

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
the Securities and Exchange Act of 1934

Date of Report (Date of earliest event reported): December 30, 1997

The Middleby Corporation

(Exact name of registrant as specified in its charter)

Delaware ----- (State or other jurisdiction of incorporation)	1-9973 ----- (Commission File number)	36-3352497 ----- (I.R.S. Employer Identification No.)
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2850 West Golf Road, Suite 405, Rolling Meadows, IL ----- (Address of principal executive offices)	60008 ----- (Zip Code)
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Registrant's telephone number, including area code: (847) 758-3880

1400 Toastmaster Drive, Elgin, IL 60120

Former name or former address, if changed since last report

Item 2. ACQUISITION OR DISPOSITION OF ASSETS

On December 30, 1997, Middleby Marshall Inc. ("MMI"), a wholly-owned subsidiary of The Middleby Corporation, entered into a Lease Agreement (the "Agreement") with BA Leasing & Capital Corporation ("BA Leasing") which provided for the sale and leaseback of certain license and sublicense agreements with respect to specified patent rights (collectively, the "License Agreements"), and the sale of a non-exclusive license to use certain trademarks and trade names (collectively, the "Intellectual Property") under specified circumstances. Under the terms of the Agreement, BA Leasing agreed to acquire the Intellectual Property for a purchase price of \$10,200,000, of which \$9,200,000 represents the sale price of the License Agreements and \$1,000,000 represents the amount paid for the license of the trademarks and trade names. Lease payments for the License Agreements will be made by MMI to BA Leasing in sixteen consecutive quarterly installments. After three years MMI may re-purchase the License Agreement for a fixed amount, or at the expiration of the lease MMI may re-purchase the Intellectual Property based upon a fair-market valuation of the License Agreement. The purchase price was determined in arms length negotiations between MMI and BA Leasing following an appraisal of the Intellectual Property performed by an independent appraiser.

Item 7. FINANCIAL STATEMENT AND EXHIBITS

10.1 Lease Agreement dated as of December 30, 1997 between Middleby
Marshall Inc. and BA Leasing & Capital Corporation.

10.2 Appendix to Lease Agreement dated as of December 30, 1997 between
Middleby Marshall Inc. and BA Leasing & Capital Corporation.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the
Registrant has duly caused this Report to be signed on its behalf by the
undersigned thereunto duly authorized.

Dated: January 12, 1998

THE MIDDLEBY CORPORATION
(Registrant)

By: /s/ John J. Hastings

Name: John J. Hastings
Title: Executive Vice President and
Chief Financial Officer

LEASE AGREEMENT

BA LEASING & CAPITAL CORPORATION ("LESSOR") agrees to acquire and lease to Middleby Marshall Inc., a Delaware corporation ("LESSEE"), on an exclusive basis throughout the world, and Lessee agrees to lease from Lessor certain intangible personal property (the "UNITS" and individually a "UNIT") described in the Appendix (the "APPENDIX") attached and made a part hereof, on the terms and conditions set forth herein and in the Appendix hereto. The Appendix shall be a part of this Lease Agreement. This Lease Agreement and the Appendix are referred to herein and therein collectively as "THIS LEASE."

SECTION 1. PROCUREMENT, DELIVERY AND ACCEPTANCE.

SECTION 1.1. Lessee currently has title to the Units described in the Appendix, and Lessee shall, on the date of the Appendix, sell to Lessor all of Lessee's right, title and interest in and to the Units described in the Appendix by executing and delivering to Lessor the Assignment Agreement in the form of Exhibit A attached hereto (the "ASSIGNMENT").

SECTION 1.2. The obligation of Lessor to pay for each Unit is subject to satisfaction of the conditions precedent set forth in Paragraph B.2 of the Appendix. If any of those conditions is not met with respect to any Unit, Lessor shall assign to Lessee all of Lessor's right, title and interest in and to the Unit.

SECTION 2. TERM, RENT AND PAYMENT.

SECTION 2.1. The term of this Lease for each Unit (its "LEASE TERM") shall begin on the date of the Appendix describing the Unit and continue as specified in the Appendix.

SECTION 2.2. Lessee shall pay Lessor rent for each Unit in the amounts and at the times specified in the Appendix.

SECTION 2.3. Rent and all other sums due Lessor hereunder shall be paid at the office of Lessor set forth below, unless otherwise specified by Lessor.

SECTION 2.4. This Lease is a net lease and Lessee shall not be entitled to any abatement or reduction of rent or any setoff against rent, whether arising by reason of any past, present or future claim of any nature by Lessee against Lessor or otherwise. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the obligations of Lessor or Lessee be otherwise affected by any circumstance, including, without limitation, (a) any infringement with respect to, loss in value or usefulness or termination of any Unit, however caused, (b) the attachment of any lien, encumbrance, security interest or other right or claim of any third party with respect to any Unit, including without limitation any claim regarding infringement with respect to the rights granted pursuant to any such Unit, (c) any prohibition or restriction of or interference with Lessee's use of any Unit by any person or entity, (d) the insolvency of or the commencement by or against Lessee or Lessor of any bankruptcy, reorganization or similar proceeding, or (e) any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the Parties that all rent and other amounts payable by Lessee hereunder shall be payable in all events in the manner and at the times herein provided unless Lessee's obligations in respect thereof have been terminated pursuant to express provisions hereof.

SECTION 2.5. Payments shall be applied in the following order: (a) Lessor's reasonable expenses, including without limitation those set forth in Sections 9.5 and 23; (b) interest on late payments; and (c) rent and all other sums due hereunder. Payments shall be conclusively

evidenced by entries in records maintained by Lessor, provided that no presumption shall be drawn from Lessor's failure to accurately enter any such payment.

SECTION 3. REPRESENTATIONS.

SECTION 3.1. Lessee hereby represents and warrants to and with Lessor that:

(a) Lessee is a corporation duly organized and validly existing under the laws of the State of Delaware, with corporate powers and authority to own its properties and carry on its operations as now being conducted.

(b) Lessee has full power, authority and legal right to enter into and perform its obligations under this Lease and the Assignment. The execution, delivery and performance of this Lease and the Assignment have been duly authorized by all necessary action on the part of Lessee and do not require any stockholder approval or the approval or consent of any trustee or holder of any indebtedness or obligation of Lessee, except for such approvals and consents as have heretofore been obtained.

(c) The execution, delivery and performance of this Lease and the Assignment do not contravene any law, governmental rule, regulation, order or ordinance of any governmental entity having jurisdiction over and binding on Lessee or the certificate of incorporation or bylaws of Lessee and do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Lessee is a party or by which it or its property is bound.

(d) There is no action, suit or proceeding pending or, to the best knowledge of Lessee, threatened against Lessee before any court or administrative agency which would

materially adversely affect the condition, business or operation of Lessee or the ability of Lessee to perform its obligations under this Lease and the Assignment.

(e) This Lease constitutes a legal, valid and binding obligation of Lessee enforceable against it in accordance with the terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency or creditors' rights or by the application of principles of equity.

SECTION 4. WARRANTIES.

