16539 FILED 1425
SEP 29 1989 -1 15 PM
INTERSTATE COMMERCE COMMISSION

16539-A FILED 1425
SEP 29 1989 -1 15 PM
INTERSTATE COMMERCE COMMISSION

16539-C FILED 1425
SEP 29 1989 -1 15 PM
INTERSTATE COMMERCE COMMISSION

16539-B FILED 1425
SEP 29 1989 -1 15 PM
INTERSTATE COMMERCE COMMISSION

ICC TRANSMITTAL LETTER

September 29, 1989

Honorable Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

9-272A023

Re: 1) Equipment Lease Agreement - new number
2) Lease Supplement No. 1 - A
3) Security Agreement and Trust Indenture - B
4) Security Agreement and Trust Indenture - C
Supplement No. 1

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instruments, in four (4) counterparts each, are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the $60 recordation fee.

Please record the Equipment Lease Agreement (the "Equipment Lease Agreement") dated as of September 15, 1989, relating to Itel Rail Trust No. 89-2, not previously recorded, under a new recordation number.

The parties to the Equipment Lease Agreement are listed below:

First Security Bank of Utah, N.A.,
as Owner Trustee under
Iten Rail Trust No. 89-2
(Lessor)
79 South Main Street
Salt Lake City, Utah 84111

Itel Rail Corporation (Lessee)
55 Francisco Street
San Francisco, California 94133

The Equipment Lease Agreement sets forth the terms upon which the Lessor will lease to Lessee certain railroad rolling stock to be identified in lease supplements thereto, and Lease Supplement No. 1 (as defined below) recorded herewith covers such railroad rolling stock now leased.

The Equipment Lease Agreement Supplement No. 1 ("Lease Supplement No. 1") dated as of September 29, 1989 should be recorded as -A of the same recordation number as the Equipment Lease Agreement.

The parties to the Lease Supplement No. 1 are the same as in the Equipment Lease Agreement, and the Lease Supplement No. 1, among other things, identifies the railroad rolling stock covered by the Equipment Lease Agreement.

The Security Agreement and Trust Indenture (the "Security Agreement and Trust Indenture") dated as of September 15, 1989 should be recorded as -B of the same recordation number as the Equipment Lease Agreement.

The parties to the Security Agreement and Trust Indenture are as follows:

First Security Bank of Utah, N.A.,
as Owner Trustee under
Itel Rail Trust No. 89-2 (Owner Trustee)
/"Assignor"
79 South Main Street
Salt Lake City, Utah 84111

Continental Bank, National Association,
as Idenure Trustee (Indenture Trustee)
/"Assignee"
231 South LaSalle Street, 7th Floor
Chicago, Illinois 60697

The Security Agreement and Trust Indenture provides for a grant by the Owner Trustee to the Inden-

ture Trustee of a security interest in the railroad rolling stock described in any Indenture Supplement thereto, and for an assignment by the Owner Trustee to the Indenture Trustee of the rights of the Owner Trustee under the Equipment Lease Agreement.

The Security Agreement and Trust Indenture Supplement No. 1 ("Indenture Supplement No. 1") dated as of September ~~15~~ 22, 1989 should be recorded as -C of the same recordation number as the Equipment Lease Agreement.

The parties to the Indenture Supplement No. 1 are the same as in the Security Agreement and Trust Indenture.

The Indenture Supplement No. 1 lists and describes the railroad rolling stock subject to Lease Supplement No. 1, which Lease Supplement No. 1 has been assigned by the Owner Trustee/Assignor to the Indenture Trustee/Assignee pursuant to the Security Agreement and Trust Indenture.

The railroad rolling stock covered by the documents, as listed above, is identified in the schedules to the Lease Supplement No. 1, a copy of which schedule is attached to this letter.

A short summary of the documents to appear in the ICC Index is as follows:

> "Covers 87 tank cars and 104 covered hopper cars."

Once the filings have been made, please return to the undersigned the stamped counterparts of the Equipment Lease Agreement, Lease Supplement No. 1, the Security Agreement and Trust Indenture and the Indenture Supplement No. 1 not required for filing purposes, together with the ICC fee receipt and the letter from the ICC acknowledging the filings.

Very truly yours,

New Railcars

Number of Units	Size of Equipment	Manufacturer	Reporting Marks	Equipment Cost Per Unit	Total
Equipment Type B					
87	23,500 Gallon Exterior Coiled Insulated Tank Car	Gulf Railcar, Inc.	PLCX 092469-092555	48,000.00	US$4,176,000
Equipment Type C					
100	5850 Cubic Foot Covered Hopper Car	Trinity Industries, Inc.	PLCX 046850-046949	48,230.00	4,823,036
Equipment Type D					
4	5851 Cubic Foot Covered Hopper Car	Trinity Industries, Inc.	PLCX 047500-047503	55,175.00	220,700
Total Equipment Cost of New Railcars.....					US$9,219,736

-B

16539-B

RECORDATION NO _____ FILED 1425

SEP 29 1989 -1 15 PM

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT AND TRUST INDENTURE

Dated as of September 15, 1989

Between

FIRST SECURITY BANK OF UTAH, N.A.,
as Owner Trustee under Itel Rail Trust No. 89-2

and

CONTINENTAL BANK, NATIONAL ASSOCIATION,
as Indenture Trustee

(Itel Rail Trust No. 89-2)

TABLE OF CONTENTS

(Not a part of the Agreement)

Section	Heading	Page
	PARTIES	1
	RECITALS	1
SECTION 1.	GRANT OF SECURITY	2
1.1.	Equipment Collateral	2
1.2.	The Lease	2
1.3.	Assigned Agreements	3
1.4.	Duration of Security Interest	4
SECTION 2.	EXECUTION, PAYMENT, REGISTRATION, ETC. OF LOAN CERTIFICATES	4
2.1.	Execution of Loan Certificates; Principal Amount	4
2.2.	Payments of Loan Certificates	5
2.3.	Registered Loan Certificates; the Register; Maximum Number of Holders	6
2.4.	Transfers and Exchange of Loan Certificates; Lost or Mutilated Loan Certificates	6
2.5.	The New Loan Certificates	8
2.6.	Cancellation of Loan Certificates	8
2.7.	Indenture Trustee as Agent	9
2.8.	Ownership	9
SECTION 3.	COVENANTS AND WARRANTIES OF THE OWNER TRUSTEE	9
3.1.	Owner Trustee's Duties	9
3.2.	Warranty	10
3.3.	Further Assurances	10
3.4.	After-Acquired Property	10
3.5.	Recordation and Filing	10
3.6.	Actions with Respect to Collateral	11
3.7.	Power of Attorney in Respect of the Lease	13
3.8.	Notice of Default	14
3.9.	Revised Schedules of Adjustment of Rents and after Stipulated Loss Value, Termination Value or Early Purchase Option Payments	14
SECTION 4.	POSSESSION, USE AND RELEASE OF PROPERTY	14
4.1.	Possession of Collateral	14
4.2.	Release of Property	14
4.3.	Condemnation	15

Section	Heading	Page
4.4.	Release of Collateral - Consent of Certificateholders	15
4.5.	Protection of Purchaser	16
SECTION 5.	APPLICATION OF ASSIGNED RENTS AND CERTAIN OTHER MONEYS RECEIVED BY THE INDENTURE TRUSTEE	16
5.1.	Application of Rents and Other Payments	16
5.2.	Multiple Loan Certificates	20
5.3.	Default	20
SECTION 6.	PREPAYMENT OF LOAN CERTIFICATES	20
6.1.	Prepayments	20
6.2.	Mandatory Prepayments	21
6.3.	Notice of Prepayment; Partial Prepayments	22
SECTION 7.	DEFAULTS AND OTHER PROVISIONS	23
7.1.	Events of Default	23
7.2.	Indenture Trustee's Rights	24
7.3.	Certain Rights of the Owner Trustee	27
7.4.	Acceleration Clause	28
7.5.	Waiver by Owner Trustee	29
7.6.	Effect of Sale	29
7.7.	Application of Proceeds	29
7.8.	Discontinuance of Remedies	30
7.9.	Cumulative Remedies	31
SECTION 8.	THE INDENTURE TRUSTEE	31
8.1.	Duties of Indenture Trustee	31
8.2.	Indenture Trustee's Liability	32
8.3.	No Responsibility of Indenture Trustee for Recitals	34
8.4.	Certain Limitations on Indenture Trustee's Rights to Compensation and Indemnification	34
8.5.	Status of Moneys Received	35
8.6.	Resignation of Indenture Trustee	35
8.7.	Removal of Indenture Trustee	35
8.8.	Appointment of Successor Indenture Trustee	35
8.9.	Succession of Successor Indenture Trustee	36
8.10.	Eligibility of Indenture Trustee	37
8.11.	Successor Indenture Trustee by Merger	37
8.12.	Co-Trustees	37

Section	Heading	Page
SECTION 9.	LIMITATIONS OF LIABILITY	38
SECTION 10.	SUPPLEMENTS; WAIVERS	39
10.1.	Supplemental Indentures Without Certificateholders' Consent	39
10.2.	Supplements to Lease Without Certificateholders' Consent	39
10.3.	Waivers and Consents by Certificateholders; Supplemental Indentures with Certificateholders' Consent	40
10.4.	Notice of Supplemental Indentures	41
10.5.	Opinion of Counsel Conclusive as to Supplemental Indenture	41
SECTION 11.	MISCELLANEOUS	41
11.1.	Successors and Assigns	41
11.2.	Severability	42
11.3.	Communications	42
11.4.	Release	43
11.5.	Business Day	43
11.6.	Governing Law	43
11.7.	Counterparts	43
11.8.	Headings	43
Signature Page		44

ATTACHMENTS TO SECURITY AGREEMENT AND TRUST INDENTURE:

Exhibit A - Form of Loan Certificate
Exhibit B - Form of Indenture Supplement
Annex I - Definitions

SECURITY AGREEMENT AND TRUST INDENTURE

THIS SECURITY AGREEMENT AND TRUST INDENTURE dated as of September 15, 1989 (the "Indenture") is between FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but solely in its capacity as trustee (the "Owner Trustee") under Itel Rail Trust No. 89-2, and CONTINENTAL BANK, NATIONAL ASSOCIATION, a national banking association (the "Indenture Trustee"). The post office addresses of the Owner Trustee and the Indenture Trustee are set forth in Section 11.3.

R E C I T A L S:

A. The capitalized terms used in this Indenture shall have the meanings specified in Annex I hereto unless otherwise herein defined or the context hereof shall otherwise require.

B. The Owner Trustee and the Indenture Trustee have entered into a Participation Agreement providing for the commitment of the Loan Participants to purchase on the Delivery Date, Loan Certificates of the Owner Trustee in an aggregate principal amount not to exceed $7,380,867.86 . The Loan Certificates are to be dated the date of issue, to bear interest from such date to maturity at the rate of 10.31% per annum payable semi-annually in arrears on March 28, 1990, and on the twenty-eighth day of each September and March thereafter to and including March 28, 2010, the principal portion thereof to be payable in accordance with the amortization schedule attached thereto. The Loan Certificates are to be otherwise substantially in the form attached hereto as Exhibit A.

C. The Loan Certificates and all principal thereof and interest (and premium, if any) thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Owner Trustee under the terms of the Loan Certificates, this Indenture or the Participation Agreement are hereinafter sometimes referred to as "indebtedness hereby secured".

D. All of the requirements of law relating to the transaction contemplated hereby have been fully complied with and all other acts and things necessary to make this Indenture a valid, binding and legal instrument for the security of the Loan Certificates have been done and performed.

SECTION 1. GRANT OF SECURITY.

The Owner Trustee, in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest and premium, if any, on the Loan Certificates according to their tenor and effect, and to secure the payment of all other indebtedness hereby secured and the performance and observance of all of the Owner Trustee's covenants and conditions contained in the Loan Certificates and in this Indenture and in the Participation Agreement, does, subject to the terms and provisions hereof, hereby convey, warrant, mortgage, assign, pledge and grant unto the Indenture Trustee, its successors in trust and assigns for the ratable use and benefit of the holders of the Loan Certificates, a security interest in all and singular of the Owner Trustee's right, title and interest in and to the properties, rights, interests and privileges described in Sections 1.1, 1.2 and 1.3 hereof; excluding, however, the Excepted Rights in Collateral (all of which properties other than the Excepted Rights in the Collateral, being hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as the "Collateral"); provided however, that any payments or amounts which have been distributed to the Owner Trustee or the Owner Participant by the Indenture Trustee in accordance with the provisions of this Indenture, and to which the Owner Trustee and the Owner Participant, as the case may be, are entitled hereunder, shall not be subject to the security interest of this Indenture.

