUN 1 1992 - 10 55 AM  
INTERSTATE COMMERCE COMMISSION

By Hand

Mr. Sidney L. Stickland, Jr.  
Secretary  
Interstate Commerce Commission  
Twelfth Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

RE: Recordation of Security Agreement  
(Equipment Mortgage) by AMG  
Resources Corporation

Dear Mr. Stickland:

I have enclosed an original and one originally signed copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code. This document is a Security Agreement (Equipment Mortgage), a primary document, dated May 22, 1992. The names and addresses of the parties to the document are as follows:

Mortgagor <sup>fb</sup> Pittsburgh National Bank  
Fifth Avenue & Wood Street  
Pittsburgh, PA 15265

Mortgagee <sup>ee</sup> AMG Resources Corporation  
4100 Grand Avenue  
Pittsburgh, PA 15225

A description of the equipment covered by the document is railroad cars and locomotives identified by serial, running or other identifying number as noted on Exhibit A attached hereto.

A fee of \$16.00 is enclosed herewith in payment of the recordation fee for this document. Please return the original and any extra copies not needed by the Commission for recordation to the undersigned attorney representing Pittsburgh National Bank in this matter.

*Clara...  
Nora...  
Helen...*

JUN 1 10 46 AM '92  
MOTOR OPERATING UNIT

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

Primary Document - Security Agreement (Equipment Mortgage) between Pittsburgh National Bank, as Mortgagor, and AMG Resources Corporation, as Mortgagee dated May 22, 1992 and covering approximately one hundred and thirty-five (135) railroad cars and locomotives.

Should you have any questions or require anything further, please do not hesitate to contact the undersigned. Thank you.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Deborah B. Walrath".

Deborah B. Walrath

DBW:pw



Interstate Commerce Commission  
Washington, D.C. 20423

6/1/92

OFFICE OF THE SECRETARY

Deborah B. Walrath

Buchanan Ingersoll

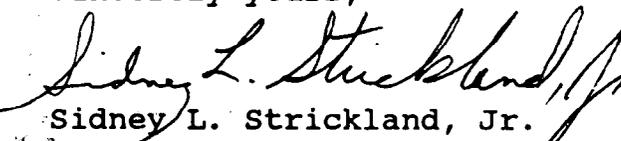
600 Grant Street 58th Fl.

Pittsburgh, PA. 15219

Dear Ms. Walrath:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/1/92 at 10:55am, and assigned recordation number(s). 15538-D & 17808

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

17808

RECORDATION NO. \_\_\_\_\_ FILED 1992

JUN 1 1992 - 10 55 AM

INTERSTATE COMMERCE COMMISSION

## SECURITY AGREEMENT (EQUIPMENT MORTGAGE)

THIS SECURITY AGREEMENT (EQUIPMENT MORTGAGE) ("Mortgage") dated May 22, 1992 by AMG Resources Corporation, a Delaware corporation (the "Borrower"), in favor of Pittsburgh National Bank, a national banking association (the "Bank").

WHEREAS, the Borrower and the Bank are parties to that certain Credit Agreement (the "Credit Agreement") dated as of May 22, 1992 pursuant to which the Bank may, from time to time, extend credit to the Borrower; and

WHEREAS, the Bank had required, as a condition to the closing of transactions contemplated by the Credit Agreement, that the Borrower execute and deliver this Mortgage to the Bank;

NOW, THEREFORE, for and in consideration of the foregoing, the parties hereto hereby agree as follows:

### Section 1. Defined Terms.

(a) The words "hereof," "herein" and "hereunder" and words of like import when used in this Mortgage shall refer to this Mortgage as a whole and not to any particular provision of this Mortgage, and section references are to this Mortgage unless otherwise specified.

(b) All terms defined in this Mortgage in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

### Section 2. Incorporation of Premises.

The premises set forth above are incorporated into this Mortgage by this reference hereto and are made a part hereof.

### Section 3. Collateral.

Section 3.1 Grant of Security Interest. As security for the payment and performance of all Indebtedness and other obligations of the Borrower under the Credit Agreement and the other Loan Documents, including, without limitation, principal,

interest, fees, expenses, costs and expenses of enforcement, reasonable attorney's fees and expenses, and obligations under indemnification provisions in the Loan Documents (collectively, the "Secured Obligations"), and the Borrower's payment and performance of obligations hereunder (the Secured Obligations and such payment and performance obligations being hereinafter collectively referred to as the "Liabilities"), the Borrower hereby grants to the Bank a security interest in and chattel mortgage on the following:

(a) all of the Borrower's now owned and hereafter acquired railroad cars and locomotives, together with all accessories, equipment, parts and appurtenances appertaining or attached thereto, and all additions, improvements, accessions and accumulations to any and all of said equipment, and all substitutions, renewals or replacements of any of the foregoing, together with all the rents, issues, income, proceeds and avails therefrom (collectively, the "Equipment"); and

(b) all proceeds (including, without limitation, insurance and indemnity payments) from the sale or loss or other disposition of the Equipment.