Lessee acknowledges and agrees that (a) each unit is of a type selected and designed by Lessee, (b) Lessee is satisfied that each Unit is suitable for its purposes, (c) Lessor is not a manufacturer of any property contemplated by the units and (d) Lessor has not made, and does not hereby make, any representation, warranty or covenant with respect to the title, Merchantability, Condition, quality, description, durability, fitness for purpose or suitability of any unit in any respect or in connection with or for the purposes and uses of Lessee. Lessor hereby assigns to Lessee, to the extent assignable, any warranties, covenants and representations of Patentsmith II, Inc., a Texas corporation (including any assignee or successor thereof, "Patentsmith II"), and Lincoln Foodservice Products, Inc., an Indiana corporation (including any assignee or successor thereof, "Lincoln"), with respect to any Unit, but any action taken by Lessee by reason thereof shall be at Lessee's expense and shall be consistent with Lessee's obligations under Section 2.

SECTION 5. USE.

SECTION 5.1. Lessee shall not (a) use any Unit improperly, carelessly or in violation of any applicable law or regulation of any government authority or in violation of any agreement

relating to such Unit, in each case to the extent such use could reasonably be expected to have a material adverse effect on the rights of Lessor or the value or usefulness of any Unit or Lessee's ability to perform its obligations hereunder, (b) sublease any Unit or permit its use by anyone

other than Lessee without the prior written consent of Lessor, (c) sell, assign or transfer, or directly or indirectly create, incur or suffer to exist any lien, encumbrance, right or claim of any kind on any of its rights hereunder or in any Unit or (d) amend, modify or waive, or permit the amendment, modification or waiver of any term or provision of any agreement relating to any Unit.

SECTION 5.2. Lessee shall at its expense use and defend each Unit during its Lease Term in all material respects in accordance with the express terms of each and every agreement relating to such Unit.

SECTION 5.3. Lessee shall fully comply in all material respects with all of the provisions of each agreement relating to the continuing right to use or enjoy the benefit of the Units.

SECTION 5.4. Lessee shall not amend, modify or alter any Unit, or permit any Unit to be amended, modified or altered, in any respect, without the prior written consent of Lessor. Prior to the occurrence of an Event of Default or the termination of this Lease without Lessee exercising its option to purchase the Units hereunder, Lessor shall not amend, modify or alter any Unit, or permit any Unit to be amended, modified or altered, in any respect, without the prior written consent of Lessee.

SECTION 5.5. Upon reasonable prior notice to Lessee, Lessor and its designees shall have the right at all reasonable times to observe the use of any Unit by Lessee and inspect Lessee's books and records related thereto.

SECTION 6. GENERAL TAX INDEMNITY.

SECTION 6.1. Lessee shall pay or reimburse Lessor for, and indemnify and hold Lessor harmless from, all fees (including, but not limited to, license, documentation, recording or registration fees) and all sales, use, gross receipts, property, occupational, value-added or other taxes, levies, imposts, duties, assessments, charges or withholdings of any nature whatsoever, together with any penalties, fines or additions to tax, or interest thereon, in each case after taking into account the net tax benefit to Lessor in the tax reporting period of Lessor with respect to which such payment or reimbursement is made resulting from any facts or circumstances described in this Section 6.1 (each of the foregoing being hereafter referred to as an "Imposition"), arising at any time before or during the term of this Lease, or upon any termination of this Lease or return of the Units to Lessor, and levied or imposed on Lessor, directly or otherwise, by any federal, state or local government or taxing authority in the United States or by any foreign country or foreign or international taxing authority on or with respect to (a) any Unit, (b) the exportation, importation, registration, purchase, ownership, delivery, leasing, possession, use, operation, return, sale, transfer of title or other disposition thereof, (c) the rents, receipts or earnings arising from any Unit or (d) this Lease or any payment made hereunder, excluding, however, taxes measured by Lessor's net income imposed or levied by the United States or any state or local authority thereof unless such taxes are in lieu of or in substitution for any Impositions Lessee would otherwise have been obligated to pay, reimburse or indemnify hereunder.

SECTION 6.2. Lessor shall pay directly each Imposition for which Lessor is primarily responsible and as to which Lessor gives Lessee notice Lessor will pay directly; and Lessee shall

promptly reimburse Lessor for any such Imposition so paid (except any Imposition excluded by Section 5.1) upon presentation of a bill therefor, together with a calculation and proof thereof in reasonable detail.

SECTION 6.3. Lessee shall pay on or before the time or times prescribed by law any Imposition for which Lessee is primarily responsible under applicable law and any other Imposition (except any Imposition excluded by Section 6.1) not payable by Lessor pursuant to Section 6.2, but Lessee shall have no obligation to pay an Imposition that Lessee is contesting in good faith and by appropriate legal proceedings and the nonpayment thereof does not, in the reasonable opinion of Lessor, adversely affect the title, property, use, disposition, security or other rights of Lessor with respect to the Units. Lessee shall furnish on Lessor's request proof of payment of

any Imposition paid by Lessee.

SECTION 6.4. If Lessor is not entitled to a corresponding and equal deduction with respect to any Imposition Lessee is required to pay or reimburse under Section 6.1, 6.2, or 6.3 and the payment or reimbursement constitutes income to Lessor, then Lessee shall also pay to Lessor the amount of any Imposition Lessor is obligated to pay in respect of (a) such payment or reimbursement by Lessee and (b) any payment by Lessee made pursuant to this Section 6.4.

SECTION 6.5. Lessor shall prepare and file all required property tax reports or returns, if any, as "Owner" of the Units, but Lessee must timely provide Lessor with all information that Lessor requires to prepare properly any such report or return. Lessee shall report the Units as "Property Leased from Others" on any property tax reports or returns required to be filed by Lessee. Lessee shall furnish on Lessor's request copies of reports or returns so filed.

SECTION 7. INDEMNITY.

SECTION 7.1. Lessee waives and releases any claim now or hereafter existing against Lessor, any company controlled by, controlling, or under common control with Lessor and all of their directors, officers, employees, agents, attorneys, successors and assigns (each, an "Indemnified Person") on account of, and shall indemnify, reimburse and hold each Indemnified Person harmless from, any and all claims (including, but not limited to, claims based on or relating to copyright, trademark or patent infringement, negligence, strict liability in tort, statutory liability or violation of laws), losses, damages, obligations, penalties, liabilities, demands, suits, judgments or causes of action (collectively, "Claims"), and all legal proceedings, and any reasonable costs or expenses in connection therewith, including reasonable attorneys' fees, including reasonable allocated time charges of internal counsel, in each case imposed on, incurred by or asserted against the Indemnified Person in any way relating to or arising in any manner out of (a) the registration, purchase, taking or foreclosure of a security interest in, or the ownership, delivery, condition, lease, assignment, possession, use, operation, return, repossession, sale or other disposition of, any Unit, before or during the term of this Lease as to such Unit, (b) any alleged or actual defect in any Unit (whether arising from the use thereof or otherwise) regardless of when such defect is discovered or alleged, whether or not the Unit is in Lessee's possession and no matter where it is located or (c) this Lease or any other related document, the enforcement hereof or thereof or the consummation of the transactions contemplated hereby or thereby, other than any Claim resulting solely from the gross negligence or willful misconduct of Lessor (other than any gross negligence or willful misconduct of another party imputed to Lessor) or a violation of

Lessor's agreements under Section 5.4, Section 10, Section 11 or Section 24 hereof or Paragraph H or I of the Appendix.

