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INTERSTATE COMMERCE COMMISSION

HOPPER HOLDINGS CORP.

AND

SHAWMUT BANK OF BOSTON, N.A.

AND

L.H. BAKER,  
as Trustees

Trust Indenture and Security Agreement

9 3/4% Secured Notes Due August 1, 1992

Dated as of July 1, 1975

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TRUST INDENTURE and SECURITY AGREEMENT dated as of July 1, 1975 (herein, as the same may be amended or supplemented from time to time as permitted hereby, called "this Indenture"), between HOPPER HOLDINGS CORP., a Delaware corporation (herein called "the Company"), having an address at One William Street, New York, New York 10004 and SHAWMUT BANK OF BOSTON, N.A. a national banking association (herein in its capacity as Trustee, together with each successor as such trustee hereunder, called "the Trustee"), and L. H. BAKER (herein in his capacity as Individual Trustee, together with each successor as such trustee hereunder, called "the Individual Trustee"), each having an address at 40 Water Street, Boston, Massachusetts 02109, Trustees.

#### PRELIMINARY STATEMENT

The defined terms used in this Indenture and not hereinabove defined have the meanings indicated in Article XI.

The Company deems it necessary to borrow money for its proper corporate purposes, to issue the Notes as evidence of such indebtedness and to Grant its interest in the property described in the Granting Clauses of this Indenture as security for the payment of the Notes.

The Company will apply the proceeds from the sale of the Notes to the payment of or reimbursement for not in excess of the Capitalized Cost of the Equipment.

The Company is duly authorized under all applicable provisions of law, its Certificate of Incorporation and By-Laws to issue the Notes, to execute and deliver the Lease Assignment and this Indenture and to Grant its interest in the property described in the Granting Clauses of this Indenture to the Trustees, as security for the Notes; and all corporate action (including any required shareholder authorization) and all consents, approvals and other authorizations or filings with, of or by courts, administrative agencies or other governmental authorities required therefor have been duly taken or obtained.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the Company, in consideration of the Premises, the acceptance by the Trustees of the trusts hereunder, and of other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest and any other sums payable on, the Notes, according to their tenor and effect, and to declare the provisions upon and subject to which the Notes are to be issued and secured, has executed and delivered this Indenture, has granted and

does hereby Grant unto the Trustees (in the case of the Trustee, only to the extent of its legal qualification and capacity under the laws of any particular jurisdiction to receive and hold property therein for the purposes hereof), their successors in trust and assigns, forever, a first security interest in, all and singular, the following described properties, rights, interests and privileges:

GRANTING CLAUSE FIRST

The Equipment

All the Equipment described in Schedules A-1 and A-2 of the Equipment Lease of even date herewith (herein called "the Lease") between the Company, as lessor, and INTERNATIONAL MINERALS & CHEMICAL CORPORATION, as lessee (herein called "the Lessee"), and which is leased or to be leased under such Lease, including all accessories, equipment, parts and appurtenances appertaining or attached to any such Equipment, whether now or hereafter acquired, and all substitutions and replacements for and additions, improvements and accumulations to any and all of such Equipment as the same may become accessions to such Equipment as in the Lease provided, together with all the rents, issues, income, proceeds, profits and avails thereof.

GRANTING CLAUSE SECOND

The Lease

All right, title, interest, claims and demands

of the Company, as lessor in, to and under the Lease, together with all rights, powers, privileges, options and other benefits of the Company as lessor thereunder, including without limitation, all rights of the Company thereunder or with respect thereto to make claim for, collect, receive and receipt for any and all rents, revenues, issues, profits, insurance proceeds, condemnation awards, tenders, security and other moneys payable or receivable thereunder or with respect thereto (whether as Basic Rent or Additional Rent as defined therein or as the purchase price for the Equipment or any portion thereof or otherwise), to bring proceedings thereunder or for the specific or other enforcement thereof or with respect thereto, in the name of the Company or otherwise, and to do any and all things which the Company is or may be or become entitled to do thereunder or with respect thereto; provided however, that no obligation of the Company as lessor under the provisions thereof or with respect thereto shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon the Trustees. This Grant shall be considered confirmatory of the assignment made by the Lease Assignment hereinafter referred to.

GRANTING CLAUSE THIRD

The Lease Assignment

All right, title, interest, claims and demands of the

Company in, to and under the Assignment of Lease of even date herewith (herein called "the Lease Assignment"), between the Company and the Trustees and consented to by the Lessee together with all rights, powers, privileges, options and other benefits of the Company thereunder or with respect thereto; provided however that no obligation of the Company under the provisions thereof or with respect thereto shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon the Trustees.

#### GRANTING CLAUSE FOURTH

##### The Purchase Agreements and Assignments

All right, title, interest, claims and demands of the Company as assignee in, to and under (i) the ACF Purchase Agreement as assigned to the Company pursuant to the ACF Purchase Agreement Assignment made as of September 25, 1974, among the Company, Lessee, and ACF Industries Incorporated and (ii) the GATX Purchase Agreement as assigned to the Company pursuant to the GATX Purchase Agreement Assignment made as of July 22, 1975, among the Company, Lessee and General American Transportation Corporation; provided, however, that no obligation of the Company thereunder or with respect thereto shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon the Trustees.

GRANTING CLAUSE FIFTH

Other and After-Acquired Property

Any and all moneys and other property (including rights to property granted under each amendment or supplement to any and all instruments included in the Trust Estate) which may from time to time, by delivery to the Trustees or by any instrument, be subjected to the Lien of this Indenture by the Company or by anyone on the behalf or with the consent of the Company, or which may come into the possession or be subject to the control of the Trustees pursuant to this Indenture or pursuant to any instrument included in the Trust Estate, it being the intention of the Company and the Trustees and it being hereby agreed by them that all property hereafter acquired by the Company and required to be subjected to the Lien of this Indenture or intended so to be shall forthwith upon the acquisition thereof by the Company be as fully embraced within the Lien of this Indenture as if such property were now owned by the Company and were specifically described in this Indenture and Granted hereby or pursuant hereto; and the Trustees are hereby authorized to receive any and all such property as and for additional security for the payment of the Notes and all other sums secured or intended to be secured hereby.

TO HAVE AND TO HOLD all and singular the Trust Estate, whether now owned or held or hereafter acquired, unto the Trustees, their successors in the trusts hereunder and assigns, forever;

SUBJECT, HOWEVER, at all times to the Lease and the interest, rights and options of the Lessee thereunder (so long as no Event of Default shall have occurred and be continuing under the Lease), and to the exceptions and reservations and matters herein recited and to Permitted Encumbrances;

IN TRUST, NEVERTHELESS, with power of sale as provided herein, for the equal and ratable benefit and security of the Notes, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise, and for the enforcement of the payment of the principal of, premium, if any, and interest on the Notes in accordance with their respective terms, and all other sums payable under this Indenture, or on the Notes, and compliance with the provisions of the Indenture, all as herein provided.

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the Notes are to be issued and secured, and that the Trust Estate is to be held, dealt with and disposed of by the Trustees, upon and subject to the provisions of this Indenture.

## ARTICLE I

### The Notes

SECTION 1.01. (a) Each Note shall be issued pursuant to either Section 1.12 or an Exchange Provision, and shall comply with the applicable provisions of this Article I. Any Note may have such letters, numbers and

other marks of identification and such legends or endorsements thereon as the Company may determine with the approval of the Trustee and as are not inconsistent with the provisions of this Indenture.

(b) The Notes shall:

(i) be designated "9 3/4% Secured Notes Due August 1, 1992";

(ii) be limited in aggregate principal amount (exclusive of Notes issued pursuant to an Exchange Provision) to \$8,000,000;

(iii) be issuable only as fully registered 9 3/4% Notes in denominations of \$25,000 or greater;

(iv) each be dated the date of its original issue;

(v) mature, unless sooner paid in full pursuant to the provisions thereof and of this Indenture, on August 1, 1992;

(vi) each bear interest (computed as if each full calendar year consisted of 360 days and each full calendar month consisted of 30 days) on the unpaid principal amount thereof from the date thereof to maturity, whether by acceleration or otherwise, at the rate of 9 3/4% per annum, and, unless prohibited by applicable law, interest on any overdue principal, premium or interest, at the rate of 10% per annum (or at the highest rate

permitted by applicable law, whichever is less);

(vii) each be due and payable as to interest accrued from the date thereof to August 1, 1975 to the extent then accrued and unpaid, on August 1, 1975;

(viii) each be due and payable on February 1, 1976 and each Payment Date thereafter to and including August 1, 1992, in 34 semi-annual Instalment Payments, containing both principal and interest, each such Instalment Payment to be in an amount equal to 6.0802404% of the original principal amount of such Note; each Instalment Payment, when paid, to be applied first to the payment of all interest accrued and unpaid on the particular Note and then to payment on account of the principal thereof; provided, that upon any partial prepayment of the principal of a particular Note, the amount of the Instalment Payments thereafter to be made on such Note shall be reduced as provided in this Indenture;

(ix) be prepayable only as provided in Articles IV and V; and

(x) be substantially in the form, and bear thereon the Trustee's certificate of authentication and a marking grid substantially in the respective forms, set forth below in this Section

1.01(b)(x), with such omissions, insertions and variations as the Company may determine with the approval of the Trustee and as are not inconsistent with the provisions of this Indenture or as may be provided for in this Indenture.

[Form of 9 3/4% Note]

This security has not been registered under the Securities Act of 1933. This security may not be sold or offered for sale unless registered pursuant to such Act or unless an exemption from such registration is available.

HOPPER HOLDINGS CORP.

9 3/4% Secured Note Due August 1, 1992

No.

\$ \_\_\_\_\_

Hopper Holdings Corp., a Delaware corporation (herein called "the Company"), for value received, hereby promises to pay to \_\_\_\_\_ or registered assigns, on or before August 1, 1992 as hereinafter provided, the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and to pay interest on the unpaid principal amount hereof from the date hereof to maturity at the rate of 9 3/4% per annum, and, unless prohibited by applicable law, to pay interest on any overdue principal, premium and interest, at the rate of 10% per annum (or at the highest rate permitted by applicable law, whichever is less), in each case computed as if each full calendar year consisted of 360 days and each full calendar month consisted of 30 days. Such principal, premium, if any, and interest shall be payable in immediately available funds against presentation of this Note (except as otherwise provided in Section 1.02(b) of the Indenture hereinafter referred to) at the Corporate Trust Office of Shawmut Bank of Boston, N.A., the Trustee (herein in its capacity as Trustee, together with each successor as such

Trustee, called "the Trustee") under the Trust Indenture and Security Agreement dated as of July 1, 1975 (herein, as the same may be amended or supplemented from time to time as permitted thereby, called "the Indenture"), among the Company, the Trustee, and L.H. Baker, Trustees, or at the Corporate Trust Office of its successor as such Trustee, in lawful money of the United States, in the following manner:

(i) Interest accruing from the date hereof to August 1, 1975 shall be payable, to the extent then accrued and unpaid, on August 1, 1975;

(ii) 34 semi-annual Instalment Payments, consisting of both principal and interest, each such Instalment Payment being in an amount equal to 6.0802404% of the original principal amount of this Note, shall respectively be due and payable on February 1, 1976 and on each August 1 and February 1 thereafter to and including August 1, 1992, provided that the thirty-fourth Instalment Payment shall be in such amount as is sufficient to discharge the interest accrued and unpaid hereon principal hereof.

Each Instalment Payment shall be applied first to payment on account of the interest accrued and unpaid on this Note and then to payment on account of the principal hereof.

This Note is one of the Company's 9 3/4% Secured Notes Due August 1, 1992 issued and to be issued under the Indenture (such Notes of the Company as from time to time may be outstanding under the Indenture being herein collectively called "the Notes"). The Notes are and are to be

equally and ratably secured by the Indenture. Certain terms used in this Note and not hereinabove defined have the meanings indicated in Article XI of the Indenture. Reference is hereby made to the Indenture and the instruments included in the Trust Estate for a description of the property and rights subject or intended to be subject to the Lien thereof; the provisions upon which the Notes are and are to be issued and secured; the nature and extent of the security for the Notes, the rights of the holders of the Notes, the Company and the Lessee in respect of such security and otherwise, and the limitations upon such rights; the rights, duties and immunities of the Trustees; and the terms and conditions of the trusts created by the Indenture, to all of which terms and conditions in the Indenture the holder of this Note agrees by its acceptance hereof. As provided in the Indenture, the Notes are limited in aggregate principal amount (exclusive of Notes issued pursuant to an Exchange Provision) to \$8,000,000 and the Notes are issuable thereunder only as fully registered Notes in denominations of \$25,000 or greater. The provisions of the Indenture and of any instrument included in the Trust Estate and the rights and obligations of the Company and the Lessee and the rights of the holders of the Notes may be changed and modified to the extent permitted by and as provided in the Indenture and the instruments included in the Trust Estate.

This Note is subject to prepayment in the manner, to the extent, under the circumstances and at the price provided for in the Indenture.

Upon the occurrence and during the continuance of an Event of Default under the Indenture, the principal hereof and the interest accrued and unpaid hereon may be declared to be due and payable forthwith as provided in the Indenture.

Prior to due presentment of this Note for registration of transfer, the Company and the Trustees may deem and treat the person in whose name this Note is registered on the Register as the absolute owner hereof (whether or not this Note shall be overdue) for the purpose of receiving payment and for all other purposes, and neither the Company nor the Trustees shall be affected by any notice to the contrary. In accordance with the provisions of the Indenture, the transfer of this Note may be registered at the Corporate Trust Office, and this Note may be, and under certain circumstances may be required to be, exchanged for other Notes of authorized denominations.

By acceptance of this Note the holder hereof agrees as provided in Sections 6.09, 6.14 and 8.04 of the Indenture, and confirms the appointment of the Trustees as the attorneys-in-fact of the holder hereof for the purposes specified in Section 6.14 of the Indenture.

Should the indebtedness represented by this Note or any part thereof be collected in any proceeding, or this

Note be placed in the hands of attorneys for collection after default, the Company agrees to pay, in addition to the principal, premium, if any, and interest due and payable hereon, all costs of collecting this Note, including reasonable attorneys' fees and expenses.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on this Note, or for any claim based thereon or otherwise in respect thereof or based on or in respect of the Indenture or the Assignment of Lease and Agreement, against any incorporator or any past, present or future subscriber to the capital stock, shareholder, officer or director of the Company or of any predecessor or successor, as such, either directly or through the Company or any predecessor or successor, under any rule of law, statute or constitution, or by the enforcement of any assessment or penalty, or otherwise; it being expressly understood that this Note and all obligations of the Company under the Indenture and the Assignment of Lease and Agreement are solely corporate obligations and that all such liability of incorporators, subscribers, shareholders, officers and directors, as such, is by the acceptance of this Note expressly waived and released as a condition of, and as consideration for, the execution of the Indenture and the Assignment of Lease and Agreement and the issuance of this Note; provided, however, that nothing in the Indenture, the Assignment of Lease and Agreement or herein contained

shall constitute a waiver of any indebtedness evidenced by this Note or secured by the Indenture or the Assignment of Lease and Agreement or shall be taken to prevent recourse to and the enforcement against the security for the Notes described in the Assignment of Lease and Agreement and the Trust Estate of all liabilities, obligations and undertakings in the Indenture, the Assignment of Lease and Agreement and this Note contained, or to prevent recourse to and the enforcement of any liability, obligation or undertaking of the Company, its predecessors or successors, or incorporators, subscribers, shareholders, officers or directors pursuant to the terms of any agreement, undertaking or certificate executed and delivered by or on behalf of such person. For the purposes of the foregoing, the term "shareholder" shall be deemed to include the shareholders of any corporation which is a shareholder.

This Note shall not be valid or become obligatory for any purpose unless and until the Certificate of Authentication hereon shall have been executed by the Trustee.

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed by its President or one of its Vice Presidents and its corporate seal to be affixed hereto and

attested by its Secretary or one of its Assistant Secretaries.

Dated: \_\_\_\_\_, 19

HOPPER HOLDINGS CORP.

By \_\_\_\_\_  
President

[CORPORATE SEAL]

Attest:

\_\_\_\_\_  
Secretary

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

CERTIFICATE OF AUTHENTICATION

This Note is one of the 9 3/4% Secured Notes Due August 1, 1992 described in the within-mentioned Indenture.

SHAWMUT BANK OF BOSTON, N.A.  
as Trustee

By \_\_\_\_\_  
Authorized Officer

[FORM OF MARKING GRID]

Date	Aggregate Amount of Payments and Prepayments of Principal Previously Made	Amount of Instalment Payments Thereafter Payable, if Reduced	Date to Which Interest Has Been Paid	Unpaid Balance of Principal	Authorized Signature

SECTION 1.02. (a) The principal of, premium, if any, and interest on the Notes shall be payable at the Corporate Trust Office in lawful money of the United States of America, against presentation of the Notes for notation of the payment or prepayment made thereon or, in the case of a payment or prepayment which will discharge all indebtedness of the Company evidenced thereby, against surrender thereof.