All such Equipment described in the immediately preceding clause (a), and proceeds with respect thereto, are herein collectively referred to as the "Collateral."

Section 3.2. Representations and Warranties of the Borrower. The Borrower represents and warrants to the Bank as follows:

(i) that as of the date hereof, all of the Equipment consisting of railroad cars and locomotives is identified by serial, running or other identifying number on Attachment I hereto;

(ii) that except as otherwise permitted in the Credit Agreement, it is the sole owner of all of the Equipment, that there are no encumbrances or liens of any kind or character, including, without limitation, leases, against any of the Equipment and that it has good right and lawful authority to assign, pledge, mortgage, and grant a security interest in the Equipment;

(iii) that except as otherwise permitted in the Credit Agreement, it has not assigned, pledged or mortgaged, and hereby covenants that it will not assign, pledge or mortgage, so long as this Mortgage shall remain in effect, the whole or any part of the rights or interests hereby assigned, pledged, mortgaged, and granted by it hereunder to anyone other than the Bank and its successors and assigns; and

(iv) the Borrower agrees to warrant and defend the rights and interests of the Bank in and to the Equipment against the rights or claims of any Persons.

Section 3.3. Maintenance and Repair. The Borrower agrees that, at its own cost and expense, it will maintain and keep all the Equipment in good order and repair in accordance with industry standards and with the Interchange Rules of the Association of American Railroads and in full compliance with any applicable Law which may be promulgated by the Department of Transportation, Federal Railway Administration, the Interstate Commerce Commission ("ICC") or any other applicable Official Body.

Section 3.4. Inspections. The Bank shall have the right to inspect the Equipment and the Borrower's records with respect to the Equipment at such reasonable times as the Bank may request.

Section 3.5. Use of Equipment. The Borrower agrees that the Equipment shall at all times remain in the United States or Canada.

Section 3.6. Marking of Equipment. The Borrower will keep and maintain, or cause to be kept and maintained, at all times, after the date hereof, plainly, distinctly, permanently and conspicuously marked on each item of Equipment in letters not less than seven-sixteenths of an inch in height:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED UNDER THE INTERSTATE COMMERCE ACT."

or other appropriate words designated by the Bank with appropriate changes thereof and additions thereto as from time to time may be required by Law in order to protect the security interests of the Bank in the Equipment and its rights hereunder. The Borrower will not place any item of Equipment in operation or exercise any control or dominion over any item of Equipment after the date hereof unless and until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Borrower will cause the Equipment to be kept numbered with the respective serial, running and other identifying numbers set forth in Attachment I hereto. The Borrower will not (a) change or authorize to be changed such serial, running or other identifying numbers or (b) place any item of Equipment in service or otherwise exercise any control or dominion over any item of Equipment if the serial, running or other identifying number of such item of Equipment is not contained in Attachment I hereto, unless and until an amendment to this Mortgage shall have been filed and recorded by the Borrower with the ICC, and the Borrower shall have furnished to

the Bank a certificate of an executive officer of the Borrower to the effect that such amendment has been so filed and recorded. If the Borrower fails to take any action specified in the immediately preceding sentence, the Borrower hereby authorizes the Bank to modify this Mortgage by amending Attachment I hereto as applicable, to reflect such changes or additions to the serial, running or other identifying numbers contained therein and to record the same with the ICC.

Section 3.7. Destruction of Equipment. The Borrower will bear the responsibility for and risk of, and shall not be released from the Liabilities in the event of, any damage to or the destruction or loss of any or all of the Equipment.

Section 4. Defaults.

Section 4.1. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

(a) There shall occur an Event of Default (under and as defined in the Credit Agreement);

(b) The Borrower shall fail to perform any of its obligations under this Mortgage and, in the case of any such default which is curable by the Borrower, such default shall continued unremedied for a period of twenty (20) Business Days; or

(c) Any representation made to the Bank in this Mortgage shall prove to be false or misleading at the time in any material respect when made.

Section 5. Remedies.