SECTION 8. ROYALTIES AND OTHER OBLIGATIONS.

Lessee, at its cost and expense, and without regard to any rent or other amounts payable by Lessee to Lessor hereunder shall perform and satisfy each obligation or condition required to be performed by the licensee under each Unit during the Term of the Lease. Without limiting the foregoing, Lessee agrees, at its own cost and expense to do the following during the Term of the Lease: (a) pay to Patentsmith II and Lincoln, as applicable, all royalties on Licensed Devices (within the meaning of the agreements relating to the Units) as and when payable thereunder, including the payment of any minimum royalties necessary to preserve the Units or to prevent any agreements relating thereto from being terminated, (b) keep true and accurate books of account setting forth all information in such detail as is necessary to calculate the royalties payable under and with respect to the Units, (c) pay all costs and expenses required to be paid by any licensee of the Units in connection with any examination of the books and records of such licensee or any sub-licensee thereof, (d) to furnish written reports to Patentsmith II

and Lincoln, as and when required under the agreements relating to the Units, setting forth the quantity and number of Licensed Devices made and sold, leased, put into use or otherwise disposed of during each three month period provided for in the agreements relating to the Units, along with the List Price (as defined in the agreements relating to the Units), model number, serial number and dollar value of all Licensed Devices sold, leased, put into use or otherwise disposed of by any licensee, sub-licensee or affiliate thereof, in each case as required of any licensee of any Unit, (e) submit to Lessor copies of the written reports described in the foregoing clause (d) not later than the dates

required under the agreements relating to the Units, together with a statement of the royalties paid to Patentsmith II and Lincoln for the respective quarterly period and a calculation in reasonable detail setting forth the manner in which such royalties were determined, (f) stamp, print or otherwise mark upon each Licensed Device such notice as is required under the agreements relating to the Units with respect to the identification of all applicable patents, and (g) take such other action and perform such other obligations as may be required to be taken or performed by any licensee or sub-licensee of the Units under any agreement relating thereto.

SECTION 9. DEFAULTS; REMEDIES.

SECTION 9.1. The following shall constitute events of default ("EVENTS OF DEFAULT") hereunder:

(a) Lessee fails to make any payments to Lessor within ten (10) days after the same become due hereunder;

(b) any representation or warranty of Lessee contained herein or in any document furnished to Lessor in connection herewith is incorrect or misleading in any material respect when made;

(c) Lessee fails to observe or perform any agreement, covenant or undertaking required to be performed by the licensee under any agreement relating to any Unit if such failure causes or permits, or with notice or the passage of time or both would cause or permit, the termination of such Unit by the licensor thereunder or any other material impairment of licensee's rights thereunder, provided that if Lessee cures such failure within the time permitted under the terms of the agreement relating to such Unit to avoid

such termination or impairment (but in no event to exceed 90 days), then no Event of Default shall be deemed to have occurred hereunder;

(d) Lessee fails to observe or perform any other covenant, agreement or warranty made by Lessee hereunder or under any document delivered pursuant hereto and such failure continues for thirty (30) days after written notice thereof to Lessee;

(e) (i) Lessee or Middleby shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Lessee or Middleby shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Lessee or Middleby any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against Lessee or Middleby any case, proceeding or other action seeking issuance of a warrant of attachment, execution, restraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated or discharged, within sixty (60) days from the entry thereof;

or (iv) Lessee or Middleby shall take any action in furtherance of, or

indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (i), (ii) or (iii) above; or (v) Lessee or Middleby shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(f) Lessee liquidates, dissolves or enters into any partnership, joint venture (other than in its ordinary course of business), consolidation, merger or other combination, and Lessee does not survive the same (provided such consolidation, merger or other combination does not violate any covenant of Lessee hereunder or otherwise create or default under this Lease or any related documents), or sells, leases or disposes of a substantial portion of its business or assets;

(g) (i) Lessee shall fail to make any payment in respect of any indebtedness for borrowed money in excess of \$500,000, or (ii) any event or condition shall occur which results in the default after the expiration of any applicable grace period, or requires the early redemption or prepayment, of any of such indebtedness for borrowed money or any event or condition shall occur and be continuing which enables (or, with the giving of notice or lapse of time or both, would enable) the holders of any of such indebtedness for borrowed money acting on such holder's behalf to accelerate the maturity, or require the early redemption or prepayment, of any of such indebtedness for borrowed money;

(h) (i) one or more judgments or orders for the payment (which judgments or orders are uninsured by third party insurers) in the aggregate, of money in excess of \$500,000 shall be rendered against Lessee and such judgments or orders shall continue unsatisfied and unstayed for a period of thirty (30) days or (ii) one or more judgments or orders shall be rendered against Lessee, which judgments or orders shall be stayed on

condition that a bond or collateral equal to or greater than, in the aggregate, \$500,000 be posted or provided, and such judgments or orders shall not be overturned or lifted within a period of thirty (30) days; or

(i) Middleby fails to observe or perform any covenant, agreement or warranty made by Middleby under the Support Agreement.

SECTION 9.2. If any Event of Default occurs, Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to use the Units shall terminate, but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may enter upon the premises of Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold the same free from any right of Lessee, its successors or assigns, but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts that under the terms of this Lease may be then due or that may have accrued to the date of such termination (computing the rent for any number of days less than a full rent period by multiplying the rent for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rent period) and also to recover forthwith from Lessee: (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, that equals (x) the present value, at the time of such termination, of the entire unpaid balance of all rent for the Unit that would

otherwise have accrued hereunder from the date of such termination to the end of its Lease Term minus (y) the then present value of the rent

Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case by discounting at a rate equal to the then judgment rate of interest fixed under California law, compounded at the same frequency as rent is payable hereunder, from the respective dates upon which rent would have been payable hereunder had the Lease not been terminated and (ii) any damages and expenses in addition thereto that Lessor sustains because of the breach of any covenant, representation or warranty contained in this Lease other than for the payment of rent. Lessee hereby waives any rights now or hereafter conferred by statute or otherwise that may require Lessor to sell, lease or otherwise use any Unit in mitigation of Lessor's damages upon any default by Lessee, except as may be set forth in this Section 9.2, or that may otherwise limit or modify any of Lessor's rights or remedies under Section 9.2.

SECTION 9.3. Lessee agrees to pay all allocated time charges, costs and expenses of internal counsel for Lessor and any other attorneys' fees, expenses or out-of-pocket costs incurred by Lessor in enforcing this Lease.

SECTION 9.4. The remedies herein provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity.

SECTION 9.5. If Lessee fails to perform any of its agreements contained herein, Lessor may perform such agreement, and Lessee shall pay the expenses incurred by Lessor in connection with such performance upon demand.

SECTION 10. USE OF TRADEMARK, TRADE NAME; OTHER ACTION.