1.1. Equipment Collateral. Collateral includes (i) the Equipment, described in the Indenture Supplement, the form of which is attached hereto as Exhibit B and made a part hereof, which constitutes the Equipment leased and delivered under that certain Equipment Lease Agreement dated as of September 15, 1989 (the "Lease") between the Owner Trustee, as lessor, and the Lessee, as lessee; together with (i) all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment hereinabove described, whether now owned or hereafter acquired, except such thereof as remain the property of the Lessee under the Lease, (ii) all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Equipment, except such thereof as remain the property of the Lessee under the Lease, together with all the rents, issues, income and profits to the Owner Trustee therefrom, and (iii) all proceeds, including, without limitation, insurance proceeds, and products of any of the foregoing.

1.2. The Lease. Collateral also includes all right, title, interest, claims and demands of the Owner Trustee as lessor in, to and under the Lease, including all extensions of the term of the Lease, together with all rights, powers, privileges, options and other benefits of the Owner Trustee as lessor under the Lease, including, without limitation:

(a) the immediate and continuing right to receive and collect all Rent, Stipulated Loss Value and Termination Value payments, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable or receivable by the Lessor under the Lease pursuant thereto, except those sums reserved as Excepted Rights in Collateral;

(b) the right to make all waivers and agreements and to enter into any amendments relating to the Lease or any provision thereof, except with regard to those rights of the Owner Trustee or the Owner Participant reserved as Excepted Rights in Collateral; and

(c) the right to take such action upon the occurrence of a Lease Default or a Lease Event of Default, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law, and to do any and all other things whatsoever which the Owner Trustee or any lessor is or may be entitled to do under the Lease, except such rights with respect to, and as are reserved to the Owner Trustee and the Owner Participant in the definition of, Excepted Rights in Collateral; it being the intent and purpose hereof that the assignment and transfer to the Indenture Trustee of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Indenture Trustee shall have the right to collect and receive all Rent and Stipulated Loss Value and Termination Value payments and other sums for application in accordance with the provisions of Section 5 hereof at all times during the period from and after the date of this Indenture until the indebtedness hereby secured has been fully paid and discharged.

1.3. Assigned Agreements. All right, title, interest, claims and demands of the Owner Trustee in, to and under

(a) the Purchase Agreements;

(b) the Purchase Agreement Assignment;

(c) the Bills of Sale; and

(d) any and all other contracts and agreements relating to the Equipment or any rights or interests therein to which the Owner Trustee is now or may hereafter be a party, excepting the Tax Indemnity Agreement and the Trust Agreement (collectively, the "Assigned Agreements"),

together with all rights, powers, privileges, licenses, easements, options and other benefits of the Owner Trustee under each thereof, including, without limitation, the right to make all waivers and agreements, to give and receive all notices and other instruments or communications, to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by law, and to do any and all other things which the Owner Trustee is or may be entitled to do thereunder.

1.4. Duration of Security Interest. The Indenture Trustee, its successors in trust and assigns shall have and hold the Collateral forever; provided, always, however, that such security interest is granted upon the express condition that if the Owner Trustee shall pay or cause to be paid all the indebtedness hereby secured then these presents and the estate hereby granted and conveyed shall cease and this Indenture shall become null and void, and in such event the Indenture Trustee shall (upon the request of the Owner Trustee and at no cost to the Indenture Trustee) execute and deliver to the Owner Trustee such instrument or instruments as may be necessary or appropriate in order to make clear upon the public records the title of the Owner Trustee in and to the Collateral; otherwise it shall remain in full force and effect.

SECTION 2. EXECUTION, PAYMENT, REGISTRATION, ETC. OF LOAN CERTIFICATES.

2.1. Execution of Loan Certificates; Principal Amount. (a) The Loan Certificates shall be signed on behalf of the Owner Trustee by any Person who, at the date of the actual execution of such Loan Certificate, shall be a proper officer of the Owner Trustee. Only such Loan Certificates as shall bear thereon a certificate of authentication substantially in the form set forth in Exhibit A hereto shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Indenture Trustee upon any Loan Certificate executed by the Owner Trustee shall be conclusive evidence that the Loan Certificate so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture. The authentication by the Indenture Trustee of any Loan Certificate issued hereunder shall not be construed as a representation or warranty by the Indenture Trustee as to the validity or security of this Indenture or of such Loan Certificate, and the Indenture Trustee shall in no respect be liable or answerable for the use made of such Loan Certificate or the proceeds thereof. The Indenture Trustee shall, upon presentation to it of Loan Certificates duly executed on behalf of the Owner Trustee, authenticate such Loan Certificates upon the

written request of the Owner Trustee so to do and shall thereupon deliver such Loan Certificates to or upon the written order of the Owner Trustee signed by any person who, at the date of the actual execution of such order, shall be a proper officer of the Owner Trustee.

(b) The principal amount of the Loan Certificates to be issued hereunder shall not exceed $7,380,867.86 , except as provided in Section 2.4(a) or (d).

2.2. Payment of Loan Certificates. (a) The principal of, premium, if any, and interest on the Loan Certificates shall be payable at the principal office of the Indenture Trustee, in lawful money of the United States of America. Payment of principal and interest on the Loan Certificates shall be made only upon presentation of such Loan Certificates to the Indenture Trustee for notation thereon of the amount of such payment. Any payment or prepayment of amounts due on the Loan Certificates in accordance with the terms thereof and hereof which is due on a date which is not a Business Day shall be payable on the immediately succeeding Business Day.

(b) Notwithstanding the foregoing provisions of paragraph (a) of this Section 2.2, if any Loan Certificate is held by a Certificateholder which is an institutional investor, the Indenture Trustee shall, if so requested in writing by such Certificateholder (and Section 7 of the Participation Agreement shall constitute such written request in the case of the Loan Participants), make payment of interest on such Loan Certificate and make payments or prepayments of the principal thereof, and any premium, by check, duly mailed, by first-class mail, postage prepaid, or delivered to such Certificateholder at its address appearing on the Register without surrender or presentation of such Loan Certificate and without any notation of such payment being made thereon, and such Certificateholder (or Person for whom such Certificateholder is a nominee) will, before selling, transferring or otherwise disposing of such Loan Certificate, present such Loan Certificate to the Indenture Trustee for transfer and notation as provided in Sections 2.4 and 2.5. Upon written notice from any Certificateholder which is an institutional investor or its nominee given not less than thirty (30) days prior to the payment or prepayment of the Loan Certificates (and Section 7 of the Participation Agreement shall constitute such written notice in the case of the Loan Participants), the Indenture Trustee will cause all payments and prepayments of the principal of, and interest and premium, if any, on the Loan Certificate held by such Certificateholder or its nominee to be made to any bank in the continental United States as shall be specified in such notice by wire transfer of immediately available Federal Reserve funds to such bank, on each such date such payment or prepayment is due, provided that such bank has facilities for the receipt of a wire transfer. The Indenture

Trustee will transmit any such wire transfer from its offices not later than 1:00 P.M., Chicago, Illinois time, on each such date payment or prepayment is due provided immediately available Federal funds have been received by the Indenture Trustee prior to 12:00 P.M., Chicago, Illinois time.

2.3. Registered Loan Certificates; the Register; Maximum Number of Holders. The Loan Certificates shall be issuable as fully registered Loan Certificates in the form attached hereto as Exhibit A. The Owner Trustee shall cause to be kept at the principal office of the Indenture Trustee a register for the registration and transfer of Loan Certificates (herein called the "Register"). The names and addresses of the holders of the Loan Certificate, the transfers of the Loan Certificates and the names and addresses of the transferees of all Loan Certificates shall be registered in the Register.

Except as otherwise agreed by the Owner Trustee, the Owner Trustee shall not be obligated to issue any new Loan Certificate to any holder if as a result the outstanding Loan Certificates would be held by more than a total of five different investors.

2.4. Transfers and Exchanges of Loan Certificates; Lost or Mutilated Loan Certificates. (a) The holder of any Loan Certificate may transfer such Loan Certificate upon the surrender thereof at the principal office of the Indenture Trustee, or upon notice to the Indenture Trustee as provided in Section 7 of the Participation Agreement. If such Certificateholder has surrendered its Loan Certificate to the Indenture Trustee, thereupon, the Owner Trustee shall execute in the name of the transferee a new Loan Certificate or Loan Certificates in an aggregate principal amount equal to the original principal amount of the Loan Certificate so surrendered, and the Indenture Trustee shall authenticate and deliver such new Loan Certificate or Loan Certificates to such transferee; provided, however, that, except as otherwise agreed by the Owner Trustee, no such new Loan Certificate is required to be delivered to any holder in violation of the provisions of Section 2.3 hereof or in a principal amount ~~less than~~ $1,000,000, or (ii) in the case of any Loan Certificate originally issued for less than $1,000,000, the amount of such original issuance.

the lesser of (i)

(b) All Loan Certificates presented or surrendered for transfer shall be accompanied (if so required by the Owner Trustee or by the Indenture Trustee) by a written instrument or instruments of assignment or transfer, in form satisfactory to the Indenture Trustee, duly executed by the holder or by its attorney duly authorized in writing. The Owner Trustee and the Indenture Trustee shall not be required to make a transfer or an exchange of any Loan Certificate for a period of ten (10) days preceding any payment date with respect thereto.

(c) No notarial seal shall be necessary for the transfer or exchange of any Loan Certificate pursuant to this Section 2.4, and the holder of any Loan Certificate issued as provided in this Section 2.4 shall be entitled to any and all rights and privileges granted under this Indenture to a holder of a Loan Certificate.

(d) In case any Loan Certificate shall become mutilated or be destroyed, lost or stolen, the Owner Trustee, upon the written request of the holder thereof, shall execute and the Indenture Trustee shall authenticate and deliver a new Loan Certificate in exchange and substitution for the mutilated Loan Certificate, or in lieu of and in substitution for the Loan Certificate so destroyed, lost or stolen. The applicant for a substitute Loan Certificate shall furnish to the Owner Trustee and to the Indenture Trustee such security or indemnity as may be required by them to save each of them harmless from any loss resulting from the authentication and delivery of the substitute Loan Certificate, however remote, including claims for principal of and premium, if any, and interest on the purportedly lost, stolen or destroyed Loan Certificate, and the applicant shall also furnish to the Owner Trustee and to the Indenture Trustee evidence to their satisfaction of the mutilation, destruction, loss or theft of the applicant's Loan Certificate and of the ownership thereof. In case any Loan Certificate which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Owner Trustee may, instead of issuing a substitute Loan Certificate, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Loan Certificate) if the applicant for such payment shall furnish to the Owner Trustee and to the Indenture Trustee such security or indemnity as they may require to save them harmless, and shall provide evidence to the satisfaction of the Owner Trustee and the Indenture Trustee of the mutilation, destruction, loss or theft of such Loan Certificate and the ownership thereof. If an institutional Certificateholder or its nominee is the owner of any mutilated, destroyed, lost or stolen Loan Certificate, then the affidavit of its Secretary or Assistant Secretary in form reasonably satisfactory to the Owner Trustee and the Indenture Trustee setting forth the fact of destruction, loss or theft and such Loan Participant's ownership of the Loan Certificate at the time of such mutilation, destruction, loss or theft shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Loan Certificate other than the written agreement of such Certificateholder, in form reasonably satisfactory to the Owner Trustee and the Indenture Trustee, to indemnify the Owner Trustee and the Indenture Trustee from all risks resulting from the authentication and delivery of the substitute Loan Certificate.

2.5. The New Loan Certificates. (a) Each new Loan Certificate (herein, in this Section 2.5, called a "New Loan Certificate") issued pursuant to Section 2.4(a) or (d) in exchange for or in substitution or in lieu of an outstanding Loan Certificate (herein, in the Section 2.5, called an "Old Loan Certificate") shall be dated the date of such Old Loan Certificate. The Indenture Trustee shall mark on each New Loan Certificate (i) the date to which principal and interest have been paid on such Old Loan Certificate, and (ii) all payments and prepayments of principal previously made on such Old Loan Certificate which are allocable to such New Loan Certificate. Interest shall be deemed to have been paid on such New Loan Certificate to the date on which interest shall have been paid on such Old Loan Certificate, and all payments and prepayments of principal marked on such New Loan Certificate, as provided in clause (ii) above, shall be deemed to have been made thereon.

(b) Upon the issuance of a New Loan Certificate pursuant to Section 2.4(a) or (d), the Owner Trustee may require from the Certificateholder the payment of a sum to reimburse it for, or to provide it with funds for, the payment of any tax or other governmental charge or any other charges and expenses connected therewith which are paid or payable by the Owner Trustee and the Certificateholder of such new Loan Certificate shall, promptly upon request by the Owner Trustee, so reimburse the Owner Trustee.

