

7436
RECORDATION NO. _____
MAR 21 1974 - 9 35 A'
INTERSTATE COMMERCE COMMIS

**NON-RECOURSE PURCHASE
AND LEASE AGREEMENT**
(relating to surface railway rolling stock)

Dated as of October 1, 1973

BETWEEN

WHITKATH INC.,
Lessor

AND

UNITED STATES STEEL CORPORATION,
Lessee

(copy) *copy*
(copy)

7436 - a
RECORDATION NO. _____ Filed & Recd
MAR 21 1974 -9 35 AM
INTERSTATE COMMERCE COMMISSION

Trust Indenture
RELATING TO
SURFACE RAILWAY ROLLING STOCK

WHITKATH INC.,
as Owner

TO

FIRST NATIONAL CITY BANK,
as Trustee

Dated as of October 1, 1973

Securing

8 1/8 % Non-Recourse Secured Notes

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Schedule II—Description of Property and Equipment

Exhibit A—Form of Indenture Supplement

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TRUST INDENTURE, dated as of October 1, 1973, from WHITKATH INC. (the "Owner"), a New York corporation, having its principal office and place of business at 23 Wall Street, New York, New York 10015, to First National City Bank, a national banking association incorporated and existing under the laws of the United States (the "Trustee"), having its corporate trust office at 111 Wall Street, New York, New York 10015, as Trustee for benefit of the Loan Participants (such term and certain other terms used herein are defined in Section 1 hereof) and all other holders of the Notes secured hereby.

To SECURE THE PAYMENT when and as due and payable of the principal of and the premium, if any, and interest on the Notes limited in aggregate principal amount to \$45,000,000 (except as otherwise provided in Section 2.12 hereof), issued by the Owner from time to time as provided in Section 2 below, to secure the payment of all commitment fees and cancellation fees payable under Section 3 of the Participation Agreement, and to secure the payment of all other indebtedness which this Indenture by its terms secures and compliance with all of the terms hereof and of such Notes, the Owner does hereby create and grant to the Trustee and to its successors and assigns, a security interest in the following properties:

(a) all right, title and interest of the Owner, including all such right, title and interest hereafter acquired at any time, in and to all property or equipment at any time now or hereafter located or used in (i) the underground and surface facilities to be constructed and installed to mine, wash and dry coal (the "Coal Properties") in the Pittsburgh seam underlying those lands in Greene County, Pennsylvania, the location of which is marked "Cumberland Mine" and is shown outlined on the map attached hereto as Schedule I and the railroad facilities to transport coal to the loading facilities referred to below (such underground, surface and railroad facilities being herein called the "Mine") or (ii) the loading facilities (the "Loading Site") located on the Monongahela River at the location marked "River Loading Site" and shown on such map where coal from the Mine will be loaded onto barges; including, without limitation, all property and equipment of the types described in Schedule II hereto; but excluding from this clause (a) any items of property or equipment which shall not have been made subject to a Basic Lease Supplement, each such item to become subject to the security interest of this Indenture at the time a Basic Lease Supplement is entered into covering such item;

(b) all the items of property and equipment described in any Indenture Supplement hereafter executed and delivered by the Owner to the Trustee in accordance with the provisions of Section 2.1 hereof (all such items, including, without limitation, all Parts of whatever nature from time to time incorporated therein and all alterations, title to which shall vest in the Owner pursuant to Section 16(c) of the Lease, and all items of property and equipment acquired by the Owner in replacement thereof or substitution therefor being herein called the "Leased Assets");

(c) all additional or substituted items of property or equipment which hereafter may be subjected to the security interest hereof by operation of Section 5 hereof or otherwise;

(d) all right, title and interest of the Owner in, to and under the Non-Recourse Purchase and Lease Agreement Relating to Surface Railway Rolling Stock (the "Lease"), dated as of October 1, 1973, between the Owner and United States Steel

Corporation (the "Lessee"), including any amendments or modifications thereof; but excluding from this clause (d) all rights to Interim Rent, to Supplemental Rent payable (other than pursuant to Section 14(g) of the Lease) with respect to any item of property or equipment prior to the Basic Term of such item, and to Supplemental Rent payable under Sections 22 (to the extent such Supplemental Rent is in respect of the Owner's own expenses), 34 (to the extent such Supplemental Rent is in respect of "Expenses" of the Owner), 35 (to the extent such Supplemental Rent is in respect of "taxes, fees or other charges" of the Owner), and 36 of the Lease;

(e) all right, title and interest of the Owner (including all right, title and interest of the Lessee assigned by the Lessee to the Owner) in, to and under Section 6.1 of the Coal Purchase Agreement (the "Coal Purchase Agreement"), dated as of October 1, 1973, between The Hydro-Electric Power Commission of Ontario ("Hydro") and the Lessee; but excluding from this clause (e) all rights to payments in respect of Interim Rent, to payments in respect of Supplemental Rent payable (other than pursuant to Section 14(g) of the Lease) with respect to any item of property or equipment prior to the Basic Term of such item, and to payments with respect to Supplemental Rent payable under Sections 22 (to the extent such Supplemental Rent is in respect of the Owner's own expenses), 34 (to the extent such Supplemental Rent is in respect of "Expenses" of the Owner), 35 (to the extent such Supplemental Rent is in respect of "taxes, fees or other charges" of the Owner), and 36 of the Lease; and

(f) all rents, income, revenues, issues, profits and proceeds arising from or in connection with any of the foregoing, except as expressly excluded in the prior granting clauses.

SAVING AND EXCEPTING, however, from the properties in which a security interest is hereby created and granted, all properties other than railway rolling stock (as the term "railway rolling stock" is used in Section 9-104(e) of the Uniform Commercial Code of Pennsylvania) and all rents, income, revenues, issues, profits and proceeds arising from or in connection with any such property other than railway rolling stock.

THE AFORESAID SECURITY INTEREST is created and granted and is to be held by the Trustee in trust upon the terms and trusts herein set forth, for the equal and proportionate benefit and security of those who shall hold the Notes, without preference of any of such Notes over any others by reason of priority in the time of issue or negotiation thereof, or for any other reason.

AND THE OWNER hereby binds itself, its successors and assigns, to warrant and forever defend to the Trustee and its successors and assigns the security interest hereby created and granted.

IT IS HEREBY COVENANTED by the parties hereto that the Trust Estate is to be held and applied subject to the further terms herein set forth; and the Owner, for itself and its successors and assigns, hereby covenants and agrees with the Trustee for the benefit of the holders of the Notes and each Loan Participant as follows:

1. **Definitions.** As used in this Indenture the following terms have the following respective meanings:

Affiliated Bank or Holding Company: (a) any Substantial Bank which owns (either directly or through one or more subsidiaries) a controlling interest in a Permitted Transferee, or (b) any "bank holding company", as defined in the Bank Holding Company Act of 1956, as amended, which (i) is subject to the prohibitions in Section 4 of said Act, as amended (12 U.S.C. § 1843, as amended), (ii) has a combined capital and surplus of not less than \$50,000,000 and (iii) owns (either directly or through one or more subsidiaries) all of the capital stock (other than directors' qualifying shares, if any) of a Substantial Bank and a controlling interest in a Permitted Transferee which is not a Substantial Bank.

Authorized Lessee Representative: as defined in the Lease.

Basic Lease Supplement: as defined in the Lease.

Basic Rent: as defined in the Lease.

Basic Term: as defined in the Lease.

Business Day: as defined in the Lease.

Coal Properties: as defined in the granting clauses hereof.

Coal Purchase Agreement: as defined in the granting clauses hereof.

Deposit Receipts: as defined in Section 16 of the Participation Agreement.

Encumbrance: any mortgage, pledge, lien, charge, encumbrance, lease, security interest or claim, other than any of the following as long as they do not individually or in the aggregate involve the danger of sale, forfeiture or loss of any material property or interest included in the Trust Estate: (a) the respective rights of the Owner, the Lessee, Hydro, the Trustee and the holders of the Notes as provided in this Indenture, the Lease, the Hydro Consent and Agreement or the Participation Agreement, (b) any lien or claim for taxes either not yet due or being contested in good faith and by appropriate proceedings, (c) inchoate materialmen's, mechanics', workmen's and employees' liens or like Encumbrances arising in the ordinary course of business which are not delinquent or the enforcement of which has been suspended but then only for the duration of such suspension, and (d) Encumbrances arising out of judgments or awards against the Owner or the Lessee which have been adequately bonded or with respect to which at the time an appeal or proceeding for review is being or is in good faith intended to be prosecuted in good faith and with respect to which there shall be in effect a stay of execution pending such appeal or proceeding for review.

Events of Default: as defined in Section 15 hereof.

Event of Loss: any "Event of Loss", as defined in the Lease, with respect to any Leased Asset.

Hydro: as defined in the granting clauses hereof.

Indenture Supplement: each of the Indenture Supplements, substantially in the form of Exhibit A hereto, executed and delivered by the Owner to the Trustee describing Leased Assets subject to the security interest of this Indenture.

Interim Rent: as defined in the Lease.

Lease: as defined in the granting clauses hereof.

Lessee: as defined in the granting clauses hereof.

Leased Assets: as defined in the granting clauses hereof.

Loading Site: as defined in the granting clauses hereof.

Loan Participants: the following institutions:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
Prudential Plaza
Newark, New Jersey 07101

*Attention: Vice President in Charge of the Bond and Commercial Loan
Department*

THE TRAVELERS INSURANCE COMPANY
One Tower Square
Hartford, Connecticut 06115

Attention: Securities Department

CONNECTICUT GENERAL LIFE INSURANCE COMPANY
Hartford, Connecticut 06115

Attention: Bond Department W-32

Loan Percentage: as defined in the Participation Agreement.

Mine: as defined in the granting clauses hereof.

Morgan: Morgan Guaranty Trust Company of New York, a New York trust company.

Morgan Agreement: as defined in the Participation Agreement.

Notes: all Notes issued pursuant to Section 2.1 hereof, all Notes issued hereunder in exchange therefor and in replacement thereof, and all renewals and extensions of any of the foregoing.

Officer's Certificate: with respect to the Lessee, a certificate signed in the name of the Lessee by an Authorized Lessee Representative, and with respect to the Owner, a certificate signed in the name of the Owner by its President, one of its Vice Presidents, or its Treasurer, each such certificate to state that it is an Officer's Certificate hereunder and the provision hereof pursuant to which such Officer's Certificate is being delivered.

Owner's Cost: as defined in the Participation Agreement.

Owner Participant: as defined in the Participation Agreement.

Participation Agreement: the Participation Agreement, dated as of October 1, 1973, among Hydro, the Lessee, the Owner, the Loan Participants and the Trustee.

Parts: all appliances, parts, instruments, appurtenances, accessories, accessions, furnishings and other equipment of whatever nature which may from time to time be incorporated or installed in or attached to the Leased Assets.

Permitted Transferee: either (a) any Substantial Bank or (b) any corporation organized under the laws of a state of the United States of America which is engaged in the business of owning and leasing property and is controlled by an Affiliated Bank or Holding Company.

Person: a corporation, an association, a partnership, an organization, a business, a trust, an individual, a government or political subdivision thereof or a governmental agency.

Responsible Officer: with respect to the Trustee, the Chairman of the board of directors, the President, every Vice President, every Assistant Vice President, the Cashier, every Assistant Cashier, the Secretary, every Assistant Secretary, every Trust Officer, every Associate Trust Officer and every officer and assistant officer of such Trustee, other than those specifically above mentioned, to whom any corporate trust matter is referred because of his knowledge of and familiarity with, a particular subject.

Stipulated Loss Value: as defined in the Lease.

Substantial Bank: any national banking association organized under the laws of the United States of America or entity which (a) is organized under the laws of a state of the United States of America or the District of Columbia, (b) is authorized by law to conduct the business of a bank or trust company, and (c) is subject to supervision or examination by Federal, state or District of Columbia authority, which national banking association or entity has a combined capital and surplus of at least \$50,000,000.

Supplemental Rent: as defined in the Lease.