SECTION 10.1. As provided in the Assignment, Lessee has licensed to Lessor (and Lessor's assigns) the nonexclusive right to the use of the trademarks and trade names described therein (collectively, the "TRADEMARKS"), together with the goodwill associated therewith, such license to become effective upon (i) the expiration of the Lease Term of each Unit (provided Lessee has not exercised its option to purchase the Units as provided herein) or (ii) the occurrence of an Event of Default. Additionally, upon the expiration of the Lease Term of each Unit (provided Lessee has not exercised its option to purchase the Units as provided herein) or the occurrence of an Event of Default, Lessee shall, at the direction of Lessor, take such action, including without limitation the execution of documents, as Lessor reasonably deems necessary to protect the interests of Lessor in the Units, including without limitation, any recordation or filing with the U.S. Patent and Trademark Office which Lessor deems necessary or desirable.

SECTION 10.2. Lessor acknowledges the ownership of the Trademarks by Lessee. Lessor acknowledges and agrees that it has no right, title or interest in or to the Trademarks nor any part thereof, except the nonexclusive use of the Trademarks as set forth herein, and that nothing in this Lease, the Assignment or otherwise shall be construed as an assignment or grant to Lessor of any other right, title or interest in or to the Trademarks. Prior to the occurrence of an Event of Default, during the Term of this Lease, should any right, title or interest in or to the Trademarks or any part thereof become vested in Lessor, Lessor shall hold such rights, title or interest in trust for Lessee and shall, at the request of Lessee, forfeit unconditionally any right, title or interest to Lessee, subject to the license granted to Lessor hereunder and under the Assignment. Lessor agrees that it will do nothing inconsistent with Lessee's ownership of the Trademarks and that all

use of the Trademarks by Lessor and all goodwill developed therefrom shall inure to the benefit of and be on behalf of Lessee. Lessor agrees not to challenge, directly or indirectly, Lessee's right, title or interest in or to the Trademarks.

SECTION 10.3. Lessor agrees that the nature and quality of all services rendered and goods sold by Lessor in connection with the Trademarks shall be in accordance with and shall conform to standards set by and which are under

the control of Lessee.

SECTION 10.4. Lessor agrees to cooperate with Lessee in facilitating Lessee's control of the nature and quality of the services and goods sold by Lessor in connection with the Trademarks, to permit reasonable inspection of Lessor's operation, and to permit Lessee to inspect specimens of use of the Trademarks upon Lessee's written request.

SECTION 10.5. Lessor agrees to notify Lessee of any unauthorized use of the Trademarks by others promptly as such use comes to Lessor's attention. Lessee shall have the sole right and discretion to bring infringement or unfair competition proceedings involving the Trademarks and shall retain all proceeds from such infringement or unfair competition proceedings.

SECTION 10.6. Lessor shall, at its expense, defend, indemnify and hold Lessee harmless from and against any and all liabilities, claims, causes of actions, suits and damages, including without limitation, suits for personal injury or death or third parties, and expenses (including without limitation, reasonable attorneys' fees) for which Lessee becomes liable, or in any way incurs or is compelled to pay, by reason of Lessor's activities or breach of the terms of this Lease.

SECTION 10.7. Anything herein to the contrary notwithstanding, upon an assignment or transfer by Lessor of Lessor's title to the Units and the license to the use of the Trademarks as

provided herein, Lessor shall be released from any and all obligations and liabilities under this Section 10 arising from and after the date of such assignment or transfer, PROVIDED that the party to which such transfer or assignment is made shall expressly assume Lessor's obligations under this Section 10.

SECTION 11. ASSIGNMENT.

Lessor may at any time assign or transfer all or any of the right, title or interest of Lessor in and to this Lease, and the rights, benefits and advantages of Lessor hereunder, including the rights to receive payment of rent or any other payment hereunder, Lessor's title to the Units and any and all obligations of Lessor in connection herewith, and the license to the use of the trademarks as provided in Section 10.1; PROVIDED that, unless an Event of Default shall have occurred or this Lease has expired or terminated (provided Lessee has not exercised its option to purchase the Units as provided herein), no such assignment or transfer shall be to any person or entity which, directly or indirectly, competes with Lessee or its affiliates; and further PROVIDED that, prior to the occurrence of an Event of Default or, if earlier, the third anniversary of the Base Date without the exercise by Lessee of its purchase option under Paragraph H of the Appendix, Lessor shall not make any such assignment or transfer without the prior written consent of Lessee (which consent shall not be unreasonably withheld). Lessor may disclose to any potential or actual assignee or transferee any information in the possession of Lessor or any of its affiliates relating to Lessee or this Lease. Any such assignment or transfer shall be subject and subordinate to this Lease and the rights and interests of Lessee hereunder. NO ASSIGNMENT OF THIS LEASE OR ANY RIGHT OR OBLIGATION HEREUNDER MAY BE MADE BY LESSEE OR ANY ASSIGNEE OF LESSEE WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR. Lessor shall, and shall cause its

representatives to, keep confidential and not use for any other purpose all materials and information relating to Lessee, its assets or business or this Lease submitted to Lessor in connection with this Lease (collectively, "Evaluation Materials") and shall not disclose any Evaluation Materials to any person or entity other than (a) Lessor's representatives who require them in connection with the administration or enforcement of this Lease or the transactions contemplated hereby or (b) any such actual or proposed assignee or transferee for purposes of an actual or proposed transfer or assignment, provided that Lessor shall obtain an agreement of such assignee or transferee, for Lessee's benefit, to be bound by this confidentiality and non-disclosure provision. The foregoing confidentiality obligations shall

survive termination of this Lease for a period of three years, provided that such obligation shall not apply to any Evaluation Materials to the extent they (i) become generally available to the public other than as a result of a disclosure by Lessor or its representatives or such transferees or assignees, (ii) were available to Lessor or its representatives on a non-confidential basis prior to their disclosure to Lessor or its representatives by Lessee or its representatives, (iii) become available to Lessor or its representatives on a non-confidential basis from a source other than Lessee or its representatives when such source is entitled to make such disclosure, or (iv) are required to be disclosed under applicable law or as required by regulatory authorities.

SECTION 12. FURTHER ASSURANCES.

Lessee confirms there is no pending litigation, tax claim, proceeding or dispute that may materially adversely affect any Unit or its financial condition or materially impair its ability to perform its obligations hereunder. Lessee will, at its expense, maintain its legal existence in good standing and do any further act and execute, acknowledge, deliver, file, register and record

any further documents Lessor may reasonably request in order to protect Lessor's title to the Units and Lessor's rights and benefits under this Lease.

SECTION 13. LATE PAYMENTS.

Lessee shall pay to Lessor, on demand, interest at the rate set forth in the Appendix on the amount of any payment not made when due hereunder from the date due until payment is made.

SECTION 14. EFFECT OF WAIVER.

No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default of Lessee hereunder shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Lessor of any breach or default under this Lease must be in writing specifically set forth.

SECTION 15. SURVIVAL OF COVENANTS.

All obligations of Lessee and Lessor under Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 hereof and under the Appendix shall survive the expiration or termination of this Lease to the extent required for their full observance and performance.