(b) Notwithstanding the foregoing provisions of this Section 1.02, if there shall be filed with the Trustee a copy of an agreement between the Company and the holder of any Note or the Purchaser thereof, to the effect that (i) the Company will cause the interest on such Note and all payments and prepayments (except a payment or prepayment which will discharge all indebtedness of the Company evidenced by such Note) of the principal thereof, and any premium thereon, to be paid by check of the Trustee duly mailed or delivered to such holder at its address appearing on the Register, or, if such Purchaser or holder shall have so specified in Annex I to the Note Purchase Agreement or in such other agreement, to be paid by the Trustee's wire transfer of immediately available funds directly to the account specified in Annex I to the Note Purchase Agreement or in such other agreement, as the case may be, without presentation

of such Note to the Trustee, and (ii) such holder or Purchaser will effect any sale, transfer or other disposition of such Note only by presenting such Note for registration of transfer in accordance with Section 1.06, or will cause the same to be done, the Trustee shall, until such Note has been duly presented for registration of transfer, pay the interest on such Note and make payments and prepayments of the principal thereof, and any premium thereon, in accordance with the provisions of such agreement and without presentation of such Note to the Trustee. The Trustee shall be under no duty with respect to any notations of any payments of principal, premium or interest made without presentation of the Note in respect of which such payments are made except such notations as shall have been made by one of its authorized officers and shall have no liability by reason of any claim arising on account of a payment made in accordance with the provisions of any agreement filed with it pursuant to the foregoing provisions of this Section 1.02 (b). The Note Purchase Agreement shall constitute an agreement contemplated by this Section 1.02 (b), and the Company will, promptly after the date of delivery of this Indenture, file with the Trustee counterparts of the Note Purchase Agreement executed by the respective Purchasers.

SECTION 1.03. The Company shall keep or cause to be kept at the Corporate Trust Office a sufficient register or

registers for the registration, and registration of transfer, of Notes, which shall be denominated the Register and maintained by the Trustee. The Notes, the names and addresses of the holders of the Notes, the transfers of the Notes and the names and addresses of the transferees of the Notes shall be registered in the Register as herein provided and under such reasonable regulations as the Trustee may prescribe. The Register shall at all reasonable times be open for inspection by any holder.

SECTION 1.04. The Notes shall be signed on behalf of the Company by its President or one of its Vice Presidents, and its corporate seal shall be thereunto affixed and attested by its Secretary or one of its Assistant Secretaries. In case any officer who shall have signed, or attested the corporate seal upon, any Note shall cease to be such officer before such Note shall have been authenticated and delivered by the Trustee, such Note may nevertheless be authenticated and delivered with the same effect as though such person had not ceased to be such officer of the Company. Any Note may be signed on behalf of the Company, and the corporate seal attested thereon, by a person who, at the actual date of the execution of such Note, shall be a proper officer of the Company, although at the date of such Note or the date of authentication or delivery thereof, such person was not then such officer of the Company.

SECTION 1.05. No Note shall be valid or become obligatory for any purpose or be binding upon the Company or be

entitled to the benefits and security of this Indenture unless and until it has been authenticated by the Trustee's execution of the certificate of authentication thereon. The authentication and delivery by the Trustee of any Note shall be conclusive, and the only competent, evidence that such Note has been duly issued hereunder and is entitled to the benefits and security of this Indenture.

SECTION 1.06. (a) Subject to the requirements of Section 1.13, the transfer of any Note may be registered if such Note is surrendered for cancellation at the Corporate Trust Office and is accompanied by an instrument or instruments of transfer satisfactory to the Trustee. A New Note of the same tenor as such Old Note, executed by the Company and payable to the transferee in an original principal amount (subject to Section 1.07) equal to the original principal amount of such Old Note and dated as of the same date as the date of such Old Note, shall be authenticated and delivered by the Trustee to the transferee in exchange for such Old Note.

(b) Any Note or Notes may be exchanged for a New Note or Notes of the same tenor as such Old Note or Notes if such Old Note or Notes are surrendered for cancellation at the Corporate Trust Office and are accompanied by the request of the holder thereof specifying the authorized denomination or denominations of the New Note or Notes to

be issued in exchange therefor. A New Note or Notes of the same tenor and dated as of the same date as such Old Note or Notes, executed by the Company and payable to such holder in the authorized denomination or denominations so requested and in aggregate original principal amount equal to the aggregate original principal amount of such Old Note or Notes, shall be authenticated and delivered by the Trustee to such holder in exchange for such Old Note or Notes.

(c) If any Note shall become mutilated or be destroyed, lost or stolen, upon request of the holder thereof a New Note of the same tenor and dated as of the same date as such Old Note or Notes, executed by the Company and payable to such holder in the same original principal amount as such Old Note, shall be authenticated and delivered by the Trustee to such holder in exchange for such Old Note if mutilated, or in substitution for such Old Note if destroyed, lost or stolen; provided that (i) in the case of a mutilated Old Note, such Old Note shall be surrendered for cancellation at the Corporate Trust Office, or (ii) in the case of a destroyed, lost or stolen Old Note, the holder thereof shall furnish to the Company and the Trustee such security and indemnity as may be reasonably required by them to save each of them harmless from any loss or liability in connection therewith (except that any holder which is a Purchaser or is

a nominee of, or a payee originally designated by, a Purchaser, shall be required only to furnish the agreement of such Purchaser to indemnify the Company and the Trustee for any loss or liability in connection therewith), and evidence to their satisfaction of the destruction, loss or theft of such Old Note and the ownership thereof.

(d) The Trustee shall not be required to authenticate and deliver any New Note or Notes (i) during the period commencing at the close of business on the 15th day of the calendar month next preceding the month in which occurs any Payment Date and ending at the start of business on the day next succeeding such Payment Date, or (ii) during the period commencing at the close of business on the 15th day prior to any date on which the Trustee plans to send notice of prepayment to the holders of Notes and ending at the start of business on the day next succeeding the date fixed for prepayment specified in such notice.

SECTION 1.07. (a) Before any New Note is issued in exchange, transfer or substitution for an Old Note or Notes pursuant to any Exchange Provision, the Trustee shall mark on such New Note (i) the date to which interest has been paid on such Old Note or Notes, (ii) the aggregate amount of all payments and prepayments of principal previously made on such Old Note or Notes which are allocable

to such New Note, such allocation to be made by the Trustee in proportion, as nearly as may be practicable, to the principal amount of each such New Note, and (iii) if the amount of any Instalment Payments on such Old Note or Notes has been reduced as provided in this Indenture, the reduced amount of the Instalment Payments to be made thereafter on such New Note. Interest shall be deemed to have been paid on such New Note to the date to which interest shall have been paid on such Old Note or Notes, and the aggregate amount of all payments and prepayments of principal marked on such New Note shall be deemed to have been made thereon.

(b) Upon the issuance of a New Note pursuant to Section 1.06(a), the Company may require the payment of a sum to reimburse it, or to provide it with funds, for the payment of any transfer tax or similar governmental charge paid or payable by the Company in connection with such exchange.

(c) Each New Note issued in exchange or in substitution for an Old Note or Notes pursuant to any Exchange Provision shall be a valid obligation of the Company evidencing the same debt as such Old Note or Notes or the portion thereof allocable to such New Note, and shall be entitled to the benefits and security of this Indenture to the same extent.

SECTION 1.08. The Trustee is hereby appointed the agent of the Company for the payment, registration, registration of transfer and exchange of Notes, and to receive all notices to or demands upon the Company with respect to the Notes or this Indenture. Notes may, subject to the provisions of Section 1.02(b), be presented for payment, and notices to or demands upon the Company with respect to the Notes or this Indenture may be given or made, at the Corporate Trust Office. The Trustee will notify the Company of its receipt of any such notices or demands within 5 days after receipt thereof, but the failure of the Trustee so to notify the Company will not relieve the Company of any of its obligations hereunder nor affect or impair any of the rights of or impose any liability upon the Trustees or the holders of the Notes.

SECTION 1.09. Prior to due presentment for registration of transfer of any Note, the Company and the Trustees may deem and treat the holder of such Note as the absolute owner thereof (whether or not such Note shall be overdue) for all purposes, and neither the Company nor the Trustees shall be affected by any notice to the contrary; and, subject to the provisions of Section 1.02(b), payment of or on account of the principal of, premium, if any, and interest on such Note shall be made only to or upon the order of

such holder. All such payments so made, including, without limitation, all payments made pursuant to Section 1.02(b), shall be valid and effective to satisfy and discharge the liability of the Company upon such Note to the extent of the sum or sums so paid, and the Trustee shall have no liability in respect of any such payment.

SECTION 1.10. This Indenture creates a continuing security interest and lien to secure equally and ratably the payment in full of the principal of, premium, if any, and interest on all Notes which may, from time to time, be outstanding hereunder.

SECTION 1.11. All Notes surrendered to the Trustee for payment in full or for exchange or for registration of transfer shall be promptly cancelled. Such Notes shall, thereafter, be delivered or disposed of as directed by an Executive Officer of the Company, and no Notes shall be issued in exchange or substitution therefor except as expressly permitted hereby.

SECTION 1.12. On the date of delivery of this Indenture the Company shall execute 9 3/4% Notes in an aggregate principal amount not in excess of \$8,000,000. If the Trustee shall have received such Notes in the form prescribed by this Indenture and executed by the Company, such Notes shall be authenticated and delivered by the

Trustee in accordance with the order of the Company signed by an Executive Officer thereof. Such order shall be the only authority required by the Trustee for the authentication and delivery of the Notes issued hereunder.

SECTION 1.13. The Notes are being issued pursuant to the Note Purchase Agreement under the express understanding, and the specific representation and warranty by each Purchaser, that such Purchaser is purchasing a Note or Notes for its own account and not with a view to distribution, subject nevertheless to any requirement of law that the disposition of its property shall at all times be within its control. Each Purchaser and every subsequent holder shall, by its acceptance of any Note, be deemed to have represented and warranted to the Company and to the Trustees that it will make no offer to sell or sale or other distribution of the Note or Notes issued to it, in whole or in part, in violation of the registration provisions of the Securities Act of 1933 as amended, or the Trust Indenture Act of 1939, as amended; and prior to any sale or other disposition of any Note, in whole or in part, by any such Purchaser or subsequent holder, it shall submit to the Company and to the Trustees an opinion of counsel, who shall be Special Counsel to the Purchasers or house counsel to such Purchaser or other counsel satisfactory to the Company and the Trustee, in the form and in substance satisfactory to the Company

and the Trustee, to the effect that such sale or other disposition may be made by such Purchaser or holder without violation of the Securities Act of 1933, as amended, or the Trust Indenture Act of 1939 as amended. The right of such Purchaser or holder to transfer any Note shall be subject to the foregoing, and no transfer of any Note will be made on the Register unless evidence of compliance with the foregoing shall have been delivered to the Company and the Trustees.

## ARTICLE II

### Particular Covenants of the Company

Anything in this Indenture or in the Notes to the contrary notwithstanding, the Company, expressly for the benefit of the original and future holders of the Notes, represents and warrants the truth and correctness of the information set forth in the Preliminary Statement, and covenants and agrees as follows:

SECTION 2.01. The Company has full power and lawful authority to Grant (or cause to be Granted) the Trust Estate to the Trustees, and warrants that the Trust Estate is free and clear of all liens, security interests, charges and

other encumbrances except Permitted Encumbrances. The Company will at all times protect or cause to be protected the title to the Trust Estate, and will forever warrant and defend the same and the rights of the Trustees therein and thereto against the claims and demands of all persons, and will maintain the Lien of this Indenture so long as any Note remains outstanding. The Company warrants that this Indenture will create a valid and enforceable first security interest in the Equipment.

SECTION 2.02. The Company will, at its expense and from time to time, execute and deliver any and all such instruments of further assurance and other instruments, and do any and all such acts, or cause the same to be done, as the Trustee shall deem necessary or advisable to better Grant to the Trustees the Trust Estate or to carry out more effectively the purposes of this Indenture.

SECTION 2.03. (a) The Company, forthwith upon the execution and delivery of this Indenture and thereafter from time to time, will promptly cause this Indenture, each instrument included in the Trust Estate and financing statements, continuation statements or other instruments with respect to any thereof or the property intended to be subject to any thereof or subject to the Lien of this Indenture, to

be filed, registered or recorded (and, when and if necessary, to be refiled, reregistered or re-recorded) in such manner and in such places as may be required by any present or future law in order to, as the case may be, create or protect the Lien hereof or thereof, if any, upon the property subject hereto or thereto or intended to be subject hereto or thereto in order to protect the validity hereof or thereof or to publish notice hereof or thereof or to entitle the holders of the Notes, directly or indirectly, to the benefits and security intended to be provided hereby or thereby, or to protect and maintain the estate, right, title, interest, claim and demand of the Trustees in, to and under the Trust Estate.

(b) To the extent that it lawfully may, the Company will pay, or cause to be paid, all taxes and fees incident to each filing, registration, recording, refiling, reregistration and re-recording required by this Indenture, the costs and expenses incurred in preparing and obtaining each report required by Section 2.03(c), all federal or state stamp taxes and other taxes, duties, imposts, assessments and charges and all other expenses arising out of or incident to the issuance of the Notes and the preparation, execution and delivery of the instruments referred to in Section 2.03(a).

(c) On or before the date nine months after the first filing of each financing statement and the first filing or recording of each other document required to be filed or recorded by paragraph 6(h) of the Note Purchase Agreement in each place in which such financing statement or other document is filed or recorded, and thereafter on or before each anniversary of such date, the Company will deliver or cause the Lessee to deliver to the Trustees and to the holders of the Notes the certificate required by paragraph 9 of the Note Purchase Agreement.

SECTION 2.04. (a) The Company will punctually pay, or cause to be paid, the principal, premium, if any, and interest to become due in respect of the Notes according to the provisions thereof and hereof, and will not claim any credit on or make any deduction from the payments thereon by reason of the payment of any taxes levied at any time or from time to time upon the Trust Estate or any portion thereof.

(b) Notwithstanding the provisions of Section 2.04(a), the Trustee may deduct from the payment of any interest on the Notes, and dispose of in accordance with applicable laws, the amount of any income or profits tax payable by the holders of the Notes upon such interest, only to the extent that such withholding is required to be made by the Company or the Trustee pursuant to any law or regulation of the United States of America, of any state or states or of any other governmental authority.

Section 2.05. (a) The Company will observe and perform all provisions to be observed or performed by it, and will cause to be observed and performed by each other person all provisions to be performed by it, contained in the Note Purchase Agreement, in each instrument included in the Trust Estate, and in each instrument delivered pursuant to any thereof, in accordance with the terms thereof and within the time permitted thereby, and will maintain, or cause to be maintained, the validity and effectiveness of each such instrument and the assignment thereof or of rights with respect thereto to the Trustees.

(b) The Company will not take any action nor permit any action to be taken by others, which would release any person from any of its covenants or obligations under any instrument included in the Trust Estate, or which would result in the amendment, hypothecation, subordination, termination or discharge, or impair the validity or effectiveness, of any such instrument, except as expressly provided herein or therein.

(c) The Company will give notice to the Trustees (i) of any default by any person under this Indenture or under any instrument included in the Trust Estate and (ii) of the pendency of any proceedings for the condemnation, confiscation, requisition or other taking of the possession, use or leasing of or title to the Equipment or any portion thereof promptly after the Company obtains knowledge of the same.

(d) So long as any Note remains outstanding:  
(i) the aggregate Basic Rent payable under the Lease on the

day next preceding each Payment Date shall be not less than the aggregate amount of the payments of interest and/or the Instalment Payments for such Payment Date; (ii) the aggregate amount of the payments of interest and the Instalment Payments payable on the Notes to and including the stated maturity thereof shall be sufficient to pay all interest due and payable on the Notes to the stated maturity thereof and to repay the entire original principal amount of each of the Notes by the stated maturity thereof; and (iii) the aggregate unpaid principal amount of the Notes on any Payment Date, together with the interest then accrued and unpaid thereon, shall not exceed the purchase price (less any premium included therein) payable pursuant to the Lease in the case of a purchase of the Equipment on the day next preceding such Payment Date, together with the Basic Rent payable under the Lease on the day next preceding such Payment Date.

(e) At all times the Equipment shall be leased to the Lessee under the Lease, provided that the Lease may be assigned by the Lessee on condition that the Lessee remains obligated thereunder to the same extent as though no assignment or transfer thereof had been made. It is expressly understood and agreed that the use and possession of the Equipment by Lessee as permitted under and subject to the Lease shall not constitute a violation of this Indenture.