Trust Estate: the Leased Assets, the right, title and interest of the Owner in, to and under the Lease (except to the extent expressly excluded from the security interest of this Indenture by granting clause (d)), the right, title and interest of the Owner in, to and under Section 6.1 of the Coal Purchase Agreement (except to the extent expressly excluded from the security interest of this Indenture by granting clause (e)), and all other properties and moneys at the time subject to the security interest of this Indenture or held by the Trustee hereunder.

2. The Notes.

2.1. **Issue and Terms.** The Notes issued by the Owner hereunder (a) shall be designated as the Owner's 8 $\frac{1}{8}$ % Non-Recourse Secured Notes, (b) shall be originally issued at the times, in the aggregate principal amount (limited to \$45,000,000) and on the other terms

and conditions specified in or determined pursuant to the Participation Agreement and this Indenture, (c) shall be dated the date of issue thereof (except as otherwise required by Section 2.11 or 2.12 hereof), specify the Loan Percentage of the Leased Assets with respect to which the loan evidenced thereby is made, and bear interest on the unpaid principal balance thereof from the date thereof until the principal thereof shall have become due and payable at the rate of $8\frac{1}{8}\%$ per annum, (d) shall have a final maturity date which is not later than January 1, 2007 and which is the last day of the Basic Term under a Basic Lease Supplement being entered into on such date of issue, (e) shall each be payable in equal quarterly installments of combined principal and interest in an amount such that the entire principal amount of such Note together with all accrued interest thereon shall be fully paid on the final maturity date thereof (*provided* that if the date of original issue of such Note is not the first day of a calendar quarter, the first such quarterly installment shall be adjusted to eliminate any unearned interest), which installments shall be applied, first, to the payment of interest accrued on the unpaid principal amount thereof and, then, to the reduction of the unpaid principal amount thereof, (f) shall be subject to prepayment as provided in Sections 2.3 to 2.6 hereof, inclusive, and (g) shall be substantially in the form of Exhibit B attached hereto. At the time of issuing any Notes pursuant to the Participation Agreement, the Owner will execute and deliver to the Trustee an Indenture Supplement substantially in the form of Exhibit A attached hereto describing all of the Leased Assets covered by the Basic Lease Supplements being entered into at such time. All Notes specifying the same Loan Percentage and having both a common issue date and a common maturity date are herein sometimes referred to as a "series" of Notes; all Leased Assets which have the same Loan Percentage and are subject to Basic Lease Supplements entered into on the same date and expiring on the same date are herein sometimes referred to as a "group" of Leased Assets; and the series of Notes which is issued on the first Business Day of the Basic Term of a group of Leased Assets, has a final maturity on the last day of such Basic Term and specifies the Loan Percentage of such group of Leased Assets is herein sometimes referred to as the series of Notes "relating" to such group of Leased Assets. At the time of the issue of each series of Notes, the Owner shall deliver to the Trustee an Officer's Certificate of the Owner describing all Leased Assets included in the group of Leased Assets to which such series of Notes relates and setting forth the Owner's Cost of each such Leased Asset and the aggregate Owner's Cost of all such Leased Assets, and the aggregate original principal amount of the Notes of such series shall not be greater than the Loan Percentage of the aggregate Owner's Costs of all such Leased Assets.

2.2. Payment of Notes, etc. The Owner will duly and punctually pay the principal of and the premium, if any, and interest on the Notes in accordance with the terms thereof and hereof, and all commitment and cancellation fees payable under Section 3 of the Participation Agreement. Except as specified in Sections 2.3 to 2.6 hereof, inclusive, the Notes are not subject to prepayment. In the event of any prepayment of less than all of the Notes of any series pursuant to Section 2.4 or 2.5 hereof, each quarterly installment of combined principal and interest thereafter payable on each Note of such series shall be reduced in the same proportion as the principal amount of such Note shall have been reduced by such prepayment. No prepayment of less than all of the Notes pursuant to Section 2.3 hereof will reduce the amount of any quarterly installment of combined principal and interest payable thereon, each such payment being applied to installments of principal in their inverse order of maturity.

2.3. **Optional Prepayment in Whole or in Part with Premium.** The Notes shall be subject to prepayment in whole or from time to time in part (in multiples of \$1,000—not less than \$1,000,000), at the option of the Owner, on any interest payment date occurring on or after (but not prior to) June 1, 1991, at the following applicable percentage of the principal amount so prepaid:

If prepaid during the twelve-month period commencing on June 1,

| <u>Year</u> | <u>Percentage</u> |
|---------------------------|-------------------|
| 1991 ----- | 103.25 |
| 1992 ----- | 102.88 |
| 1993 ----- | 102.52 |
| 1994 ----- | 102.16 |
| 1995 ----- | 101.80 |
| 1996 ----- | 101.44 |
| 1997 ----- | 101.08 |
| 1998 ----- | 100.72 |
| 1999 ----- | 100.36 |
| 2000 and thereafter ----- | 100.00 |

If the Lessee shall exercise its option to purchase all the Leased Assets pursuant to Section 32(a) of the Lease, the Owner will prepay all of the Notes at the time outstanding pursuant to this Section 2.3 on the date of such purchase.

2.4. **Prepayment Upon Event of Loss.** If an Event of Loss shall occur with respect to any Leased Asset and the Stipulated Loss Value thereof becomes payable under the Lease, the Owner will prepay that unpaid principal amount of the series of Notes relating to the group of Leased Assets which includes such Leased Asset which bears the same proportion to the aggregate unpaid principal amount of such series of Notes as the Owner's Cost of such Leased Asset bears to the aggregate Owner's Cost of all Leased Assets in such group immediately prior to such occurrence, through the application of amounts received by the Trustee as a result of such Event of Loss, such prepayment to be made on the date on which such Stipulated Loss Value becomes payable, and to be made at 100% of the principal amount so prepaid.

2.5. **Prepayment Upon Obsolescence.** If the leasing of any Leased Asset is terminated pursuant to Section 23 of the Lease (relating to Leased Assets becoming obsolete or surplus to the Lessee's requirements), and a sale thereof or payment with respect thereto is to be made under Section 23(c) of the Lease on account of such termination, the Owner will prepay that unpaid principal amount of the series of Notes relating to the group of Leased Assets which includes such Leased Asset which bears the same proportion to the aggregate unpaid principal amount of such series of Notes as the Owner's Cost of such Leased Asset bears to the aggregate Owner's Cost of all Leased Assets in such group immediately prior to such occurrence, through the application of amounts received by

the Trustee as a result of such termination, such prepayment to be made on the date on which such sale or payment is to be made under Section 23(c) of the Lease, and to be made at the following applicable percentage of the principal amount so prepaid:

If prepaid during the twelve-month period commencing on June 1,

| <u>Year</u> | <u>Percentage</u> | <u>Year</u> | <u>Percentage</u> |
|-------------|-------------------|---------------------------|-------------------|
| 1976 ----- | 108.13 | 1989 ----- | 103.95 |
| 1977 ----- | 108.13 | 1990 ----- | 103.60 |
| 1978 ----- | 107.78 | 1991 ----- | 103.25 |
| 1979 ----- | 107.43 | 1992 ----- | 102.88 |
| 1980 ----- | 107.08 | 1993 ----- | 102.52 |
| 1981 ----- | 106.73 | 1994 ----- | 102.16 |
| 1982 ----- | 106.38 | 1995 ----- | 101.80 |
| 1983 ----- | 106.04 | 1996 ----- | 101.44 |
| 1984 ----- | 105.69 | 1997 ----- | 101.08 |
| 1985 ----- | 105.34 | 1998 ----- | 100.72 |
| 1986 ----- | 104.99 | 1999 ----- | 100.36 |
| 1987 ----- | 104.64 | 2000 and thereafter ----- | 100.00 |
| 1988 ----- | 104.29 | | |

2.6. Prepayment Upon Termination of Coal Purchase Agreement. In the event that the Lessee shall purchase the Leased Assets pursuant to Section 31 of the Lease (relating to purchase of the Leased Assets in the event of termination of the Coal Purchase Agreement), the Owner shall prepay all of the Notes through the application of the purchase price of the Leased Assets received by the Trustee, such prepayment to be made on the date the termination of the Coal Purchase Agreement becomes effective, and to be made at 105% of the principal amount so prepaid if such prepayment occurs prior to June 1, 1982, and, if such prepayment occurs on or after June 1, 1982, at the following applicable percentage of the principal amount so prepaid:

If prepaid during the 12-month period commencing on June 1,

| <u>Year</u> | <u>Percentage</u> | <u>Year</u> | <u>Percentage</u> |
|-------------|-------------------|---------------------------|-------------------|
| 1982 ----- | 104.50 | 1987 ----- | 102.00 |
| 1983 ----- | 104.00 | 1988 ----- | 101.50 |
| 1984 ----- | 103.50 | 1989 ----- | 101.00 |
| 1985 ----- | 103.00 | 1990 ----- | 100.50 |
| 1986 ----- | 102.50 | 1991 and thereafter ----- | 100.00 |

2.7. Notice of Prepayment. In the case of each prepayment of Notes, the Owner will, or will cause the Lessee to, give written notice thereof, not less than 30 nor more than 60 days prior to the date fixed for such prepayment, to each holder of any Notes and to the Trustee, specifying such date, the aggregate principal amount of all Notes and the respective principal amounts of the Notes of each series to be prepaid on such date, the principal amount, if any, of the Notes (and of the Notes of each series) held by each such holder to be prepaid on such date, the premium, if any, and accrued interest payable with respect to such Notes held by each such holder, the Section hereof pursuant to

which such prepayment is to be made, the respective amounts of principal and interest included in each quarterly installment of combined principal and interest thereafter payable on each Note of each series to be prepaid held by each such holder, and the amount of principal of each such Note remaining outstanding after giving effect to the payment of each such quarterly installment.

2.8. Application of Partial Prepayments. In the case of each partial prepayment of Notes pursuant to Section 2.3 hereof, the principal amount of the Notes to be prepaid shall be allocated among all the Notes at the time outstanding in proportion to the respective unpaid principal amounts thereof. In the case of each partial prepayment of Notes pursuant to Section 2.4 or 2.5 hereof, the principal amount of the Notes to be prepaid shall be allocated among all the Notes of the series to be prepaid at the time outstanding in proportion to the respective unpaid principal amounts thereof.

2.9. Maturity of Prepayments. In the case of each prepayment of any Note, the unpaid principal amount thereof being prepaid shall become due and payable, to the extent of the prepayment to be made in respect thereof, on the date fixed for such prepayment, together with interest accrued on such principal amount to such date and the applicable premium, if any. From and after such date, unless the Owner shall fail to pay such principal amount when so due and payable, together with the premium, if any, and interest as aforesaid, interest on such principal amount shall cease to accrue.

2.10. Cancellation of Notes; No Reissue. If any Note is paid or prepaid in full, it shall be surrendered to the Trustee (for cancellation or delivery to the Owner for cancellation) and shall not thereafter be reissued. No Note shall be issued in lieu of any prepaid principal amount of any Note.

2.11. Note Register; Transfer and Exchange of Notes. The Notes are issuable only as registered Notes without coupons. The Owner will maintain a register for the registration and transfer of the Notes. Upon presentment of any Note for registration of transfer, or upon surrender of any Note for exchange, the Owner at its expense will issue, in exchange therefor, a new Note or Notes of the same series, in denominations of \$1,000 or any multiples thereof as may be requested (plus one Note in such other denomination as may be requested), registered as such holder or transferee may request, in aggregate principal amount equal to the unpaid principal amount of the surrendered Note or Notes, dated so that there will be no loss of interest on such presented or surrendered Note, and otherwise of like tenor, with appropriate variations. Every Note presented or surrendered for registration of transfer shall be duly endorsed, or be accompanied by a written instrument of transfer duly executed, by the holder of such Note or his attorney duly authorized in writing. The Owner shall not be required to exchange any surrendered Notes as above provided during the 10-day period preceding the due date of any payment on such Note. The Owner and the Trustee may treat the Person in whose name any Note is registered as the owner and holder of such Note for the purpose of receiving payment of principal of, premium, if any, and interest on, such Note and for all other purposes whatsoever, whether or not such Note shall be overdue and the Owner and the Trustee shall not be affected by notice to the contrary.