(c) All New Loan Certificates issued pursuant to Section 2.4(a) or (d) in exchange for or in substitution or in lieu of Old Loan Certificates shall be valid obligations of the Owner Trustee evidencing the same debt as the Old Loan Certificates and shall be entitled to the benefits and security of this Indenture to the same extent as the Old Loan Certificates.

(d) Upon the issuance of any Loan Certificate pursuant to this Indenture, the Indenture Trustee shall deliver to the holder thereof an amortization schedule with respect to such Loan Certificate setting forth the amount of the scheduled principal to be made on such Loan Certificate after the date of issuance thereof and the unpaid principal balance of such Loan Certificate after each such payment.

2.6. Cancellation of Loan Certificates. All Loan Certificates surrendered for the purpose of payment, redemption, transfer or exchange shall be delivered to the Indenture Trustee for cancellation or, if surrendered to the Indenture Trustee, shall be cancelled by it, and no Loan Certificates shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture. The Indenture Trustee shall deliver a certificate to the Owner Trustee specifying any cancellation of Loan Certificates which has been made. All such cancelled Loan Certificates shall be held by the Indenture Trustee

until this Indenture shall have been discharged, at which time the Indenture Trustee shall either deliver such cancelled Loan Certificates in a manner necessary to effect the discharge and release of this Indenture or, if no such delivery is necessary, such Loan Certificates shall be delivered to or disposed of as directed by the Owner Trustee.

2.7. Indenture Trustee as Agent. The Indenture Trustee is hereby appointed the agent of the Owner Trustee for the payment, registration, transfer and exchange of Loan Certificates. Subject to the provisions of Section 2.2, Loan Certificates may be presented for payment at, and notices or demands with respect to the Loan Certificates or this Indenture may be served or made at, the principal corporate trust office of the Indenture Trustee.

2.8. Ownership. The Person in whose name any Loan Certificate shall be registered shall be deemed and treated as the owner thereof for all purposes of this Indenture and neither the Owner Trustee nor the Indenture Trustee shall be affected by any notice to the contrary. Payment of or on account of the principal of, premium, if any, and interest on such Loan Certificate shall be made to another Person only to or upon the order in writing of such registered owner. For the purpose of any request, direction or consent hereunder, the Owner Trustee and the Indenture Trustee may deem and treat the registered owner of any Loan Certificate as the owner and holder thereof without production of such Loan Certificate.

SECTION 3. COVENANTS AND WARRANTIES OF THE OWNER TRUSTEE.

The Owner Trustee covenants, warrants and agrees for the benefit of the Indenture Trustee and the holders of the Loan Certificates as follows:

3.1. Owner Trustee's Duties. The Owner Trustee covenants and agrees well and truly to perform, abide by and be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements set forth in the Participation Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns, to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Participation Agreement were fully set out in an amendment or supplement to this Indenture. The Owner Trustee undertakes to perform only such duties as are expressly and specifically set forth herein and in the other Operative Agreements (as defined in the Participation Agreement) and no implied obligations or covenants shall be read into this Indenture or any other Operative Agreements against the Owner Trustee.

3.2. Warranty. The Owner Trustee has the right, power and authority under the Trust Agreement to grant a security interest in the Collateral to the Indenture Trustee for the uses and purposes herein set forth. The Owner Trustee also agrees that it will, in its individual capacity and at its own cost and expense, without regard to the provisions of Section 9 hereof, promptly take such action as may be necessary to duly discharge any liens and encumbrances on the Collateral which result from claims against the Owner Trustee in its individual capacity and not related to the ownership of the Equipment or the administration of the Trust Estate. Without limiting the foregoing, there is no financing statement or other filed or recorded instrument in which the Owner Trustee is named and which the Owner Trustee has signed, as debtor or mortgagor, now on file in any public office covering any of the Collateral excepting the financing statements or other instruments filed or to be filed in respect of and for the security interest provided for herein.

3.3. Further Assurances. The Owner Trustee will, upon the request of and at no expense to the Owner Trustee or Indenture Trustee, (a) execute an Indenture Supplement in the form of Exhibit B attached hereto specifically identifying the Equipment, and (b) do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired. Without limiting the foregoing but in furtherance of the security interest herein granted in the rents and other sums due and to become due under the Lease, the Owner Trustee covenants and agrees that it will, pursuant to Section 18 of the Lease, notify the Lessee of the assignment hereunder and direct the Lessee to make all payments of such rents and other sums due and to become due under the Lease directly to the Indenture Trustee or as the Indenture Trustee may direct in writing.

3.4. After-Acquired Property. Any and all property described or referred to in the granting clauses hereof which is hereafter acquired shall ipso facto, and without any further conveyance, assignment or act on the part of the Owner Trustee or the Indenture Trustee, become and be subject to the security interest herein granted as fully and completely as though specifically described herein, but nothing in this Section 3.4 contained shall be deemed to modify or change the obligation of the Owner Trustee under Section 3.3 hereof.

3.5. Recordation and Filing. The Owner Trustee will cooperate fully with the Lessee and/or the Indenture Trustee in any effort to cause this Indenture and all supplements hereto, the Lease and all supplements thereto, and all financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed at no expense to

the Indenture Trustee or the Owner Trustee in such manner and in such place as may be requested in writing by the Indenture Trustee in order to fully preserve and protect the rights of the Indenture Trustee hereunder.

3.6. Actions with Respect to Collateral.

(a) At all times, whether or not an Indenture Event of Default shall have occurred and be continuing, the Owner Trustee and the Owner Participant shall have the right, to the exclusion of the Indenture Trustee, (i) to exercise all rights that Section 22.7 of the Lease confers upon the Lessor to amend, supplement, waive or modify the Lease with respect to Excepted Rights in Collateral; and (ii) to declare a Lease Event of Default under Section 15.1(b) of the Lease resulting from non-payment of Supplemental Rent in respect of Excepted Rights in Collateral, and to exercise the remedies, but only those remedies, provided in Section 15.2(a) of the Lease in respect of such Lease Event of Default;

(b) At all times, whether or not an Indenture Event of Default shall have occurred and be continuing, the Owner Trustee and the Owner Participant shall have the right, together with and not exclusive of the concurrent right of the Indenture Trustee and the Loan Participants, (i) to receive from the Lessee all notices, financial statements, certificates, opinions of counsel and other information which the Lessee is permitted or required to furnish to the Lessor under any Operative Document, including under Section 5.1 of Participation Agreement and Section 10.1, Section 19.2 and Section 13.1 of the Lease; (ii) to exercise all rights that Section 5.2 of the Participation Agreement and Section 13.2 of the Lease specifically confers upon the Lessor with respect to inspection and reports; and (iii) except to the extent contemplated by Section 7.3(a), to exercise all rights that Section 17 of the Lease specifically confers upon the Lessor to perform for the Lessee under the Lease;

(c) So long as no Indenture Event of Default shall have occurred and be continuing, except to the extent permitted in clause (a) above or clause (d) below, neither the Owner Trustee nor the Indenture Trustee will, except by acting with the concurrence of both such parties as evidenced by their joint execution of a written instrument (i) exercise any rights that Section 22.7 of the Lease specifically confers upon the Lessor with respect to termination, amendment, supplementing, waiver or modification of the Lease; or (ii) approve as satisfactory any accountants, inspectors, engineers or counsel to render services for or to issue

opinions to the Lessor pursuant to express provisions of the Operative Documents;

(d) So long as no Indenture Event of Default shall have occurred and be continuing, the Owner Trustee and the owner Participant shall have the right, to the exclusion of the Indenture Trustee, (i) to negotiate amounts of adjustments to Rent payable pursuant to Section 2.1 of the Lease so long as such adjustments do not reduce Basic Rent below the level required to pay the principal and interest due under the Loan Certificates; (ii) to exercise all rights that Section 11 of the Lease specifically confers upon the Lessor with respect to Stipulated Loss Value, including, without limitation, the right to negotiate amounts of adjustments to Stipulated Loss Value so long as such adjustments do not reduce Stipulated Loss Value below the level required to pay the principal and interest due under the Loan Certificates; (iii) to exercise all rights that Section 12 of the Lease confers upon the Lessor with respect to early termination and Termination Value, including, without limitation, the right to negotiate amounts of adjustments to Termination Value so long as such adjustments do not reduce Termination Value below the level required to pay the principal, interest and Make-Whole Amount due under the Loan Certificates; and (iv) to consent to any determination of Fair Market Rental Value, Fair Market Sales Value, residual value and estimated useful life in connection with Lessee's purchase option and renewal option pursuant to Section 20 of the Lease, and in the event such Indenture Event of Default shall arise solely under Section 7.1(b), the Owner Trustee, the Owner Participant and the Indenture Trustee may exercise all such rights only with the concurrence of all such parties as evidenced by their joint execution of a written instrument.

(e) In addition to the limitations upon the independent action of the Indenture Trustee imposed by clauses (a) through (d) of this Section, the Indenture Trustee will not, notwithstanding that an Indenture Event of Default has occurred and is continuing, except with the consent of the Owner Trustee and the Owner Participant, exercise any right of the Lessor under Section 22.7 of the Lease with respect to Excepted Rights in Collateral or so as to limit, modify or restrict any rights of the Owner Trustee or the Owner Participant referred to in clauses (b) or (d) above.

(f) The Owner Trustee will not:

or which will extend the Lease Term or reduce the amount of, or delay the due date of, any payment of Basic Rent, Stipulated Loss Value or Termination Value or amend Section 20.

(i) except as otherwise provided in clauses (a) through (e) of this Section 3.6, declare a default or exercise the remedies of the Lessor under, or terminate, modify or accept a surrender of, or offer or agree to any termination, modification or surrender of, the Lease, or except for Excepted Rights in Collateral, by affirmative act consent to the creation or existence of any security interest or other Lien to secure the payment of indebtedness (other than pursuant to this Indenture) upon the leasehold estate created by the Lease or any part thereof;

(ii) receive or collect any payment of Rent, Stipulated Loss Value or Termination Value under the Lease (except for Excepted Rights in Collateral) prior to the date of payment thereof provided for by the Lease or, except to the extent contemplated by Section 10.01 of the Trust Agreement of Section 6.1 of the Participation Agreement, assign, transfer or hypothecate (other than to the Indenture Trustee hereunder) any payment of Rent, Stipulated Loss Value or Termination Value which is then due or to accrue in the future under the Lease in respect of the Equipment; or

(iii) except to the extent contemplated by Section 10.01 of the Trust Agreement of Section 6.1 of the Participation Agreement, sell, mortgage, transfer, assign or hypothecate (other than to the Indenture Trustee hereunder) its interest in the Equipment or any part thereof or in any amount to be received by it from the use or disposition of the Equipment (except for Excepted Rights in Collateral).

3.7. Power of Attorney in Respect of the Lease. Except with respect to Excepted Rights in Collateral, the Owner Trustee does hereby irrevocably constitute and appoint the Indenture Trustee its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, income and other sums which are assigned under Section 1 hereof with full power to settle, adjust or compromise any claim thereunder with respect to such assigned sums as fully as the Owner Trustee could itself do, and, so long as an Indenture Event of Default has occurred and is continuing, to accept any offer of the Lessee to purchase the Equipment as provided in the Lease and upon such purchase to execute and deliver in the name of and on behalf of the Owner Trustee an appropriate bill of sale and other instruments of transfer relating to the Equipment when purchased by the Lessee in accordance with the Lease, and to endorse the name of the Owner Trustee on all commercial paper given in payment or in part payment thereof, and, subject to the limitations set forth in this

Indenture and so long as an Indenture Event of Default has occurred and is continuing, in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Owner Trustee or otherwise, which the Indenture Trustee may deem necessary or appropriate to protect and preserve the right, title and interest of the Indenture Trustee in and to such rents and other sums and the security intended to be afforded hereby.

3.8. Notice of Default. The Owner Trustee further covenants and agrees that it will give the Indenture Trustee and each Certificateholder prompt written notice of any event or condition constituting a Lease Event of Default if a senior officer in the Corporate Trust Department of the Owner Trustee has actual knowledge of such event or condition.