SECTION 16. FINANCIAL INFORMATION.

Lessee shall, and shall cause any guarantor to, keep its books and records in accordance with generally accepted accounting principles and practices consistently applied and shall, and shall cause any guarantor to, deliver to Lessor such financial statements and information as may be set forth in the relevant Appendix or as Lessor may reasonably request. Credit information

relating to Lessee, any guarantor or any general partner of Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

SECTION 17. NOTICES.

All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, certified mail, postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile transmission (with electronic confirmation of receipt) addressed to each party at the

address set forth below the signature of such party on the signature page, or at such other address as may hereafter be furnished in writing by such party to the other.

SECTION 18. APPLICABLE LAW; SEVERABILITY.

This Lease shall be governed by and construed under the laws of Illinois. If any provision hereof is held invalid, the remaining provisions shall remain in full force and effect.

SECTION 19. SUBMISSION TO JURISDICTION.

Each party hereto hereby submits to the nonexclusive jurisdiction of the courts of the State of Illinois for purposes of all legal proceedings arising out of or relating to this Lease or the transactions contemplated hereby. Each party hereto irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

SECTION 20. WAIVER OF JURY TRIAL.

The parties hereto voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this

Lease, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any of the parties hereto. The parties hereto hereby agree that they will not seek to consolidate any such litigation with any other litigation in which a jury trial has not or cannot be waived. The provisions of this Section 20 have been fully negotiated by the parties hereto and shall be subject to no exceptions. Lessee acknowledges and agrees that it has received full and sufficient consideration for this provision and that this provision is a material inducement for Lessor entering into this Lease.

SECTION 21. SETOFF.

Lessor shall, upon the occurrence of any Event of Default, have the right to appropriate and apply to the payment of Lessee's obligations under this Lease as security for the payment of such obligations, any and all balances, credits, deposits, accounts or moneys of Lessee then or thereafter maintained with Lessor. The rights of Lessor under this Section 21 are in addition to other rights and remedies (including other rights of setoff under applicable law or otherwise) which Lessor may have.

SECTION 22. COUNTERPARTS.

Two counterparts of this Lease have been executed by the parties hereto. One counterpart has been prominently marked "Lessor's Copy." One counterpart has been prominently marked "Lessee's Copy." Only the counterpart marked "Lessor's Copy" shall evidence a monetary obligation of Lessee.

SECTION 23. TRANSACTION COSTS.

Lessee agrees to (a) reimburse any reasonable legal expenses of Lessor (including reasonably allocated time charges of internal counsel for Lessor and other attorneys fees) and any

reasonable out-of-pocket costs incurred (whether prior to or after the date hereof) in connection with the preparation and negotiation of lease documents and any documents required in connection therewith, (b) pay all appraisal fees of the appraiser heretofore approved by Lessor and Lessee incurred in connection with the Units, and (c) pay (or reimburse) all search, recording and filing fees reasonably incurred in connection with this Lease and the Units.

SECTION 24. NON-INTERFERENCE.

So long as no Event of Default or event that, upon giving of notice or lapse of time, could become an Event of Default exists, Lessor will not interfere with the rights of enjoyment and exclusive use of the Units by Lessee.

SECTION 25. EFFECT AND MODIFICATION OF LEASE.

This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all prior agreements, oral or written, with respect thereto. No variation or modification of this Lease shall be valid unless in writing.

The parties hereto have executed this Lease as of 30th day of December, 1997.

BA LEASING & CAPITAL CORPORATION

MIDDLEBY MARSHALL INC.

By /s/ John A. Armstrong

By /s/ David B. Baker

Its Vice President

Its Assistant Treasurer

Address:

Address:

555 California Street

2850 West Golf Road

Fourth Floor

Suite 405

San Francisco, CA 94104

Rolling Meadows, IL 60008

Attn: Contract Administration

Attn: Chief Financial Officer

Telecopier No. 415/765-7373

Telecopier No. 847/758-0595

Telephone No. 415/765-7427

Telephone No. 847/758-3884

APPENDIX (this "APPENDIX") dated December 30, 1997 to LEASE AGREEMENT (the "LEASE AGREEMENT" and, together with this Appendix, the "LEASE") dated as of, December 30, 1997 between BA LEASING & CAPITAL CORPORATION ("LESSOR") and MIDDLEBY MARSHALL INC., a Delaware corporation ("LESSEE"). Capitalized terms not defined herein shall have the meanings given such terms in the body of the Lease.

A. UNITS.

The Units to be leased under the Lease Agreement by this Appendix consist of the following:

All right, title and interest of Middleby Marshall Inc. in, to and under that certain License Agreement dated September 24, 1981, between Stewart Systems, Inc. ("STEWART") and Enertex, Incorporated, relating to U.S. Patent Nos. 3,884,213 and 4,154,861, as assigned by Assignment of License Rights dated December 22, 1983, between Stewart and Middleby Marshall Oven Company, Inc., and as amended by Amendment No. 1 to License Agreement effective October 1, 1989, between Middleby Marshall Inc. and Patentsmith II, Inc., as the same may be further amended from time to time; and

Sublicense and Settlement Agreement dated October 31, 1989, between Lincoln Foodservice Products, Inc. and Middleby Marshall Inc., relating to certain patent rights of Patentsmith II.

B. PURCHASE PRICE; CONDITIONS PRECEDENT; ADVANCES.

1. PURCHASE PRICE.

(a) "PURCHASE PRICE" with respect to the Units to be leased under the Lease Agreement is the Purchase Price set forth in the Schedule (as hereinafter described), which Purchase Price shall in no event exceed \$10,200,000.

(b) Subject to paragraph B.2, Lessor shall pay the Purchase Price directly to Lessee in immediately available funds on the Delivery Date of the Units.

2. The obligation of Lessor to pay the Purchase Price with respect to the Units is subject to satisfaction of Lessor of each of the following conditions precedent:

(a) Lessee shall have executed and delivered to Lessor the Assignment as required under Section 1.1 of the Lease Agreement, and delivered to Lessor a copy of a notice of such Assignment which was delivered to Lincoln;

(b) the execution and delivery of a Lease Schedule and Acceptance Certificate in the form of EXHIBIT B hereto (the "SCHEDULE"), which Schedule shall set forth, among

other things, the Delivery Date, the Purchase Price, the schedule of the installments of Base Rent and the Early Buy-Out Option;

(c) the Delivery Date of the Unit shall be during the Utilization Period set forth below;

(d) there shall exist no Event of Default nor any event which, with notice or lapse of time or both, would become an Event of Default (a "DEFAULT");

(e) no material adverse change in the financial condition of Lessee or The Middleby Corporation ("MIDDLEBY") shall have occurred since the date hereof;

(f) delivery to Lessor, at Lessee's sole expense, of the following, in each case in form and substance satisfactory to Lessor:

- (i) an opinion of counsel to Lessee and Middleby;
- (ii) evidence of Lessee's authority to enter into and perform its obligations under the Lease and the Assignment, and of the incumbency of corporate officers or identity of individuals authorized to execute and deliver the Lease and the Assignment and any other agreement or document required thereunder, including specimen signatures of such persons;
- (iii) UCC financing statements executed by Lessee together with, at Lessor's option, certificates of filing officers as to the nonexistence of any prior UCC filings and evidence satisfactory to Lessor that each Unit is free and clear of all claims, liens, security interests and encumbrances, other than those to be released by Sanwa Business Credit Corporation and, pursuant to the written direction of The Northwestern Mutual Life Insurance Company, First Security Bank of Utah, National Association, as security trustee;
- (iv) a support agreement, in substantially the form of Exhibit C hereto (the "SUPPORT AGREEMENT") duly executed and delivered by Middleby to Lessor;
- (v) an appraisal of the Units, satisfactory to Lessor, by Accuval Associates, Incorporated; and
- (vi) any other documents specified in this Appendix and such other documents as Lessor may reasonably request.