2.12. Replacement of Notes. Upon receipt of evidence reasonably satisfactory to the Owner of the loss, theft, destruction or mutilation of any Note and, in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement or bond reasonably satisfactory to the Owner and to the Trustee (or, if the holder of such Note is a Loan Participant, the written agreement of such Loan Participant to indemnify), or, in the case of any such mutilation, upon surrender and cancellation of such Note, the Owner, at its expense, will issue, in lieu thereof, a new Note of the same series, dated so that there will be no loss of interest on such lost, stolen, destroyed or mutilated Note, and otherwise of like tenor, with appropriate variations.

2.13. Certificates as to Issue of Notes. At the time of issuing any Note pursuant to Section 2.1, 2.11 or 2.12 hereof, the Owner will deliver to the Trustee (a) an Officer's Certificate specifying the series, date and principal amount of such Note and the name and address of the payee thereof and stating that such Note is being issued pursuant to Section 2.1 hereof, or in exchange for or in replacement of a previously issued Note or Notes (in which case such certificate shall also identify such previously issued Note or Notes by reference to the prior certificate, if any, covering the same) and that such Note is entitled to the benefits of this Indenture and (b) a copy of such Note, certified as a true copy by the President or a Vice President or the Treasurer or an Assistant Treasurer of the Owner, and copies of the Note or Notes (if any) being surrendered, certified as a true copy by any such officer. The Owner will also deliver to the Trustee, whenever requested by it, an Officer's Certificate confirming such data as to all Notes at the time outstanding and entitled to the benefits of this Indenture.

2.14. Notations on Transfer of Notes. Prior to any transfer of any Note, the holder shall endorse thereon the amount of principal paid thereon and the last date to which interest thereon has been paid.

3. Title to Property; Authority, etc. The Owner represents and warrants that it is and will be the absolute owner of the entire right, title and interest conveyed to it of all property and interests in the Trust Estate, that there are and will be no Encumbrances on any such property or interests arising out of any act of or claim against it, and that it has good and lawful right and authority to own all such property and interests and to convey, and create the security interests in, all such property and interests as provided herein.

4. Recordation, etc. The Owner will (to the extent the Lessee is not obligated so to do under the Lease or the Participation Agreement) at the expense of the Owner or the Lessee, at all times cause this Indenture and the Lease and any instruments amendatory hereof or thereof or supplemental hereto or thereto (and appropriate financing statements) to be recorded, registered and filed and to be kept recorded, registered and filed in such manner and in such places, and pay all such recording, registration, filing or other taxes, fees and other charges, and comply with all such statutes and regulations, as may be required by law in order to establish, preserve and protect the security interest of this Indenture as a valid and perfected security interest in any property or interests now or hereafter included in the Trust Estate, validly securing all indebtedness to be secured hereunder, and the rights of the Trustee and each Loan Participant and the other holders of the Notes hereunder. Promptly upon effecting any re-recording,

re-registration or re-filing in order to comply with this Section, the Owner will (to the extent the Lessee is not obligated so to do under the Lease or the Participation Agreement) at the expense of the Owner or the Lessee, furnish to each Loan Participant and the Trustee an opinion of counsel satisfactory to each Loan Participant specifying the action taken and stating that such action has been duly taken and that no other action is at the time required to be taken under this Section.

5. Replacements, Alterations, Modifications and Additions.

5.1. Security Interest in Removed Parts, etc. All Parts removed from any of the Leased Assets, and all replaced Leased Assets use of which has been discontinued or which have been removed from the Mine or the Loading Site, shall remain part of the Trust Estate and subject to the security interest of this Indenture for so long as the same shall remain the property of the Owner pursuant to Section 16(a) or Section 29(a) of the Lease. All removed Parts title to which vests in any Person other than the Owner pursuant to Section 16(a) of the Lease, and all replaced Leased Assets title to which vests in any Person other than the Owner pursuant to Section 29(a) of the Lease, shall at the time of such vesting cease to be a part of the Trust Estate or subject to the security interest of this Indenture. All replacement Parts which shall become the property of the Owner pursuant to Section 16(a) of the Lease, and all replacement assets which shall become the property of the Owner pursuant to Section 29(a) of the Lease, shall at such time become part of the Trust Estate and subject to the security interest of this Indenture. Each such replacement asset which shall become the property of the Owner pursuant to Section 29(a) of the Lease shall be deemed to be the Leased Asset replaced for all purposes of this Indenture.

5.2. Security Interest in Alterations. All Parts incorporated or installed in or attached to each Leased Asset as a result of alterations, title to which shall vest in the Owner pursuant to Section 16(c) of the Lease shall, without further act, become part of the Trust Estate and subject to the security interest of this Indenture. Parts incorporated or installed in or attached to a Leased Asset as a result of alterations which are not deemed part of such Leased Asset pursuant to Section 16(c) of the Lease shall not become part of the Trust Estate or subject to the security interest of this Indenture.

6. Right of Inspection. The Owner hereby grants permission to the Trustee and to each holder of Notes which is a financial institution and holds at least 5% in aggregate unpaid principal amount of the Notes at the time outstanding, at all reasonable times, upon reasonable notice, subject to all safety and operating regulations of the Lessee, to inspect the Mine, the Loading Site and the Leased Assets and the books and records of the Owner relative thereto. Neither the Trustee nor any holder of any Note shall have any duty to make any such inspection or inquiry or incur any liability or obligation by reason of not making such inspection or inquiry.

7. Leased Assets to be Personal Property. The Owner will not take any action which would cause any Leased Asset to be other than a special-purpose structure readily capable of being dismantled, transported and reused without material injury thereto or to the underlying real property or to be installed in or attached to any building or located above, upon or under any real property in such manner as to become part of such building or real

property so as to preclude the removal thereof without material injury to the Leased Asset or to such building or real property, it being the intention and agreement of the Owner and the Trustee that each Leased Asset shall be and remain personal property (except as may otherwise be provided under applicable law for purposes of state and local taxes and the exercise of the power of eminent domain), owned by the Owner, subject to the security interest of this Indenture.

8. No Claims Against Trustee, Holders of Notes, etc. Nothing contained in this Indenture shall constitute any consent or request by the Trustee or any holder of a Note, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Leased Assets or any part thereof, nor as giving the Owner any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Trustee or any holder of a Note in respect thereof or any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the security interest of this Indenture.

9. Encumbrances, etc. The Owner will not, directly or indirectly, create, incur, assume or suffer to exist any Encumbrance on or with respect to any property or interest now or hereafter included in the Trust Estate, resulting from the acts of or claims against the Owner. The Owner will duly and punctually pay and discharge, or cause to be paid and discharged, before the same become delinquent, all taxes, assessments and governmental charges and levies (herein called "Taxes") imposed upon it or imposed upon or with respect to its business, income, profits or properties or assets or any part thereof, including, without limitation, all taxes imposed upon or with respect to or measured by or based on the gross income or the net income of the Owner or any part thereof (except only to the extent that any such Tax is being contested by the Owner in good faith and by appropriate proceedings so long as such proceedings do not involve any danger of any Encumbrance or claim against the Trust Estate, and except that the Owner shall not have any obligation under this Section 9 with respect to any Taxes which the Lessee is obligated to pay under Section 35 of the Lease) and hereby agrees to indemnify, protect, save and keep harmless all holders of the Notes and all holders of the Deposit Receipts from and against any reduction in the amount payable to such holders in respect of the Notes or the Deposit Receipts, or other loss, cost or expenses (including legal fees and expenses) incurred by such holders, as a result of the imposition or enforcement of any Encumbrance or claim against the Owner or the Trust Estate by any taxing authority because of the nonpayment by the Owner of such Taxes.

10. Loss, Destruction, Condemnation or Damage.

10.1. Event of Loss. If an Event of Loss occurs with respect to any Leased Asset, and the Stipulated Loss Value thereof becomes payable under the Lease, the Owner shall, or shall cause the Lessee to, give the Trustee and the holders of all Notes at the time outstanding written notice thereof at least 30 days before the date on which the Lessee is required to pay such Stipulated Loss Value.

10.2. Application of Payments Upon Event of Loss. All insurance proceeds, condemnation awards, payments by the Lessee under Section 33(b) of the Lease or other payments received at any time by the Trustee as a result of the occurrence of an Event of Loss with respect to any Leased Asset (less the actual cost, fees and expenses incurred in the collection thereof) shall be applied by the Trustee as follows (and held by the Trustee until it is required to make such application) :

(i) if such Leased Asset is required to be replaced pursuant to Section 29 of the Lease and has been replaced (as evidenced by an Officer's Certificate of the Lessee), all such payments received with respect to such Leased Asset shall, if the Trustee has not received notice of an Event of Default from the holder of any Note, be paid over to the Owner for application as provided in Section 33(c) of the Lease;

(ii) if a prepayment of Notes relating to the group of Leased Assets which includes such Leased Asset is required to be made by Section 2.4 hereof, all such proceeds shall first be applied to make such prepayment and the balance, if any, remaining after such prepayment shall, if the Trustee has not received notice of an Event of Default from the holder of any Note, be paid over to the Owner for application as provided in Section 33(c) of the Lease;

provided that the Trustee shall not be obligated to see to the application of such proceeds paid over to the Owner.

10.3. Application of Payments Not Relating to Event of Loss. All insurance proceeds, awards or other payments received at any time by the Trustee as a result of any condemnation, confiscation, theft or seizure of, or requisition of title to or use of, or loss or damage to, any Leased Asset not constituting an Event of Loss, shall, if the Trustee has not received notice of an Event of Default from the holder of any Note, be paid over to the Lessee for application as provided in Section 33(d) of the Lease or, in the case of payments received from any requisitioning authority for use of the Leased Assets, be paid over to the Lessee as provided in Section 33(f) of the Lease, *provided* that the Trustee shall not be obligated to see to the application of such proceeds.

10.4. Other Dispositions. Any amounts otherwise payable to the Owner or the Lessee pursuant to Section 10.2 or 10.3 hereof, which are not so payable solely because an Event of Default shall have occurred and is continuing and the Trustee has received written notice of such an Event of Default from the holder of any Note, shall be held by the Trustee and shall be paid over to the Owner or the Lessee, whichever would have been entitled thereto under Section 10.2 or 10.3 hereof, but for the occurrence and continuance of such Event of Default, when such Event of Default shall cease to be continuing, unless the Trustee shall have theretofore applied such amounts in accordance with Section 28 hereof.