3.9. Revised Schedules of Adjustment of Rents and after Stipulated Loss Value, Termination Value or Early Purchase Option Payments. In the event of any adjustments of the Basic Rent, Stipulated Loss Value and Termination Value pursuant to Section 2.3 of the Lease, the Owner Trustee shall furnish to each Certificateholder and to the Indenture Trustee revised schedules of the Basic Rent, Stipulated Loss Value and Termination Value, as so adjusted in the manner and on the dates provided in Section 2.7 of the Participation Agreement. Promptly following any payment of Stipulated Loss Value pursuant to Section 11 of the Lease, Termination Value pursuant to Section 12 of the Lease, or relating to the Lessee's exercise of its early purchase option pursuant to Section 20.1 of the Lease, the Owner Trustee shall furnish to the Indenture Trustee revised schedules of the Basic Rent.

SECTION 4. POSSESSION, USE AND RELEASE OF PROPERTY.

4.1. Possession of Collateral. Unless and until an Indenture Event of Default shall have occurred and be continuing, the Owner Trustee shall, to the exclusion of the Indenture Trustee, be permitted to remain in full possession, enjoyment and control of the Collateral and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto, provided, always, that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Indenture and the Lease. It is expressly understood that the use and possession of the Equipment by the Lessee under and subject to the Lease shall not constitute a violation of this Section 4.1.

4.2. Release of Property. So long as no Lease Event of Default has occurred and is continuing to the knowledge of the Indenture Trustee, the Indenture Trustee shall execute a release in respect of any Unit designated by the Lessee for settlement of Stipulated Loss Value pursuant to Section 11 of the Lease,

Termination Value pursuant to Section 12 of the Lease or early purchase option pursuant to Section 20.1 of the Lease, upon receipt from the Lessee of written notice designating the Unit in respect of which the Lease will terminate and the receipt from the Lessee or such other Person, as the case may be, of all sums (except for Excepted Rights in Collateral) payable for such Unit in compliance with Section 11, Section 12 or Section 20.1 of the Lease, as the case may be. Any such written notice from the Lessee shall be accompanied by an Officer's Certificate of the Lessee setting forth the basis for such request and stating that the Lessee has complied with the applicable provisions of the Lease, together with such additional evidence of such compliance as the Indenture Trustee shall reasonably request. The Indenture Trustee agrees at no cost to itself to execute such instruments as the Lessee or the Owner Trustee shall reasonably request to evidence such release and consents to all appropriate filings to confirm such release of public record.

4.3. Condemnation. The Owner Trustee, immediately upon obtaining actual knowledge of the institution of any proceedings for the condemnation of the Collateral or any portion thereof, which such condemnation proceedings, if successful, would reasonably be likely to result in an Event of Loss, shall notify the Indenture Trustee of the pendency of such proceedings. The Indenture Trustee, at its own cost and expense, may participate in any such proceedings, and the Owner Trustee from time to time will deliver or cause to be delivered to the Indenture Trustee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable to the Owner Trustee or assigned to the Owner Trustee by the Lessee under the Lease shall be paid to the Indenture Trustee, and such award or compensation shall be retained by the Indenture Trustee as part of the Collateral and applied in accordance which Section 5. The Indenture Trustee shall be under no obligation to question the amount of the award or compensation and the Indenture Trustee may accept any such award or compensation. In any such compensation proceedings, the Indenture Trustee may be represented by counsel.

4.4. Release of Collateral - Consent of Certificateholders. In addition to any release pursuant to Section 4.2, the Owner Trustee may sell or otherwise dispose of all or any part of the Collateral then subject to the Lien of this Indenture upon the written consent of the Certificateholders, and the Indenture Trustee shall release the same from the Lien and security interest hereof, to the extent and on the terms and upon compliance with the conditions provided for in any such written consent given thereto at any time or from time to time by the Certificateholders.

4.5. Protection of Purchaser. No purchaser in good faith of property purporting to be released hereunder shall be bound to ascertain the authority of the Indenture Trustee to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of such authority; nor shall any purchaser, in good faith, of any item or unit of the Collateral be under obligation to ascertain or inquire into the conditions upon which any such sale is hereby authorized.

SECTION 5. APPLICATION OF ASSIGNED RENTS AND CERTAIN OTHER MONEYS RECEIVED BY THE INDENTURE TRUSTEE.

5.1. Application of Rents and Other Payments. As more fully set forth in Section 1.2 hereof, the Owner Trustee has hereby granted to the Indenture Trustee a security interest in Rents, issues, profits, income, insurance proceeds and other sums due and to become due to the Owner Trustee under the Lease in respect of the Equipment as security for the Loan Certificates. So long as no Indenture Default or Indenture Event of Default has occurred and is continuing to the knowledge of the Indenture Trustee:

(a) Interim Rent and Basic Rent. The amounts from time to time received by the Indenture Trustee which constitute payment by the Lessee of installments of Interim Rent, if any, or Basic Rent shall be applied first, to the payment of the installments of principal and interest (and in each case first to interest and then to principal) on the Loan Certificates which have become due and payable or will become due and payable on or before the due date of such installment of Interim Rent or Basic Rent which is received by the Indenture Trustee, and then the balance, if any, of such amounts shall be paid to or upon the order of the Owner Trustee on the date of payment of the installment as provided in clause first above;

(b) Supplemental Rent. The amount, if any, from time to time received by the Indenture Trustee which constitutes payment of Supplemental Rent pursuant to Section 2.1(c) of the Lease (other than Termination Value payments, Stipulated Loss Value payments and any early purchase option payment under Section 20.1 of the Lease) shall be paid to or upon the order of the Owner Trustee, or to such other party which is to receive the same pursuant to the terms of the Lease;

(c) Stipulated Loss Value. The amounts from time to time received by the Indenture Trustee which constitute settlement by the Lessee of the Stipulated Loss Value for any Unit pursuant to Section 11 of the

Lease shall be applied by the Indenture Trustee as follows:

(i) First, to the payment of an amount, if any, equal to the accrued and unpaid interest on that portion of the Loan Certificates to be prepaid pursuant to the following subparagraph;

(ii) Second, an amount equal to the Loan Value of the Unit for which settlement is then being made shall be applied to the prepayment of the Loan Certificates so that each of the remaining installments of each Loan Certificate shall be reduced in the proportion that the principal amount of the prepayment bears to the unpaid principal amount of the Loan Certificates immediately prior to the prepayment; and

(iii) Third, the balance, if any, of such amounts held by the Indenture Trustee after making the applications provided for by the preceding subparagraphs (i) and (ii) shall be released to or upon the order of the Owner Trustee on the date of payment of the amounts provided in the preceding clauses, (i) and (ii).

For purposes of this Indenture and the other Operative Agreements, the "Loan Value" in respect of any Unit as of any Stipulated Loss Value payment date, Termination Date or early purchase payment date pursuant to Section 20.1 of the Lease, as applicable, shall be an amount equal to the product of (A) a fraction, the numerator of which is an amount equal to the Equipment Cost of such Unit for which settlement is then being made and the denominator of which is the Total Equipment Cost of all Units then subject to the Lease, times (B) the unpaid principal amount of the Loan Certificates immediately prior to the prepayment provided for in this Section 4.1(c), Section 4.1(d) or Section 4.1(e), as the case may be (after giving effect to all payments of installments of principal made or to be made on the date of prepayment provided for in this Section 4.1(c), Section 4.1(d) or Section 4.1(e), as the case may be).

(d) Termination Value. The amounts from time to time received by the Indenture Trustee which constitute settlement by the Lessee of the Termination Value for any Unit pursuant to Section 12 of the Lease together with any Make-Whole Amount due under Section 12 of the Lease shall be applied by the Indenture Trustee as follows:

(i) First, to the payment of an amount, if any, equal to the accrued and unpaid interest and Make-Whole Amount on that portion of the

Loan Certificates to be prepaid pursuant to the following subparagraph;

(ii) Second, an amount equal to the Loan Value of the Unit for which settlement is then being made shall be applied to the prepayment of the Loan Certificates so that each of the remaining installments of each Loan Certificates shall be reduced in the proportion that the principal amount of prepayment bears to the unpaid principal amount of the Loan Certificates immediately prior to the prepayment; and

(iii) Third, the balance, if any, of such amounts held by the Indenture Trustee after making the applications provided for by the preceding subparagraphs (i) and (ii) shall be released to or upon the order of the Owner Trustee on the date of payment of the amounts provided in the preceding clauses (i) and (ii).

(e) Early Purchase Option. The amounts from time to time received by the Indenture Trustee which constitute payment by the Lessee of the amount due upon exercise of the early purchase option for any Unit pursuant to Section 20.1 of the Lease together with any Make-Whole Amount due under Section 20.1 of the Lease shall be applied by the Indenture Trustee as follows:

(i) First, to the payment of an amount, if any, equal to the accrued and unpaid interest and Make-Whole Amount on that portion of the Loan Certificates to the prepaid pursuant to the following subparagraphs;

(ii) Second, an amount equal to the Loan Value of the Unit for which settlement is then being made shall be applied to the prepayment of the Loan Certificates so that each of the remaining installment of each Loan Certificate shall be reduced in the proportion that the principal amount of the prepayment bears to the unpaid principal amount of the Loan Certificates immediately prior to the prepayment; and

(iii) Third, the balance, if any, of such amounts held by the Indenture Trustee after making the applications provided for by the preceding subparagraphs (i) and (ii) shall be released to or upon the order of the Owner Trustee on the date of payment of the amounts provided in the preceding clauses (i) and (ii).

(f) Insurance Proceeds. The amounts received by the Indenture Trustee from time to time which constitute proceeds of property or casualty insurance maintained by the Lessee on the Equipment, shall be held by the Indenture Trustee as a part of the Collateral and shall be applied by the Indenture Trustee from time to time to any one or more of the following purposes:

(i) So long as no Lease Default or Lease Event of Default has occurred and is continuing to the knowledge of the Indenture Trustee, the proceeds of such insurance shall, if the Unit is to be repaired or restored, be released to the Owner Trustee to reimburse or pay the Lessee for expenditures made for such repair or restoration promptly, but in any event within thirty (30) days following receipt by the Indenture Trustee of a written application signed by the Lessee for payment of, or to reimburse the Lessee for payment of, the costs of repairing or restoring the Unit which has been damaged, accompanied by the certificate referred to in Section 10.2 of the Lease such certificate to be accompanied by satisfactory evidence of such repair or restoration and the cost thereof; and

(ii) If the insurance proceeds shall not have been released to the Owner Trustee pursuant to the preceding paragraph (i) within 180 days from the receipt thereof by the Indenture Trustee, or if within such period the Lessee shall have notified the Indenture Trustee in writing that the Lease is to be terminated in respect of such Unit in accordance with the provisions of Section 11 of the Lease then so long as no Indenture Event of Default has occurred and is continuing to the knowledge of the Indenture Trustee, the insurance proceeds shall be applied by the Indenture Trustee as follows:

(A) First, to the prepayment of the Loan Certificates, all in the manner and to the extent provided for by Section 5.1(c) hereof; and

(B) Second, the balance, if any, of such insurance proceeds held by the Indenture Trustee after making the applications provided for by the preceding subparagraph (A) shall be

released to or upon the order of the Owner Trustee on the date of such prepayment of the Loan Certificates.

(g) Condemnation Awards. So long as no Lease Default or Lease Event of Default has occurred or is continuing, any amounts received by or payable to the Indenture Trustee from time to time which constitute the award, compensation or damages payable for the condemnation or taking of all or any part of the Equipment for any public or quasi-public use (less the actual costs, fees and expenses incurred in the collection thereof) shall be released to or upon the order of the Owner Trustee if such condemnation or taking does not constitute an Event of Loss and otherwise shall be applied in accordance with Section 5.1.(c).

(h) Excepted Payments. Anything in this Section 5.1 or elsewhere in this Indenture to the contrary notwithstanding, any Excepted Rights in Collateral received at any time by the Indenture Trustee shall be distributed on the date on which it is received in accordance with the final sentence of Section 2.4 of the Lease to the Owner Trustee or the Owner Participant, as the case may be.

5.2. Multiple Loan Certificates. If more than one Loan Certificate is outstanding at the time such application is made, such application shall be made on all outstanding Loan Certificates ratably in accordance with the aggregate principal amount remaining unpaid thereon.

5.3. Default. If an Indenture Event of Default has occurred and is continuing, all amounts received by the Indenture Trustee pursuant to Section 1 hereof shall be applied in the manner provided for in Section 7 in respect of proceeds and avails of the Collateral but only following the expiry of the Cure Periods referred to in Section 7.3(a).

SECTION 6. PREPAYMENT OF LOAN CERTIFICATES.

6.1. Prepayments. Neither any prepayment of any Loan Certificate nor any purchase by the Owner Trustee of any Loan Certificate may be made except to the extent and in the manner expressly permitted by this Indenture. Every prepayment of Loan Certificates required to be made pursuant to Section 5 and any prepayment permitted to be made under Section 7 shall be made in accordance with the provisions of this Section 6.