SECTION 2.06. (a) The Company will do or cause to be done all things necessary to preserve and keep in full

effect its existence, rights (charter and statutory) and franchises as a corporation under the laws of the State of Delaware, and if the qualification of the Company as a foreign corporation to do business in any jurisdiction shall be necessary to protect the validity and enforceability against the Company of this Indenture, the Notes or any instrument included in the Trust Estate, or against any other person of any instrument included in the Trust Estate, then the Company will do or cause to be done all things necessary to obtain, preserve and keep in full effect such qualification.

(b) The Company will comply with, or cause to be complied with, all requirements of each instrument and all legal requirements, which are applicable to the Company, the property of the Company, the Trust Estate or any portion thereof.

SECTION 2.07. All right, title and interest of the Company in and to all improvements, substitutions and replacements of, and all additions and accessions to, the Trust Estate or any portion thereof, hereafter acquired by the Company, immediately upon such acquisition, and without any further grant, conveyance or assignment, shall become and be part of the Trust Estate and shall be subject to the Lien of this Indenture as fully and completely, and with the same effect, as though now owned by the Company.

SECTION 2.08. (a) The Company will pay and discharge, or cause to be paid and discharged, before they

become delinquent, all taxes (including income, franchise, general excise and receipts taxes), assessments, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees, and other governmental and similar charges, general or special, ordinary or extraordinary, foreseen or unforeseen, of every character, and any interest and penalties thereon, which may be levied upon or assessed against it or the Trust Estate or any portion thereof, any other property of the Company or any income therefrom, or the interest of the Trustees in any thereof, and will promptly discharge, or cause to be discharged, any liens, charges or other encumbrances, other than Permitted Encumbrances, which may heretofore have been or may hereafter be created on the Trust Estate or any portion thereof, such other property of the Company or any income therefrom, or the interest of the Trustees in any thereof.

(b) Nothing in this Indenture shall require the payment or discharge of, or permit the Trustee to pay or discharge, any tax, charge, levy, assessment or lien or any other imposition or encumbrance so long as the same shall be the subject of a contest permitted by the Lease. The Company warrants and agrees that it will prosecute, or cause to be prosecuted, each such contest diligently to a final conclusion, that it or the Lessee will pay or cause to be paid, and save the Trustees harmless against, any and all losses, judgments, decrees and costs (including all reasonable attorneys' fees and expenses) in connection therewith and that it will, promptly after the final determination of such contest, fully pay and

discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein, together with all penalties, fines, interest and costs resulting from such contest. The Company will, within 60 days after demand therefor by the Trustees, furnish proof of the payment of any thereof.

(c) The Company will pay the compensation to which the Trustees are entitled hereunder and all proper disbursements and expenses incurred by them hereunder, all taxes assessed against the Trustees as such, or against any funds on deposit with the Trustee which the Trustees might be required or permitted by law to deduct from such deposit or payment, and all statutory penalties and other payments which the Trustees may be required to pay or make hereunder or by virtue hereof.

SECTION 2:09. Without the prior consent of the holders of not less than 66-2/3% in unpaid principal amount of the Notes, the Company will not:

(a) directly or indirectly create, incur, assume or suffer to exist any Debt except (i) the Notes, and (ii) Subordinated Debt which may arise by operation of law;

(b) create, assume or suffer to exist any mortgage, pledge, lien, security interest, charge or other encumbrance in or upon the Trust Estate or any portion thereof or interest therein, or upon any income therefrom, or upon any other real or personal property of the Company, whether now

owned or hereafter acquired, except (i) Permitted Encumbrances and (ii) as otherwise permitted by this Indenture;

(c) make or permit to remain outstanding any loan or advance to, or guarantee or otherwise become contingently liable with respect to the obligations, stock or dividends of, or own or acquire any stock or other securities of, any other person, except that the Company may (i) make any advance required to be made pursuant to this Indenture, the Note Purchase Agreement or the Lease and permit the same to remain outstanding, and (ii) own or acquire any obligations, stock or other securities which constitute or are to constitute a portion of the Trust Estate;

(d) merge or consolidate with any other person;

(e) sell, lease, transfer or otherwise dispose of the Trust Estate or any portion thereof or interest therein, except that the Company may sell, transfer or otherwise dispose of any of the foregoing to the extent expressly permitted or required by this Indenture, the Lease or any Permitted Encumbrance;

(f) directly or indirectly engage in any business or enter into any transaction other than such business or transactions as are contemplated by the Note Purchase Agreement, this Indenture or any instrument included in the Trust Estate and such other business or transactions as are incidental thereto;

(g) declare or pay any dividends on, or make any payments in connection with the purchase, redemption or retirement of, or make any other distribution upon or in

respect of, the shares of the Company, or make any change in the authorized shares of the Company, or issue any additional shares of the Company, or directly or indirectly reclassify the shares of the Company or any portion thereof, except that the Company may from time to time declare and pay cash dividends on the shares of the Company out of the funds of the Company which are available for disposition by the Company (determined as provided in Section 4.05) provided that no Default or Event of Default hereunder shall have occurred and be continuing on the date of declaration or on the date of payment of such dividends; or

(h) make any payments or prepayments of or on account of principal, premium, if any, or interest on any Subordinated Debt, except that the Company may from time to time make such payments and prepayments out of the funds of the Company which are available for disposition by the Company (determined as provided in Section 4.06) if such payments and prepayments are made in compliance with the subordination provisions prescribed by this Indenture, which are included in the definition of the term "Subordinated Debt".

SECTION 2.10. (a) The Company will (i) keep adequate records and books of account in accordance with generally accepted accounting principles consistently applied, reflecting all financial transactions of the Company, and (ii) permit the Trustees personally or by their agents, accountants and attorneys, to visit or inspect any

of the properties, examine the records and books of account and discuss the affairs, finances and accounts, of the Company, with the officers of the Company, and its independent public accountants, if any, at such reasonable times as may be reasonably requested by the Trustees. The Trustees shall be under no duty to make any such visit, inspection or examination unless requested to do so by any holder which is the Purchaser or by the holders of not less than 25% in unpaid principal amount of the Notes and furnished with funds for the purpose.

(b) The Company will deliver to the Trustee, promptly after their original distribution, copies of all financial statements and reports, if any, as it shall send to its stockholders or file with any federal or state agency or other governmental authority or commission.

(c) At the request of any Purchaser, the Company will file with the Trustee, and will deliver to each holder of any of the Notes (i) within 90 days after the end of each fiscal year of the Company ending subsequent to the date of such request, or, in the case of fiscal years ended prior to such request, within 90 days after the date of such request, statements of income and retained earnings of the Company for such fiscal year and a balance sheet of the Company as at the end of such fiscal year, setting forth in each case (except for the first fiscal year of the Company) in comparative form figures for the preceding fiscal year, all in reasonable detail and scope and certified

by the principal financial officer of the Company, or, if any Purchaser shall have requested such certification, certified by independent public accountants of recognized national standing selected by the Company; (ii) promptly upon receipt thereof, copies of all detailed reports, if any, submitted to the Company by accountants in connection with each annual or interim audit of the books of the Company made by such accountants; and (iii) with reasonable promptness, such other data and information as any holder of any of the Notes or the Trustee may reasonably request. Together with each delivery of financial statements required by clause (i) above, the Company will deliver to the Trustee and each holder of any of the Notes a certificate signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer of the Company, stating, as to each signer thereof, that (1) a review of the activities of the Company during such year and to the date of such certificate and of performance under the Note Purchase Agreement and this Indenture has been made under his supervision, and (2) to the best of his knowledge, based on such review, the Company has fulfilled all its obligations under the Note Purchase Agreement and this Indenture throughout such year and to the date of such certificate, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him and the nature and status thereof.

SECTION 2.11. If the Company shall fail to perform or fail to cause to be performed any of the covenants contained in Sections 2.03, 2.05(a), 2.08, 2.12(b), 2.12(c) or 3.05, the Trustee may make advances to perform the same on its behalf (which advances shall be made by the Trustee if requested so to do by any holder which is one of the Purchasers or by the holders of not less than 25% in unpaid principal amount of the Notes and if furnished with funds for the purpose), and all sums so advanced shall be a lien upon the Trust Estate and shall be secured hereby prior to the Notes; and the Company will repay on demand all sums so advanced on its behalf with interest at the rate of 10% per annum from the date of the advance.

SECTION 2.12. (a) The Company will not issue or permit to be issued any Notes in any manner other than in accordance with the provisions of this Indenture and the covenants and agreements herein contained.

(b) The Company will, at its expense but subject to the direction and control of the Trustee, take such action, or upon the Trustee's request furnish the Trustee with funds sufficient to enable the Trustees to take such action at the Company's expense, as the Trustee may deem necessary or advisable for enforcing payment by any and all persons of any moneys payable under or pursuant to the Trust Estate or any instrument included therein.

(c) The Company will maintain or cause to be maintained upon the Equipment a policy or policies of insurance of the character, with the coverage, and in the amounts, naming such insureds and with loss payable under any policy as the Lease shall require to be maintained, whether or not the Lease shall have been terminated as permitted therein. Either said policy or policies of insurance or a certificate or certificates from such insurance company or companies or certificates of the Lessee evidencing compliance with the requirements of this Section 2.12(c) shall be delivered to the Trustee. The Company shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Section 2.12(c), unless the Trustees shall be included as named insureds with loss payable to them as their interests may appear.

SECTION 2.13 If no Event of Default hereunder shall have occurred and be continuing, the Company may sell or otherwise transfer its interest in the Equipment, subject to the Lease, the Lease Assignment and this Indenture, provided that the purchaser or transferee, by instrument in form and substance satisfactory to the Trustee, expressly assumes and agrees to be bound by the provisions of the Lease and the Lease Assignment and expressly undertakes and assumes

all of the obligations and undertakings of the Company contained in this Indenture, and appoints the Trustees as its agents and attorneys-in-fact with full power and authority to take all actions and do all things in its behalf which the Trustees are authorized by Section 2.14 to do as agents and attorneys-in-fact of the Company and to execute and deliver in its name and behalf any deed, instrument, document or other paper which, pursuant to this Indenture or any instrument contained in the Trust Estate, the Trustees are authorized to execute and deliver in the name and behalf of the Company or such purchaser or transferee; provided, however, that such purchaser or transferee shall not be required to undertake or assume any obligations herein contained which are imposed upon the Lessee pursuant to the Lease; and provided further, that any such purchaser or transferee which shall sell or otherwise transfer the interest in the Equipment theretofore acquired by it in such manner that such sale or transfer would, if it were a sale or transfer by the Company, be permitted by the provisions of this Section 2.13, shall be released from complying thereafter with said undertakings and assumptions so made by it and shall have no further obligation by reason thereof (except any obligations, actual or contingent, that may exist at the time of such sale or transfer by such purchaser or transferee). Performance by or on behalf of the Company of any such obligation or

undertaking so assumed by any purchaser or transferee shall constitute performance thereof for all purposes of this Indenture. Any purchaser or transferee of an interest pursuant to this Section 2.13 is hereinafter called a "2.13 Transferee." This Section 2.13 shall not apply to any purchase of the Equipment or any portion thereof pursuant to the Lease.

SECTION 2.14. Within three business days after the receipt by the Company of any notice from the Lessee of its intention to terminate the Lease as to the Equipment or any portion thereof pursuant to paragraph 12(b) or 15(c) of the Lease, or of the exercise by Lessee of any option to purchase the Equipment pursuant to paragraph 15(d) of the Lease, the Company will furnish a copy of such notice to the Trustee. The Company shall comply with all applicable provisions of the Lease, so that the purchase of the Equipment or such portion thereof by the Lessee shall be consummated as provided in the Lease. If the Company shall fail to comply with the applicable provisions of the Lease, or cause the same to be complied with, the Trustees shall be, and are hereby, irrevocably appointed the agents and attorneys-in-fact of the Company and of any and every future owner of any interest in the Equipment to comply with said provisions, including without limitation the execution and delivery,

in the name of and on behalf of the Company and such other owner or owners of any interest in the Equipment, of a bill of sale and such other instruments and authorizations, if any, as may be necessary to transfer to and vest in the Lessee the title to the Equipment or such portion thereof, as the case may be, free and clear of any liens, charges, security interests or encumbrances except such as may have been in existence at the time title to the Equipment or such portion thereof vested in the Company, but subject also to any other liens, charges, security interests and encumbrances not caused or created by any lessor under the Lease, and to all restrictions, regulations and ordinances that are applicable to the Equipment or such portion thereof on the date of transfer thereof to the Lessee and subject to any violations of any applicable laws and regulations that are in existence as of said date; but the provisions of this sentence shall not prevent any default in the observance or performance of any covenant or obligations contained in this Section 2.14 from constituting an Event of Default hereunder.

### ARTICLE III

#### Possession, Use and Release

SECTION 3.01. The Trustee shall receive and collect directly and without the intervention or assistance of any fiscal agent or other intermediary all moneys referred to in Article IV and all other moneys and property paid or payable to or received or receivable by the Trustees under or pursuant to the provisions of or otherwise in respect of any instrument or other property included in the Trust Estate or under or pursuant to the provisions of this Indenture; and the Trustees may demand and enforce payment thereof, and may take such other action as the Trustee shall deem necessary or advisable in connection therewith. All such moneys received by the Trustees shall be held by the Trustee as part of the Trust Estate and applied as provided in this Indenture.

SECTION 3.02. The Trustees shall not be obligated at any time to accept any property, other than property of the character referred to in the Granting Clauses and intended to become part of the Trust Estate, or to cause or permit the transfer thereof to be made to the Trustees if the Trustee shall determine in good faith that such action would subject

the Trustees to the risk of any personal liability or expense. The Trustees shall not be under any duty to examine or pass upon the validity or genuineness of, or the title to, any instrument or other property at any time included in the Trust Estate, and the Trustees shall be entitled to assume that any such instrument or other property is valid and genuine and is owned by the putative owner thereof and that the conveyance, assignment or other transfer thereof to the Trustees is legal, valid and binding and enforceable in accordance with its terms. The Trustees shall hold, deal with, apply and release the Trust Estate or any portion thereof or interest therein in accordance with the provisions of this Indenture.

SECTION 3.03. If, while this Indenture is in effect, the title, interest or Lien created hereby on the Trust Estate or any portion thereof shall be endangered or shall be attacked directly or indirectly, the Company hereby authorizes the Trustees to take all necessary and proper steps for the defense of said title, interest or Lien, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims; provided, however, that the Trustees shall take no action under this sentence unless the Company shall have failed to take the requisite action within 10 days after demand therefor by the Trustee to the Company unless the lapse of time involved in making such demand would be

prejudicial to the Trustees. In case default shall be made in payment of any Basic Rent or Additional Rent under the Lease or of any other moneys due under or pursuant to the provisions of or otherwise in respect of, or in the due performance of any provision of, any instrument included in the Trust Estate, then and in every such case (without prejudice to any right to claim a Default or Event of Default under this Indenture or to assert any right consequent thereon), the Trustees may, and upon the request of the holders of not less than 66-2/3% in unpaid principal amount of the Notes shall, cause proper proceedings to be instituted and prosecuted in a court of competent jurisdiction, or take any other action, to enforce such payment, collect the amounts due and/or enforce the performance of such provisions, subject, however, to the provisions of Sections 6.02 and 6.08 and to the proviso to the first sentence of Section 6.13.

SECTION 3.04. The Trustees shall, upon the request of all of the holders of the Notes, give their consent to, or take, any action or change under, in or in respect of the Trust Estate, any instrument or other property included in the Trust Estate or any property subject or intended to be subject to any instrument included in the Trust Estate; provided, that the Trustees may decline to follow any such request if (i) the Trustee shall be advised by counsel that such consent or such action or change

may not lawfully be made or taken, or (ii) the Trustee shall determine in good faith that such consent or such action or change would subject the Trustees to the risk of any personal liability or expense, unless any of the holders of the Notes can and do indemnify and hold the Trustees harmless from and against such liability or expense.

SECTION 3.05. On demand of the Trustee, the Company forthwith will pay or satisfactorily provide for all expenditures incurred by the Trustees under this Article III.

SECTION 3.06. The Trustees shall, before taking any action under this Article III, be entitled to receive from the Company at least 10 days' prior notice of the action to be taken and of the form of the instruments involved, and an opinion of counsel, in form and substance satisfactory to the Trustee, stating the legal effect of such action, the steps necessary to be taken to consummate the same and that such action will not materially and adversely impair the security for the Notes or the rights of the holders of the Notes in contravention of the provisions hereof, and such opinion shall be full protection to the Trustees for any action taken or omitted to be taken by the Trustees in reliance thereon. In the case of any instrument or instruments supplemental to any or all instruments included in the Trust Estate and in the case of any releases and related instruments, the

Trustees shall be entitled to receive and rely on an opinion of counsel, in form and substance satisfactory to the Trustee, as conclusive evidence that such supplemental instrument or instruments or releases and related instruments may be entered into or consented to by the parties thereto (and by any person whose consent thereto or execution thereof is required) pursuant to and in compliance with the requirements of this Indenture.