11. Business of the Owner, etc.

11.1. Business, Indebtedness, etc. The Owner will not directly or indirectly:

(a) engage in any business or activity other than the carrying out of the transactions contemplated by the Participation Agreement, the Lease, the Notes and this Indenture; or

(b) create, incur, assume, guarantee, agree to purchase or repurchase or provide funds in respect of or otherwise become or be or remain liable, contingently or otherwise, with respect to, directly or indirectly, any indebtedness, liability or obligation other than (i) the Notes, (ii) all other indebtedness at any time secured by this Indenture, (iii) interim borrowings the proceeds of which shall be applied to pay costs incurred pursuant to the Lease, the Participation Agreement or this Indenture, *provided* that no interim borrowings shall remain outstanding after the final closing under the Participation Agreement, (iv) obligations under the Lease, the Participation Agreement, this Indenture and the Owner Participants' Agreement, if any, and (v) current liabilities (exclusive of indebtedness for borrowed money) for accounts payable (including, without limitation, taxes due but not yet payable), and expense accruals incurred in connection with transactions contemplated by the Participation Agreement, the Lease, this Indenture, and the Owner Participants' Agreement, if any, or in the ordinary course of the Owner's business permitted by subdivision (a) of this Section 11.1 *provided* that such accounts payable shall not have remained unpaid for more than 60 days after the same became payable or shall currently be contested in good faith by appropriate proceedings promptly initiated and diligently conducted; or

(c) make any loan or advance (other than as required by the Lease) to any Person, or purchase or otherwise acquire or invest in or own any stock, obligations or other securities of any Person (other than prime commercial paper and certificates of deposit in United States commercial banks (having capital resources in excess of \$50,000,000), obligations of the United States Government or any agency thereof and obligations guaranteed by the United States Government, in each case due within one year from the date of acquisition) or make any capital contribution to any Person, or become or be obligated to provide funds to any Person (except pursuant to the Lease), or become or be liable, contingently or otherwise (by guarantee, endorsement, discount, sale with recourse, repurchase agreement or otherwise) upon or with respect to, directly or indirectly, any indebtedness, liability or obligation of any other Person (except as permitted by clause (b) above) or any stock or dividend of any other Person; or

(d) purchase or agree to purchase any property or asset (other than pursuant to the Lease and other than commercial paper, certificates of deposit and obligations which the Owner is permitted to invest in pursuant to clause (c) above) having an aggregate purchase price in excess of \$10,000; or

(e) issue any additional shares of its capital stock of any class, whether now or hereafter authorized, if, after giving effect to such issuance, Morgan (together with J. P. Morgan & Co. Incorporated and all corporations which are controlled by J. P. Morgan & Co. Incorporated) shall not own legally and beneficially 80% or more of the outstanding shares of each class of capital stock of the Owner; or

(f) merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, lease, transfer or otherwise dispose of any of the Leased Assets which are subject to the security interest of this Indenture, its interest in the Lease or the Coal Purchase Agreement or any of its other properties

or assets to any Person, *provided* that the Owner may sell, subject to the security interest of this Indenture and all of the terms and provisions thereof, all of the Leased Assets which shall theretofore have become subject to the security interest of this Indenture and its interest in the Lease and the Coal Purchase Agreement in respect of such Leased Assets, or undivided percentage interests therein, to one or more Permitted Transferees, if each of the following conditions shall have been fulfilled to the satisfaction of the Trustee and each holder of 10% or more in principal amount of the Notes of each series at the time outstanding:

(i) the Trustee and each such holder shall have received from the Owner, not less than 30 days prior to the date of such transfer, a notice setting forth the name of each Permitted Transferee to which such sale is to be made, and the date on which such proposed sale is to become effective;

(ii) on or prior to the date of such sale, each such Permitted Transferee shall have agreed in writing with the Trustee that (A) such Permitted Transferee will not, directly or indirectly, create, incur, assume or suffer to exist any Encumbrance on or with respect to any property or interest then or thereafter included in the Trust Estate, resulting from acts of or claims against such Permitted Transferee; such Permitted Transferee will duly and punctually pay and discharge, or cause to be paid and discharged before the same become delinquent, all taxes, assessments and governmental charges and levies (herein called "Taxes") imposed upon it or imposed upon or with respect to its business, income, profits or properties or assets or any part thereof, including, without limitation, all taxes imposed upon or with respect to or measured by or based on the gross income or the net income of such Permitted Transferee (except only to the extent that any such tax is being contested by such Permitted Transferee in good faith and by appropriate proceedings so long as such proceedings do not involve any danger of any Encumbrance or claim against the Trust Estate, and except that such Permitted Transferee shall not have any obligation under such agreement with respect to any Taxes which the Lessee is obligated to pay under Section 35 of the Lease); and such Permitted Transferee will indemnify, protect, save and keep harmless all holders of the Notes and all holders of the Deposit Receipts from and against any reduction in the amount payable to such holders in respect of the Notes or the Deposit Receipts, or other loss, cost or expenses (including legal fees and expenses) incurred by such holders, as a result of the imposition or enforcement of any Encumbrance or claim against such Permitted Transferee or the Trust Estate by any taxing authority because of the non-payment by such Permitted Transferee of such Taxes; and (B) such Permitted Transferee will not sell, transfer or otherwise dispose of its interest in any of the Leased Assets, in the Lease, or in the Coal Purchase Agreement except to a Permitted Transferee subject to the fulfillment to the satisfaction of the Trustee and each holder of 10% or more in principal amount of the Notes of each series at the time outstanding of all of the conditions herein set forth with respect to any such sale by the Owner;

(iii) the Affiliated Bank or Holding Company controlling each such Permitted Transferee which is not a Substantial Bank shall have guaranteed in writing the

due and punctual performance by such Permitted Transferee of all the covenants contained in the agreement of such Permitted Transferee referred to in the foregoing clause (ii); and

(iv) the Trustee and each such holder shall have received all such other documents, instruments and opinions of counsel as they may reasonably request in order to establish compliance with the conditions herein set forth, the taking of all corporate proceedings in connection therewith and the legality, validity and binding effect of such agreement and guaranty;

and *provided, further*, that the Owner may merge into or consolidate with Morgan, or be liquidated at any time when all of its capital stock is directly owned, legally and beneficially, by Morgan and in connection therewith assign and transfer substantially all of its properties, rights and interests as an entirety to Morgan, if Morgan shall have executed and delivered to the Trustee an agreement, in form satisfactory to the Trustee and to each holder of 10% or more in principal amount of the Notes of each series at the time outstanding, containing an assumption by Morgan of the due and punctual performance and observance of each covenant and condition of the Participation Agreement, the Lease, (subject to the provisions of Section 39 hereof which shall be applicable to Morgan to the same extent as to the Owner) this Indenture (excluding all the covenants contained in this Section 11.1 other than the covenant contained in this clause (f) to the extent such covenant would prohibit any sale, lease, transfer or other disposition of any of the Leased Assets, its interest in the Lease or the Coal Purchase Agreement, and excluding the covenants contained in Section 11.4 hereof) and the Notes to be performed or observed by the Owner, and Morgan shall have delivered to the Trustee and to each such holder an opinion of counsel satisfactory to the Trustee and each such holder, stating that such assignment and transfer and such assumption agreement comply herewith and all conditions precedent herein provided for relating to such transaction have been complied with.

11.2. Maintenance of Corporate Existence, etc. The Owner will maintain, preserve and keep in full force and effect its corporate existence, franchises, rights and privileges in the State of New York, and, if legally required, will qualify as a foreign corporation in the Commonwealth of Pennsylvania and maintain such qualification, *provided that* the Owner may abandon any franchise, right, privilege or license to do business if such abandonment is not disadvantageous in any respect to the holders of the Notes and *provided, further*, that the Owner may merge, consolidate, liquidate or dissolve in connection with a transaction permitted by the last proviso in Section 11.1(f) hereof.

11.3. Financial Statements. The Owner will deliver to each holder of 10% or more in principal amount of the Notes at the time outstanding:

(i) as soon as practicable and in any event within 90 days after the end of each fiscal year, a profit and loss statement and reconciliation of surplus statement of the Owner for such year, and a balance sheet of the Owner as at the end of such year, setting forth in each case in comparative form corresponding figures from the preceding fiscal year, all in reasonable detail and satisfactory in scope to each such holder, and certified by an authorized financial officer of Morgan;

(ii) promptly upon receipt thereof, one copy of each report submitted to the Owner by independent accountants in connection with any annual, interim or special audits made by them of the books of the Owner; and

(iii) with reasonable promptness, such other financial data as may be reasonably requested, including, without limitation, quarterly financial statements of the Owner, if requested by any such holder.

The Owner will keep true books of records and accounts in which full and correct entries will be made of all of its business transactions (except that the Owner shall have no obligation to keep records of sales by the Trustee of which the Owner has no knowledge), and will reflect in its financial statements adequate accruals and appropriations to reserves, all in accordance with generally accepted accounting principles. The Owner also covenants that forthwith upon any officer of the Owner, at any time while any Notes are outstanding, obtaining knowledge of an Event of Default, or other event or condition which after notice or lapse of time or both would become an Event of Default, it will deliver to the Trustee and each holder of Notes at the time outstanding an Officer's Certificate specifying the nature thereof, the period of existence thereof, and what action the Owner proposes to take with respect thereto. Each holder of Notes is hereby authorized to deliver a copy of any financial statement delivered to it pursuant to this Section 11.3 to any regulatory body having jurisdiction over it.

11.4. Inspection. In addition to the permission granted by Section 6 hereof, the Owner will permit any Person designated in writing by the Trustee or by any holder of 10% or more in principal amount of the Notes at the time outstanding, at such holder's expense, to visit and inspect any of the properties of the Owner (in addition to those referred to in Section 6 hereof), to examine all its books of account, records, reports and other papers and to make copies and extracts therefrom and to discuss its affairs, finances and accounts with its officers, employees and independent public accountants, all at such reasonable times and as often as may be reasonably requested.

11.5. Repurchase of Notes. The Owner covenants that it will not, directly or indirectly, repurchase or make any offer to repurchase any Notes unless the Owner has offered to repurchase Notes, pro rata, from all holders of the Notes and upon the same terms. In case the Owner repurchases any Notes, such Notes shall thereafter be cancelled and no Notes shall be issued in substitution thereof.

12. No Credit for Payment of Taxes. The Owner shall not be entitled to any credit against the principal or interest payable on the Notes, or any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any tax on the Leased Assets or any part thereof.

13. Specific Assignment of Moneys, Claims, etc. Without limiting the generality of the granting clauses hereof, the Owner specifically hereby presently and irrevocably assigns, transfers and sets over to the Trustee, effective (except as set forth in the last sentence of this Section 13) upon the execution and delivery by the Owner to the Trustee of the first Indenture Supplement:

(a) the full amount of each installment of Basic Rent payable pursuant to the Lease or Section 6.1 of the Coal Purchase Agreement;

(b) all Supplemental Rent payable to the Owner pursuant to the Lease or Section 6.1 of the Coal Purchase Agreement, excluding Supplemental Rent payable (other than pursuant to Section 14(g) of the Lease) with respect to any item of property or equipment prior to the Basic Term of such item and excluding Supplemental Rent payable under Sections 22 (to the extent such Supplemental Rent is in respect of the Owner's own expenses), 34 (to the extent such Supplemental Rent is in respect of "Expenses" of the Owner), 35 (to the extent such Supplemental Rent is in respect of "taxes, fees or other charges" of the Owner), and 36 of the Lease;

(c) all insurance proceeds, condemnation awards, payments by the Lessee or other amounts payable to the Owner pursuant to Section 17 or 33 of the Lease or otherwise as a result of the occurrence of an Event of Loss with respect to any Leased Asset or as a result of any condemnation, confiscation, theft or seizure of, or requisition of title to or use of, or loss or damage to, any Leased Asset not constituting an Event of Loss;

(d) all amounts payable to the Owner by the Lessee or otherwise as a result of the termination of the leasing of any Leased Asset pursuant to Section 23 of the Lease (relating to Leased Assets becoming obsolete or surplus to the Lessee's requirements);

(e) all amounts payable to the Owner as a result of the purchase of the Leased Assets pursuant to Section 31 of the Lease (relating to purchase of the Leased Assets in the event of termination of the Coal Purchase Agreement);

(f) all amounts payable to the Owner as a result of the purchase of the Leased Assets pursuant to Section 32(a) of the Lease (relating to the optional purchase of the Leased Assets on or after June 1, 1991);

(g) all rights, powers, privileges and remedies on the part of the Owner, whether arising under the Lease or the Coal Purchase Agreement or by statute or at law or in equity or otherwise, consequent on any failure by the Lessee to perform or comply with any term of the Lease or consequent on any failure by Hydro to perform or comply with any term of Section 6.1 of the Coal Purchase Agreement; and

(h) all other rights of the Owner to exercise any election or option or to give or receive any notice, consent, waiver or approval under or in respect of the Lease or Section 6.1 of the Coal Purchase Agreement or to accept any surrender of the Leased Assets or any part thereof, *provided* that the Owner shall have all rights, to the exclusion of the Trustee, to exercise any such election or option or to give or receive any such notice, consent, waiver or approval under or in respect of Section 5, 6, 7, 8, 9, 14(a), 23(b), 33(a) or 36 of the Lease if and so long as no Event of Default shall have occurred and be continuing;

in each case together with full power and authority, in the name of the Trustee, the Owner, the Lessee, Hydro or otherwise, to enforce, collect, receive or receipt for any and all of the foregoing. The Owner hereby irrevocably directs the Lessee and Hydro to pay to the Trustee, or as the Trustee may from time to time direct, the Basic Rent and all Supplemental Rent assigned pursuant to this section, and all other sums assigned pursuant to this section, effective (except as set forth in the last sentence of this Section 13) upon the execution and delivery by the Owner to the Trustee of the first Indenture Supple-

ment. Any and all rights of the Trustee under this section may, to the extent, permitted by law, be exercised by any trustee or receiver appointed at the instance of or for the benefit of the Trustee or any Loan Participant or the holder of the Notes. The assignment of Basic Rent and Supplemental Rent (except as set forth in the last sentence of this Section 13) and other sums provided for in this section shall be effective immediately upon the execution and delivery by the Owner to the Trustee of the first Indenture Supplement and is not conditioned upon the occurrence of any default hereunder or of any other contingency or event. The assignment effected by this Section 13 of Supplemental Rent payable pursuant to Section 14(g) of the Lease, and all provisions of this Section 13 with respect to such Supplemental Rent, is effective immediately upon the execution and delivery of this Indenture.