6.2. Mandatory Prepayments.

(a) Early Termination Pursuant to Section 11 of the Lease. In the event of a termination of the Lease by the Lessee pursuant to the provisions of Section 11 of the Lease with respect to any Unit, on the date of such termination the Owner Trustee shall prepay and apply, and there shall become due and payable, a principal amount of the Loan Certificates equal to the Loan Value of the Units with respect to which the Lease is being terminated, and all accrued and unpaid interest thereon, but without premium.

(b) Early Termination Pursuant to Section 12 of the Lease. In the event of a termination of the Lease by the Lessee pursuant to the provisions of Section 12 of the Lease with respect to any Unit, on the date of such termination the Owner Trustee shall prepay and apply, and there shall become due and payable, a principal amount of the Loan Certificates equal to the Loan Value of the Units with respect to which the Lease is being terminated, and all accrued and unpaid interest thereon, together with an amount equal to the applicable Make-Whole Amount.

(c) Early Termination Pursuant to Section 20.1 of the Lease. In the event of a termination of the Lease by the Lessee pursuant to the provisions of Section 20.1 of the Lease with respect to any Unit, on the date of such termination the Owner Trustee shall prepay and apply, and there shall become due and payable, a principal amount of the Loan Certificates equal to the Loan Value of the Units with respect to which the Lease is being terminated, and all accrued and unpaid interest thereon, together with an amount equal to the applicable Make-Whole Amount.

(d) Refinancing Pursuant to Section 9.2 of the Participation Agreement. In the event of a refinancing of the indebtedness evidenced by the Loan Certificates pursuant to Section 9.2 of the Participation Agreement, on the date of such refinancing the Owner Trustee shall prepay and apply, and there shall become due and payable, the entire outstanding principal amount of the Loan Certificates and all accrued and unpaid interest thereon, together with an amount equal to the Make-Whole Amount.

(e) Escrowed Funds Distribution. Any portion of Escrowed Funds which shall not have been applied to the payment of a portion of the Total Equipment Cost of the Units to be delivered on the Second Delivery Date or on December 29, 1989, whichever shall first occur, shall be applied, to the extent that the amount of Original Escrowed Funds shall exceed the amount so applied to the payment to a portion of the Total Equipment Cost of such Units delivered on the Second Delivery Date, or if the Second Delivery Date does not occur on or prior to December 29, 1989, to the extent of the full amount of the Original Escrowed Funds, to the prepayment of the principal amount of the Loan Certificates then

outstanding and any additional amount distributed to the payment of Loan Certificates pursuant to Section 2.3(b)(ii) of the Participation Agreement shall be applied to the payment of accrued interest on such prepaid portion of the Loan Certificates.

6.3. Notice of Prepayment; Partial Prepayments.

(a) Notice of Prepayment. In the case of any payment which will discharge all indebtedness of the Owner Trustee evidenced by the Loan Certificates, notice thereof in writing to the holders of the Loan Certificates to be so paid shall be sent by the Indenture Trustee as agent and attorney-in-fact of the Owner Trustee in the manner set forth in Section 10.3, to the holder of each Loan Certificate to be paid, in the case of any prepayment resulting from a termination of the Lease pursuant to Section 12 or Section 20.1 of the Lease, at least [redacted] and not more than 90 days prior to the date fixed for payment or such later date as the Indenture Trustee shall have received notice of such prepayment, and in the case of any prepayment resulting from an Event of Loss or a refinancing pursuant to Section 9.2 of the Participation Agreement or the release of the escrowed funds pursuant to Section 2.3(b)(ii) of the Participation Agreement, on the date the Indenture Trustee shall have received notice of such prepayment or release. Such notice shall specify the date fixed for payment, the provision thereof under which such payment is being effected, and on the date fixed for payment there will become due and payable upon each Loan Certificate or portion thereof so to be paid at the place where the principal of the Loan Certificates to be paid is payable, the specified amount of principal thereof, together with the accrued interest to such date, with such premium (including the method used in determining such premium), if any, as is payable thereon. 10

(b) Allocation of Partial Prepayments. In the event of any partial prepayment of any Loan Certificates, the aggregate principal amount of such Loan Certificates to be prepaid shall be prorated by the Indenture Trustee among the holders thereof in proportion to the unpaid principal amount of such Loan Certificates held by them, and the Indenture Trustee shall apply the proceeds of such partial prepayment first, to the interest due and payable on, second, to any premium due on, and third, to the outstanding principal amount of, such Loan Certificates of each such holder to be prepaid.

(c) Deposit of Prepayment Funds. On or prior to the date fixed for any prepayment of Loan Certificates the moneys required for such payment shall be deposited with the Indenture Trustee by the Owner Trustee.

SECTION 7. DEFAULTS AND OTHER PROVISIONS.

7.1. Events of Default. The term "Indenture Event of Default" for all purposes of this Indenture shall mean one or more of the following:

(a) Default in payment of an installment of the principal of, premium, if any, or interest on, any Loan Certificate when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise, and such default shall continue unremedied for five (5) Business Days;

(b) A Lease Event of Default shall have occurred and be continuing; provided, that any such Lease Event of Default caused by a failure of the Lessee to pay when due any amount that is included in the definition of Excepted Rights in Collateral shall not constitute an Indenture Event of Default unless notice is given by the Owner Trustee to the Indenture Trustee that such failure shall constitute an Indenture Event of Default;

(c) Default on the part of the Owner Trustee or the Owner Participant in the due observance or performance of any covenant or agreement to be observed or performed by the Owner Trustee or the Owner Participant under the Loan Certificates, this Indenture or the Participation Agreement, and such default shall continue unremedied for thirty (30) days after written notice from the Indenture Trustee to the Owner Trustee or the Owner Participant, as the case may be, specifying the default and demanding the same to be remedied; provided, however, that if such default is not capable of cure during such thirty (30) day period, no Indenture Event of Default shall occur under this paragraph (c) so long as the Owner Trustee or the Owner Participant, as the case may be, is diligently attempting to cure such default, but in no event longer than ninety (90) days.

(d) Any representation or warranty on the part of the Owner Trustee or the Owner Participant made herein or in the Participation Agreement or in any report, certificate, financial or other statement furnished by the Owner Trustee or the Owner Participant (unless prepared by the Lessee or its agent) in connection with this Indenture, the Lease or the Participation Agreement, or the transactions contemplated therein, is untrue or incorrect in any material respect as of the date of issuance or making thereof;

(e) Any Lessor Lien (other than Permitted Liens and liens, charges and encumbrances which the Lessee is obligated to discharge under Section 8 of the Lease) shall be asserted against or levied or imposed upon the Equipment, and such Lessor Lien shall not be discharged or removed within thirty (30) days after the same shall have been asserted, levied or imposed;

(f) The Owner Trustee (other than in its individual capacity) or the Trust (i) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) shall make a general assignment for the benefit of creditors, or (iv) shall fail generally to pay its debts as they become due, or (v) shall take any corporate action to authorize any of the foregoing; or

(g) An involuntary case or other proceeding shall be commenced against the Owner Trustee (other than in its individual capacity) or the Trust seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days.

7.2. Indenture Trustee's Rights. The Owner Trustee agrees that when any Indenture Event of Default has occurred and is continuing, the Indenture Trustee shall have the rights, options, duties and remedies of a secured party but subject to Section 7.3, and the Owner Trustee shall have the rights and duties of a debtor, under the Uniform Commercial Code of New York, and without limiting the foregoing, the Indenture Trustee may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute.

(a) The Indenture Trustee may, and upon the written request of the holders of at least 25% in principal amount of the Loan Certificates then outstanding shall, by notice in writing to the Owner Trustee, declare the entire unpaid balance of the Loan Certificates to be immediately due and payable, and thereupon all such unpaid balance, together with all accrued interest thereon, shall be and become immediately due and payable;

(b) Subject always to the existing rights, if any, of the Lessee under the Lease, the Indenture Trustee personally or by agents or attorneys, shall have the right (subject to compliance with any applicable mandatory legal requirements) to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Owner Trustee, with or without notice, demand, process of law or other legal procedure, if this can be done without breach of the peace, and search for, take possession of, remove, keep and store the same, or use and operate or lease the same until sold, and to collect and receive all earnings, revenues, rents, issues, proceeds and income of the Collateral and every part thereof, to make alterations, improvements and additions thereon or remove and dispose of any portion of the Collateral and to otherwise exercise any and all of the rights and powers of the Owner Trustee in respect thereof;

(c) Subject always to the existing rights, if any, of the Lessee under the Lease, the Indenture Trustee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of any such sale by registered mail to the Owner Trustee and the Lessee at least ten (10) days prior to (i) the date of any public sale or (ii) the date on or after which any private sale may take place, and any other notice which may be required by law, sell and dispose of the Collateral, or any part thereof, at public auction to the highest bidder or at private sale or sales conducted in a commercially reasonable manner, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Indenture Trustee may determine, and at any place (whether or not it be the location of the Collateral or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales,

without further published notice, and the Indenture Trustee or the holder or holders of the Loan Certificates, or of any interest therein, or the Owner Trustee may bid and become the purchaser at any such sale;

(d) Subject always to the existing rights of the Lessee under the Lease, if any, the Indenture Trustee may proceed to protect and enforce this Indenture and the Loan Certificates by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, or subject to the provisions of Section 2.9 hereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper, legal or equitable remedy available under applicable law; and

(e) Subject always to the existing rights of the Lessee under the Lease, if any, and to the provisions of Section 7.3 and the proviso to Section 1.2(b), the Indenture Trustee may proceed to exercise all rights, privileges and remedies of the Owner Trustee under the Lease (except for Excepted Rights in Collateral) and may exercise all such rights and remedies either in the name of the Indenture Trustee or in the name of the Owner Trustee for the use and benefit of the Indenture Trustee and the Certificateholders.

Notwithstanding the foregoing, the Indenture Trustee hereby agrees that if no Indenture Event of Default has occurred and is continuing except such as is caused by or is also a Lease Event of Default, then the Indenture Trustee shall proceed to foreclose the lien and security interest of this Indenture only if it is concurrently exercising (or has previously exercised) one or more of the remedies referred to in Section 15 of the Lease, unless it is then stayed or otherwise prevented from doing so by operation of law; provided, however, that if the Indenture Trustee is unable to exercise its rights under the Lease because of the imposition of an automatic stay under Section 362 of the Federal Bankruptcy Code in a proceeding with respect to the Lessee, the Indenture Trustee agrees that it shall not foreclose on the Collateral until the earlier of (i) the date which is sixty days following the imposition of such automatic stay or (ii) the date on which such automatic stay no longer applies to the Lease.

7.3. Certain Rights of the Owner Trustee

(a) Right to Cure. In the event of the occurrence of an Indenture Event of Default as a result of (i) the failure of the Lessee to timely and fully pay an installment of Rent under the Lease or (ii) a failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by the Lessee under the Lease or any other Operative Agreement (other than the covenants and agreements to pay Rent), the Owner Trustee or the Owner Participant may, during the ten (10) Business Day period in the case of an Indenture Event of Default described in clause (i) above, or the twenty (20) Business Day period, in the case of an Indenture Event of Default described in clause (ii) above (in both cases the "Cure Period") following the giving of written notice by the Indenture Trustee to the Owner Trustee, the Owner Participant and the holders of the Loan Certificates of the occurrence of such Indenture Event of Default (which notice the Indenture Trustee agrees to give promptly upon such non-payment of an installment of Rent or failure to perform becoming an Indenture Event of Default unless such rights are no longer in effect pursuant to the below proviso), pay to the Indenture Trustee an amount equal to any principal and interest (including interest, if any, on overdue payments of principal and interest) then due and payable on the Loan Certificates or observe or perform such covenant, condition or agreement on behalf of the Lessee, and such payment or performance or observance, as the case may be, by the Owner Trustee or the Owner Participant shall be deemed to cure such Lease Event of Default arising on account of the non-payment by the Lessee of such installment of Rent or failure to perform or observe under the Lease and any Indenture Event of Default arising therefrom; provided, however, that in case of an Indenture Event of Default described in clause (i) above, the Owner Trustee and the Owner Participant may not exercise such right in respect of more than two consecutive Rent payment Indenture Events of Default or in any event more than a total of six (6) times throughout the term of the Lease ~~and in the case of an Indenture Event of default described~~ in clause (ii) above, the Owner Trustee and the Owner Participant shall not have any such right to cure if the amount of any such payment when added to the amount of any prior payments made by the Owner Trustee or the Owner Participant pursuant to clause (ii) above would exceed 2% of the Total Equipment Cost. The Indenture Trustee shall not take any action to exercise remedies hereunder or under the Lease in respect of any such Indenture Event of Default prior to the expiry of the applicable Cure Period.