SECTION 3.07. If no Event of Default hereunder has occurred and is continuing, the Trustees may execute any releases not inconsistent with the provisions of this Indenture, and shall execute any releases and related instruments required by the provisions of this Indenture or any instrument included in the Trust Estate, including, without limitation, any release or reconveyance of the Equipment or a portion thereof if the release or reconveyance thereof is required or permitted by the provisions of the Lease. In no event shall any purchaser in good faith of any portion of the Trust Estate, purported to be released or reconveyed by the Trustees as provided in this Article III, be bound to ascertain the authority of the Trustees to execute the release, or to inquire as to the satisfaction of any conditions precedent to the exercise of such authority, or to see to the application of the purchase price therefor. Any portion of the Trust Estate may be so released or reconveyed by the Trustees without affecting the Lien hereof against the remainder.

The taking of additional security or the extension or renewal of any Note shall at no time release or impair the Lien and rights Granted hereby, or affect the liability of any endorser or surety, or improve the right of any junior lienholder or any person acquiring an interest in the Trust Estate; and this Indenture, as well as any instrument given to secure any renewal or extension of any Note, shall be and remain a first and prior lien on all of the Trust Estate not expressly released, until the Notes are paid in full.

SECTION 3.08. Without the consent of any of the holders of the Notes, the parties thereto (and any other person whose consent thereto or execution thereof is required), from time to time and at any time may enter into or consent to an instrument or instruments supplemental to any or all instruments included in the Trust Estate, which instrument or instruments shall form a part of the instrument or instruments supplemented thereby, when required by any of the provisions of this Indenture, the Lease or the Lease Assignment or contemplated by the Note Purchase Agreement or for any one or more or all of the following purposes:

(a) to increase the amounts payable by the Lessee under the instrument or instruments to be supplemented or to make any other additions to, deletions from or alterations of the provisions of such instrument at the joint request of the Lessee and the Company, provided

that, in the opinion of Special Counsel, such increases, additions, deletions or alterations are permitted under the provisions of this Indenture and will not materially and adversely affect any right or remedy of direct or indirect benefit to the holders of the Notes;

(b) to correct or amplify the description of any property described in or subject to the instrument or instruments to be supplemented or intended so to be; or to add or release property as permitted or required by the provisions of the instrument or instruments to be supplemented;

(c) to add to the agreements of the Lessee or the Company in the instrument or instruments to be supplemented other agreements thereafter to be observed or performed by or on behalf of the Lessee or the Company, or to surrender any right or remedy therein reserved to or conferred upon the Lessee or the Company provided that no such surrender is contrary to or inconsistent with the covenants and agreements of the Company contained in the instrument or instruments to be supplemented; and

(d) to cure any ambiguity, or to cure, correct or supplement any defective or inconsistent provision contained in the instrument or instruments to be supplemented.

The Trustees shall enter into any supplemental instrument which has been entered into or consented to by the other parties

thereto (and by any other person whose consent thereto or execution thereof is required) pursuant to and in compliance with the requirements of this Section 3.08 unless such supplemental instrument affects the Trustees' own rights, duties or immunities under this Indenture or otherwise, in which case the Trustees may in their discretion, but shall not be obligated to, enter into such supplemental instrument.

SECTION 3.09. A copy of each financial statement or report from time to time delivered to the Trustee pursuant to paragraph 32 of the Lease, and a copy of each notice received by the Trustee pursuant to the Lease Assignment, shall promptly after the Trustee's receipt thereof be sent by the Trustee to each of the holders of the Notes.

#### ARTICLE IV

##### Application of Moneys

SECTION 4.01. (a) If no Event of Default hereunder has occurred and is continuing, moneys received by the Trustee as Basic-Rent due and payable pursuant to the Lease on the day next preceding a particular Payment Date (and as interest on any overdue instalment thereof), shall be applied first to the payment in full of the interest or the Instalment Payments due and payable on such Payment Date on the Notes (and to payment of interest on any overdue amount thereof), and then, if no

Default or Event of Default hereunder has occurred and is continuing, any balance shall be remitted to or upon the order of the Company.

(b) Any moneys received by the Trustee as or in respect of Additional Rent due and payable pursuant to the Lease shall be applied by the Trustee to the purpose or purposes for which such moneys were paid; and then, if no Default or Event of Default hereunder has occurred and is continuing, any balance shall be remitted to or upon the order of the Lessee.

(c) Any moneys received by the Trustee which, according to the provisions of the Lease, are to be paid over to the Lessee, shall be so paid over upon compliance with the applicable provisions of the Lease, provided that no Default or Event of Default under the Lease shall have occurred and be continuing.

SECTION 4.02. If no Event of Default hereunder has occurred and is continuing, any moneys received by the Trustee to discharge encumbrances pursuant to paragraph 8 of the Lease shall be applied by the Trustee first to the purpose or purposes for which such moneys were paid, and then, if no Default or Event of Default hereunder has occurred and is continuing, any balance shall be remitted by the Trustee to or upon the order of the Lessee.

SECTION 4.03. If No Event of Default hereunder has occurred and is continuing, any moneys received by the Trustee from the Lessee in connection with its purchase of all or any portion of the Equipment as required by paragraph 12(b) or

15(c) of the Lease shall be applied by the Trustee to the prepayment of the Notes in whole unless such moneys are received in connection with the termination of the Lease as to less than all of the Equipment as then constituted, in which case such moneys shall be applied by the Trustee to the partial prepayment of the Notes, in each case on the Payment Date immediately following the date on which the Lease is to terminate as to the Equipment or portion thereof so purchased and at a price equal to 100% of the principal amount thereof so to be prepaid.

SECTION 4.04. If no Event of Default hereunder has occurred and is continuing, any moneys received by the Trustee from the Lessee in connection with its purchase of all of the Equipment as permitted by paragraph 15(d) of the Lease shall be applied by the Trustee to the prepayment of the Notes in whole, on the date on which the Lessee is scheduled to purchase the Equipment and at a price equal to 100% of the unpaid principal amount thereof, together with the Applicable Premium.

SECTION 4.05. If no Default or Event of Default hereunder has occurred and is continuing, any moneys received by the Trustee under or pursuant to the provisions of or otherwise in respect of any instrument or other property included in the Trust Estate or under or pursuant to the provisions of this Indenture and which are not expressly required by any other provision of this Indenture to be applied to any purpose or purposes, shall be held by the

Trustee in the Trust Estate, and the Trustee shall apply such moneys to the purpose or purposes for which such moneys were paid.

SECTION 4.06. All funds of the Company shall be deemed to be available for disposition by the Company unless such funds (i) constitute a portion of the Trust Estate, or have been Granted or otherwise assigned to the Trustees and are expressly required by any provision of this Indenture to be applied to any other purpose or purposes, or (ii) are necessary to permit the Company to meet its obligations referred to in Sections 2.04 and 2.08. Funds of the Company otherwise deemed to be available for disposition by the Company shall not be deemed to be necessary to permit the Company to meet any obligations if funds sufficient to meet such obligations, when and as the same become due and payable, have been Granted or otherwise assigned to the Trustees for the purpose of meeting such obligations, or, in the case of obligations referred to in Section 2.08, if after disposition of such funds the Company would retain funds equal to the sum of (a) such obligations as are then due and payable, and (b) such obligations as the Company estimates will become due and payable during the next succeeding 12 months.

## ARTICLE V

### Prepayment of Notes

SECTION 5.01. No prepayment of any Notes may be made except to the extent and in the manner expressly

permitted or required by this Indenture. Every prepayment of Notes made pursuant to Article IV and every optional prepayment of the Notes permitted by Section 5.02, shall be made in accordance with the provisions of this Article V. Any prepayment of Notes shall be in addition to any interest or Instalment Payments on such Notes therein specified to be due and payable on the date fixed for such prepayment.

SECTION 5.02. In addition to the prepayments of Notes required or permitted to be made pursuant to Article IV, at the option of the Company the Notes may be prepaid in whole or in part on any date after August 1, 1985 at a price equal to 100% of the then unpaid principal amount thereof, together with the Applicable Premium and all interest then accrued and unpaid thereon. If the Company elects to prepay the Notes pursuant to this Section 5.02, the Company shall give notice of such election to the Trustee not less than 30 days prior to the date on which such prepayment is to be made, specifying the date fixed for prepayment. At least 5 days prior to the date fixed for prepayment of the Notes pursuant to this Section 5.02, the moneys required therefor shall be deposited with the Trustee by or on behalf of the Company, and such moneys shall be applied by the Trustee to

the prepayment of the Notes pursuant to this Section 5.02. If the Company shall have given notice of its election to prepay the Notes pursuant to this Section 5.02, the Company may rescind such election only by giving notice of such rescission to the Trustee before the Trustee has sent notice of such prepayment to the holders of the Notes.

SECTION 5.03. In case of any prepayment of Notes, notice thereof shall be sent by the Trustee to the holders of the Notes to be prepaid at least 20 days prior to the date fixed for prepayment. Any notice so sent shall be conclusively presumed to have been given whether or not such notice is actually received. Each such notice shall specify the date fixed for prepayment, designate the respective principal amounts so to be prepaid on the respective Notes to be prepaid and specify the Applicable Premium thereon, if any, and specify the amounts of the accrued interest to be paid on the respective Notes to be prepaid. Except as herein otherwise expressly provided, in the event of any partial prepayment of Notes, the aggregate principal amount so to be prepaid shall be prorated by the Trustee among the Notes to be prepaid in proportion to the aggregate unpaid principal amount of Notes to be prepaid registered in the name of each holder of any

such Notes, as nearly as may be practicable, and the Trustee shall designate Notes or portions thereof registered in the name of each such holder and so to be prepaid. Interest on any Note, or portion thereof, designated for prepayment shall cease upon the date fixed for prepayment unless default shall be made in the payment to the Trustee of the amount payable upon the prepayment thereof.

SECTION 5.04. (a) Upon any partial prepayment of the principal of any Note, each Instalment Payment payable on such Note on each Payment Date occurring after the date of such prepayment shall be reduced by a fraction of such Instalment Payment, the numerator of which fraction shall be the amount of such prepayment of the principal of such Note and the denominator of which fraction shall be the unpaid principal of such Note immediately prior to such prepayment.

(b) On or prior to each date of a partial prepayment of any Notes, the Trustee shall prepare or procure, at the Company's expense, three copies of a separate amortization schedule with respect to each such Note, setting forth the amount of the interest portion and the principal portion of each Instalment Payment thereafter to be made on such Note and the amount of the principal of such Note which will remain unpaid after each such Instalment Payment is made. The Trustee shall retain one of such copies, deliver another to the holder of such Note and deliver the remaining one to the Company.

## ARTICLE VI

### Events of Default and Remedies

SECTION 6.01. Any of the following occurrences or acts shall constitute an Event of Default under this Indenture (whether any such act or occurrence shall be voluntary or involuntary or come about or be effective by operation of law or pursuant to compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) if default shall be made in the payment of (i) any interest on any Note or any Instalment Payment on any Note, when and as the same shall become due and payable, and such default shall have continued for a period of 3 days, or (ii) any other payment of the principal of (or premium, if any, on) any Note, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any prepayment or otherwise, in each case as in such Note and this Indenture provided; or

(b) if any representation or warranty of the Company set forth in this Indenture, the Lease Assignment or the Note Purchase Agreement, or any representation or warranty of any party set forth in any certificate or other instrument delivered pursuant to this Indenture, the Note Purchase Agreement or any instrument included in the Trust Estate, shall prove to be incorrect in any material re-

spect as of the time when the same shall have been made;  
or

(c) if default shall be made by the Company in the due observance or performance of any provision of Section 2.03, 2.05, 2.06, 2.08, 2.09, 2.12(a), 2.13 or 2.14;  
or

(d) if default shall be made in the due observance or performance of any other provision of the Notes or this Indenture to be observed or performed by the Company, and such default shall have continued for a period of 30 days after notice specifying such default and demanding that the same be cured shall have been given to the Company by the Trustee as provided in Section 10.05; or

(e) if an Event of Default (as defined therein) under the Lease shall occur whether or not the lessor shall have declared the Lease to be in default; or

(f) if any instrument included in the Trust Estate shall be cancelled, terminated or discharged, or in any way amended or modified, or shall be hypothecated, except as expressly provided for herein and therein; or

(g) if by order of a court or agency of competent jurisdiction, a receiver, trustee or liquidator (or other similar official) of the Company or of the Trust Estate or any portion thereof or of a 2.13 Transferee shall be appointed in any proceeding by any federal or state officer or agency, and such order shall not be vacated or set

aside or stayed within 60 days after the entry thereof, or if the Company shall consent to such appointment; or

(h) if the Company or a 2.13 Transferee shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Act or any similar federal or state law, now or hereafter in effect, or shall be adjudicated a bankrupt or become insolvent, or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay debts generally as they become due, or shall be dissolved or shall suspend payment of its obligations or shall take any corporate action in furtherance of any of the foregoing; or if a petition or an answer shall be filed proposing the adjudication of the Company or of a 2.13 Transferee as a bankrupt or its reorganization under the Bankruptcy Act or any similar federal or state law, now or hereafter in effect, and (1) the Company or such 2.13 Transferee shall consent to the filing thereof, or (2) such petition or answer shall be approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within 60 days after the entry thereof; or

(i) if final judgment for the payment of money or specific performance shall be rendered against the Company or a 2.13 Transferee and the Company or such 2.13 Transferee shall not discharge the same or provide for its discharge

in accordance with its terms or procure a stay of execution thereof within 60 days from the entry thereof, and shall not within said period, or such longer period during which execution on such judgment shall have been stayed, appeal therefrom or from the order, decree or process upon or pursuant to which said judgment shall have been granted, passed or entered and cause the execution thereof to be stayed during such appeal, and if on appeal such order, decree or process shall be affirmed and the Company or such 2.13 Transferee shall not discharge such judgment or provide for its discharge in accordance with its terms within 60 days after the entry of the order or decree of affirmance; or

(j) if the Company or a 2.13 Transferee shall default in the payment of principal, premium or interest on any Subordinated Debt or any other Debt upon which the Company or such 2.13 Transferee may be or become liable beyond any period of grace provided with respect thereto, or shall fail to comply with any provision thereof or of any instrument under which or pursuant to which the same may be issued, if the effect of such failure is to cause, or permit the holder or holders thereof (or a trustee or agent, on behalf of such holder or holders) to cause any such Debt to become due prior to its stated maturity; or

(k) if the Lease shall be terminated before the expiration of the term thereof for any reason other than the purchase by the Lessee of all of the Equipment in accordance with the provisions of the Lease, or if the Lease or the Lease Assignment shall be in any way amended, modified, terminated or hypothecated otherwise than as expressly provided therein or herein unless the Trustees shall have given their prior written consent to such amendment, modification, termination or hypothecation; or

(l) if the Trustee shall not actually receive directly from the Lessee any amount payable to the lessor under the Lease, or any sum of money in respect thereof payable pursuant to the Lease Assignment, regardless of the reason for such non-receipt.

SECTION 6.02. (a) If an Event of Default hereunder shall have occurred and be continuing, the Trustees may, and upon the request of the holders of not less than 40% in unpaid principal amount of the Notes shall, by notice to the Company, declare (i) the entire unpaid principal of the Notes (if not then due and payable), (ii) all interest accrued and unpaid thereon, and (iii) all other sums required to be paid by the Company pursuant to this Indenture, to be forthwith due and payable, and upon any such declaration the

amounts referred to in clauses (i) through (iii) of this Section 6.02(a) shall become and be forthwith due and payable, subject, however, to the provisions of Section 6.08.

(b) If an Event of Default hereunder shall have occurred and be continuing (and subject always to then existing rights, if any, of Lessee under the Lease), the Trustees, with or without entry, personally or by their agents, may, and upon the request of the holders of a majority in unpaid principal amount of the Notes shall (subject to the proviso contained in the first sentence of Section 6.13), do one or more of the following:

(i) sell, to the extent not prohibited by law, all and singular the Trust Estate and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more public or private sales, as an entirety or otherwise, and at such time and place and upon such terms as the Trustee may fix and specify in the notice of sale to be given to the Company, or as may be required by law; or

(ii) institute proceedings for the complete or partial foreclosure of this Indenture under the provisions of the laws of the jurisdiction or jurisdictions in which the Trust Estate or any portion thereof is located, or any other applicable provision of law; or

(iii) take any action which is appropriate to enforce the rights and remedies of the holders of the Notes and the Trustees under any instrument included in the Trust Estate, to the extent not prohibited thereby or by law; or

(iv) take all steps to protect and enforce the rights and remedies of the holders of the Notes and the Trustees whether by proceedings (for the specific performance of any provision of the Notes or this Indenture, or in aid of the exercise of any right or remedy herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy) or otherwise as the Trustee, being advised by counsel, shall deem most effective to protect and enforce the same.