14. Application of Assigned Moneys.

14.1. Prior to Default. Unless an Event of Default shall have occurred and be continuing and the Trustee shall have received written notice of such Event of Default from the holder of any Note, the Trustee shall apply all moneys received by it pursuant to Section 13 hereof as follows:

(a) each installment of Basic Rent shall be applied to the payment of the installments of combined principal and interest falling due concurrently in respect of the Notes, such application to be made in accordance with the terms of the Notes;

(b) all Supplemental Rent so received (other than amounts thereof for which application is expressly otherwise provided in this Section 14) shall promptly be applied to the payment of the obligation or liability in respect of which such Supplemental Rent was paid;

(c) all insurance proceeds, condemnation awards, payments by the Lessee or other payments received as a result of the occurrence of an Event of Loss with respect to any Leased Asset shall be applied as provided in Section 10.2 hereof;

(d) all insurance proceeds, condemnation awards or other payments received as a result of any condemnation, confiscation, theft or seizure of, or requisition of title to or use of, or loss or damage to, any Leased Asset not constituting an Event of Loss shall be applied as provided in Section 10.3 hereof;

(e) all payments received as a result of the termination of the leasing of any Leased Asset pursuant to Section 23 of the Lease shall be applied to make the prepayment of the Notes required by Section 2.5 hereof;

(f) all payments received as a result of the purchase of the Leased Assets pursuant to Section 31 of the Lease shall be applied to make the prepayment of the Notes in full required by Section 2.6 hereof;

(g) all payments received as a result of the purchase of the Leased Assets pursuant to Section 32(a) of the Lease shall be applied to make the optional prepayment of the Notes in full under Section 2.3 hereof to be made simultaneously with such purchase; and

(h) any excess of the moneys referred to in any of clauses (a) to (g), inclusive, above, over the amount required for the application provided in the clause which

refers to such moneys shall be applied as provided in the Lease, or, if no such application is provided in the Lease, shall be paid over to the Owner or as the Owner may direct.

14.2. During Default. If and so long as an Event of Default shall have occurred and be continuing and the Trustee shall have received written notice of such Event of Default from the holder of any Note, the Trustee shall hold all moneys received by it pursuant to Section 13 hereof as part of the Trust Estate and shall apply the same as provided in Section 28 hereof.

14.3. Other Payments. Any payments received by the Trustee for which no provision as to the application thereof is made in the Lease or the Participation Agreement or elsewhere herein shall be applied in accordance with the written directions signed by the holders of not less than 66 $\frac{2}{3}$ % in principal amount of the Notes at the time outstanding and the Owner or, in the absence of such written directions, as a court of competent jurisdiction may direct.

15. Events of Default; Declaration of Notes Due. If one or more of the following events (individually called an "Event of Default," and collectively called "Events of Default") shall occur:

(a) if the Owner shall default in the due and punctual payment of the principal of or premium, if any, or interest on any Note when due and payable (whether at maturity or as an installment of combined principal and interest or at a date fixed for any optional or required prepayment or otherwise) and such default shall continue for more than 10 days; or

(b) if the Owner shall default in the due performance or observance of any of the terms of the Notes or of this Indenture other than those referred to in the foregoing paragraph (a) and such default shall continue for more than 30 days after written notice thereof from the holder of any Notes or the Trustee; or

(c) if an "Event of Default" as defined in the Lease shall occur and be continuing; or

(d) if Hydro shall default in the due and punctual performance of any of its obligations under Section 6.1 of the Coal Purchase Agreement; or

(e) if Morgan shall default in the due and punctual performance of any of the terms of the Morgan Agreement and such default shall continue for more than 30 days after written notice thereof from the holder of any Notes or the Trustee; or

(f) if any Owner Participant shall default in the due and punctual performance of any of the terms of the Owner Participants' Agreement; or

(g) if Morgan (together with J. P. Morgan & Co. Incorporated and all corporations which are controlled by J. P. Morgan & Co. Incorporated) shall at any time cease to own legally and beneficially 80% or more of the outstanding shares of each class of capital stock of the Owner; or

(h) if any event which is an "Event of Default" with respect to the Lessee or Hydro under subsection (f), (g), (h) or (i) of Section 27 of the Lease shall occur with respect to the Owner; or

(i) if the Owner shall default in the due and punctual payment of any commitment fee or cancellation fee payable under Section 3 of the Participation Agreement and such default shall continue for more than 10 days; or

(j) if any representation or warranty made by the Owner, the Lessee or Hydro in or pursuant to the Participation Agreement or by any Owner Participant in or pursuant to the Owner Participants' Agreement shall prove to have been false or incorrect in any material respect on the date as of which made;

then, and in any such event, any holder or holders of at least 25% in principal amount of the Notes at the time outstanding may at any time thereafter (unless all Events of Default shall theretofore have been remedied and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses incurred by or on behalf of the Trustee or any such holder, shall have been paid by the Owner) at its or their option, by written notice or notices to the Owner, declare all the Notes to be due and payable, whereupon the same shall forthwith become due and payable, together with interest accrued thereon, without presentment, demand, protest or notice, all of which are hereby waived. However, the holder or holders of at least 66 $\frac{2}{3}$ % of the aggregate principal amount of the Notes at the time outstanding may waive such Event or Events of Default and the consequences thereof and rescind such declaration, by similar written notice, if, at any time after the Notes shall have been so declared due and payable and before any sale of any of the Trust Estate shall have been made,

(i) all covenants, agreements, terms, provisions and conditions with respect to which default shall have been made shall have been fully performed,

(ii) all arrears of interest upon the Notes shall have been paid, together with interest on overdue principal, premium and (to the extent permitted under applicable law) interest,

(iii) the reasonable expenses, disbursements and compensation of the Trustee, its agents, attorneys and counsel and all other sums owed to the Trustee in connection with the exercise and performance of its powers and duties hereunder shall have been paid, and

(iv) all other indebtedness secured hereby (except the principal of the Notes which would not at the time be due but for such declaration) and all interest accrued thereon shall have been paid.

No such waiver shall extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

16. Remedies of Holders of Notes, etc.

16.1. Legal Proceedings. If any one or more Events of Default shall have occurred and be continuing, the holder of any Notes at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

16.2. Cost of Collection. If the Owner shall fail to pay any principal of, premium, if any, or interest on any Notes, the Owner will pay to the holder thereof such further amount as shall be sufficient to cover the cost and expense of collection, including, without limitation, reasonable attorneys' fees.

16.3. Notice of Claimed Default. If any holder of any Note shall serve any notice or demand on the Owner in respect of a claimed default, the Owner will forthwith give written notice thereof to the Trustee and to all other holders of the Notes at the time outstanding describing the notice, demand or action and the nature of the claimed default.

17. Reports, etc., Under Lease. The Owner will furnish contemporaneously to the Trustee, each Loan Participant and each holder of 10% or more in principal amount of the Notes duplicates or copies of all reports, notices, requests, demands, certificates and other instruments furnished to the Owner under the Lease, to the extent that the Lessee shall not be obligated to furnish the same to the Trustee, each Loan Participant and each such holder pursuant to the Lease.

18. Compromise of Actions, etc. Any action, suit or proceeding brought by the Trustee, any Loan Participant or any holder of any Notes pursuant to this Indenture, the Lease, the Coal Purchase Agreement or otherwise and any claim made by the Trustee, any Loan Participant or any holder of any Notes under this Indenture, the Lease or the Coal Purchase Agreement, may be compromised, withdrawn or otherwise dealt with by the Trustee or such Loan Participant without the approval of the Owner.

19. No Assumption of Lease or Coal Purchase Agreement. Neither this Indenture nor any action or inaction on the part of the Trustee, any Loan Participant or any holder of any Notes shall constitute an assumption on the part of the Trustee, such Loan Participant or such holder of any obligation under the Lease or the Coal Purchase Agreement. No action or inaction on the part of the Owner shall adversely affect or limit in any way the rights of the Trustee, any Loan Participant or any holder of any Notes under or through this Indenture or under or through the Lease or under the Coal Purchase Agreement.

20. Foreclosure. If any Event of Default shall have occurred and be continuing, and the Trustee shall have received written notice of such Event of Default from the holder of any Note, the Trustee may at any time proceed at law or in equity or otherwise to enforce the payment of the Notes at the time outstanding in accordance with the terms hereof and thereof and to foreclose the security interest of this Indenture in one or more proceedings as against all or, to the extent permitted by law, any part of the Trust Estate, or any interest in any part thereof, and to have the same sold under the judgment or decree of a court of competent jurisdiction or proceed to take either of such actions.

21. Power of Sale. If an Event of Default shall have occurred and be continuing and the Trustee shall have received written notice of such Event of Default from the holder of any Note, the Trustee may sell, assign, transfer and deliver the whole or, from time to time, any part of the Trust Estate or any interest in any part thereof, at any private sale or public auction with or without demand, advertisement or notice of the date, time and place of sale and any adjournment thereof or otherwise, for cash or credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Trustee may determine, or as may be required by law.

22. Remedies Under Uniform Commercial Code. If an Event of Default shall have occurred and be continuing, the Trustee may exercise any or all of the rights and remedies available to it under the Uniform Commercial Code, without limitation of any other rights or remedies granted hereby or by law. It is agreed that 5 days' notice to the Owner of the date, time and place of any proposed sale by the Trustee of any property or interest included in the Trust Estate is reasonable.

23. Trustee Authorized to Execute Bills of Sale, etc. The Owner irrevocably appoints the Trustee its true and lawful attorney, in the name and stead and on behalf of it, for the purpose of effectuating any sale, assignment, transfer or delivery for the enforcement of this Indenture, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such bills of sale, assignments and other instruments as the Trustee may consider necessary or appropriate, with full power of substitution, the Owner hereby ratifying and confirming all that such attorneys or any substitute shall lawfully do by virtue hereof. Nevertheless, if so requested by the Trustee or any purchaser, the Owner shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to the Trustee or such purchaser all bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

24. Purchase of Trust Estate by the Trustee or Holders of Any Notes. The Trustee or any holder of any Notes may be a purchaser of the Trust Estate or of any part thereof or of any interest therein at any sale thereof, whether pursuant to foreclosure or power of sale or otherwise hereunder, and may apply upon the purchase price the indebtedness secured hereby owing to such purchaser, to the extent of such purchaser's distributive share of the purchase price. Any such purchaser shall, upon any such purchase, acquire title to the properties so purchased free of the security interest of this Indenture.

25. Receipt a Sufficient Discharge to Purchaser. Upon any sale of the Trust Estate or any part thereof or any interest therein, whether pursuant to foreclosure or power of sale or otherwise hereunder, the receipt of the officer making the sale under judicial proceedings or of the Trustee shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obliged to see to the application thereof.

26. Waiver of Appraisal, Valuation, etc. The Owner hereby waives, to the full extent it may lawfully do so, the benefit of all appraisal, valuation, stay, extension and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale of the Trust Estate or any part thereof or any interest therein.

27. **Sale a Bar.** Any sale of the Trust Estate or any part thereof or any interest therein, whether pursuant to foreclosure or power of sale or otherwise hereunder, shall forever be a perpetual bar against the Owner after the expiration of the period, if any, during which the Owner shall have the benefit of redemption laws which may not be waived pursuant to Section 26 hereof.