Neither the Owner Trustee nor the Owner Participant shall, by exercising the right to cure any such Indenture Default or Indenture Event of Default, obtain any lien, charge or encumbrance of any kind on any of the Collateral for or on account of costs or expenses incurred in connection with the exercise of such right nor shall any claims of the Owner Trustee or the Owner

Participant against the Lessee or any other party for the repayment of such costs or expenses impair the prior right and security interest of the Indenture Trustee in and to the Collateral. Upon any payment by the Owner Trustee or the Owner Participant of the amount of principal and interest then due and payable on the Loan Certificates, the Owner Trustee or the Owner Participant, as the case may be, shall be subrogated to the rights of the Indenture Trustee in respect of any Rent which was overdue at the time of such payment and interest payable by the Lessee on account of its being overdue, and if the Indenture Trustee shall thereafter receive such overdue payment of Rent or such interest, the Indenture Trustee shall, notwithstanding the requirements of Section 5, on the date such payment is received by the Indenture Trustee, remit such payment of Rent and such interest (to the extent of the payment made by the Owner Trustee or the Owner Participant, as the case may be, pursuant to this Section 7.3(a)) in reimbursement for the funds advanced by it; provided that in the event the principal and interest on the Loan Certificates shall have become due and payable pursuant to Section 7.2(a) hereof, such subrogation and right to receive such payment of Rent and such interest shall, until principal of and interest on all Loan Certificates shall have been paid in full, be subordinate and junior to the rights of the Indenture Trustee in respect of such payment of Rent and such interest.

(b) Options to Prepay Loan Certificates. Notwithstanding anything in this Indenture to the contrary, if an Indenture Event of Default which results solely from a Lease Event of Default has occurred and is continuing (and no other Indenture Event of Default exists), and the Indenture Trustee (i) has not pursued any remedy under the Lease, for a period of one year following knowledge by the Indenture Trustee (as defined in Section 8.2(g) hereof) of such Indenture Event of Default, or, (ii) has declared the entire unpaid balance of the Loan Certificates immediately due and payable pursuant to Section 7.2(a) hereof, then the Owner Trustee may, upon prior written notice to the Indenture Trustee and each Certificate-holder, prepay the Loan Certificates by payment of the unpaid principal amount thereof and accrued interest thereon to the date of payment, plus all other sums then due and payable to the Indenture Trustee or the Certificateholders hereunder or under the Participation Agreement, the Lease or the Loan Certificates. The Owner Trustee may not exercise its prepayment option under this Section 7.3(b) with respect to less than all of the Loan Certificates.

7.4. Acceleration Clause. In case of any sale of the Collateral, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Indenture, the principal of the Loan Certificates, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and

payable; also in the case of any such sale, the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Loan Certificates and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Loan Certificates including principal and interest thereof out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in cash.

7.5. Waiver by Owner Trustee. To the extent permitted by law, the Owner Trustee covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person, except decree or judgment creditors of the Owner Trustee acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Indenture, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

7.6. Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Owner Trustee in and to the property sold, and shall be a perpetual bar, both at law and in equity, against the Owner Trustee, its successors and assigns, and against any and all Persons claiming the property sold or any part thereof under, by or through the Owner Trustee, its successors or assigns (subject, however, to the then existing rights, if any, of the Lessee under the Lease).

7.7. Application of Proceeds. The purchase money proceeds and/or avails of any sale of the Collateral or any part thereof and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all

proper expenses, liability and advances, including legal expenses and attorneys fees, incurred or made hereunder by the Indenture Trustee, or the holder or holders of the Loan Certificates and any compensation due and owing to the Indenture Trustee and of all taxes, assessment or Liens superior to the Lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) Second, to the payment of the holder or holders of the Loan Certificates of the amount then owing or unpaid on the Loan Certificates for principal, interest and premium, if any; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Loan Certificates, then ratably according to the aggregate of such principal and the accrued and unpaid interest and premium, if any, with application on each Loan Certificate to be made, first, to the unpaid interest thereon, second, to unpaid premium, if any, thereon, and third, to unpaid principal thereof; such application to be made upon presentation of the several Loan Certificates, and the notation thereon of the payments if partially paid, or the surrender and cancellation thereof, if fully paid; and

(c) Third, to the payment of the surplus, if any, to the Owner Trustee, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

7.8. Discontinuance of Remedies. Holders of at least 66-2/3% in principal amount of the Loan Certificates then outstanding, may upon written notice to the Indenture Trustee direct the Indenture Trustee to discontinue any enforcement proceedings commenced by the Indenture Trustee. Without limiting the foregoing, the holders of at least 66-2/3% in principal amount of the Loan Certificates then outstanding, may upon written notice to the Indenture Trustee (which shall in turn notify the Owner Trustee and the Lessee), rescind any acceleration of the maturity of the Loan Certificates, and direct that the payment schedule on the Loan Certificates shall be that which existed immediately prior to such acceleration, if (i) all Indenture Events of Default, other than the non-payment of any portion of the Loan Certificates which has become due and payable solely by reason of the acceleration of the Loan Certificates, have been cured or waived, and (ii) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction. In case the Indenture Trustee shall have proceeded to enforce any right under this Indenture by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, then and in every such case the Owner Trustee, the Indenture Trustee and the holder or holders of the Loan Certificates shall be restored to their former positions and

rights hereunder with respect to the property subject to the security interest created under this Indenture.

7.9. Cumulative Remedies. No delay or omission of the Indenture Trustee or of the holder of any Loan Certificate to exercise any right or power arising from any Indenture Default or Indenture Event of Default shall exhaust or impair any such right or power or prevent its exercise during the continuance thereof. No waiver by the Indenture Trustee, or the holder of any Loan Certificate of any such Indenture Default or Indenture Event of Default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent Indenture Default or Indenture Event of Default, or to impair the rights resulting therefrom except as may be otherwise provided herein. No remedy hereunder is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Indenture operate to prejudice, waive or affect the security of this Indenture or any rights, powers or remedies hereunder, nor shall the Indenture Trustee or holder of any of the Loan Certificates be required to first look to, enforce or exhaust such other or additional security, collateral or guaranty.

SECTION 8. THE INDENTURE TRUSTEE.

The Indenture Trustee accepts the trusts hereunder and agrees to perform the same, but only upon the terms and conditions hereof, including the following, to all of which the Owner Trustee and the respective holders of the Loan Certificates at any time outstanding by their acceptance thereof agree:

8.1. Duties of Indenture Trustee. The Indenture Trustee undertakes (i) except while an Indenture Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, to perform such duties and only such duties as are specifically set forth in this Indenture, and (ii) while an Indenture Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, to exercise such of the rights and powers as are vested in it by this Indenture and to use the same degree of care and skill in their exercise as an ordinary prudent man would exercise or use under the circumstances in the conduct of his own affairs.

The Indenture Trustee upon receipt of instruments furnished to the Indenture Trustee pursuant to the provisions of this Indenture shall examine the same to determine whether or not such instruments conform to the requirements of this Indenture.

8.2. Indenture Trustee's Liability. No provision of this Indenture shall be construed to relieve the Indenture Trustee from liability for its own negligent action, negligent failure to act, or its own willful misconduct, except that:

(a) unless an Indenture Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, the Indenture Trustee shall not be liable except for the performance of such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Indenture Trustee but the duties and obligations of the Indenture Trustee shall be determined solely by the express provisions of this Indenture; and

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

(c) in the absence of bad faith on the part of the Indenture Trustee, whenever the Indenture Trustee, or any of its agents, representatives, experts or counsel, shall consider it necessary or desirable that any matter be proved or established, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officer's Certificate; provided, however, that the Indenture Trustee, or such agent, representative, expert or counsel, may require such further and additional evidence and make such further investigation as it or they may consider reasonable; and

(d) the Indenture Trustee may consult with counsel and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered hereunder in good faith and in accordance with such advice or opinion of counsel; and

(e) the Indenture Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any direction or request of the required percentage of the holders of the Loan Certificates; and

(f) the Indenture Trustee shall not be liable for any error of judgment made in good faith by an officer of the Indenture Trustee unless it shall be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts; and

(g) the Indenture Trustee shall not be deemed to have knowledge of any Indenture Default or Indenture Event of Default unless and until an officer of the Corporate Trust Division of the Indenture Trustee who customarily handles corporate trusts shall have actual knowledge thereof or the Indenture Trustee shall have received written advice thereof from the holder of any Loan Certificate, the Owner Trustee, the Owner Participant or the Lessee; and

(h) whether or not an Indenture Event of Default shall have occurred, the Indenture Trustee shall not be under any obligation to take any action under this Indenture which may tend to involve it in any expense or liability the payment of which within a reasonable time is not, in its reasonable opinion, assured to it by the security afforded to it by the terms of this Indenture, unless and until it is requested in writing so to do by one or more holders of Loan Certificates outstanding hereunder and furnished, from time to time as it may require, with reasonable security and indemnity; and

(i) whether or not an Indenture Event of Default shall have occurred, whenever it is provided in this Indenture that the Indenture Trustee consent to any act or omission by any Person or that the Indenture Trustee exercise its discretion in any manner, the Indenture Trustee shall seek the written acquiescence of all of the Certificateholders and, unless written evidence of the acquiescence of the holders of at least 66-2/3% in principal amount of the Loan Certificates then outstanding has been received by the Indenture Trustee, it shall be fully justified in refusing so to consent or so to exercise its discretion; provided, however, that holders of 66-2/3% in principal amount of the Loan Certificates from time to time outstanding shall have the right, upon furnishing to the Indenture Trustee such indemnification as the Indenture Trustee shall reasonably request, by an instrument in writing delivered to the Indenture Trustee, to determine which of the remedies herein set forth shall be adopted and to direct the time, method and place of conducting all proceedings to be taken under the provisions of this Indenture for the enforcement thereof or of the Loan Certificates; provided, however, that the Indenture Trustee shall have the right to decline to

follow any such direction if the Indenture Trustee shall be advised by counsel that the action or proceedings so directed may not lawfully be taken or would be unjustly prejudicial to holders of Loan Certificates not parties to such direction or would be contrary to the terms of the Lease.

8.3. No Responsibility of Indenture Trustee for Recitals. The recitals and statements contained herein and in the Loan Certificates (except for the Indenture Trustee's certificate of authentication endorsed on the Loan Certificates) shall be taken as the recitals and statements of the Owner Trustee, and the Indenture Trustee assumes no responsibility for the correctness of the same, nor shall the Indenture Trustee have any responsibility for or any liability with respect to any disclosure, warranty, representation or concealment or failure to disclose in connection with the offering, solicitation, sale or distribution of the Loan Certificates by the Owner Trustee or by any other Person.

The Indenture Trustee makes no representation as to the validity or sufficiency of this Indenture, or of the Loan Certificates secured hereby, the security hereby or thereby afforded, the title of the Owner Trustee to the Collateral or the descriptions thereof, or the filing or recording or registering of this Indenture or any other document.

The Indenture Trustee shall not be concerned with or accountable to any Person for the use or application of any deposited moneys which shall be released or withdrawn in accordance with the provisions of this Indenture or of any property or securities or the proceeds thereof which shall be released from the lien hereof in accordance with the provisions of this Indenture.

8.4. Certain Limitations on Indenture Trustee's Rights to Compensation and Indemnification. Except to the extent otherwise expressly provided in the Operative Agreements, the Indenture Trustee shall have no right against the holder of any Loan Certificate for the payment of compensation for its services hereunder or any expenses or disbursement incurred in connection with the exercise and performance of its powers and duties hereunder or any indemnification against liabilities which it may incur in the exercise and performance of such powers and duties but on the contrary, shall look solely to the Owner Participant under Section 2.6 of the Participation Agreement and the Lessee under Section 2.6 and Section 8 of the Participation Agreement for such payment and indemnification, and it shall have no lien on or security interest in the Collateral as security for such compensation, expenses, disbursements and indemnification except to the extent provided for in Section 7.7.

8.5. Status of Moneys Received. All moneys received by the Indenture Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys, except to the extent required by law, and may be deposited by the Indenture Trustee under such general conditions as may be prescribed by law in the Indenture Trustee's general banking department, and the Indenture Trustee shall be under no liability for interest on any moneys received by it hereunder. The Indenture Trustee and any affiliated corporation may not become the owner of any Loan Certificate secured hereby. The Indenture Trustee and any affiliated corporation may be interested in any other financial transaction with the Owner Trustee or any affiliated corporation, or the Indenture Trustee may act as depositary or otherwise in respect to other Securities of the Owner Trustee or any affiliated corporation, all with the same rights which it would have if not the Indenture Trustee.