(c) If an Event of Default hereunder shall have occurred and be continuing (and subject always to the then existing rights, if any, of Lessee under the Lease), the Trustees personally, or by their agents or attorneys, may, and upon the request of the holders of a majority in unpaid principal amount of the Notes shall (subject to compliance with any applicable mandatory legal requirements), seize and take immediate possession of the Equipment, or any portion thereof, and may exclude the Company and its respective attorneys and agents therefrom; and for that purpose and at the expense of the Trust Estate, the Trustees may pursue the same wherever it may be found, and may enter any of the premises of the Company or of Lessee,

with or without notice, demand, process of law or legal procedure, and search for, take possession of, remove, keep and store the same; and in every such case the Trustees shall have the right to use, operate, lease, maintain, restore, insure and reinsure the same as may seem to the Trustees to be advisable, and may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions and improvements thereto and thereon as to the Trustees may seem advisable, and may exercise all rights and powers of the Company with respect thereto either in the name of the Company or otherwise as the Trustees shall deem best; and the Trustees shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of or from the Equipment, and after deducting the expenses of any action taken by the Trustees pursuant to this Section 6.02(c), including without limitation taxes, assessments, insurance and prior or other proper charges upon the Equipment or any portion thereof, as well as reasonable compensation for the services of the Trustees and for all attorneys, agents and other persons by them properly engaged and employed, the Trustee shall apply the moneys arising as aforesaid as follows:

(1) in case an Event of Default hereunder of the character described in Section 6.01(a) shall not have occurred, first, to the payment of interest and/or the Instalment

Payments and any other payments of the principal of the Notes and interest thereon, when and as the same shall become payable and, second, to the payment of any other sums required to be paid by the Company under this Indenture; or

(2) in case an Event of Default hereunder of the character described in Section 6.01(a) shall have occurred, whether at maturity, on acceleration, or otherwise, in the order of priorities and amounts set forth in Section 6.03(e).

SECTION 6.03. (a) Any sale of the Trust Estate or any portion thereof shall be hereinafter referred to as a sale made under or by virtue of this Article VI, whether made under the power of sale granted herein or under or by virtue of proceedings or of a judgment or decree of foreclosure and sale. The Trustees may conduct any number of sales under or by virtue of this Article VI from time to time. The power of sale hereunder shall not be exhausted by any one or more such sales as to any portion of the Trust Estate remaining unsold, but shall continue unimpaired until all of the Trust Estate shall have been sold or the Notes and all indebtedness of the Company hereunder shall have been paid in full. To the extent not prohibited by law, the Trustees may postpone any sale by public announcement at the time and place of such sale, and from time to time thereafter may further postpone such sale by public announcement made at

the time and place of sale fixed by the preceding postponement.

(b) Upon the completion of any sale or sales made by the Trustees under or by virtue of this Article VI, the Trustees shall execute and deliver to the accepted purchaser or purchasers an appropriate instrument or instruments which shall effectively transfer all of the Trustees' estate, right, title, interest, claim and demand in and to the Trust Estate or any portion thereof so sold. The Trustees are hereby irrevocably appointed the attorneys-in-fact of the Company in its name and stead or in the name of the Trustees, to make all appropriate transfers and deliveries of the Trust Estate or any portion thereof so sold and, for that purpose, the Trustees may execute all appropriate instruments of transfer, and may substitute one or more persons with like power, the Company hereby ratifying and confirming all that said attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Company, if so requested by the Trustees, shall ratify and confirm, or cause to be ratified or confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered to the Trustees or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Trustees, for the purpose, and as may be designated in such request. Any sale or sales made under or by virtue of this Article VI, to the extent not prohibited by law, shall operate to divest all the

estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Company in, to and under the Trust Estate or any portion thereof so sold, and shall be a perpetual bar both at law and in equity against the Company, its successors and assigns, and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Company, or the successors or assigns of any such persons (subject, however, to the then existing rights, if any, of Lessee under the Lease).

(c) The receipt of the Trustee for the purchase money paid as a result of any such sale shall be a sufficient discharge therefor to any purchaser of the Trust Estate or any portion thereof sold as aforesaid; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Indenture, or shall be answerable in any manner whatsoever for any loss, misapplication or non-application of any such purchase money or any part thereof, nor shall any such purchaser be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(d) In the event of any sale made under or by virtue of this Article VI the entire unpaid principal of the Notes (if not then due and payable), all interest accrued and unpaid

thereon and all other sums required to be paid by the Company pursuant to this Indenture, shall, anything in the Notes or in this Indenture contained to the contrary notwithstanding, become forthwith due and payable.

(e) The purchase money, proceeds or avails of any sale made under or by virtue of this Article VI together with any other sums which then may be held by the Trustee under this Indenture as part of the Trust Estate or the proceeds thereof, whether under the provisions of this Article VI or otherwise shall be applied by the Trustee as follows:

First: To the payment of the costs and expenses of any such sale and of any proceeding wherein the same may be made, all compensation of the Trustees provided for herein and of all expenses, liabilities and advances made or incurred by the Trustees under this Indenture (including, without limitation, the reasonable compensation and expenses and disbursements of their counsel and of such agents, representatives and experts not regularly in the employ of the Trustee as it shall employ in connection with the exercise and performance of its powers and duties hereunder), together with, unless prohibited by applicable law, interest at the rate of 10% per annum (or at the highest rate permitted by applicable law, whichever is less) on all advances made by the Trustees, and all taxes or assessments, except any

taxes, assessments or other charges subject to which the Trust Estate or any portion thereof shall have been sold. The Trustees hereby expressly waive their rights to the amount, if any, fixed by law as compensation for any such sale.

Second: To the payment of the whole amount then due and unpaid upon the Notes for principal, premium, if any, and interest and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the Notes, then ratably (after giving effect to any concurrent payment or distribution on account of any thereof) according to the aggregate of such unpaid principal, premium, if any, and interest, without preference, priority or distinction as between any Notes or as between principal, premium, if any, or interest; such payment to be made upon presentation of the several Notes, and the notation thereon of the payment, if partially paid, or the surrender and cancellation thereof, if fully paid.

Third: To the payment of any other sums required to be paid by the Company pursuant to any provision of this Indenture or of the Notes.

Fourth: To the payment of the surplus, if any, to the Company or such other person or persons entitled thereto.

(f) Upon any sale made under or by virtue of this

Article VI, to the extent permitted by applicable law, the Trustees or an independent agent, on behalf of the holders of Notes, may bid for and acquire the Trust Estate or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Company secured by this Indenture the net proceeds of sale, after deducting therefrom the expenses of the sale and the costs of the proceedings and any other sums which the Trustees are authorized to deduct under this Indenture. The person making such sale shall accept such settlement without requiring the production of any of the Notes and without such production there shall be deemed credited thereon the pro rata share of the net proceeds of sale ascertained and established as aforesaid. The Trustees or such independent agent, upon so acquiring the Trust Estate or any portion thereof, shall be entitled to hold, lease, rent, operate, manage, sell or otherwise deal in and with or dispose of the same in any manner not prohibited by applicable law. To the extent that applicable law shall require a different procedure than that provided for in this Section 6.03(f), the Trustees or such independent agent shall proceed in a manner not prohibited by applicable law.

(g) Upon any sale under or by virtue of this Article VI, any purchaser at such sale which is the holder of any of the Notes shall be entitled to use and apply any of such Notes, and the amount of interest accrued thereon, for or in settlement or payment of the purchase price, or any part thereof, of the property

purchased, by presenting such Notes in order that there may be credited thereon the sums payable out of the net proceeds of such sale to the holder of such Notes as his ratable share of such net proceeds, after the deduction of all costs, expenses, compensation and other charges to be paid therefrom as herein provided; and thereupon such purchaser shall be credited on account of such price payable by him with the portion of such net proceeds that shall be applicable to the payment of, and that shall have been credited upon, the Notes so presented on account of principal and interest and other sums payable thereon; and if the portion so payable in respect of the principal of such Notes and interest and other sums payable thereon shall be less than the amount for which the Company may be liable thereon, then the receipt, endorsed thereon under the direction of any person authorized to receive payment of the purchase price, for the amount to be so allowed or credited thereon, shall constitute such partial payment and settlement and shall be conclusive proof of the amount thereof. At any such sale any holder of Notes may bid for and purchase the property sold and may make payment therefor as aforesaid, and upon compliance with the terms of sale may hold, retain and dispose of such property without further accountability.

SECTION 6.04. (a) In case an Event of Default hereunder of the character described in Section 6.01(a) hereof shall have occurred and be continuing, then, upon demand of the Trustee, the Company will pay to the Trustee for the benefit of the holders of the Notes the whole amount which then shall have become due and payable on all the Notes for principal, premium, if any, and interest, and the sums required to be paid by the Company pursuant to any provision of this Indenture, and in addition thereto such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustees, their agents and counsel, and any expenses and liabilities incurred by the Trustees hereunder. In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustees shall be entitled and empowered to institute such proceedings as may be advised by counsel for the collection of the sums so due and unpaid, to prosecute such proceedings to judgment or final decree, and to enforce any such judgment or final decree against the Company and collect moneys adjudged or decreed to be payable out of the property of the Company wherever situated, as well as out of the Trust Estate in any manner not prohibited by law.

(b) The Trustees shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of

this Indenture; and the right of the Trustees to recover such judgment shall not be affected by any entry, seizure or sale hereunder, or by the exercise of any other right or remedy for the enforcement of the provisions of this Indenture, or by the foreclosure of the Lien hereof; and in case of any sale of the Trust Estate or any portion thereof, and of the application of the proceeds of sale, as in this Indenture provided, to the payment of the indebtedness hereby secured, the Trustees shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the Notes then outstanding for the equal and ratable benefit of the holders thereof, and upon all other payments, charges and costs due under this Indenture, and shall be entitled to recover judgment for any portion of the indebtedness remaining unpaid, with interest. In case of proceedings against the Company in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, then and in such case the Trustees shall be entitled to prove the whole amount of principal, premium and interest due upon the Notes to the full amount thereof, and all other indebtedness due under this Indenture, without deducting therefrom any proceeds obtained from the sale of the Trust Estate or any portion thereof; provided, however, that in no case

shall the Trustees receive from the aggregate amount of the proceeds of the sale of the Trust Estate or any portion thereof and the distribution from the estate of the Company a greater amount than such principal, premium and interest and such other indebtedness.

(c) No recovery of any judgment by the Trustees, and no levy of an execution under any judgment upon the Trust Estate or any portion thereof or upon any other property of the Company, shall affect, in any manner or to any extent, the Lien of this Indenture upon the Trust Estate or any portion thereof, or any rights or remedies of the Trustees hereunder, or any rights or remedies of the holders of the Notes, but such Lien and such rights and remedies shall continue unimpaired as before.

(d) Any moneys thus collected by the Trustees under this Section 6.04 shall be applied by the Trustee in accordance with the provisions of Section 5.03(e).

SECTION 6.05. If an Event of Default hereunder shall have occurred and be continuing, then immediately upon the commencement of any proceeding by the Trustees to obtain judgment for the principal of, premium, if any, or interest on the Notes and other sums required to be paid by the Company pursuant to any provision of this Indenture, or of any other nature in aid of the enforcement of the Notes or of this Indenture, the Company will,

to the extent that it lawfully may, (a) waive the issuance and service of process and enter its voluntary appearance in such proceeding, (b) consent to the entry of a judgment for the principal, premium, if any, and interest and other sums, and for the lawful costs, expenses and compensation of the Trustees and of their agents or attorneys, and for such other relief as the Trustees may be entitled to hereunder, and (c) if required by the Trustees, consent to the appointment of a receiver or receivers of the Trust Estate and the earnings, revenues, rents, issues, profits and income thereof. If an Event of Default hereunder shall have occurred and be continuing, or upon the filing of a bill in equity to foreclose this Indenture or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other proceeding to enforce any right or remedy of the Trustees or of the holders of the Notes, the Trustees shall be entitled, as a matter of right, if the Trustees shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of the security of the Trust Estate, forthwith, either before or after declaring the entire unpaid principal of the Notes, premium, if any, and the interest accrued and unpaid thereon to be due and payable, to the appointment of such a receiver or receivers. Any receiver or receivers so appointed shall have such powers as the court

SECTION 6.08. The Trustees, upon the request of the holders of not less than 66-2/3% in unpaid principal amount of the Notes, shall waive any Default or Event of Default hereunder and its consequences (including, without limitation, any acceleration declared pursuant to Section 6.02 (a), which declaration and acceleration shall, by virtue of such waiver, be deemed rescinded and annulled), unless such waiver would be prohibited by this Section 6.08. Without the consent of the holders of 100% in unpaid principal amount of the Notes, no waiver shall be made pursuant to this Section 6.08: (a) unless and until the Company shall have wholly cured each Default and Event of Default hereunder other than the Default or Event of Default so to be waived and shall have made provision satisfactory to the Trustees for the payment of all payments and prepayments of the principal of, premium, if any, and interest on the Notes and all other amounts which would then be due hereunder or upon the Notes if the Default or Event of Default so to be waived had not occurred, together with provision for the payment of all expenses of the Trustees in connection with such Default or Event of Default and waiver; or (b) which would permit the creation of any lien on the Trust Estate or any portion thereof equal or prior to the Lien of this Indenture or would deprive any holder of the benefit of a lien upon

the Trust Estate or any portion thereof; or (c) which would waive the due observance or performance of the provisions of Section 2.03, 2.04, 2.05(d), 2.06, 2.08, 2.09 or 2.12(a). In case of any such waiver, or in case any proceeding taken on account of any such Default or Event of Default shall have been discontinued or abandoned or determined adversely to the Trustees, then in every such case the Company, the Trustees and the holders of the Notes shall be restored to their former positions and rights hereunder, respectively. No such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

SECTION 6.09. None of the holders of the Notes shall have any right to institute any proceeding growing out of any provision of this Indenture, or for the foreclosure or enforcement of this Indenture, unless and until (a) an Event of Default hereunder shall have occurred and be continuing, and (b) the Trustees have notice of the occurrence of such Event of Default as provided in Section 7.01(k), and (c) the holders of not less than 40% in unpaid principal amount of the Notes shall have requested the Trustees to institute such proceeding in the Trustees' own names and as trustees of an express trust, and (d) the Trustees shall have been offered security and indemnity satisfactory to them against the costs, expenses and liabilities to be incurred

therein or thereby, and (e) the Trustees shall have neglected or refused to institute any such proceeding within 30 days after receipt of such notification, request and offer of indemnity. Such notification, request, offer of indemnity and refusal or neglect shall be conditions precedent to the institution by any of the holders of the Notes of any such proceeding, and the holders of the Notes from time to time outstanding, by their purchase or acceptance of any thereof, mutually agree with each other and with the Trustees that none of the holders of the Notes shall have any right in any manner whatever to affect, disturb or prejudice the rights or remedies of any of the other holders of the Notes, or to enforce any right or remedy hereunder, except in the manner herein provided, and for the equal and ratable benefit of all of the holders of the Notes. Nothing in this Indenture or in the Notes contained shall affect the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, and interest on the Notes in the manner and at the time and place therein respectively expressed, or shall affect the right of the holders of the Notes, by a proceeding upon the promise to pay therein contained, to enforce such payment without reference to or without consent of the Trustees or any other of the holders of the Notes.

SECTION 6.10. No right or remedy herein conferred upon or reserved to the Trustees or the holders of the Notes is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing, upon the occurrence of an Event of Default hereunder. The failure of the Trustees or of any of the holders of the Notes to insist at any time upon the strict observance or performance of any of the provisions of this Indenture, or to exercise any right or remedy provided for in this Indenture, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof. Every right and remedy given by this Indenture to the Trustees or to the holders of the Notes may be exercised from time to time and as often as may be deemed expedient by the Trustees or by the holders of the Notes, as the case may be.

SECTION 6.11. To the extent that it lawfully may, the Company agrees that it will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium law, which may affect observance or performance of the provisions of this Indenture or the Notes; nor claim, take or insist upon any benefit or advantage of any present or future law

providing for the valuation or appraisal of the Trust Estate or any portion thereof prior to any sale or sales thereof which may be made under or by virtue of this Article VI; nor after any such sale or sales, claim or exercise any right, under any applicable present or future law or otherwise, to redeem the Trust Estate or any portion thereof so sold; and, the Company, to the extent that it lawfully may, expressly waives all benefit or advantage of any such laws, and covenants not to hinder, delay or impede the exercise of any right or remedy herein permitted to be exercised by the Trustees, but to suffer and permit the exercise of every such right or remedy as though no such law or laws were in effect. The Company for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Trust Estate and any other security for the Notes or any thereof marshaled upon any foreclosure.