28. **Application of Proceeds of Sale.** The proceeds of any sale of the Trust Estate or any part thereof or any interest therein, whether pursuant to foreclosure or power of sale or otherwise, together with any other moneys at the time held by the Trustee as part of the Trust Estate, shall be applied to pay:

First: the costs and expenses of the sale and of any receiver of the Trust Estate or any part thereof appointed pursuant to Section 29 hereof;

Second: any indebtedness secured by this Indenture and at the time due and payable, other than indebtedness with respect to the Notes at the time outstanding;

Third: all amounts of principal, premium, if any, and interest at the time due and payable on the Notes at the time outstanding (whether at maturity or on a date fixed for any installment payment or any prepayment or by declaration or acceleration or otherwise), including interest at the rate of 9 $\frac{1}{8}$ % per annum on any overdue principal, premium, if any, and (to the extent permitted under applicable law) on any overdue interest; and in case such moneys shall be insufficient to pay in full the amount so due and unpaid upon the Notes, then, *first*, to the payment of all amounts of interest at the time due and payable on the Notes, without preference or priority of any installment of interest over any other installment of interest or of any Note over any other Note, and, *second*, to the payment of all amounts of principal and premium, if any, at the time due and payable on the Notes, without preference or priority of any amount of principal over any other amount of principal or of any Note over any other Note; all such payments of principal, premium, if any, and interest to be made ratably to the holders of the Notes entitled thereto; and

Fourth: the balance, if any, to the Owner if all conditions to the release of this Indenture specified in Section 38.2 hereof shall have been fulfilled, but if any such condition shall not have been fulfilled, to be held by the Trustee and thereafter applied to any future payments required to be made in accordance with subdivisions *First* to *Third*, inclusive, of this Section 28.

29. **Appointment of Receiver.** If an Event of Default shall have occurred and be continuing, the Trustee shall, to the extent permitted by law, be entitled to the appointment of a receiver for all or any part of the Trust Estate, whether such receivership be incidental to a proposed sale of the Trust Estate or otherwise, and the Owner hereby consents to the appointment of such receiver and will not oppose any such appointment.

30. **Possession, Management and Income.** If an Event of Default shall have occurred and be continuing and the Trustee shall have received notice of such Event of Default from the holder of any Note, the Trustee, without further notice, so far as permitted by law, may enter upon and take possession of the Trust Estate or any part thereof by force or otherwise without judicial process, summary proceedings, ejectment or otherwise and may remove the Owner, the Lessee and all other Persons and any and all property there-

from, and may hold, operate and manage the same (including the books, papers and accounts of such Persons relating thereto) and may exclude such Persons and their agents and servants, and all Persons claiming under such Persons, wholly or partly therefrom; and having and holding the same, may use, operate, manage and control the Trust Estate and conduct the business thereof, by superintendents, managers, receivers, agents, servants and/or attorneys. Upon every such entry, the Trustee may, from time to time, at the expense of the Owner, make all such repairs, renewals, replacements and useful or required alterations, additions, betterments and improvements to the Trust Estate, as to the Trustee may seem necessary, proper or judicious. In each such case, the Trustee shall have the right to manage the Trust Estate and to carry on the business and to exercise all rights and powers of the Owner, either in the name of such Persons or otherwise, as the Trustee shall deem best, and the Trustee shall be entitled to collect and receive all earnings, income, rents, issues and profits of the same and every part thereof. The Trustee shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management, except that any amounts so received by the Trustee shall be applied to pay:

First: all costs and expenses of so entering upon, taking possession of, holding, operating and managing the Trust Estate or any part thereof, all other fees and expenses of the Trustee hereunder, and any taxes, assessments or other charges, prior to the security interest of this Indenture, which the Trustee may consider it necessary or desirable to pay;

Second: any indebtedness secured by this Indenture and at the time due and payable, other than indebtedness with respect to the Notes at the time outstanding;

Third: all amounts of principal, premium, if any, and interest at the time due and payable on the Notes at the time outstanding, including interest on overdue principal, premium, if any, and interest, all as provided in subdivision *Third* of Section 28 hereof; and

Fourth: the balance, if any, to the Owner, if all conditions to the release of this Indenture specified in Section 38.2 hereof shall have been fulfilled, but if any such condition shall not have been fulfilled, to be held by the Trustee and thereafter applied to any future payments required to be made in accordance with subdivisions *First* to *Third*, inclusive, of this Section 30.

31. Right of the Trustee to Perform Covenants, etc. If the Owner shall fail to make any payment or perform any act required to be made or performed hereunder by it or to release or cause to be released any Encumbrance affecting the Leased Assets, the Trustee, without notice to or demand upon the Owner and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Owner and may take all such action on or about or with respect to the Leased Assets as, in the Trustee's opinion, may be necessary or appropriate therefor. All sums so paid by the Trustee and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon at the rate of $9\frac{1}{8}\%$ per annum from the date of payment or incurring, shall constitute additional indebtedness secured by this Indenture and shall be paid by the Owner to the Trustee on demand.

32. Remedies, etc., Cumulative. Each right, power and remedy of the Trustee provided for in this Indenture or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Indenture or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Trustee of any one or more of the rights, powers or remedies provided for in this Indenture or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise of any such right, power or remedy with respect to a part only of the Trust Estate, shall not preclude the simultaneous or later exercise by the Trustee of any or all such other rights, powers or remedies, or the simultaneous or later exercise by the Trustee of any such right, power or remedy with respect to any other part of the Trust Estate.

33. Terms Subject to Applicable Law. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Indenture invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Indenture or any application thereof shall be held to be invalid, illegal or unenforceable, the validity of other terms of this Indenture or any other application of such term shall in no way be affected thereby.

34. No Waiver, etc. Neither failure nor delay by the Trustee, any Loan Participant or any holder of any Note to insist upon the strict performance of any term hereof or to exercise any right, power, privilege or remedy provided for herein or therein or by statute or at law or in equity or otherwise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No waiver of any breach shall affect or alter this Indenture, which shall continue in full force and effect, or the rights of the Trustee, any Loan Participant or any holder of any Note with respect to any other then existing or subsequent breach.

35. The Trustee. Acceptance of the trusts hereunder and performance of the same by the Trustee shall not constitute a representation by it as to the legality, genuineness or sufficiency of the Notes and shall be only upon the terms and conditions hereof, including the following, to all of which the respective holders of the Notes at any time outstanding by their acceptance thereof agree:

35.1. Duties of the Trustee. The Trustee undertakes by such acceptance, for the pro rata benefit of the holders of all the Notes from time to time outstanding, to take such action from time to time for the protection and enforcement of their rights under this Indenture as may be necessary or appropriate in the interests of the holders of the Notes, *provided that:*

(a) the Trustee shall not be obligated to take any action hereunder which might in its reasonable judgment involve it in any expense or liability unless it shall have been furnished with reasonable indemnity;

(b) unless and until an Event of Default shall have occurred and be continuing and the Trustee shall have received written notice of such Event of Default from the holder of any Note, the Trustee shall not be obligated to take any action hereunder

except for the performance of such duties as are specifically set forth in this Indenture and except as may be requested from time to time in writing by the holders of a majority in principal amount of the Notes at the time outstanding;

(c) the Trustee shall not be deemed to have knowledge of the existence of any Event of Default or default unless notified thereof in writing by any holder of any Notes at the time outstanding or by the Owner;

(d) if and so long as an Event of Default shall have occurred and be continuing and the Trustee shall have received written notice of such Event of Default from the holder of any Note, the Trustee shall exercise such rights, powers and remedies (whether vested in it by this Indenture or at law or in equity or by statute or otherwise) for the protection and enforcement of its rights under this Indenture as it may (in the absence of written instructions from the holders of a majority in principal amount of the Notes at the time outstanding) determine to be in the best interests of the holders of the Notes, or as it may be requested in writing to exercise by the holders of a majority in principal amount of the Notes at the time outstanding, and shall use the same degree of care and skill in such exercise as a prudent man would use under the circumstances in the conduct of his own affairs;

(e) the Trustee may at any time request written instructions from the holders of the Notes with respect to the interpretation of this Indenture or action to be taken or suffered or not taken hereunder and, notwithstanding any other provision of this Indenture, shall be absolutely entitled to withhold (and shall not be under any liability whatsoever to any person for withholding) action under this Indenture until it shall have received such written instructions from the holders of a majority in principal amount of the Notes at the time outstanding;

(f) the Trustee may at any time consult with counsel, and any opinion of counsel (an opinion in writing signed by counsel who shall be satisfactory to the Trustee and who may be counsel for the Owner) shall be full and complete authorization and protection in respect of any action taken or suffered or not taken by the Trustee, in accordance with such opinion of counsel;

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

(h) the Trustee shall not be responsible for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(i) the Trustee may perform any of the duties or exercise any of the powers provided for herein either directly or through its agents or attorneys, and the Trustee shall not be answerable or accountable for any acts, defaults, neglect or misconduct of any such agent or attorneys provided reasonable care shall have been exercised in the selection and continued employment thereof;

(j) the Trustee shall not be personally liable for debts contracted or liabilities or damages incurred in connection with the enforcement of any of the rights or other interests of the Trustee in respect of the Trust Estate;

(k) the Trustee shall be under no obligation to inquire as to the nature or sufficiency of any payment received by it in respect of the Trust Estate and, except as specifically provided in this Indenture, shall be under no obligation to take any action to perfect or preserve unimpaired the security afforded by the Trust Estate; and

(l) the Trustee shall not be required to inquire as to the performance of any obligation under the Lease, the Coal Purchase Agreement or the Participation Agreement.

35.2. Limitation on Trustee's Liability. Subject to Section 35.4 hereof and notwithstanding any other term hereof, the Trustee shall be under no liability with respect to any action taken or suffered or not taken (a) in accordance with the written request or instructions of the holders of a majority in principal amount of the Notes at the time outstanding, or (b) in reliance in good faith on an opinion of counsel, except that nothing contained herein shall relieve the Trustee from liability for its negligence, bad faith or willful misconduct.

35.3. Reliance on Photostats and Certificates. In making any payment in respect of any Note or in taking any other action hereunder, the Trustee may conclusively rely upon any photostatic copy of such Note and any certificate covering the same delivered to it by the Owner pursuant to Section 2.13 hereof unless it shall have received written notice of a transfer of such Note, and the Trustee shall be protected in making any payment in respect of any Note believed by it to be genuine.

35.4. Amendments, Consents, etc., Under Lease, Coal Purchase Agreement and Indenture. Without the prior written consent of the holders of at least 66 $\frac{2}{3}$ % in principal amount of the Notes at the time outstanding, the Trustee shall not, but with such consent the Trustee may, (a) agree to any amendment or modification of the Lease, the Coal Purchase Agreement or this Indenture, (b) consent to or accept any cancellation or termination of the Lease, the Coal Purchase Agreement (other than pursuant to the terms thereof) or this Indenture, or (c) give any consent, waiver or approval under the Lease, the Coal Purchase Agreement or this Indenture, *provided* that, without the written consent of the holder or holders of all the Notes at the time outstanding, no such amendment, modification, cancellation, termination, consent, waiver or approval shall extend the maturity of any Note, or reduce the rate of interest or premium payable with respect to any Note, or affect the time or amount of any required payments on any Note, or reduce the proportion of the principal amount of the Notes required with respect to any consent, and *provided, further*, that notwithstanding any provision of the Participation Agreement or this Indenture to the contrary, no consent of the Trustee or of the holders of any Notes shall be required in connection with or as a condition to any amendment or modification of, or any consent, waiver or approval under, Section 5, 6, 7, 8, 9, 14(a), 23(b), 33(a) or 36 of the Lease, or any amendment, modification or waiver of the Coal Purchase Agreement (other than Section 6.1, 10 or 11

thereof) if, not less than 10 days prior to entering into or executing such amendment, modification, consent, waiver or approval, the Owner (in the case of the Lease) or the Lessee (in the case of the Coal Purchase Agreement) shall have given notice thereof to each holder of the Notes and (except in the case of any such notice given after the final closing under the Participation Agreement) each Loan Participant, together with an Officer's Certificate of the Owner stating that such amendment, modification, consent, waiver or approval, as the case may be, will not be materially detrimental to the holders of the Notes, and *provided, further*, that the Trustee shall not be required to consent to any amendment or modification which would adversely affect the rights, duties, obligations and indemnities of the Trustee.