8.6. Resignation of Indenture Trustee. The Indenture Trustee may resign and be discharged from the trusts created hereby by delivering notice thereof pursuant to Section 10.3 to the Owner Trustee, the Owner Participant and all holders of the Loan Certificates at the time outstanding, specifying a date (not earlier than sixty (60) days after the date of such notice) when such resignation shall take effect.

Such resignation shall take effect on the day specified in such notice, unless previously a successor Indenture Trustee shall have been appointed as provided in Sections 8.8 and 8.9 in which event such resignation shall take effect immediately upon the appointment of such successor Indenture Trustee; provided, however, that no such resignation shall be effective hereunder unless and until a successor Indenture Trustee shall have been appointed and shall have accepted such appointment as provided in Sections 8.8 and 8.9.

8.7. Removal of Indenture Trustee. The Indenture Trustee may be removed at any time, for or without cause, by an instrument or instruments in writing executed by the holders of a majority in aggregate principal amount of the Loan Certificates (other than the Indenture Trustee) at the time outstanding and delivered to the Indenture Trustee with a copy to the Owner Trustee and to the Lessee, specifying the removal and the date when it shall take effect; provided, however, that no such removal shall be effective hereunder unless and until a successor trustee shall have been appointed and shall have accepted such appointment as provided in Sections 8.8 and 8.9.

8.8. Appointment of Successor Indenture Trustee. In case at any time the Indenture Trustee shall resign or be removed or become incapable of acting, a successor Indenture Trustee may be appointed by the holders of a majority in aggregate principal

amount of the Loan Certificates (other than the Indenture Trustee) at the time outstanding, by an instrument or instruments in writing executed by such Certificateholders and filed with such successor Indenture Trustee, the Owner Trustee and the Lessee; provided that, so long as no Lease Event of Default has occurred and is continuing, such appointment of a successor Indenture Trustee shall be subject to the prior written approval of the Lessee, which approval shall not be unreasonably withheld.

Until a successor Indenture Trustee shall be so appointed by the Certificateholders, the Owner Trustee shall appoint a successor Indenture Trustee to fill such vacancy, by an instrument in writing executed by the Owner Trustee and delivered to the successor Indenture Trustee. If all or substantially all of the Collateral shall be in the possession of one or more receivers, trustees, custodians, liquidators or assignees for the benefit of creditors, then such receivers, trustees, custodians, liquidators or assignees may, by an instrument in writing delivered to the successor Indenture Trustee, appoint a successor Indenture Trustee. Promptly after any such appointment, the Owner Trustee, or any such receivers, trustees, custodians, liquidators or assignees, as the case may be, shall give notice thereof pursuant to Section 10.3 to each holder of the Loan Certificates at the time outstanding.

Any successor Indenture Trustee so appointed by the Owner Trustee, or such receivers, trustees, custodians, liquidators or assignees, shall immediately and without further act be superseded by a successor Indenture Trustee appointed by the holders of a majority in aggregate principal amount of the Loan Certificates (other than the Indenture Trustee) then outstanding.

If a successor Indenture Trustee shall not be appointed pursuant to this Section within sixty (60) days after the resignation or removal of the retiring Indenture Trustee, the holder of any Loan Certificate (other than the retiring Indenture Trustee) or such retiring Indenture Trustee (unless the retiring Indenture Trustee is being removed) may apply to any court of competent jurisdiction to appoint a successor Indenture Trustee, and such court may thereupon, after such notice, if any, as it may consider proper, appoint a successor Indenture Trustee.

8.9. Succession of Successor Indenture Trustee. Any successor Indenture Trustee appointed hereunder shall execute, acknowledge and deliver to the Owner Trustee and the predecessor Indenture Trustee an instrument accepting such appointment, and thereupon such successor Indenture Trustee, without any further act, deed, conveyance or transfer, shall become vested with the title to the Collateral, and with all the rights, powers, trusts, duties and obligations of the predecessor Indenture Trustee in the trust hereunder, with like effect as if originally named as Indenture Trustee herein.

Upon the request of any such successor Indenture Trustee, however, the Owner Trustee and the predecessor Indenture Trustee shall execute and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Indenture Trustee its interest in the Collateral and all such rights, powers, trusts, duties and obligations of the predecessor Indenture Trustee hereunder, with like effect as if originally named as Indenture Trustee herein.

Upon the request of any such successor Indenture Trustee, however, the Owner Trustee and the predecessor Indenture Trustee shall execute and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Indenture Trustee its interest in the Collateral and all such rights, powers, trusts, duties and obligations of the predecessor Indenture Trustee hereunder, and the predecessor Indenture Trustee shall also assign and deliver to the successor Indenture Trustee any property subject to the lien of this Indenture which may then be in its possession.

8.10. Eligibility of Indenture Trustee. The Indenture Trustee shall be a state or national bank or trust company in good standing, organized under the laws of the United States of America or of any State and having a capital, surplus and undivided profits aggregating at least $100,000,000, if there be such a bank or trust company willing and able to accept such trust upon reasonable and customary terms.

In case the Indenture Trustee shall cease to be eligible in accordance with the provisions of this Section, the Indenture Trustee shall resign immediately in the manner and with the effect specified in Section 8.6.

8.11. Successor Indenture Trustee by Merger. Any corporation into which the Indenture Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Indenture Trustee shall be a party, or any state or national bank or trust company in any manner succeeding to the corporate trust business of the Indenture Trustee as a whole or substantially as a whole, if eligible as provided in Section 8.10, shall be the successor of the Indenture Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything to the contrary contained herein notwithstanding.

8.12. Co-Trustees. At any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Owner Trustee and the Indenture Trustee jointly shall have power and shall execute and deliver all instruments, to appoint one or more

Persons approved by the Indenture Trustee, to act as co-trustee, or co-trustees, jointly with the Indenture Trustee, or separate trustee or separate trustees, of all or any part of the Collateral, and to vest in such Person or Persons in such capacity, such interest in the Collateral or any part thereof, and such rights, powers, duties, trusts or obligations as the Owner Trustee and the Indenture Trustee may consider necessary or desirable. If the Owner Trustee shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request so to do, or in case an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee alone shall have power to make such appointment.

SECTION 9. LIMITATIONS OF LIABILITY

Anything in this Indenture to the contrary notwithstanding, neither the Indenture Trustee nor the holder of any Loan Certificate nor the successors or assigns of any of said Persons, shall have any claim, remedy or right to proceed against the Owner Trustee, the Owner Participant or First Security Bank of Utah, N.A., in their individual corporate capacity or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Owner Trustee, the Owner Participant or First Security Bank of Utah, N.A., whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any penalty or assessment or otherwise, for the payment of any deficiency or any other sum owing on account of the indebtedness evidenced by the Loan Certificates or for the payment of any liability resulting from the breach of any representation, agreement or warranty of any nature whatsoever, in this Indenture, from any source other than the Collateral, including the Rent, other than Excepted Rights in Collateral. The Indenture Trustee by the execution of this Indenture and the holders of the Loan Certificates by acceptance thereof, waive and release any personal liability of the Owner Trustee, the Owner Participant or First Security Bank of Utah, N.A., in their individual corporate capacity and any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Owner Trustee, the Owner Participant or First Security Bank of Utah, N.A., for and on account of such indebtedness or such liability, and the Indenture Trustee and the holders of the Loan Certificates agree to look solely to the Collateral, including the Rent, other than Excepted Rights in Collateral, for the payment of said indebtedness or the satisfaction of such liability; provided, however, subject to the limitations herein contained, the holders of the Loan Certificates or the Indenture Trustee shall have the right to accelerate the maturity of the Loan Certificates upon an Indenture Event of Default under this Indenture; to bring suit and obtain a judgment against the Owner Trustee on the Loan Certificates or to exercise all rights and remedies provided under this Indenture or otherwise realize upon the Collateral.

SECTION 10. SUPPLEMENTS; WAIVERS.

10.1. Supplemental Indentures Without Certificateholders' Consent. The Owner Trustee and the Indenture Trustee from time to time and at any time, subject to the restrictions in this Indenture contained, may, without the Certificateholders' consent, enter into an agreement or agreements supplemental hereto, which thereafter shall form a part hereof, for any one or more or all of the following purposes:

(a) to add to the covenants and agreements to be observed by, and to surrender any right or power reserved to or conferred upon the Owner Trustee;

(b) to subject to the Lien of this Indenture additional property hereafter acquired by the Owner Trustee and intended to be subjected to the Lien of this Indenture and to correct and amplify the description of the Collateral;

(c) to permit the qualification of 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 of the provisions referred to in Section 316(a)(2) of said Trust Indenture Act of 1939 or any responding provision in any similar federal statute hereafter in effect;

(d) to reflect a revised payment schedule on the Loan Certificates pursuant to a re-amortization of the Loan Certificates permitted by and complying with the terms of Section 2.7 of the Participation Agreement; and

(e) for any other purpose not inconsistent with the terms of this Indenture or to cure any ambiguity or cure, correct or supplement any defect or inconsistent provisions of this Indenture or any supplement and the covenants to perform all requirements of any such supplemental agreement.

No restriction or obligation imposed upon the Owner Trustee may, except as otherwise provided in this Indenture, be waived or modified by any such supplemental agreement.

10.2. Supplements to Lease Without Certificateholders' Consent. The Indenture Trustee from time to time and at any time, subject to the restrictions contained in this Indenture, may, without the Certificateholders' consent, consent to any amendment or supplement to the Lease for any one of the following purposes:

(a) to add to the covenants and agreements to be observed by, and to surrender any right or power reserved to or conferred upon the Lessee; and

(b) to adjust the Basic Rent, Stipulated Loss Values and Termination Values payable under the Lease pursuant to Section 2.3 thereof and subject to all of the conditions set forth in said Section 2.3; provided, however, that on or before the effective date of any amendment of or supplement to the Lease pursuant to the provisions of this paragraph (b), the Indenture Trustee shall have received an Officer's Certificate of the Lessee addressed to the holders of the Loan Certificates and the Indenture Trustee, to the effect that, after giving effect to such supplement, the amount of Basic Rent payable on each Rent Payment Date under the Lease equals or exceeds the amount payable on such date for principal and accrued interest on all the Loan Certificates, and the amounts of Stipulated Loss Value and Termination Value payable on any date with respect to any Unit under the Lease equals or exceeds the Loan Value of such Unit plus any premium due pursuant to Section 6.2 hereof after giving effect to the payment of Basic Rent on such date, which Certificate shall set forth sufficient detailed information to demonstrate the matters covered in this proviso.

No restriction or obligation imposed upon the Lessee may, except as otherwise provided in this Indenture, be waived or modified by any such supplement to the Lease.

10.3. Waivers and Consents by Certificateholders; Supplemental Indentures with Certificateholders' Consent. Upon the waiver or consent of the holders of at least 66-2/3% in aggregate principal amount of the Loan Certificates then outstanding (x) the Indenture Trustee may take any action prohibited, or omit the taking of any action required, by any of the provisions of this Indenture or the Participation Agreement or any agreement supplemental hereto or thereto, or (y) the Owner Trustee and the Indenture Trustee may enter into an agreement or agreements supplemental hereto or to the Participation Agreement for the purpose of adding, changing or eliminating any provisions of this Indenture or the Participation Agreement or of any agreement supplemental hereto or thereto or modifying in any manner the rights and obligations of the holders of the Loan Certificates and the Owner Trustee; provided, however, that no such waiver or supplemental agreement shall (i) impair or affect the right of any holder to receive payments or prepayments of the principal of and payments of the interest and premium on its Loan Certificate, as therein and herein provided, without the consent of such holder; (ii) permit the creation of any Lien or security interest with

or the Lease

respect to any of the Collateral, without the consent of the holders of all Loan Certificates at the time outstanding; (iii) effect the deprivation of the holder of any Loan Certificate of the benefit of the Lien and security interest of this Indenture upon all or any part of the Collateral without the consent of such holder; (iv) reduce the aforesaid percentage of the aggregate principal amount of Loan Certificates, the holders of which are required to consent to any such waiver or supplemental agreement pursuant to this Section, without the consent of the holders of all of the Loan Certificates at the time outstanding; or (v) modify the rights, duties or immunities of the Indenture Trustee, without the consent of the Indenture Trustee and of the holders of all of the Loan Certificates at the time outstanding. The Owner Trustee shall not pay or cause to be paid to any Certificateholder any remuneration for or in connection with such Certificateholder's consent to any waiver or consent unless each Certificateholder is paid remuneration in a ratable amount (based on the proportion which the principal balance of such Certificateholder's Loan Certificate bears to the principal balance of all of the Loan Certificates).