Section 5.1. Remedies. Upon the occurrence and during the continuance of any Event of Default, the Bank may do any one or more of the following acts (but shall be under no obligation to do so) regarding the Collateral, or any portion thereof:

(a) exercise all the rights and remedies in foreclosure and otherwise granted to secured parties under the provisions of applicable Laws;

(b) institute legal proceedings for the specific performance of any covenant or agreement herein undertaken by the Borrower or for aid in the execution of any power or remedy herein granted;

(c) institute legal proceedings to foreclose upon and against the security interest and the chattel mortgage in the Equipment granted in and by this

Mortgage, to recover judgment for all amounts then due and owing as Liabilities and to collect the same out of any sale of the Collateral;

(d) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any Collateral;

(e) demand, collect, and retain all hire, earnings and other sums due and to become due to the Borrower in respect of the Equipment from any party whomsoever, accounting only for the net earnings arising from such use, if any, after charging against any receipts from the use of the same and from any subsequent sale thereof all costs and expenses of and damages or losses by reason of, such use or sale;

(f) enter upon the Borrower's premises where the Collateral is located (or is believed to be located), without any obligation to pay rent to the Borrower, or any other place or places where the Collateral is believed to be located and kept, and prevent the Borrower or any other Person from using the Collateral or remove the Collateral therefrom to the premises of the Bank or any agent of the Bank, for such time as the Bank may desire, in order to effectively collect or liquidate the Collateral; or

(g) sell or dispose of all or any part of the Collateral, free from any and all claims of the Borrower or of any other party claiming by, through, or under the Borrower, at law, in equity, or otherwise, at one or more public or private sales, in such place or places, at such time or times, and upon such terms as the Bank may determine, in its sole and complete discretion and in light of the best interests of the Bank, with or without previous demand on or notice to the Borrower or advertisement of any such sale or other disposal, except that the Bank shall give the Borrower ten (10) days prior notice of sale which the Borrower, expressly acknowledges shall be deemed to be reasonable notice; and for the aforesaid purposes, except as provided in the immediately preceding clause, all notices of sale, advertisements, and demands and any rights or equities of redemption otherwise required or available to the Borrower under applicable Law are hereby waived by the Borrower to the fullest extent permitted by applicable Law. The power of sale hereunder shall not be exhausted by one or more sales, and the Bank from time to time may adjourn any sale to be made pursuant to this Section 5.1.

Section 5.2. Sale; Proceeds of Sale. Any sale of the Collateral may be in one lot as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Bank may determine. The Bank may bid for and become the purchaser of the Collateral, or any portion thereof, so offered for sale. In the event that the Bank shall be the purchaser thereof, it shall not be accountable to the Borrower upon a subsequent disposition of such property. All cash proceeds received by the Bank in respect of any sale of, collection from or other realization upon all or any part of the Collateral may, in the discretion of the Bank, be applied as set forth in Section 9.02(e) of the Credit Agreement.

Section 5.3. Assembly of Equipment. Upon the occurrence of an Event of Default, the Bank may designate some premises for the delivery of the Equipment to the Bank, which premises may include premises owned, leased or under the control of the Borrower, without any obligation to pay rent to the Borrower, and the Borrower shall, at its own expense, arrange for such Equipment to be delivered to the Bank at such premises. This agreement to deliver the Equipment as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court having jurisdiction in the premises, the Bank shall be entitled to a decree against the Borrower requiring specific performance hereof. The Borrower further agrees to store such Equipment, at the Borrower's expense, pending the Bank's disposition thereof for a period not in excess of six (6) months. The Borrower hereby expressly waives any and all claims against the Bank or its agents for damages of whatever nature in connection with any lawful retaking of any item of Equipment pursuant to the terms hereof.

Section 5.4. Waiver by the Borrower. To the extent permitted by Law, the Borrower covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension Law now or at any time hereafter in force, nor claim, take, or insist upon any benefit or advantage of or from any Law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every Person, except decree or judgment creditors of the Borrower acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Mortgage, all benefit and

advantage of any such Law or Laws, and covenants that it will not invoke or utilize any such Law or Laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Bank, but will suffer and permit the execution of every such power as though no such power, Law or Laws had been made or enacted.

## Section 6. General.

Section 6.1. Rights Cumulative. Each and every power and remedy hereby specifically given to the Bank shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time simultaneously and as often and in such order as may be deemed expedient by the Bank. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Bank in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Borrower shall not otherwise alter or affect the Bank's rights or the Liabilities. The Bank's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Liabilities or the Bank's rights hereunder with respect to any subsequent payments or default therein.

Section 6.2. Waiver. Except as otherwise provided in this Mortgage, the Borrower, to the full extent permitted by Law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, and any other requirements as to the time, place and terms of the sale, lease, transfer or assignment thereof, any other requirements with respect to the enforcement of the Bank's rights under this Mortgage and any and all rights of redemption.