35.5. Notices, etc., Under Lease and Indenture. The Trustee shall deliver to each holder of any Notes, promptly upon receipt thereof, duplicates or copies of all notices, requests, financial statements and other instruments received by it in connection with the Leased Assets or under or pursuant to the Lease or this Indenture, to the extent that the same shall have not been furnished pursuant thereto or hereto to such holders.

35.6. Trustee's Compensation, Expenses, etc. The Owner will or will cause the Lessee, from time to time upon request, to pay the Trustee reasonable compensation for its services hereunder and to pay or reimburse the Trustee for all its reasonable expenses and disbursements hereunder, including, without limitation, the reasonable compensation and expenses and disbursements of its counsel and of agents not regularly in its employ. The Owner will or will cause the Lessee to indemnify the Trustee against any liability or obligation with respect to the payment, failure to pay or delay in payment of any stamp or other taxes (including interest and penalties) in respect of the issue of any Notes, such indemnity to survive payment of the Notes and any resignation, removal or replacement of the Trustee and from and against any and all liabilities, obligations, losses, damages, penalties, taxes, claims, costs or expenses of any kind or nature which may be imposed upon, incurred by or asserted against the Trustee in any way relating to or arising out of this Indenture, the Participation Agreement, the Hydro Consent and Agreement, the Owner Participants' Agreement and the interests created or vested thereby.

35.7. Resignation, Removal and Replacement of Trustee. The Trustee or any successor Trustee may resign at any time by giving 30 days' prior written notice of resignation to the Owner and to each holder of a Note, such resignation to be effective on the date specified in such notice. The holders of a majority in principal amount of the Notes at the time outstanding may at any time remove the Trustee for or without cause by an instrument or instruments in writing delivered to the Trustee and the Owner. In case the Trustee at any time acting hereunder shall resign or shall be removed or otherwise shall become incapable of acting, the holders of a majority in principal amount of the Notes at the time outstanding may appoint a successor Trustee by an instrument or instruments in writing delivered to such successor Trustee, the retiring Trustee and the Owner, whereupon such successor Trustee shall succeed to all the rights and obligations of the retiring Trustee hereunder as if originally named herein. Any retiring Trustee, at the expense of the Owner, shall duly assign, transfer and deliver to its successor Trustee all the rights and moneys at the time held by the retiring Trustee hereunder and shall execute and deliver such proper instruments as may be reasonably requested to evidence such assignment, transfer and delivery.

35.8. Successor Trustee by Merger, Consolidation, etc. Any corporation into which the Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee is a party, or any state or national bank or trust company in any manner succeeding to all or substantially all of the corporate trust business of the Trustee, shall automatically succeed to all of the rights and obligations of the Trustee hereunder without further action on the part of any of the parties hereto.

36. Further Assurances. The Owner will execute, acknowledge and deliver all such instruments and take all such action as the Trustee or the holders of a majority in principal amount of the Notes at the time outstanding from time to time may reasonably request for the better assuring to the Trustee of the properties and rights now or hereafter subject to the security interest hereof or assigned hereunder or intended so to be.

37. Additional Security. Without notice to or consent of the Owner, and without impairment of the security interest and rights created by this Indenture, the Trustee may accept (but the Owner shall not be obligated to furnish) from the Owner, or from any other Person or Persons, additional security for the Notes at the time outstanding. Neither the giving of this Indenture nor the acceptance of any such additional security shall prevent the Trustee from resorting, first, to such additional security, or, first, to the security created by this Indenture, in either case without affecting the Trustee's security interest and rights under this Indenture.

38. Defeasance and Release, etc.

38.1. Partial Release. If (a) an Event of Loss shall have occurred with respect to any Leased Asset, or the leasing of any Leased Asset shall have terminated pursuant to Section 23 of the Lease by reason of such Leased Asset becoming obsolete or surplus to the Lessee's requirements, (b) a prepayment of Notes on account thereof becomes required under Section 2.4 or 2.5 hereof and the Owner shall have prepaid the principal amount of the Notes required to be prepaid pursuant to Sections 2.4 and 2.5 hereof together with all interest accrued thereon to the date of prepayment, and (c) no Event of Default or other event or condition which after notice or lapse of time or both would become an Event of Default shall have occurred and be continuing and the Trustee shall not have received written notice of such Event of Default or other event or condition from the holder of any Note, then such Leased Asset shall cease to be part of the Trust Estate or subject to the security interest of this Indenture, and the Trustee, on the written request and at the expense of the Owner or the Lessee, will execute and deliver such proper instrument of release as may be reasonably requested to evidence the release of such Leased Asset from the security interest of this Indenture.

38.2. Complete Release. If the Owner shall pay the principal of and premium, if any, and interest on the Notes in accordance with the terms thereof and all other sums payable hereunder by the Owner and shall comply with all the terms hereof and of the Notes, then this Indenture shall be null and void and of no further force and effect and shall be released by the Trustee at the expense of the Owner upon its written request. Upon the release of this Indenture, the Trustee, on the written request and at the expense of the Owner or the Lessee, will execute and deliver such proper instrument of release and satisfaction as may reasonably be requested to evidence such release, and any such instrument, when duly executed by the Trustee and duly filed wherever necessary, shall conclusively evidence the release of this Indenture.

39. No Personal Liability. Anything herein or in the Notes or in any other document referred to herein to the contrary notwithstanding, the Owner shall not be personally liable or accountable to the Trustee, any Loan Participant, or the holder of any Note by reason of any representation, warranty, covenant, promise, agreement, default, other provision or action or inaction hereunder or thereunder, and neither the Trustee, any Loan Participant, nor the holder of any Note will seek or be entitled to any personal judgment or decree against the Owner by reason of any such representation, warranty, covenant, promise, agreement, default, other provision or action or inaction hereunder or thereunder, except such judgments or decrees as may be incidental to the foreclosure of this Indenture or the taking possession of the Trust Estate as provided herein, which incidental judgments or decrees shall not be enforced or enforceable or collectible out of any assets of the Owner other than its interest in the Trust Estate. All payments to be made by the Owner under this Indenture and the Notes shall be made only from the income and the proceeds from the Trust Estate and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Estate to make such payments in accordance with the terms hereof and the Notes. Each holder of a Note, by its acceptance of such Note, agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for distribution to such holder as herein provided and that the Owner is not personally liable to such holder of any Note for any amounts payable under such Note or this Indenture or for any liability under this Indenture. Notwithstanding any of the foregoing, the Owner shall be personally liable and accountable for any failure to perform or observe any covenant contained in Section 9 hereof.

40. Notices, etc. All notices and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the Owner, c/o Morgan Guaranty Trust Company of New York at 23 Wall Street, New York, New York 10015, Attention: Loan Department, or at such other address as the Owner shall have furnished to the Trustee and each Loan Participant in writing, or (b) if to the Trustee, at Corporate Securities Services Department, 111 Wall Street, New York, New York 10015, or at such other address as the Trustee shall have furnished to the Owner in writing, or (c) if to a Loan Participant, at the address listed under the name of such Loan Participant in Section 1 of this Indenture, or at such other address as such Loan Participant shall have furnished to the Owner and the Trustee in writing, or (d) if to any other holder of a Note, at such address as such holder shall have furnished to the Owner and the Trustee in writing or, until an address is so furnished, to and at the address of the last holder of such Note so furnishing an address to the Owner and the Trustee.

41. Miscellaneous. On request the Owner will, at its expense, furnish to the Trustee and any holder of a Note a written statement of the amount due on the Notes then outstanding. This Indenture may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. This Indenture shall be binding upon the Owner and its successors and assigns, and all Persons claiming under or through the Owner or any such successor or assign, and shall inure to the benefit of and be enforceable by the Trustee and its successors and assigns. The headings in this Indenture are for purposes of reference only and shall not limit or define the meaning hereof. This Indenture may be executed in any number of counterparts, each of which shall be an

original, but all of which together shall constitute one and the same instrument. This Indenture shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

42. **Other Indenture.** This Indenture is being executed and delivered simultaneously with a Trust Indenture Not Relating to Surface Railway Rolling Stock (the "Other Indenture"), dated as of October 1, 1973, from the Owner to the Trustee, which is identical to this Indenture except that (a) the Lease referred to in granting clause (d) thereof and defined as the "Lease" therein is the Non-Recourse Purchase and Lease Agreement Not Relating to Surface Railway Rolling Stock, dated as of October 1, 1973, between the Owner and the Lessee; (b) the Other Indenture covers all property which would be covered by this Indenture but for the excepted properties clause immediately following the granting clauses hereof and excepts all other properties from the coverage of such Indenture; (c) Section 42 of the Other Indenture refers to this Indenture; and (d) the title to the Indenture Supplement attached as Exhibit A to the Other Indenture conforms to the title of the Other Indenture and the reference in such form is to the Other Indenture and not to this Indenture. Except for the coverage of different and distinct properties by this Indenture and the Other Indenture, this Indenture and the Other Indenture shall be deemed to be and shall in all respects be construed as one and the same instrument, as if the Owner had executed and delivered to the Trustee a single Trust Indenture covering all properties collectively covered by this Indenture and the Other Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be executed by their respective officers thereunto duly authorized.

WHITKATH INC.

By

W. F. Ludwig Pres.

Address: c/o Morgan Guaranty Trust
Company of New York
23 Wall Street
New York, New York 10015
Attention: Loan Department

FIRST NATIONAL CITY BANK,

as Trustee

By

E. J. Jaworski

E. J. JAWORSKI
TRUST OFFICER

Address: 111 Wall Street
New York, New York 10015

Attention: Corporate Securities
Services Department

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 7th day of ~~February~~ **MARCH**, 1974, before me personally appeared **W. F. Ludwig**
....., to me personally known, who being by me duly sworn, says that he is the
..... **PRESIDENT** of WHITKATH INC., a New York corporation, that the seal affixed
to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and
sealed 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.

(Seal, if any)

ANNE J. CUSACK, Notary Public,
State of New York, No. 03-5385
Qualified in Queens County
Certificate filed in New York County
Commission Expires **MARCH 30, 1975**

..... **Andrew J. Cusack**
[Title of Officer]

My Commission expires

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 6th day of ~~February~~ **MARCH**, 1974, before me personally appeared **E. J. Jaworski**
....., to me personally known, who being by me duly sworn, says that he is the
..... **Trust Officer** of ~~UNITED STATES STEEL CORPORATION~~ **FIRST NATIONAL CITY BANK**, a Delaware corporation,
that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instru-
ment was signed and sealed 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.