C. BASE TERM.

Rent for each Unit will accrue under the Lease during its Base Term. The "BASE TERM" for each Unit will begin on, and include, its Base Date and continue for the number of months specified in the Schedule. The "BASE DATE" for each Unit will be the first of the month during or immediately following the month in which the Delivery Date occurs, as specified in the Schedule.

D. UTILIZATION PERIOD.

The Delivery Date for the Units leased hereunder must occur between the date of this Appendix and December 31, 1997, inclusive, which date may be extended by Lessor by written notice to Lessee (the "UTILIZATION PERIOD").

E. RENT.

BASE RENT. The Base Rent for each Unit shall be established on the date on which Lessor pays the Purchase Price to Lessee and shall be set forth in the Schedule.

Lessee shall pay Lessor rent ("BASE RENT") for the Units during the Base Term in the amounts and on the dates set forth in the Schedule.

F. LATE PAYMENT CHARGES.

The interest rate on late payments shall be 16% per annum computed daily on the basis of a 360-day year and actual days elapsed which results in more interest than if a 365-day year is used.

G. INCOME TAX INDEMNITY.

1. DEFINITION OF LOSS. For all Federal, state and local income tax purposes, if due to any Lessee Act (as defined below):

- (a) DEPRECIATION. Lessor is not entitled to the depreciation deductions (the "Depreciation Deductions") for each Unit as provided by Proposed Treasury Regulation Section 1.167-14(c)(4), promulgated under Section 167(f) of the Internal Revenue Code of 1986, as amended (the "Code") based on (i) a basis for depreciation equal to \$9,200,000, (ii) use of the straight-line method as provided in Proposed Treasury Regulation Section 1.167-14(c)(4), (iii) a remaining useful life of ten years, (iv) a salvage value equal to zero and (v) depreciation begins on the first day of

the month in which a Unit is acquired;

(b) INCLUSIONS. Lessor is required to include in gross income (an "Inclusion") any amount with respect to the Lease other than (i) Base Rent and rent payable with respect to any extension of the term of the Lease, (ii) any amounts payable with respect to an election to purchase the Units, (iii) any amounts payable as interest on overdue payments, and (iv) the amount of any indemnity payment; in each case at the time and in the amount each such payment accrues under the terms of the Lease; or

(c) FOREIGN TAX CREDITS. Lessor's federal income tax liability is increased as a result of a reduction in the foreign tax credits available for utilization by Lessor;

(any of the foregoing being a "Loss"), then, except as provided in paragraph 6, Lessee shall indemnify Lessor with respect to such Loss by making payments in the amounts and at the times specified herein. Any Loss suffered for federal income tax purposes will be deemed to give rise to a corresponding loss for state and local income tax purposes, and no Loss will be considered suffered for state and local income tax purposes unless there is a corresponding Loss for federal income tax purposes.

2. DEFINITION OF LESSEE ACT. A "Lessee Act" means any act or failure to act by Lessee, any assignee or sublessee of Lessee, any user of the Units or any affiliate of any of the foregoing or, without regard to any act or failure to act by any person, any representation or warranty by Lessee in paragraph 3 below shall prove to be incorrect or misleading or a breach of any warranty or agreement by Lessee in paragraph 3 below, in each case other than as a result of (A) an act or failure to act required by the Lease, (B) the exercise of any purchase or renewal option under the Lease; or (C) the making of any non-severable improvement permitted by Revenue Procedure 79-48.

3. LESSEE'S TAX REPRESENTATIONS.

(a) All factual information supplied by Lessee, its affiliates or agents to Lessor and relied upon by Lessor and any appraiser reporting to Lessor with respect to the Units was, in all material respects, complete and accurate at the time given (provided that with respect to any projections given to any appraiser, such information was, in all material respects, to the best of Lessee's knowledge and information, complete and accurate), and Lessee shall notify Lessor and any such appraiser of any material change in the accuracy or completeness of such information before the Delivery Date.

(b) On the Delivery Date, the Units being delivered will not require additions or modifications to make them suitable for their intended use.

(c) As a result of the Assignment, Lessor will be treated as the owner for all federal, state and local income tax purposes, of each Unit.

(d) For all purposes, Lessee (i) intends the Lease to be and will treat the Lease

as a "true lease" for federal income tax purposes, (ii) will take no position inconsistent with ownership of the Units by Lessor, and (iii) will not claim any depreciation deductions with respect to the Units.

(e) The Units are eligible for straight line depreciation by Lessor under Section 167(f) of the Code over a period of ten years.

(f) In any taxable year of Lessor, no deductions or losses arising from the lease financing transaction will arise from sources without the United States under either Section 862 or Section 863 of the Code and the Treasury Regulations promulgated thereunder.

(g) Each Unit will be placed in service by Lessor on the Delivery Date.

(h) Due to various factors and considerations that Lessee will

evaluate in determining whether to exercise the options provided in Sections H and I, there is no certainty, as of the date hereof, that either option will be exercised by Lessee or a member of the Lessee Group (as defined below).

(i) No part of the cost of the Units has been or will be furnished by Lessee, a shareholder of Lessee or any party related to Lessee, within the meaning of Section 318 of the Internal Revenue Code of 1986, as amended (collectively, the "LESSEE GROUP").

(j) No member of the Lessee Group has or will loan to Lessor any of the funds necessary to acquire the Units or guarantee any indebtedness created in connection with the acquisition of the Units by Lessor.

(k) No member of the Lessee Group will make any improvements to the Units, except in conformance with Rev. Proc. 79-48.

(l) Other than as expressly provided in Sections H and I, Lessee has no option to purchase any Unit from Lessor.

4. (a) LESSEE'S PAYMENTS. If a Loss occurs, Lessee shall pay Lessor an amount which, after reduction by the net amount of all additional taxes payable by Lessor in respect of the receipt or accrual of such amount under the laws of the United States and California (the amount of such taxes to be computed assuming Lessor is subject to the highest marginal Federal and California statutory rate for income or franchise taxes then generally applicable to corporations), is equal to the sum of (i) the net additional Federal income taxes payable by Lessor as a result of such Loss, plus (ii) any interest, penalties or additions to tax payable by Lessor as a result of such Loss, such sum to be determined (A) in the case of a loss of a Depreciation Deduction, by assuming that Lessor's combined marginal federal, state and local income tax rate will be 40.2%, (B) in the case of an Inclusion, by assuming Lessor is subject to

the highest marginal Federal and California statutory rate for income or franchise taxes then generally applicable to corporations and (C) in the case of a loss of foreign tax credits, by assuming Lessor can fully and currently utilize all available credits for foreign taxes to reduce its federal income tax liability.