Section 6.3. Satisfaction of Mortgage and Termination of Mortgage. When all the Liabilities have been paid in full, all obligations of the Borrower to the Bank under the Loan Documents (including but not limited to those set forth in Section 10.15(iv) of the Credit Agreement) have been satisfied in full, and the Credit Agreement has been terminated, the Bank shall release the lien of this Mortgage with respect to the Collateral by an appropriate document in recordable form and thereupon this Mortgage shall be satisfied and void.

Section 6.4. Section Headings, Effect and Modification of Agreement. All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Mortgage.

Section 6.5. Modifications. No variation or modification of this Mortgage and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Bank and the Borrower.

Section 6.6. Notices. All notices hereunder to any of the parties designated below shall be deemed to be properly served if delivered, telecopied or mailed to the respective addresses set forth in the Credit Agreement in the manner set forth in the Credit Agreement.

Section 6.7. Governing Law. The terms of this Mortgage and all rights and obligations hereunder shall be governed by the internal Laws (as opposed to the conflicts of law provisions) and decisions of the Commonwealth of Pennsylvania; provided, however, that the Bank shall be entitled to all rights conferred by the filing, recording or deposit hereof in the appropriate office(s) pursuant to Section 11303 of the Interstate Commerce Act or in such other offices as may be appropriate in the jurisdiction in which the Equipment is operated.

Section 6.8. Counterparts. This Mortgage may be executed in several counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement.

Section 6.9. Successors and Assigns. This Mortgage shall be binding upon the Borrower and its successors and assigns, and shall inure to the benefit of the Bank and its successors and assigns. The Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession to the extent that any of the foregoing are considered to be a successor or assign of or for the Borrower; provided, however, that the Borrower shall not voluntarily assign or transfer its rights or obligations hereunder without the Bank's prior written consent.

Section 6.10. Severability. The provisions of this Mortgage are severable and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Mortgage in any jurisdiction.

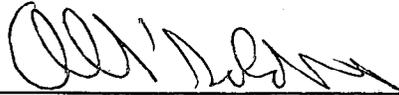
Section 6.11. Further Assurances. The Borrower will, from time to time, do and perform any other act or acts and will execute, acknowledge, and deliver, and file, register, and record (and will refile, re-register and rerecord whenever required) any

further instrument, including any extensions and renewals thereof, required by Law or requested by the Bank in order to confirm or further assure the interests of the Bank hereunder.

IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be executed by its duly authorized representative as of the day and year first set forth above.

AMG RESOURCES CORPORATION

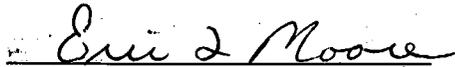
By: \_\_\_\_\_



Agreed to and acknowledged  
as of the \_\_\_\_\_ day of  
\_\_\_\_\_, 1992.

PITTSBURGH NATIONAL BANK

By: \_\_\_\_\_



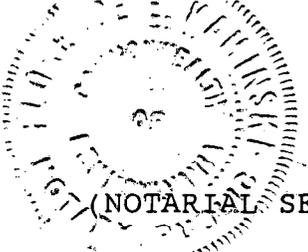
Eric L. Moore  
Vice President

COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF ALLEGHENY )

SS:

On this 22nd day of May 1992, 1992, before me personally appeared Allan M. Hollstein, to me personally known who, being by me duly sworn, says that he is the President of AMG Resources Corporation and that said instrument was on May 22, 1992, 1992, signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Florence E. Kaminski  
Notary Public



(NOTARIAL SEAL)

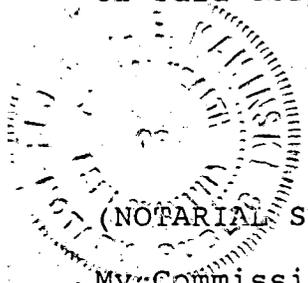
My Commission Expires:

Notarial Seal  
Florence E. Kaminski, Notary Public  
Neville Twp., Allegheny County  
My Commission Expires Nov. 30, 1993  
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF ALLEGHENY )

On this 22nd day of May 1992, 1992, before me personally appeared Eric L. Moore, to me personally known who, being by me duly sworn, says that he is a Vice President of Pittsburgh National Bank, and that said instrument was on May 22, 1992, signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Florence E. Kaminski  
Notary Public



(NOTARIAL SEAL)

My Commission Expires:

Notarial Seal  
Florence E. Kaminski, Notary Public  
Neville Twp., Allegheny County  
My Commission Expires Nov. 30, 1993  
Member, Pennsylvania Association of Notaries