(Seal, if any)

JOHN J. NEUBAUER
Notary Public, State of New York
No. 03-2869750
Qualified in Bronx County
Certificate filed in New York County
Term Expires **MARCH 30, 1975**

..... **John J. Neubauer**
[Title of Officer]

My Commission expires

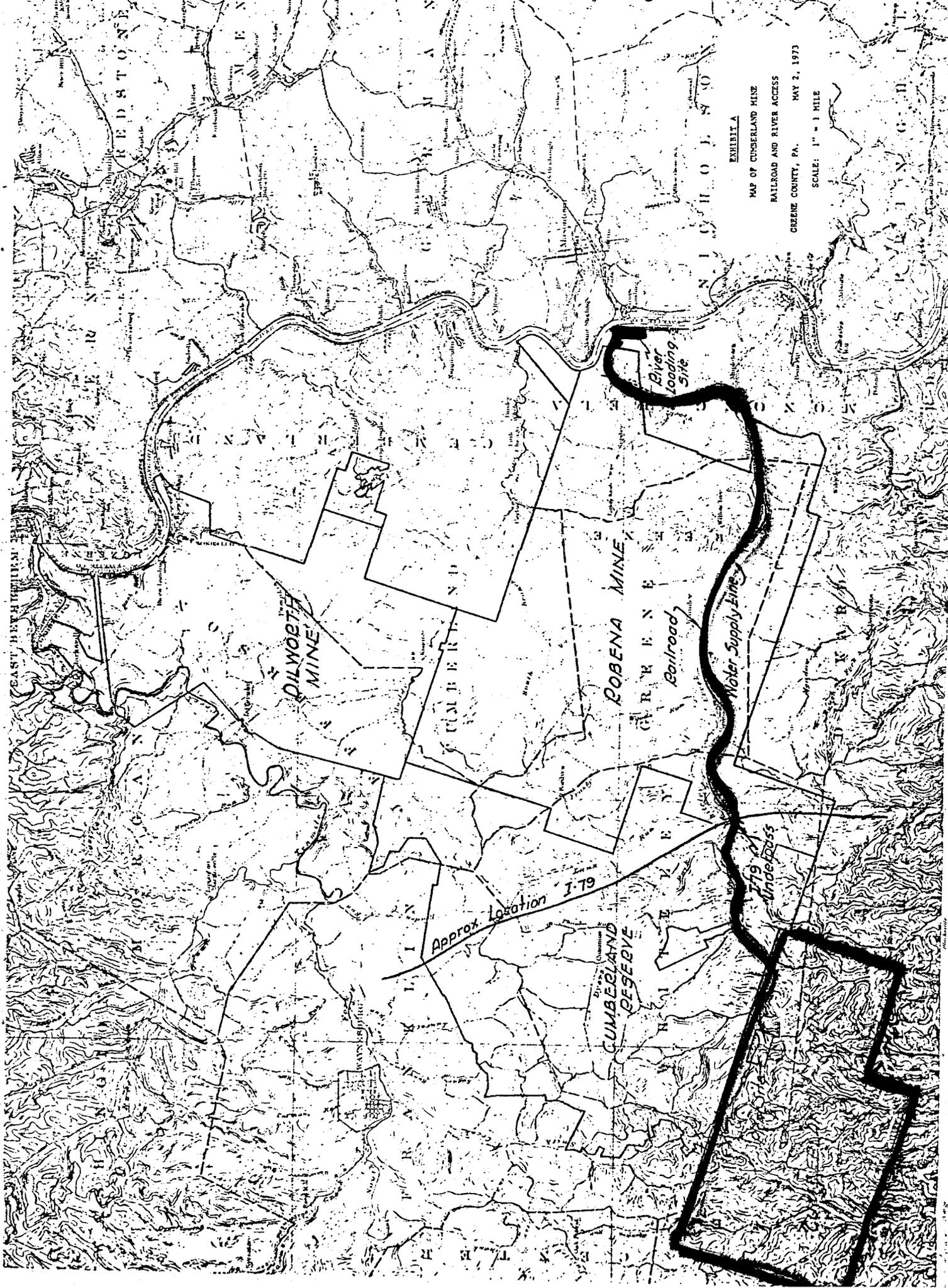


EXHIBIT A

MAP OF CUSLERLAND MINE

RAILROAD AND RIVER ACCESS

GREENE COUNTY, PA. MAY 2, 1973

SCALE: 1" = 1 MILE

Edition of Feb. 1969, reprinted 1967
Photoreproduction

SCHEDULE II
to
Trust Indenture

**TYPES OF PROPERTY AND
EQUIPMENT SUBJECT TO THE INDENTURE**

All property and equipment of the following types shall be subject to the security interest of the Indenture:

1. Scoop loaders and mobile equipment for refuse disposal;
2. Continuous mining machines, cutting machines and rock miners;
3. Roof drills, air compressors, lubrication trailers, bulk rock dust distributors and bulk dust cars, main entry rock dusting equipment, trickle dusters, shuttle cars, car spotters, loading machines, trace tamper, track cleaner, portal buses and jitneys;
4. Mine drainage, pumps, pumping station and water treatment facilities, slope hoists, air fans, substations, fire protection facilities, personnel service facilities (excluding building), slope bottom machine and conveyors and 4/0 SKV cable;
5. Refuse disposal, rock crushing and handling facilities;
6. Thermal dryer, including pulverizers, firing equipment, blowers, scrubbers and stacks;
7. 12 ton mine cars, flat cars, ballast cars, 54 ton locomotives, 20 ton locomotives, equipment dollies, repair equipment, load centers, switch gear, 600V DC circuit breakers, disconnect boxes, cable couplers, trolley and dial telephones, main haulage (excluding roof support and ventilation), raw coal handling facilities, including rotary breakers, crusher, feeders and conveyor (excluding raw coal silos), preparation plant—coal processing equipment, conveyors and structure (excluding clean coal silo), water clarification facilities including thickener, pumps and lines, and effluent treatment facilities, preparation plant yard piping and water storage facilities, electrical power distribution facilities;
8. Water supply and water treatment facilities including 16 mile pipeline (excluding underwater intake system), railroad unloading terminal, barge loading and handling facilities (excluding clean coal silo);
9. Surface railway rolling stock; and
10. Railroad track (excluding grading, bridges, drainage areas, crossings and underpass).

EXHIBIT A
to
Trust Indenture

INDENTURE SUPPLEMENT
Relating to Surface Railway Rolling Stock

INDENTURE SUPPLEMENT NO. _____, dated _____, 19____, from WHITKATH INC. (the "Owner"), a New York corporation, to FIRST NATIONAL CITY BANK, a national banking association incorporated and existing under the laws of the United States, as trustee (the "Trustee") under the Trust Indenture Relating to Surface Railway Rolling Stock dated as of October 1, 1973, from the Owner to the Trustee (the "Indenture"),

WITNESSETH:

WHEREAS, the Indenture provides for the execution and delivery from time to time of Indenture Supplements substantially in the form hereof each of which shall particularly describe Leased Assets (such term and other defined terms in the Indenture being herein used with the same meaning) included in the Trust Estate and subject to the security interest of the Indenture;

NOW, THEREFORE, TO SECURE THE PAYMENT when and as due and payable of the principal of and the premium, if any, and interest on the Notes, limited in aggregate original principal amount to \$45,000,000, issued by the Owner from time to time as provided in Section 2 of the Indenture, and to secure the payment of all other indebtedness which the Indenture by its terms secures and compliance with all the terms of the Indenture and of such Notes, the Owner does hereby create and grant to the Trustee and to its successors and assigns a security interest in the following properties:

- (a) all the items of property and equipment described in Schedule A annexed hereto;
- (b) all additional or substituted items of property or equipment which hereafter may be subjected to the security interest of the Indenture by operation of Section 5 thereof or otherwise; and
- (c) all rents, income, revenues, issues, profits and proceeds arising from or in connection with any of the foregoing except for rents excluded under clause (d) of the granting clauses of the Indenture.

SAVING AND EXCEPTING, however, from the properties in which a security interest is hereby created and granted, all property saved and excepted from the coverage of the granting clauses of the Indenture by the excepted properties clause immediately following the granting clauses thereof and all rents, income, revenues, issues, profits and proceeds arising from or in connection with such properties so saved and excepted.

THE AFORESAID SECURITY INTEREST is created and granted and is to be held by the Trustee in trust, upon the terms and trusts set forth in the Indenture, for the equal and

proportionate benefit and security of those who shall hold the Notes, without preference of any of such Notes over any other by reason of priority in the time of issue or negotiation thereof, or for any other reason.

AND THE OWNER hereby binds itself, its successors and assigns, to warrant and forever defend to the Trustee and its successors and assigns the security interest hereby created and granted.

This Supplement shall be construed as supplemental to the Indenture and shall form a part of it, and the Indenture is hereby incorporated by reference herein and is hereby ratified, approved and confirmed.

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

This Supplement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the Owner has caused this Supplement to be executed and its corporate seal to be hereunto affixed and attested by its officers thereunto duly authorized.

WHITKATH INC.

By _____

EXHIBIT B
to
Trust Indenture

Series: _____

No.: _____

WHITKATH INC.

8 $\frac{1}{8}$ % NON-RECOURSE SECURED NOTE

New York, New York
_____, 19__

FOR VALUE RECEIVED, WHITKATH INC. (the "Owner"), a New York corporation, promises to pay to _____, or registered assigns, the principal amount of \$_____, in installments as provided below, with interest (computed on the basis of a 360-day year, 30-day month) on the unpaid balance of such principal amount from the date hereof, at the rate of 8 $\frac{1}{8}$ % per annum until such principal amount shall have become due and payable (whether at maturity or on a date fixed for any installment payment or by declaration or otherwise), payable in installments as provided below, and with interest on any overdue principal and premium, if any, and (to the extent permitted under applicable law) on any overdue interest at the rate of 9 $\frac{1}{8}$ % per annum until paid, payable in installments as provided below, or at the option of the holder hereof, on demand.

Payments of principal, premium, if any, and interest are to be made in lawful money of the United States of America, at the registered address of the registered holder of this Note as set forth in the register kept by the Owner pursuant to the Trust Indenture Not Relating to Surface Railway Rolling Stock and the Trust Indenture Relating to Surface Railway Rolling Stock (herein collectively called the "Indenture"), each dated as of October 1, 1973, from the Owner to First National City Bank, as Trustee (herein called the "Trustee"), or at such other place designated to the Owner and the Trustee in writing by the registered holder in accordance with the Indenture and the Participation Agreement referred to therein.

The principal and interest on this Note shall be payable in _____¹ quarterly installments of combined principal and interest, on the first day of each January, April, July and October, the first such installment to be in the amount of \$_____² payable on the first such day after the date hereof, and each subsequent such installment to be in the amount of \$_____³ payable on each such day thereafter, to and including _____⁴, when the entire unpaid balance of the principal amount hereof, together with interest accrued to such date, shall become due and payable.

Each quarterly installment of combined principal and interest shall be applied, *first*, to interest hereon and, *second*, to the principal hereof.

This Note is one of the Owner's 8 $\frac{1}{8}$ % Non-Recourse Secured Notes issued and to be issued in an aggregate original principal amount not in excess of \$45,000,000 as provided in the Indenture, is a Note of the series designated above, and is entitled to the benefits

of the security provided for in the Indenture, to which reference is made for a description of the properties and interests included in such security, the nature and extent of such security and the rights of the holders of such Notes, the Trustee and the Owner in respect of such security.

The Loan Percentage of the Leased Assets (as such terms are used in the Indenture) with respect to which the loan evidenced hereby is made is ----%.

As provided in the Indenture, this Note is subject to prepayment, in whole or in part, in certain cases without a premium and in other cases with a premium, as specified in the Indenture. As provided in the Indenture, the amount of quarterly installments of combined principal and interest payable hereon may be reduced in the event of certain prepayments of less than all of this Note.

As provided in the Indenture, upon presentment of this Note for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the holder of this Note or his attorney duly authorized in writing, or upon surrender of this Note for exchange, a new Note or Notes of the same series in aggregate principal amount equal to the unpaid principal amount of this Note will be issued, registered as such holder or transferee may request. The Owner and the Trustee may treat the person in whose name this Note is registered as the owner and holder hereof for the purpose of receiving payment and for all other purposes whatsoever, and the Owner and the Trustee shall not be affected by notice to the contrary.

In case an Event of Default (as defined in the Indenture) shall occur, the unpaid balance of the principal amount of this Note may be declared due and payable in the manner and with the effect provided in the Indenture.

All payments to be made by the Owner hereunder and under or in connection with the Indenture shall be made only from the income and proceeds from the Trust Estate (as defined in the Indenture) and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Estate to make such payments in accordance with the terms hereof and the Indenture, and each holder hereof, by its acceptance of this Note, agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for distribution to the holder hereof as above provided and that the Owner is not personally liable to the holder hereof for any amounts payable under this Note or the Indenture or for any liability under the Indenture, except that the Owner shall be personally liable and accountable for any failure to perform or observe any covenant contained in Section 9 of the Indenture.

This Note shall be governed by the laws of the State of New York.

WHITKATH INC.

By _____

¹ Insert the number of quarterly installment dates for the particular series of Notes.

² Insert amount determined under (3) below less any adjustment for unearned interest.

³ Insert amount such that the entire principal amount of the Note together with all interest accrued thereon shall be fully paid on the final maturity date thereof.

⁴ Insert the final maturity date for the particular series of Notes.