SECTION 6.12. Not later than five days after obtaining actual knowledge of Default or any Event of Default hereunder the Trustee shall give notice thereof to the holders of the Notes, unless such Default or Event of Default shall have been wholly cured before the giving of such notice. In the event the Trustee shall have given such notice of an Event of Default hereunder and such Event of Default is subsequently wholly cured or waived pursuant to Section 6.08, the Trustee shall give notice to such effect to the holders of the Notes.

SECTION 6.13. The holders of a majority in unpaid principal amount of the Notes shall have the right, by an instrument or instruments delivered to the Trustee, to direct the time, method, manner and place of conducting any and all proceedings for the enforcement of this Indenture or the Notes or of exercising any other right or remedy under this Indenture; provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture, and the Trustees shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Trust Committee of the Trustee, determine that the proceeding so directed would be unjustly prejudicial to the holders of Notes not joining in such direction. If no such instrument has been received from the holders of the Notes, the Trustees may proceed as the Trustee shall determine.

SECTION 6.14. The Trustees are hereby irrevocably appointed (and the successive holders of the Notes from time to time outstanding, by the purchase or acceptance of any thereof, agree to and confirm such appointment) the attorneys-in-fact of the respective holders of the Notes from time to time outstanding, with authority to make or file, irrespective of whether the Notes or any of them are in default as to payment of principal or interest, in the respective names of the holders of the Notes, or on

behalf of all holders of the Notes as a class, any proof of debt, amendment to proof of debt, petition or document; to execute any other papers and documents and to do and perform any and all acts and things for and on behalf of the respective holders of the Notes, or on behalf of all such holders as a class, as the Trustees may deem necessary or advisable, in order to have the respective claims of the holders of the Notes against the Company allowed in any proceeding to which the Company shall be a party; and, except to the extent that any of the holders of the Notes shall have filed individual claims in any such proceeding on their own behalf, to receive payment of or on account of such claim, and any receiver, trustee or liquidator (or other similar official) is hereby authorized to make such payments to the Trustee. The Trustees shall have full power of substitution and delegation in respect of any such powers. Neither the foregoing nor any other provision of this Indenture shall authorize the Trustees to accept or consent to any plan of reorganization, arrangement, adjustment or composition on behalf of any of the holders of the Notes or in any such proceeding to waive or change in any way any right or remedy of any of the holders of the Notes even though the Trustees may otherwise be entitled so to do under any present or future law.

SECTION 6.15. The Company shall not ever have or assert any right, under any statute or rule of law pertaining to the marshaling of assets, the administration of estates of decedents or any other matter whatever, to defeat, reduce or affect the right of the Trustees hereunder to a sale of the Trust Estate or any portion thereof for the collection of the entire debt secured by this Indenture (without any prior or different resort for collection) or of the right of the Trustees hereunder to the payment of all the Notes out of the proceeds of sale of the Trust Estate or any portion thereof in preference to every other person.

## ARTICLE VII

### The Trustees

SECTION 7.01. (a) The Trustees accept the trusts hereunder and agree to perform the duties herein required of them, but only upon the terms and conditions hereof, including this Section 7.01. The Trustees shall have the full and complete right, power and authority at any and all times and from time to time, to do any and all things, not inconsistent with the express provisions of this Indenture, which the Trustee, may deem advisable in order to enforce the provisions of this Indenture or to take any action with respect to an Event of Default hereunder, or to institute, appear in or defend any proceeding with respect thereto, or to protect the interests of the holders of the Notes, provided that prior to the occurrence of an Event of Default hereunder and after such Event of Default may be wholly cured or waived, as provided herein, the Trustees shall be responsible for the performance of such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustees, or either of them, their duties and obligations being determined solely by the express provisions of this Indenture, and provided further that after the occurrence of an Event of Default hereunder, and until such time as such Event of Default may be wholly cured or waived, as provided herein

the Trustees shall be responsible for exercising such of the rights and powers as are vested in them by this Indenture and for using the same degree of skill and care in their exercise as an ordinary prudent man would use or exercise under the circumstances in the conduct of his own affairs. The Trustees shall not be answerable or accountable under any circumstances, except for their own bad faith, wilful misconduct or negligence, and the Company agrees to indemnify and save harmless the Trustees from and against any liability and damage which they may incur or sustain, in good faith and without negligence, in the exercise and performance of any of their duties, rights or remedies hereunder. The Trustees shall be under no obligation to take any action to protect, preserve or enforce any rights or interests in the Trust Estate or to take any action towards the execution or enforcement of the trusts hereunder or otherwise hereunder, whether on their own motion or on the request of any other person, which, in their opinion, shall be likely to involve expense or liability, unless one or more of the holders of the Notes, from time to time, shall offer and furnish indemnity, deemed reasonable by the Trustee against liability and expense to the Trustees. The Trustees, in their individual or any other capacity, may become holders or pledgees of Notes, with the same rights which they would have if they were not Trustees hereunder.

(b) The Trustees shall receive compensation from the Company at the rates agreed with the Company for all services

rendered by them under this Indenture prior to an Event of Default hereunder and after such Event of Default may be wholly cured or waived, as provided herein, in receiving and disbursing Basic Rent and other moneys payable pursuant to the Lease, the Lease Assignment or any other instrument included in the Trust Estate, issuing checks (or making wire transfers of immediately available funds directly to accounts of any holders of the Notes) for the payment of interest and of Instalment Payments payable on the Notes and for prepaying the Notes. The Trustees shall be entitled to receive reasonable compensation from the Company for any services, other than those referred to in the preceding sentence, which they may render under this Indenture prior to an Event of Default hereunder and after such Event of Default may be wholly cured or waived, as provided herein, and to be reimbursed for all reasonable expenses (including the reasonable compensation and the expenses and disbursements of their counsel and of such agents, representatives and experts, not regularly in the employ of the Trustee, as they shall employ in connection with the exercise and performance of their powers and duties hereunder) incurred by them under this Indenture prior to an Event of Default hereunder and after such Event of Default may be wholly cured or waived, as provided herein; provided, that no compensation shall be paid for the collection of any and all moneys in respect of the Trust Estate or for disbursing the same pursuant to the provisions hereof prior to

an Event of Default hereunder and after such Event of Default may be wholly cured or waived as provided herein. Any such compensation shall not be limited by any provision of law in regard to the compensation of trustees of an express trust and shall be increased by the amount of any general excise tax or similar tax thereon paid by the Trustees.

(c) The Trustees shall be entitled to reasonable compensation for their services and reimbursement for all reasonable expenses (including the reasonable compensation and the expenses and disbursements of their counsel and of such agents, representatives and experts, not regularly in the employ of the Trustee, as they shall employ in connection with the exercise and performance of their powers and duties hereunder) incurred by them in taking any action upon an Event of Default hereunder and until such time as such Event of Default may be wholly cured or waived as provided herein, or in instituting, appearing in or defending any proceeding with respect thereto and for all other expenses incurred by them hereunder, and for all taxes which may be assessed against the Trustees as such or against any funds on deposit with the Trustee which the Trustees might be required or permitted by law to deduct from such deposit and pay, and for all statutory penalties or other payments which the Trustees may be required to pay or make. For such compensation, disbursements, expenses, taxes, penalties and other payments, and for the compensation referred to in Section 7.01(b) and the indemnity by the Company

referred to in Section 7.01(a), the Trustees shall be secured under this Indenture prior to the Notes. Any such compensation shall not be limited by any provision of law in regard to the compensation of trustees of an express trust and shall be increased by the amount of any general excise tax or similar tax thereon paid by the Trustees.

(d) The Trustees shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, note or other document or paper believed by them in good faith to be genuine. In the administration of the trusts hereunder, the Trustees may act directly or through their agents or attorneys and shall not be responsible for the act or neglect of agents or attorneys appointed by them with due care and may, at the expense of the Company, consult with, and pay reasonable compensation to, counsel, appraisers, engineers, accountants and other skilled persons to be selected and employed by them, and the Trustees shall not be liable for anything done, suffered or omitted in good faith by them in accordance with the advice of any thereof.

(e) The recitals and statements in this Indenture, in any instruments included in the Trust Estate and in the Notes contained (except for the Trustee's certificate of authentication on the Notes) shall be taken as statements

by the party or parties thereto (other than the Trustees), and shall not be considered as made by, or as imposing any obligation or liability upon, the Trustees, nor shall the Trustees be held responsible for the value of the Trust Estate or for the legality or validity of this Indenture or the Notes, any instrument included in the Trust Estate, any supplemental indenture or any instrument of further assurance. No representation or warranty respecting the rights or remedies of the holders of the Notes, the Company's right, title, interest, claim and demand in, to or under any instrument or other property included in the Trust Estate, the condition of the Trust Estate or the sufficiency of the security for the Notes afforded by the Trust Estate, is made or implied by the Trustees' execution of this Indenture or the Trustee's authentication and delivery of any Note.

(f) Whenever in the administration of the trusts hereunder the Trustees shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of the Company purporting to be signed by an Executive Officer thereof and delivered to the Trustee, and such certificate shall be full warrant to the Trustees or any other person for any action taken, suffered or omitted by

them or it on the faith thereof, but in their or its discretion the Trustees or such other person may accept, in lieu thereof, other evidence of such fact or matter or may require such further or additional evidence as to them or it may seem reasonable.

(g) It shall not be the duty of the Trustees to see to any filing, registration, recording, refiling, reregistration or re-recording required by this Indenture to be effected by the Company or otherwise required or permitted by any applicable law, or to the payment of any fees, charges or taxes in connection therewith or to give any notice thereof, or to see to the payment of or be under any duty in respect of any tax or assessment or other governmental charge which may be levied or assessed on the Trust Estate or any portion thereof or against the Company. The Trustees shall be under no obligation to see to the payment or discharge of any lien (other than the Lien of this Indenture, and then only to the extent herein provided) upon the Trust Estate, or to see to the payment of the principal of, premium, if any, or interest on any obligation secured by any such lien or to the delivery or transfer to it of any property released from any such lien, or to give notice to or make demand upon any person for the delivery of any such property.

(h) The Trustees shall not be under any duty to check or verify any amortization schedules with respect to

any of the Notes, or any financial or other statements or reports, furnished pursuant to any provision hereof or of the Note Purchase Agreement or of any instrument included in the Trust Estate, or to check or verify any of such statements or reports or compare them with those previously or subsequently furnished, and shall be under no other duty in respect of the same, except to file the same, and permit the inspection of the same at reasonable times by the holders of the Notes.

(i) The Trustees shall not be concerned with or accountable to anyone for the use or application of any property or the proceeds thereof which shall be released from the Lien hereof in accordance with the provisions of this Indenture.

(j) In accepting the trusts hereunder and the Trust Estate, whether moneys, bonds, obligations, franchises, rights, interests, securities, mortgages, deeds of trust, deeds to secure debt, acts of mortgage, security instruments, notes, leases, subleases, assignments, assumptions, undertakings, agreements, contracts, licenses, permits or any other property, real or personal, or whatever it may be, and whether under this Indenture or some indenture supplemental hereto or any instrument included in the Trust Estate, the Trustees act solely as Trustees hereunder and not in their individual capacity, and all persons, other than the Company and the holders of the Notes, having any claim against the Trustees arising

by reason thereof, shall look only to the Trust Estate for payment or satisfaction thereof.

(k) The Trustees shall not be required to ascertain or inquire as to the observance or performance of any of the provisions hereof or of any instrument included in the Trust Estate to be observed or performed by the Company or any party to such instrument. The Trustees shall not be required to take notice nor be deemed to have notice or knowledge of any Default or Event of Default under any instrument included in the Trust Estate or of any Default or Event of Default hereunder (except default in the payment of moneys to the Trustee which are required by any provision hereof or of any instrument included in the Trust Estate to be paid to the Trustee on or before a specified date or within a specified time after receipt by the Trustee of a notice or certificate which was in fact received, and default in the delivery of any certificate or opinion expressly required to be delivered to the Trustee by any provision hereof), unless the Trustees shall have actual knowledge of the same or shall receive from the Company or any of the holders of the Notes, notice stating that the same has occurred and is continuing, and specifying the same, and in the absence of such actual knowledge and such notice the Trustees may conclusively assume that the same does not exist, except as aforesaid. Every provision contained in this Indenture or any instrument at any time included in the Trust Estate wherein it is provided that the duty of either of the

Trustees to take action or omit to take action or to permit the Company or any party to such instrument to do any act or thing depends on the occurrence and continuance of a Default or an Event of Default hereunder, or a default, an event of default, a Default or an Event of Default as defined in any such instrument, shall be subject to the provisions of this Section 7.01(k).

SECTION 7.02. The Individual Trustee shall act as and be such upon the following terms and conditions:

(a) The Notes shall be authenticated and delivered solely by the Trustee.

(b) Subject to the provisions of Section 7.06, all rights, powers, duties and obligations conferred or imposed upon the Trustees shall be conferred or imposed solely upon and solely exercised and performed by the Trustee except as expressly provided otherwise in this Indenture and except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by the Individual Trustee.

(c) No power granted by this Indenture to, or which this Indenture provides may be exercised by,

the Individual Trustee shall be exercised by the Individual Trustee except jointly with, or with the consent of, the Trustee, anything herein contained to the contrary notwithstanding.

The Individual Trustee may at any time by an instrument constitute the Trustee his agent or attorney-in-fact, with full power and authority, to the extent not prohibited by law, to do any and all acts and things and exercise any and all discretion authorized or permitted by him, for and on his behalf and in his name.

SECTION 7.03. The Trustee may resign and be discharged of the trusts hereunder by giving notice of such resignation to the Company and the holders of the Notes, specifying the date (which shall be not less than 60 days after the date of mailing such notice) when such resignation shall take effect. Such resignation shall take effect on the date so specified unless previously a successor trustee shall have been appointed by the holders of the Notes as provided in Section 7.04(a), in which event such resignation shall take effect upon the date the appointment of such successor takes effect. The Trustee may be removed with or without cause at any time by an instrument or instruments signed by the holders of a majority in unpaid principal amount of the Notes, or by their attorneys-in-fact thereunto duly authorized.

SECTION 7.04. (a) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting,

or if the Trustee shall be taken under the control of any public officer or officers or of a receiver appointed by a court, then (except as hereinafter provided), a successor or successors may be appointed by the holders of a majority in unpaid principal amount of the Notes, by an instrument or concurrent instruments signed by such holders or by their attorneys-in-fact thereunto duly authorized; provided, however, that the Company, by an instrument executed pursuant to resolutions adopted by its Board of Directors, may appoint a successor trustee to act until a successor trustee shall be appointed by the holders of the Notes as hereinabove provided. After any such appointment by the Company, it shall give notice thereof to the holders of the Notes; but any new trustee so appointed by the Company shall immediately and without further act be superseded by a trustee appointed by the holders of the Notes as hereinabove provided.

(b) Any successor to the Trustee shall execute, acknowledge and deliver to its predecessor and to the Company an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act or instrument, shall become the Trustee and be vested with all the estates, properties, rights, remedies, powers and trusts of its predecessor in the trusts hereunder with like effect as if originally named as Trustee herein; but nevertheless on the request of the Company or of the successor trustee, such predecessor shall execute and deliver an instrument transferring to such successor trustee, upon the trusts hereby created,

all the estates, properties, rights, remedies, powers and trusts of such predecessor and shall duly assign, transfer, deliver and pay over to the successor trustee any moneys and other property subject to the Lien of this Indenture and held by such predecessor. Should any act or instrument from the Company be required by any successor trustee for more fully and certainly vesting in and confirming to such successor trustee such estates, properties, rights, remedies, powers and trusts, then on request any and all such acts and instruments shall be done, made, executed, acknowledged and delivered by the Company.

(c) Any successor to the Trustee, however constituted, shall be a bank or trust company organized and existing under the laws of the United States or any state thereof and having capital funds as of the date of appointment of such successor (as shown by its most recent financial statement distributed to its shareholders) aggregating at least \$100,000,000, if there shall be such a bank or trust company willing and legally qualified to accept and perform the trusts hereunder and the duties mentioned herein upon reasonable or customary terms.

(d) 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 or conversion to which the Trustee shall be a party, shall be the successor to the Trustee under this Indenture without the

execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 7.05. (a) The Individual Trustee may resign and be discharged of the trusts hereunder, by giving notice of such resignation to the Company and to the Trustee, specifying the date (which shall not be less than 30 days after the date of mailing such notice) when such resignation shall take effect. Such resignation shall take effect on the date so specified unless previously a successor trustee shall have been appointed by the Trustee or the holders of the Notes as provided in Section 7.05(b), in which event such resignation shall take effect immediately upon the appointment of such successor. The Individual Trustee may be removed at any time by an instrument or instruments signed by the holders of a majority in unpaid principal amount of the Notes, or by their attorneys-in-fact thereunto duly authorized, or by the Trustee.