(b) LESSOR'S PAYMENTS. Lessor shall pay Lessee an amount equal to the sum of (i) the net reduction in Federal income taxes, if any, realized by Lessor attributable to any Loss or circumstances resulting in a Loss, such sum to be determined utilizing the rates set forth in paragraph 4(a)(A) or (B) as applicable and (ii) the net amount of any additional reduction in Federal and California income and franchise taxes, if any, realized by Lessor as a result of any payment pursuant to this sentence. However, the aggregate amount paid by Lessor to Lessee hereunder with respect to any Loss shall not exceed the aggregate amount paid by Lessee to Lessor with respect to such Loss.

5. (a) TIME OF LESSEE'S PAYMENTS. Any amount payable to Lessor shall be paid within 30 days after written notice to Lessee by Lessor that a Loss has occurred (which notice shall describe the Loss in reasonable detail and set forth the computation of the amount payable). The time at which a Loss occurs shall be deemed to be the date the additional Federal income taxes resulting from the Loss would become due under the assumptions set forth in paragraph 7.

(b) TIME OF LESSOR'S PAYMENTS. Any amount payable to Lessee shall be paid within 30 days after the date on which Lessor would realize the reduction in Federal income tax under the assumptions set forth in paragraph 7, and shall be accompanied by a written statement describing the computation of the amount so payable as determined by Lessor.

6. EXCLUSIONS. Notwithstanding any Lessee Act that is a cause of a loss of a tax benefit described above, Lessee shall not be required to make any payment hereunder in respect thereof if such loss of tax benefit is primarily caused by any of the following:

(a) the failure of Lessor to have sufficient taxable income to benefit from the depreciation deductions described in paragraph 1 (if,

absent such failure, the benefit of such deductions would have been realized);

(b) the failure of Lessor to claim timely or properly any tax benefit or treatment referred to in paragraph 1 in a tax return of Lessor, unless such failure is based on a good faith determination of Lessor that it is not entitled to claim such tax benefit or treatment;

(c) a voluntary disposition by Lessor of all or any part of its interest in a Unit before any default by Lessee;

(d) any event giving rise to a payment of an amount determined by reference thereto, but only if such payment is made in full; or

(e) a foreclosure of a lien on any Unit by any person holding such lien through Lessor which foreclosure results solely from an act of Lessor.

7. COMPUTATIONS. Whenever it may be necessary to determine (i) whether there has been a Loss or (ii) the amount of any payment required to be made hereunder by either Lessee or Lessor, such determination shall be made assuming (A) Lessor could fully benefit from any deductions and would suffer the full detriment of any additional income, (B) Lessor pays its annual federal income and state and local franchise or income taxes on quarterly estimated payment dates in accordance with the following schedule: 25% of the total income taxes for each year is paid on each April 15, June 15, September 15 and December 15 of the year with respect to which such taxes are imposed ("ESTIMATED TAX PAYMENT DATES") and (C) Lessor will compute its taxable income under the accrual method of accounting.

8. CONTEST. (a) Lessor shall have no obligation to contest any disallowance or adjustment or other action that may result in a Loss unless: (i) Lessor receives a written notification by any taxing authority of a proposed disallowance or adjustment (a "DISALLOWANCE"), (ii) Lessee requests Lessor to contest the Disallowance within 15 days after Lessor has notified Lessee thereof and within 30 days thereafter delivers to Lessor an opinion of tax counsel satisfactory to Lessor that Lessor should prevail in the contest, (iii) Lessee promptly pays the amount required under paragraph 2 if Lessor elects to pay the tax and sue for a refund, (iv) the amount at issue in such contest exceeds \$100,000, and (v) Lessee fully indemnifies Lessor for the tax and for all costs and expenses incurred by Lessor in connection with such contest including allocated time charges of internal counsel for Lessor and any other attorney's fees and expenses, and promptly reimburses Lessor for all such costs and expenses as incurred.

(b) Lessor shall have full control over any contest, provided that Lessee shall be entitled to participate in such contest at its own expense.

9. SURVIVAL. All of Lessor's rights and privileges arising from the indemnities contained herein shall survive the expiration or other termination of this Lease.

10. LESSOR. For purposes of this Income Tax Indemnity, "Lessor" shall include any affiliated group (within the meaning of Section 1504 of the Code) of which Lessor is or becomes a member for any year in which a consolidated income tax return is filed for such affiliated group.

H. EARLY BUY-OUT OPTION.

On the third anniversary of the Base Date, so long as no Event of Default has occurred and is continuing, Lessee may, by providing at least six months' prior written notice to Lessor, have a one-time option to purchase all, but not less than all, the Units for an amount equal to the EBO Amount set forth in the Schedule.

I. PURCHASE AND RENEWAL OPTIONS.

1. Lessee will have no right to renew or extend the Lease. If no Event of Default exists, Lessee may, by notice delivered to Lessor not more

than nine months and not less than six months before the end of the term of this Lease with respect to any Unit, elect to purchase at the end of such term all Units for which this Lease is then expiring for a purchase price equal to the then "Fair Market Value" of such Units.

2. Fair Market Value of the Units shall be the value that would be obtained in an arm's length transaction between an informed and willing buyer (other than a buyer currently in possession) and an informed and willing seller under no compulsion to sell, assuming the Unit's present use and location and that it is in the condition required hereunder. If the purchase option is exercised and if, four months before the end of the term of this Lease with respect to the Units, Lessor and Lessee have not agreed upon the Fair Market Value of the Units, upon application of either party an appraiser shall be appointed by the American Arbitration Association and instructed to determine the Fair Market Value of the Units within 30 days after appointment and promptly communicate such determination in writing to Lessor and Lessee. The determination so made shall be conclusively binding upon Lessor and Lessee. The expenses and fees of the appraiser shall be borne by Lessee.

3. Upon payment of the purchase price, Lessor shall execute and deliver to Lessee an assignment (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under Lessor) for the relevant Units, and Lessor shall execute such further documents, and take such further actions, as are reasonably requested by Lessee to effectuate such purchase and assignment.

J. FINANCIAL AND OTHER COVENANTS.

Lessee shall at all times (all computations and definitions being determined in accordance with generally accepted accounting principles ("GAAP")):

1. TANGIBLE NET WORTH. Lessee shall at all times maintain Tangible Net Worth of not less than the Minimum Required Amount. For the purposes hereof, the Minimum Required Amount shall be \$29,000,000 through December 31, 1998, and on January 1 of each year (commencing January 1, 1999), the Minimum Required Amount as in effect on the immediately preceding December 31 shall be increased by an amount equal to 50% of cumulative Net Income for each year (commencing with the year ended December 31, 1998), with a negative Net Income for any year to result in no adjustments to the Minimum Required Amount.

For purposes hereof, "NET INCOME" for any period shall mean the gross revenues from any

source of Lessee for such period less all expenses and other proper charges, determined in accordance with GAAP, but excluding in any event: (i) any gains or losses on the sale or other disposition or loss to or destruction of investments or fixed or capital assets, and any taxes on such excluded gains and any tax deductions or credits on account of any such excluded losses; (ii) earnings resulting from any reappraisal, revaluation or write-up of assets, other than revaluations of foreign currency; and (iii) any gain resulting from the acquisition of any equity securities of Lessee; and "TANGIBLE NET WORTH" shall mean the excess of total assets of Lessee over total liabilities and reserves of Lessee, total assets and total liabilities and reserves each to be determined in accordance with GAAP excluding, however, from the determination of total assets, all assets which would be classified as intangible assets under GAAP including, without limitation, goodwill, patents, trademarks, trade names, copyrights, franchises and deferred charges (including, without limitation, unamortized debt discount and expense, organization costs and deferred research and development expenses) and excluding the write-up of assets above cost and also excluding the effect of gains or losses of the type described in clause (i) of the definition of the term "NET INCOME."

2. RATIO OF INDEBTEDNESS TO EBITDA. Lessee shall at all times maintain the ratio of Indebtedness to EBITDA at levels not greater than 3.50 to 1.0. For purposes of testing compliance with this covenant, the term "INDEBTEDNESS" shall include the present value of all capital lease obligations of Lessee, determined as of any date the ratio is to be tested.

For purposes of testing compliance with this covenant, the term "EBITDA" means Net Income plus, without duplication and to the extent deducted in determining such Net Income, interest, depreciation and amortization expense plus income taxes paid, all determined in accordance with a first-in, first-out basis of accounting; "INDEBTEDNESS" shall mean and include all (i) obligations of Lessee for borrowed money or which have been incurred in connection with the acquisition of property other than current accounts payable, (ii) obligations secured by any lien or other charge upon Property owned by Lessee, even though Lessee has not assumed or become liable for the payment of such obligations, (iii) noncontingent obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by Lessee, notwithstanding the fact that the rights and remedies of the seller, lender or lessor under such agreement in the event of default are limited to repossession or sale of property, (iv) obligations (other than obligations under any lease which is not a capitalized lease and obligations in an amount equal to the demand component of any contract providing for usual and customary utility services, including gas, water, electricity and wastewater treatment services) to purchase any property or to obtain the services of another person if the contract requires that payment for such property or services be made regardless of whether such property is delivered or such services are performed, except that no obligation shall constitute Indebtedness solely because the contract provides for liquidated damages or reimbursement of expenses following cancellation, (v) capitalized rentals, (vi) obligations in respect of letters of credit but only to the extent that such letters of credit do not support an obligation of Lessee already included in Indebtedness and (vii) all guaranties by Lessee of obligations of the type described in the foregoing clauses (i) through (vi).

3. FIXED CHARGE COVERAGE RATIO. For the period of four consecutive fiscal quarters ending January 3, 1998, Lessee shall maintain a Fixed Charge Coverage Ratio of not less than 1.0 to 1.0, and for each period of four consecutive fiscal quarters ending at the end of each fiscal year thereafter, Lessee shall maintain a Fixed Coverage Ratio of not less than 1.25 to 1.0. For purposes of this covenant, the phrase "FIXED CHARGE COVERAGE RATIO" means the ratio of the sum of Net Income before payment of income taxes plus depreciation, amortization, interest expense and lease expense over the sum of current maturities of long term debt, including current capital lease payments, plus interest expense, plus lease expense, plus shareholder dividends or distributions paid.

4. Lessee shall not be a party to any merger or consolidation unless Lessee is the surviving corporation, and Lessee shall not sell, transfer, lease or otherwise dispose of any of its property, or in any event sell or discount (with or without recourse) any of its notes or accounts receivable or lease any property theretofore owned by Lessee in an aggregate amount in excess of 5% of total assets of Lessee in any fiscal year of Lessee.

5. FINANCIAL REPORTING. Lessee shall maintain a standard system of accounting in accordance with GAAP and will furnish to Lessor such information respecting the business and financial condition of Middleby and Lessee as may be reasonably requested by Lessor; and without any request Lessee shall furnish to Lessor:

(a) within 90 days after the end of each fiscal year of Middleby, a copy of Middleby's Form 10-K Report filed with the Securities and Exchange Commission ("SEC"), including a copy of the annual report of Middleby and its consolidated subsidiaries for such year with accompanying financial statements, prepared by Middleby and certified by Arthur Andersen or any other independent public accountants of recognized national standing selected by Lessee, in accordance with GAAP;

(b) within 90 days after the end of each fiscal year of Lessee, a copy of the annual financial statements of Lessee for such year, including the related consolidated statements of income and of cash flows of Lessee for such year;

(c) Upon the request of Lessor, not later than 60 days after the end of each of the first three quarterly periods of each fiscal year of Lessee, the unaudited balance sheet of Lessee as at the end of such quarter and the related unaudited financial statements of Lessee, including statements of income and of cash flows of Lessee, for such quarter and the portion of the

fiscal year through the end of such quarter, prepared in accordance with GAAP (except for the absence of notes and normal year-end adjustments); and

(d) Promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports which Middleby sends to its shareholders, and copies of all other regular, periodic and special reports and all registration statements which Middleby files with the SEC or any successor thereto, or with any national securities exchange.

Each of the financial statements furnished to Lessor pursuant to subsection (b) and (c) of this Paragraph J.5 shall be accompanied by a written certificate signed by the chief financial officer of Lessee to the effect that to the best of the knowledge and belief of the signer thereof no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Lessee to remedy the same. In the event Middleby is no longer required to file Form 10-K Reports with the SEC, Lessee will nevertheless furnish Lessor at the time hereinabove set forth all the financial and other information that would have comprised such filings.

K. SUBLEASES.

Notwithstanding Section 4.1 of the Lease Agreement, while no Event of Default exists, Lessee may sublease the Units if each sublease and sublessee is acceptable to Lessor and each sublessee executes and delivers to Lessor an Acknowledgment in form and substance satisfactory to Lessor. Any sublease shall be expressly subject and subordinate to the Lease and shall not relieve Lessee of its obligations under the Lease. Lessee shall not sell, assign, transfer (except to Lessor) or otherwise create, incur or suffer to be created, incurred or to exist any lien, claim, security interest or encumbrance (except in favor of Lessor) of any kind of its rights under any sublease.

The parties hereto have executed this Appendix as of the day and year first above written.

BA LEASING & CAPITAL CORPORATION

MIDDLEBY MARSHAL INC.

By /s/ John A. Armstrong

By /s/ David B. Baker

Title Vice President

Title Assistant Treasurer

Address:

Address:

555 California Street
Fourth Floor
San Francisco, CA 94104
Attn: Contract Administration
Telephone No.: 415/765-7427
Telecopier No.: 415/765-7373

2850 West Golf Road
Suite 405
Rolling Meadows, IL 60008
Attn: Chief Financial Officer
Telephone No.: 847/758-3884
Telecopier No.: 847758-0595