(b) If at any time the Individual Trustee shall die, resign or be removed or otherwise become incapable of acting, or if for any reason the office of Individual Trustee shall become vacant, a successor to the Individual Trustee shall forthwith be appointed by the Trustee or, if the Trustee shall fail to make such appointment within 60 days after the occurrence of such death, resignation, removal,

incapacity or vacancy, by the holders of a majority in principal amount of the Notes, by an instrument signed by the Trustee or by such holders, as the case may be.

(c) Any person appointed as successor to the Individual Trustee shall execute, acknowledge and deliver to his predecessor, to the Trustee and to the Company an instrument accepting such appointment hereunder, and thereupon such person, without any further act or instrument, shall become the Individual Trustee and be vested with all the estates, property, rights, remedies and trusts of his predecessor in the trusts hereunder with like effect as if originally named as Individual Trustee herein; but nevertheless on the request of the Company or of the Trustee or of the successor to the Individual Trustee, such predecessor shall execute and deliver an instrument transferring to the successor to the Individual Trustee, upon the trusts hereunder, all the estates, properties, rights, remedies and trusts of such predecessor and shall duly assign, transfer, deliver and pay over to the successor to the Individual Trustee any moneys and other property subject to the lien of this Indenture and held by such predecessor. Should any act or instrument from the Company or from the Trustee be required by any successor to the Individual Trustee for more fully and certainly vesting in and confirming to such successor to the Individual Trustee such estates,

property, rights, remedies and trusts, then on request any and all such acts and instruments shall be done, made, executed, acknowledged and delivered by the Company or the Trustee.

SECTION 7.06. (a) If at any time or times, for the purpose of conforming to any legal requirements, restrictions or conditions in any state or jurisdiction in which the Trust Estate or any portion thereof may be located, the Trustee or the holders of at least 40% in unpaid principal amount of the Notes shall deem it necessary or prudent in the interest of the holders of the Notes so to do, the Trustee or the holders of at least 40% in unpaid principal amount of the Notes shall have the power, by an instrument executed by the Trustee or by such holders, to appoint one or more persons approved by the Trustee or by such holders either to act as separate trustee or trustees, or co-trustee or co-trustees jointly with the Trustee and the Individual Trustee, of any or all of the property subject to the Lien of this Indenture; and the person or persons so appointed shall be separate trustee or separate trustees or co-trustee or co-trustees, with such rights and remedies as shall be specified in such instrument to be executed as aforesaid, to the extent not prohibited by law. If the Trustee or the holders of at least 40% in unpaid principal amount of the Notes shall request the Company to do so, the Company shall for such purpose join

the provisions of subparagraph (iv) of this paragraph (b);

(ii) all rights and remedies conferred upon the Trustee in respect of the custody of securities and all moneys received, deposited or otherwise held under or pursuant to any provision of this Indenture shall be exercised solely by the Trustee;

(iii) the Trustee may at any time by an instrument accept the resignation of or remove any separate trustee or co-trustee appointed under this Section 7.06 or otherwise, and upon the request of the Trustee the Company shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments necessary or proper to make effective such resignation or removal, but the Trustee shall have the power to accept such resignation or to remove any such separate trustee or co-trustee by its sole action without making such request of the Company. A successor to a separate trustee or co-trustee so removed or who has so resigned may be appointed in the manner provided in this Section 7.06; and

(iv) no power given to any such separate trustee or co-trustee shall be separately exercised hereunder by such separate trustee or co-trustee except with the consent in writing of the Trustee.

(c) Any notice, request or other writing by or on behalf of any or all of the holders of the Notes, the Lessee or the Company given to the Trustee shall be deemed to have been given to all of the then separate trustees or co-trustees, including the Individual Trustee, as effectively as if given to each of them. Every instrument appointing any separate trustees or co-trustees shall refer to this Indenture and the conditions in this Article VII expressed, and, upon the acceptance by such separate trustee or trustees or co-trustee or co-trustees, it or they shall be vested with the estates or property specified in such instrument either jointly with the Trustees, or separately, as may be provided therein, subject to all the provisions of this Indenture; and every such instrument shall be filed with the Trustee. Any separate trustee or trustees or any co-trustee or co-trustees may, at any time, by an instrument constitute the Trustee its or their agent or attorney-in-fact, with full power and authority, to the extent not prohibited by law, to do any and all acts and things and exercise any and all discretion authorized or permitted by it or them, for and on behalf of it or them, and in its or their name. In case any separate trustee or trustees or co-trustee or co-trustees, or a successor to any of them, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, remedies, powers and trusts of such separate

trustee or co-trustee, so far as not prohibited by law, shall vest in and be exercised by the Trustee, without the appointment of a new trustee or successor to such separate trustee or co-trustee.

SECTION 7.07. No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder except to the extent required by law.

SECTION 7.08. All moneys received, deposited or otherwise held by the Trustees under or pursuant to any provision of this Indenture shall be held in trust for the purposes for which they were paid, but except as otherwise provided for herein need not be segregated in any manner from any other moneys except to the extent required by law, and may be deposited by the Trustees under such general conditions as may be prescribed by law in the general banking department, if any, of the Trustee, and the Trustees shall not be liable for any interest thereon other than such interest as the Trustee may agree in writing so to pay.

SECTION 7.09. No provision of this Indenture, any supplemental indenture or any instrument included in the Trust Estate shall be deemed to impose any duty or obligation on the Trustee to perform any act or acts in the execution of the trusts hereunder, or exercise any right or remedy conferred or imposed on it, in any jurisdiction in which under any present or future law it shall be illegal, or in which the Trustee shall be unqualified or

incompetent, to perform any such act or acts or to exercise any such right or remedy, or if such performance or exercise would constitute doing business by the Trustee in such jurisdiction, but any such act or acts and the exercise of any such right or remedy in any such jurisdiction shall be performed and exercised by the Individual Trustee, or by any separate trustee or co-trustee appointed as provided in Section 7.06.

## ARTICLE VIII

### Supplemental Indentures

SECTION 8.01. Without the consent of any of the holders of the Notes, the Company, when authorized by a resolution of its Board of Directors, and the Trustees from time to time and at any time, may enter into an indenture or indentures supplemental hereto, which indenture or indentures shall form a part hereof, when required or permitted by any of the provisions of this Indenture or for any one or more or all of the following purposes:

(a) to correct or amplify the description of any property subject to the Lien of this Indenture or intended so as to be; to add property to or release it from the Trust Estate, as permitted or required by the provisions of this Indenture; and to Grant or otherwise transfer to the Trustees additional property in trust for the purposes

herein provided;

(b) to add to the agreements of the Company in this Indenture other agreements thereafter to be observed or performed by or on behalf of the Company, or to surrender any right or remedy herein reserved to or conferred upon the Company;

(c) to cure any ambiguity, or to cure, correct or supplement any defective or inconsistent provision contained in this Indenture, in the Notes or in any supplemental indenture entered into hereunder;

(d) to qualify this Indenture under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, except that nothing herein contained shall permit or authorize the inclusion in any indenture supplemental hereto of the provisions referred to in Section 316(a)(2) of said Act or any corresponding provisions of any such similar federal statute.

Upon the receipt by the Trustee of a Certified Resolution of the Company, authorizing the execution of any such supplemental indenture by the Company, the Trustees shall

join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustees' own rights, duties or immunities under this Indenture or otherwise, in which case the Trustees may, in their sole discretion, enter into such supplemental indenture.

SECTION 8.02. In addition to any supplemental indenture entered into pursuant to the provisions of Section 8.01, with the consent of the holders of not less than 66 2/3% in unpaid principal amount of the Notes, the Company, when authorized by a resolution of its Board of Directors, and the Trustees from time to time and at any time, may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions hereto or changing in any manner or eliminating any of the provisions of this Indenture; provided, however, that without the consent of the holders of 100% in unpaid principal amount of the Notes no such supplemental indenture shall (a) impair or affect the right of any holder to receive payments or pre-payments of the principal of, premium, if any, and interest on the Note or Notes registered in the name of such holder, as therein and herein provided, or reduce the amount of interest payable on such Note or Notes or extend the maturity of such Note or Notes, or (b) permit the creation of any lien on the Trust Estate equal or prior to the Lien of this

Indenture, or (c) reduce the aforesaid percentages of unpaid principal amount of the Notes, the holders of which are required to consent to any such supplemental indenture, or reduce the percentages of unpaid principal amount of the Notes required to effectuate a waiver under Section 6.08, or (d) amend or modify Sections 2.03, 2.04, 2.05(d), 2.06, 2.08, 2.09, 2.12(a) or this Section 8.02. Upon the receipt by the Trustee of a Certified Resolution of the Company, authorizing the execution of any such supplemental indenture by the Company, and upon the filing with the Trustee of evidence of the consent of the holders of the Notes, as aforesaid, the Trustees shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustees' own rights, duties or immunities under this Indenture or otherwise, in which case the Trustees may, in their sole discretion, enter into such supplemental indenture.

SECTION 8.03. Within 30 days after the date of execution and delivery by the Company and the Trustees of any supplemental indenture pursuant to this Article VIII, the Company shall send such number of conformed copies of such supplemental indenture to the respective holders of the Notes as such holders may reasonably request (or, if no request is received, at least one such copy per holder), in the manner provided for in the case of notices. Any failure of the

Company to send such conformed copies of such supplemental indenture shall not, however, in any way impair or affect the validity thereof. The Trustees shall be entitled to receive an opinion of counsel, in form and substance satisfactory to them, to the effect that any supplemental indenture executed pursuant to the provisions of this Article VIII will not materially and adversely impair the security for the Notes or the rights of the holders of the Notes in contravention of the provisions hereof; and the Trustees may rely upon such opinion as conclusive evidence that such supplemental indenture complies with the requirements of this Article VIII. The Trustees shall not be required to join in the execution of any supplemental indenture pursuant to this Article VIII unless they shall have received such opinion of counsel.

SECTION 8.04. (a) After the execution and delivery of any supplemental indenture pursuant to this Article VIII, the Company or the Trustee may, in the sole discretion of either, require that (i) the Notes then outstanding or Notes thereafter issued pursuant to an Exchange Provision, or both, bear a legend or other notation in form approved by the Trustee as to any matter provided for in such supplemental indenture, or (ii) New Notes, modified so as to conform, in the opinion of the Trustee and the Board of Directors of the Company, to any modification of this Indenture effected

by any such supplemental indenture, be issued in exchange for the Notes then outstanding.

(b) Any legend or notation required pursuant to this Section 8.04 may be stamped, typed or printed on the Notes or on stickers to be affixed to the Notes, as the Trustee shall determine. The Trustee may (i) upon at least 30 days' notice to the holders of the Notes, require presentation of the Notes at the Corporate Trust Office for the purpose of placing any such legend or notation thereon, or (ii) send stickers bearing such legend or notation to the holders of the Notes, in which event the holders of the Notes shall promptly affix such stickers to the Notes or cause the same to be done.

(c) Upon at least 30 days' notice from the Company that an exchange of Notes is required pursuant to this Section 8.04, each of the holders of the Notes shall surrender the Old Notes held by such holder for cancellation at the Corporate Trust Office. Upon each such surrender, a New Note or Notes in such modified form but otherwise of the same tenor as such Old Note or Notes, executed by the Company and payable to the holder surrendering such Old Note or Notes in the original principal amount or amounts of such Old Note or Notes, shall be authenticated and delivered by the Trustee to such holder in exchange for such Old Note or Notes.

(d) The Company shall pay or cause to be paid all charges, expenses and taxes in connection with any action taken pursuant to this Section 8.04, including, without limitation, the cost of preparing any such legend or notation or New Notes and the cost of transmitting the Notes to and from the principal offices of the holders thereof.

## ARTICLE IX

### Discharge of Indenture

SECTION 9.01. If and when the Notes shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and there shall have been paid the full amount due on the Notes for principal, premium, if any, and interest, and if there shall have been paid all other sums payable hereunder by the Company pursuant to the provisions of this Indenture, then and in that case upon the request of the Company this Indenture and all agreements herein contained shall cease and terminate and, at the cost and expense of the Company or the Lessee, the Trustees shall execute and deliver such instruments as shall be reasonably requested by the Company to satisfy and discharge the Lien hereof and to transfer to the Company or the Lessee or such other person or persons entitled thereto the instruments and any other property included in the Trust Estate and not sold under or by virtue of Article VI. For such purpose, Notes which are not deemed to be outstanding shall be deemed to be paid. At the time of the delivery by the Trustees of any such instruments of satisfaction, cancellation or discharge, the Trustee shall hold in trust, for the benefit of any of the holders of the Notes which have not received payment for the Notes registered in their names, the moneys on deposit with it

for the payment of such Notes. Such satisfaction, cancellation or discharge of this Indenture shall not be effected unless the Trustee shall have received an opinion of counsel, in form and substance satisfactory to the Trustee, to the effect that in the opinion of such counsel all conditions precedent to such satisfaction, cancellation or discharge prescribed by this Article IX have been complied with.

SECTION 9.02. At the expiration of 6 years following the date of the establishment, pursuant to Section 9.01, of the trust on moneys deposited for payment of principal of, premium, if any, and interest on the Notes, as the case may be, such trust shall automatically cease and terminate and any moneys deposited for such purposes then remaining on deposit with the Trustee unclaimed by the holder or holders entitled thereto shall be repaid to or upon the order of the Company by the Trustee on demand made after such date; and any holder or holders entitled to receive such moneys shall thereafter look only to the Company for the payment thereof; provided, however, that the Trustee before being required to make any such repayment may, at the expense of the Company, cause to be published at least once but not more than three times in a daily newspaper of general circulation in the city in which the Corporate Trust Office is located, a notice to the effect that said moneys have not been applied for the purpose for which they were deposited, that said trust has terminated, and that after

a date named therein, which shall be not less than 10 days after the date of first publication of said notice, any unclaimed balance of said moneys then remaining in the hands of the Trustee will be returned to the Company.

ARTICLE X

GENERAL

SECTION 10.01. No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Notes, or for any claim based thereon or otherwise in respect thereof or based on or in respect of this Indenture or the Lease Assignment, against any incorporator or any past, present or future subscriber to the capital stock, shareholder, officer or director of the Company or of any predecessor or successor, as such, either directly or through the Company or any predecessor or successor, under any rule of law, statute or constitution, or by the enforcement of any assessment or penalty, or otherwise; it being expressly understood that the Notes and all obligations of the Company under this Indenture and the Lease Assignment are solely corporate obligations and that all such liability of incorporators, subscribers, shareholders, officers and directors, as such, is and is to be by the acceptance of the Notes by the holders thereof expressly waived and released as a condition of, and as consideration for, the execution of this Indenture and the Lease Assignment and the issuance of the Notes; provided, however, that nothing herein or in the Lease Assignment or in the Notes contained shall constitute a waiver of any indebtedness evidenced by the Notes or secured by this Indenture or by the Lease Assignment or shall be taken to prevent recourse to and the enforcement

against the security for the Notes described in the Lease Agreement and the Trust Estate of all liabilities, obligations and undertakings in this Indenture and the Notes contained, or to prevent recourse to and the enforcement of any liability, obligation or undertaking of the Company, its predecessors or successors, or its incorporators, subscribers, shareholders, officers or directors pursuant to any agreement executed and delivered by such person. For the purposes of the foregoing, the term "shareholder" shall be deemed to include the shareholders of any corporation which is a shareholder.

SECTION 10.02. Any notice, request, demand, direction, consent, approval, order, waiver, acceptance, appointment or other instrument of communication under or pursuant to this Indenture shall be in writing and shall be signed or executed by each person giving or making the same or by an attorney appointed in writing by such person. Proof of the execution of any such writing, including any writing appointing any such attorney, shall be sufficient for any purpose of the Indenture if the fact and date of such execution be proved by (i) the certificate of a notary public, or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he purports to act, that the person signing such instrument or writing acknowledged to him the execution thereof, or (ii) an affidavit of a witness of such execution. Any such writing, and any other action, by any of the holders of the Notes shall bind every

future holder of the same Note or Notes and every holder of every Note or Notes issued in exchange or substitution therefor, in respect of anything done or suffered to be done by the Trustees or the Company pursuant to such writing or action.

SECTION 10.03. Nothing in this Indenture expressed or implied is intended or shall be construed to give to any person other than the Company, the Lessee, the Trustees and the holders of the Notes any legal or equitable right, remedy or claim under or in respect of the Notes or this Indenture or any provision therein or herein contained, and such provisions are and shall be held to be for the sole and exclusive benefit of the Company, the Lessee, the Trustees and the holders of the Notes, as the case may be.

SECTION 10.04. In case any one or more of the provisions contained in this Indenture or in the Notes or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein and any other application thereof shall not in any way be affected or impaired thereby.

SECTION 10.05. Any notice to or demand upon the Trustee or the Individual Trustee may be given or made at the Corporate Trust Office. Any notice to or demand upon the Company shall be deemed to have been sufficiently given or made for all purposes, if given or made as permitted by

Section 1.08 or if sent by prepaid United States registered mail, return receipt requested, addressed as follows:

Hopper Holdings Corp.  
One William Street  
New York, New York 10004  
Attention: Alan R. Batkin

or at such other address as may be filed in writing by the Company with the Trustee. Whenever, pursuant to any provisions of this Indenture any notice or other instrument is required to be given, delivered or sent to the holders of any Notes, any Purchaser, or the Lessee, such requirements shall be satisfied if such notice or other instrument shall be given or sent by prepaid United States first class mail within the period, if any, prescribed therefor, to such holders of Notes at their respective addresses specified in the Register or to such Purchaser or the Lessee at their respective addresses for the receipt of notices as provided in the Note Purchase Agreement or the Lease, as the case may be. If any notice or other instrument or communication is sent otherwise than as specified in the preceding provisions of this Section 10.05 the same shall not be validly given or made until it is in fact received by the person to whom it is to be sent.

SECTION 10.06. Whenever in this Indenture the

giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice, either before or after the time established for the giving of such notice.

SECTION 10.07. No provision of this Indenture or of the Notes shall require the payment or permit the collection of interest in excess of the maximum which is not prohibited by law. If any excess of interest in such respect is herein or in the Notes provided for, or shall be adjudicated to be so provided for herein or in the Notes, neither the Company nor its successors or assigns shall be obligated to pay such interest in excess of the maximum not prohibited by law, and the right to demand the payment of any such excess shall be and hereby is waived and this Section 10.07 shall control any provisions of this Indenture or the Notes which is inconsistent with this Section 10.07.

SECTION 10.08. This Indenture may be executed in any number of counterparts, each of which shall be deemed as original, and such counterparts shall together constitute but one and the same Indenture. It shall not be necessary in making proof of this Indenture to produce or account for more than one such counterpart signed by the party against which enforcement of this Indenture is sought.

SECTION 10.09. All of the provisions herein contained shall be binding upon and inure to the benefit of

the respective permitted successors and assigns of the Company, and the Trustees, to the same extent as if each such successor and assign were in each case named as a party to this Indenture.

SECTION 10.10. The law of the State of New York shall govern the respective rights and duties of the Company and each holder of any of the Notes with respect to this Indenture, the Notes and the transactions between the Company and the holders of the Notes contemplated by this Indenture and the Notes, and this Indenture and the Notes shall be governed by and construed and enforced in accordance with the law (including the conflict of laws rules) of the State of New York, except that the validity of the Notes and the rights and duties of the Company with respect to the registration of transfer shall be governed by the law (including the conflict of laws rules) of the State of Delaware.

SECTION 10.11. The table of contents preceding this Indenture and the headings to the various Articles of this Indenture have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Indenture.

## ARTICLE XI

### Defined Terms

When used in this Indenture, each term defined in this Article XI shall have the meanings indicated:

"ACF Purchase Agreement" has the meaning specified in the Note Purchase Agreement.

"Additional Rent" means the Additional Rent payable pursuant to the Lease and which has the meaning therein specified.

"Affiliated Person" of another person means (i) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such person; (ii) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (iii) any person directly or indirectly controlling, controlled by, or under common control with, such other person; or (iv) any officer, director, partner, copartner, or employee of such other person.

"Applicable Premium" means the premium, expressed as a percentage of the principal amount of Notes to be prepaid with premium pursuant to this Indenture, which is set forth below opposite the period during which such prepayment is made.

If the Notes are to be prepaid in whole pursuant to Section 5.02, the Applicable Premium shall be as follows:

<u>Annual Period Commencing August 1 in the Year</u>	<u>Applicable Premium</u>	<u>Annual Period Commencing August 1 in the Year</u>	<u>Applicable Premium</u>
1985 . . . . .	4.000%	1989 . . . . .	2.000%
1986 . . . . .	3.500	1990 . . . . .	1.500
1987 . . . . .	3.000	1991 . . . . .	1.000
1988 . . . . .	2.500		

"Basic Rent" means the Basic Rent payable pursuant to the Lease and which has the meaning therein specified, but does not include Additional Rent payable pursuant to the Lease.

"Board of Directors" means either the Board of Directors of the corporation referred to or any committee of such Board of Directors, however designated, authorized to exercise the powers of such Board of Directors in respect of the matters in question.

"business day" means any day other than a Saturday, a Sunday or any other day on which banking institutions in Boston are authorized to suspend operations under the laws of Massachusetts.

"Capitalized Cost" of the Equipment or any portion or portions of the Equipment, as the case may be, for

purposes of the Lease shall be deemed to be the amount specified as the Capitalized Cost thereof in Schedule B to the Lease.

"Certified Resolution" means a copy of a resolution certified, by the Secretary or an Assistant Secretary of the corporation referred to, under the corporate seal thereof, to have been duly adopted by the Board of Directors of such corporation and to be in full effect on the date of such certification.

"control" means with respect to any person, the possession of the power to direct or cause the direction of the management or policies of such person whether through the ownership of voting securities or by contract or otherwise.

"Corporate Trust Office" means the office of the Trustee where its corporate trust department is at the time located, which office is, on the date of delivery of this Indenture, located at 40 Water Street, Boston, Massachusetts 02109.

"counsel" means any legal counsel satisfactory to the Trustee, who may be of counsel to the Trustee, or of counsel to, or employed in the law department of, the Lessee.

"date of delivery of this Indenture" means \_\_\_\_\_, 1975.

"day" means a calendar day.

"Debt", with respect to any person, means (i) all indebtedness for borrowed money (determined in accordance with generally accepted accounting principles) which is created, guaranteed or assumed by or on behalf of such person, directly or indirectly, or upon which it customarily pays interest charges, (ii) all liabilities (including contingent liabilities) of such person to discharge directly or indirectly indebtedness for borrowed money (determined in accordance with generally accepted accounting principles) of other persons, (iii) all indebtedness for borrowed money secured by liens, encumbrances or charges upon the property of such person, even though not assumed by such person, and (iv) all indebtedness which in accordance with generally accepted accounting principles would be included on the liability side of a balance sheet on the date as of which such indebtedness is to be determined.

"Default" under this Indenture means any act or occurrence which, with notice or lapse of time, or both, would constitute an Event of Default under this Indenture.

"Equipment" means all equipment now or hereafter described in Schedules A-1 and A-2 to the Lease as such Schedules shall be periodically supplemented as provided in

paragraph 20 of the Lease, including all accessories, equipment, parts and appurtenances appertaining or attached to any such Equipment, and all substitutions and replacements for and additions, improvements and accumulations to any and all of such Equipment as the same may become accessions to such Equipment under the provisions of the Lease.

"Event of Default" under this Indenture means any occurrence or act of the character specified in Section 6.01.

"Exchange Provision" means Section 1.06(a), 1.06(b), 1.06(c) or 8.04.

"Executive Officer" means, with respect to any corporation, the Chairman of the Board, the Vice Chairman of the Board, the President, the Chairman of the Executive Committee, any Vice President, the Controller, the Secretary, the Treasurer, any Assistant Secretary or any Assistant Treasurer of such corporation.

"GATX Purchase Agreement" has the meaning specified in the Note Purchase Agreement.

"Grant" means grant, bargain, sell, give, warrant, alien, remise, release, convey, assign, transfer, mortgage, pledge, hypothecate, deposit, set over and confirm.

"Granted" means granted, bargained, sold, given, warranted, aliened, remised, released, conveyed, assigned, transferred, mortgaged, pledged, hypothecated, deposited, set over and confirmed.

"holder", when used with respect to any Note, means a person whose name appears on the Register as the registered owner of such Note, provided that until such Note has been registered in the Register the holder thereof shall be deemed to be the person in whose name such Note has been issued.

"Instalment Payments" means the Instalment Payments payable on the Notes, referred to in Article I.

"Lease" means the Lease and Agreement described in Granting Clause First, as the same may be amended or supplemented from time to time as permitted thereby and by the Lease Assignment and hereby.

"Lease Assignment" means the Assignment of Lease and Agreement described in Granting Clause Third, as the same may be amended or supplemented from time to time as permitted thereby and hereby.

"Lien of this Indenture" and terms of like import mean the lien, security interest and every other interest or charge Granted to the Trustees by this Indenture (including the after-acquired property clauses hereof) or pursuant

hereto (whether made by the Company or any other person) or otherwise created, effectively constituting any property a part of the security held by the Trustees for the benefit of the holders of the Notes.

"New Note" means any Note being issued pursuant to an Exchange Provision.

"Note" means any of, and "the Notes" means all of, the Notes issued and, unless the context otherwise specifies or requires, outstanding under this Indenture.

"Note Purchase Agreement" means the Note Purchase Agreement dated as of July 1, 1975, between the Company and the purchasers which provides for the purchase and sale of the Notes, as the same may be amended or supplemented from time to time as permitted thereby.

"Old Note" means any Note for which a New Note is being issued pursuant to an Exchange Provision,

"outstanding" means, with reference to Notes, as of any particular time, all Notes theretofore issued under this Indenture, except

(i) Notes theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;

(ii) Notes theretofore paid in full or Notes required to be prepaid in whole within 30 days thereafter, provided that, in the case of Notes so to be

prepaid, moneys sufficient for such prepayment thereof shall theretofore have been deposited with, or shall then be held by, the Trustee in accordance with the provisions of this Indenture and notice of such prepayment shall have been given or provision therefor satisfactory to the Trustee shall have been made; and

(iii) Notes for which other Notes shall theretofore have been issued pursuant to an Exchange Provision; and except also that for the purpose of determining whether the holders of the requisite principal amount of Notes have made or concurred in any notice, request, demand, direction, consent, approval, order, waiver, acceptance, appointment or other instrument or communication under or pursuant to this Indenture, Notes registered in the name of the Company, or the Lessee or any Affiliated Person thereof shall be disregarded and deemed not to be outstanding.

"Payment Date" means any February 1 or August 1 occurring after the date of delivery of this Indenture to and including August 1, 1992.

"Permitted Encumbrances" means, with respect to any property, but only to the extent applicable to such property: (i) rights reserved to or vested in any public authority by the terms of any right, power franchise, grant, license, permit or provision of law,

affecting such property, to (A) terminate such right, power, franchise, grant, license or permit, provided that the exercise of such right would not materially impair the use of such property or materially and adversely affect the value thereof, or (B) purchase, condemn, appropriate or recapture, or designate a purchaser of, such property; (ii) any liens thereon for taxes, assessments, levies, fees, and other governmental and similar charges and any liens of mechanics, materialmen and laborers for work or services performed or materials furnished in connection with such property, which are not due and payable or which are not delinquent or which, or the amount or validity of which, are being contested by appropriate proceedings; (iii) rights reserved to or vested in any public body to control or regulate such property or to use such property in any manner, which rights do not materially impair the use of such property or materially and adversely affect the value thereof; and (iv) to the extent that any thereof affect title to such property, this Indenture (and any rights granted as provided herein), the Lease Assignment and the Lease.

"person" means any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

"proceeding" means any suit in equity, action at law or other legal, administrative or equitable proceeding.

"Purchasers" means each of the addressees listed in Annex I to the Note Purchase Agreement.

"Register" means the register or registers maintained by the Trustee in accordance with Section 1.03 for the registration and registration of transfer of the Notes.

"Special Counsel" means the special counsel for the Purchasers specified in the Note Purchase Agreement, or such other counsel as shall have been approved by the holders of at least 66-2/3% in unpaid principal amount of the Notes.

"Subordinated Debt" means Debt of the Company, which is wholly unsecured and is effectively (by notation on any account reflecting such Debt or otherwise), and, if evidenced by any instrument or instruments, is evidenced only by one or more non-negotiable instruments which provide on their face that such Debt is, subordinated and made fully subject in right of payment of the principal thereof, premium, if any, and interest thereon to the prior payment in full of the Notes, as follows:

(a) No payments or prepayments of or on account of principal, premium, if any, or interest on the Subordinated Debt shall be made if at the time thereof or

immediately after giving effect thereto any Default or Event of Default under this Indenture shall have occurred and be continuing, unless no Note remains outstanding under this Indenture. Any such payment or prepayment made in violation of the next preceding sentence which shall be received by any holder of Subordinated Debt, or by anyone on behalf of such holder, shall be paid by such holder or other recipient thereof to and be held by the Trustee as a part of the Trust Estate;

(b) Upon any acceleration of the principal amount due on the Notes or upon any distribution of all or substantially all the assets of the Company, or upon any payment or distribution of assets of the Company of any kind or character, whether in money, property or securities, to creditors upon any dissolution or winding-up or total or partial liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership, conservatorship, arrangement or other proceedings, or upon an assignment for the benefit of creditors, or upon any marshaling of the assets and liabilities of the Company, all principal, premium, if any, and interest due and payable on the Notes shall first be

paid in full in accordance with their respective terms, before any holder of Subordinated Debt shall be entitled to receive any payments or retain any assets so paid or distributed in respect thereof (for principal, premium, if any, or interest); and upon any such acceleration, distribution of assets, dissolution, winding-up, liquidation, reorganization, assignment for the benefit of creditors, marshaling of assets, or similar proceedings, any payment or distribution of assets of the Company, of any kind or character, whether in money, property or securities, to which the holder of any Subordinated Debt would be entitled except for these subordination provisions, shall be paid or delivered by the Company or by any receiver, conservator, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, directly to the holders of the Notes, pro rata on the basis of the respective unpaid principal amounts thereof held by them, to the extent necessary to pay the Notes in full in accordance with their respective terms (after giving effect to any concurrent payment or distribution to or for the holders of the Notes) before any payment or distribution is made to any holder of Subordinated Debt;

(c) Upon any dissolution, winding-up, total or

partial liquidation or reorganization of the Company, whether voluntary or involuntary and whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any marshaling of the assets and liabilities of the Company, any payment or distribution of assets of the Company of any kind or character, whether in money, property or securities, which shall be received by any holder of Subordinated Debt, or by anyone on behalf of such holder, before the entire principal, premium, if any, and interest on the Notes is paid in full in accordance with their respective terms, shall be held in trust for the benefit of and promptly paid over to the holders of the Notes, pro rata as aforesaid, for application to the payment of the Notes until the Notes shall have been paid in full in accordance with their respective terms, after giving effect to any concurrent payment or distribution to the holders of the Notes; and

(d) No right of any present or future holder of any Note to enforce these subordination provisions shall at any time be prejudiced or impaired in any way by any act or failure to act, in good faith, by any such holder, or by any non-compliance by the Company

with the provisions of this Indenture, regardless of any knowledge thereof that any holder may have or be otherwise charged with.

"2.13 Transferee" means any purchaser or transferee of an interest pursuant to Section 2.13 hereof.

"Trust Committee" means a committee of at least three persons selected by the Trustee, which committee shall include at least one Executive Officer (as herein defined) of the Trustee and shall be otherwise selected from among the Trustee's Executive Officers (as so defined), Assistant Vice Presidents, Trust Officers, Assistant Trust Officers and other officers or assistant officers customarily performing functions similar to those performed by the enumerated officers, respectively, or to whom any corporate trust matter is referred because of their knowledge of or familiarity with the particular subject.

"Trustees" means the Trustee, the Individual Trustee and each additional trustee appointed under the provisions of Section 7.06 for the time being, and their respective successors in the trusts hereunder, collectively, or any of them, as the case may be.

"Trust Estate" means all moneys and other property subject or intended to be subject to the Lien of this Indenture as of any particular time, including, without limitation, the Equipment, each instrument referred to in

the Granting Clauses and all of the Company's and the Trustees' estate, right, title, interest, claim and demand therein, thereto and thereunder.

"Unamortized Cost" has the meaning set forth in the Lease.

"Unit" shall have the meaning set forth in the Lease.

IN WITNESS WHEREOF, HOPPER HOLDINGS CORP. has caused this Indenture to be signed in its corporate name and its corporate seal to be hereunto affixed and attested by its duly authorized officers, and SHAWMUT BANK OF BOSTON, N.A. in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name and its corporate seal to be hereunto affixed and attested by its duly authorized officers, and L. H. Baker, in token of his acceptance of the trusts created hereunder, has hereunto set his hand and seal, all as of the day and year first above written.

HOPPER HOLDINGS CORP.

[CORPORATE SEAL]

By John M. Alamo  
President

Attest:

Alvin Smith  
(Assistant) Secretary