10.4. Notice of Supplemental Indentures. Promptly after the execution by the Owner Trustee and the Indenture Trustee of any waiver, consent or supplemental agreement pursuant to the provisions of Sections 9.1, 9.2 or 9.3, the Indenture Trustee shall give written notice, setting forth in general terms the substance of such waiver, consent or supplemental agreement, together with a conformed copy thereof, mailed, first-class, postage prepaid, to each holder of the Loan Certificates. Any failure of the Indenture Trustee to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such waiver, consent or supplemental agreement.

10.5. Opinion of Counsel Conclusive as to Supplemental Indenture. The Indenture Trustee is hereby authorized to join with the Owner Trustee in the execution of any such supplemental agreement authorized or permitted by the terms of this Indenture and to make the further agreements and stipulations which may be therein contained, and the Indenture Trustee may receive an opinion of counsel as conclusive evidence that any supplemental agreement executed pursuant to the provisions of this Section 9 complies with the requirements of this Section 9.

SECTION 11. MISCELLANEOUS.

11.1. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party; and all the covenants, promises and agreements in this Indenture contained by or on behalf of the Owner Trustee or by or on behalf

of the Indenture Trustee, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

11.2. Severability. Any provision of this Indenture which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.3. Communications. All communications provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail, certified or registered, postage prepaid, return receipt requested, or, (c) in the case of notice by such a telecommunications device, when a written acknowledgement as to the receipt thereof by the transmittee has been received by the sender, addressed to each party at the following addresses:

If to the Owner Trustee:

First Security Bank of Utah, N.A.
79 South Main Street
Salt Lake City, Utah 84111
Attention: Corporate Trust Department
Fax No.: (801) 350-5053
Confirmation No.: (801) 350-5630

If to the Owner Participant:

Chase Manhattan Services Corporation
801 South Grand Avenue
15th Floor
Los Angeles, California 90017
Attention: Michael Parmalee
Fax No.: (213) 689-5545
Confirmation No.: (213) 689-5318

If to the Indenture Trustee:

Continental Bank, National Association
231 South LaSalle Street
7th Floor
Chicago, Illinois 60697
Attention: Corporate Trust Division
Itel Rail Account Administration
Fax No.: (312) 828-6052
Confirmation No.: (312) 828-6922

If to the holders of Loan Certificates:

At their addresses for notices
set forth in the Register

or to any such party at such other address as such party may designate by notice duly given in accordance with this Section to the other parties.

11.4. Release. The Indenture Trustee shall release this Indenture and the security interest granted hereby by proper instrument or instruments upon presentation of satisfactory evidence that all indebtedness secured hereby has been fully paid or discharged.

11.5. Business Day. Notwithstanding anything herein or in any other Operative Agreement to the contrary, if the date on which any payment is to be made pursuant to this Indenture is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day.

11.6. Governing Law. This Indenture and the Loan Certificates shall be construed in accordance with and governed by the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York; provided, however, that the Indenture Trustee shall be entitled to all the rights conferred by any applicable federal statute, rule or regulation.

11.7. Counterparts. This Indenture may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Indenture.

11.8. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have caused this Indenture to be executed, as of the day and year first above written.

FIRST SECURITY BANK OF UTAH, N.A.,
not individually but solely as
Owner Trustee under Itel Rail
Trust No. 89-2

By _____
Its: TRUST OFFICER

AS OWNER TRUSTEE

CONTINENTAL BANK, NATIONAL ASSOCIATION

By _____
Its: Vice President

AS INDENTURE TRUSTEE

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

On this 29th day of September, 1989, before me personally appeared Greg A. Hawley to me personally known, who being by me duly sworn, says that he is a TRUST OFFICER of FIRST SECURITY BANK OF UTAH, N.A., that said instrument was signed and sealed on September 29th, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

MARY T. EVANCHO
Notary Public, S... New York
No. 31...
... County
Commission Expires April 11, 1990

(SEAL)

My commission expires:

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

On this 29TH day of September, 1989, before me personally appeared ROBERT S CLARK, to me personally known, who being by me duly sworn, says that he is a V. P. of CONTINENTAL BANK, NATIONAL ASSOCIATION, that said instrument was signed and sealed on September 29TH, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

(SEAL)

My commission expires:

Commission Expires April 11, 1990

FIRST SECURITY BANK OF UTAH, N.A.

Not Individually But Solely as Owner Trustee under Itel Rail Trust No. 89-__

10.31% Secured Loan Certificate

NO. R- September ____, 1989

$_____

FOR VALUE RECEIVED, the undersigned, FIRST SECURITY BANK OF UTAH, N.A., not individually but solely as trustee (the "Owner Trustee") under that certain Trust Agreement dated as of September 15, 1989, sometimes identified as Itel Rail Trust No. 89-__ (the "Trust Agreement") promises to pay to

or registered assigns,
the principal sum of

and to pay interest accrued and unpaid from the date hereof until maturity (computed from and including the date hereof to but not including March 28, 1990 on the basis of a 360-day year, actual days elapsed, and from and including March 28, 1990 and thereafter, on the basis of a 360-day year of 12 consecutive 30-day months) on the unpaid principal balance hereof, in Forty-one (41) consecutive semi-annual installments, commencing on March 28, 1990 and continuing on each September 28 and March 28 thereafter to and including March 28, 2010. Interest accrued and payable on this Note shall be computed at the rate of 10.31% per annum; provided, however, that any amount of principal hereunder not paid when due (whether at stated maturity, by acceleration or otherwise), and to the extent permitted by law, overdue interest, shall bear interest from the due date until such amount is paid in full at the rate of 12.31% per annum (computed on the same basis).

The principal indebtedness evidenced hereby shall be payable in accordance with the amortization schedule set forth in Schedule 1 attached hereto.

This Loan Certificate is one of the Loan Certificates of the Owner Trustee not exceeding $_____ in aggregate principal amount (the "Loan Certificates") which are equally and ratably with said other Loan Certificates secured by that certain Security Agreement and Trust Indenture, dated as of September 15, 1989 (the "Indenture") from the Owner Trustee to Continental Bank, National

Association, as indenture trustee (the "Indenture Trustee"). Capitalized terms used herein and not otherwise defined herein shall have the meaning assigned to such terms in the Indenture. Reference is made to the Indenture and all supplements and amendments thereto executed pursuant to the Indenture for a description of the Collateral, and the nature and extent of the security and rights of the Indenture Trustee, the holder or holders of the Loan Certificates and of the Owner Trustee in respect thereof.

Both the principal hereof and interest hereon are payable in coin or currency of the United States of America which at the time of payment shall be legal tender for the payment of public and private debts. If the date on which any payment on this Loan Certificate is to be made is not a Business Day, the payment otherwise payable on such date shall be payable on the immediately succeeding Business Day.

This Loan Certificate may not be prepaid by the Owner Trustee except upon the terms and subject to the conditions set forth in the Indenture. The terms and provisions of the Indenture and the rights and obligations of the Indenture Trustee and the rights of the holders of the Loan Certificates may be changed and modified to the extent permitted by and as provided in the Indenture.

On and subject to the conditions contained in the Indenture, this Loan Certificate is transferable by the registered holder hereof in person or by its duly authorized attorney on the Register to be kept at the principal corporate trust office of the Indenture Trustee. On and subject to the conditions contained in the Indenture, this Loan Certificate is exchangeable for Loan Certificates of other denominations. The Owner Trustee and the Indenture Trustee may deem and treat the person in whose name a Loan Certificate is registered on said Register as the absolute owner and holder hereof (whether or not this Loan Certificate shall be overdue) for the purpose of receiving payment and for all other purposes, and neither the Owner Trustee nor the Indenture Trustee shall be affected by any notice to the contrary.

Presentment, protest and notice of nonpayment and protest are hereby waived by the Owner Trustee.

This Loan Certificate and the Indenture are governed by and construed in accordance with the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York.

It is expressly understood and agreed by and between the Owner Trustee, the Owner Participant, the holder of this Loan Certificate and the Indenture Trustee and their respective successors and assigns, that this Loan Certificate is executed by

First Security Bank of Utah, N.A., not individually or personally but solely as "Owner Trustee" under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Owner Trustee; and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability of the Owner Trustee, First Security Bank of Utah, N.A., or the Owner Participant, individually or personally, for or on account of any express or implied representation, warranty, covenant or agreement made herein (other than those expressly made in the Owner Trustee's individual capacity in the Participation Agreement and in the Indenture), all such liability, if any, being expressly waived by the holder of this Loan Certificate and by the Indenture Trustee and by each and every person now or hereafter claiming by, through or under the holder of this Loan Certificate or the Indenture Trustee; and that so far as the Owner Trustee, First Security Bank of Utah, N.A., or the Owner Participant, individually or personally, are concerned, the holder of this Loan Certificate and the Indenture Trustee and any person claiming by, through or under the holder of this Loan Certificate or the Indenture Trustee, except as hereinafter provided, shall look solely to the Collateral for payment of the indebtedness evidenced by this Loan Certificate or of any liability resulting from or arising out of any breach of any representation, warranty or covenants (other than those expressly made in the Owner Trustee's individual capacity in the Participation Agreement and in the Indenture) made by the Owner Trustee herein.

IN WITNESS WHEREOF, the Owner Trustee has caused this Loan Certificate to be duly executed.

FIRST SECURITY BANK OF UTAH, N.A.,
not individually but solely as
Owner Trustee under Itel Rail
Trust No. 89-__

By_____
Its:_____

NOTICE

THIS LOAN CERTIFICATE HAS NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933 OR UNDER THE SECURITIES LAWS OF ANY STATE. THIS LOAN CERTIFICATE MAY NOT BE OFFERED OR SOLD UNLESS IT IS REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

AUTHENTICATION CERTIFICATE

This Loan Certificate is one of the Loan Certificates described in the within-mentioned Indenture.

CONTINENTAL BANK, NATIONAL ASSOCIATION

By_____
Its_____

SECURITY AGREEMENT AND TRUST INDENTURE
SUPPLEMENT NO. 1

SECURITY AGREEMENT AND TRUST INDENTURE SUPPLEMENT NO. 1 (this "Indenture Supplement") dated September ___, 1989, between FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not individually but solely as Owner Trustee (the "Owner Trustee") under Itel Rail Trust No. 89-__, and CONTINENTAL BANK, NATIONAL ASSOCIATION, a national banking association (the "Indenture Trustee").

W I T N E S S E T H:

The Security Agreement and Trust Indenture dated as of September 15, 1989 (herein called the "Indenture") from the Owner Trustee to the Indenture Trustee, provides for the execution and delivery of an Indenture Supplement thereto substantially in the form hereof, which shall particularly describe the Equipment (such term and other defined terms in the Indenture being herein used with the same meanings) and shall specifically grant a security interest in such Equipment;

The Owner Trustee in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowledged, and intending to be legally bound, and in order to secure the equal and pro rata payment of both the principal of and interest and premium, if any, upon all Loan Certificates at any time outstanding under the Indenture according to their tenor and effect, and to secure the payment of all other Secured Indebtedness and the performance and observance of all the covenants and conditions contained in the Loan Certificates, the Indenture and the Participation Agreement, does hereby convey, warrant, mortgage, assign, pledge and grant unto the Indenture Trustee, its successors in trust and assigns, forever, for the ratable use and benefit of the holders of the Loan Certificates, a security interest in, all right, title and interest of the Owner Trustee in the Equipment (described in Schedule 1 attached hereto), as the same is now and will hereafter be constituted, whether now owned by the Owner Trustee or hereafter acquired, leased or to be leased under the Lease, together with all accessories, equipment, parts and appurtenances appertaining or attached to the Equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to the Equipment together with all the rents, issues, income, profits and avails thereof, subject, however, to the interest of the Lessee under the Lease.

TO HAVE AND TO HOLD the aforesaid property unto the Indenture Trustee, its successors and assigns forever, upon the terms and conditions set forth in the Indenture for the equal and

proportionate benefit, security and protection of all present and future holders of the Loan Certificates.

This Indenture Supplement shall be construed in connection with and as part of the Indenture and all terms, conditions and covenants contained in the Indenture, except as herein modified, shall be and remain in full force and effect.

Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Indenture Supplement may refer to the "Security Agreement and Trust Indenture dated as of September 15, 1989" or the "Indenture" without making specific reference to this Indenture Supplement, but nevertheless all such references shall be deemed to include this Indenture Supplement unless the context shall otherwise require.

Section 1.1. Counterparts. This Indenture Supplement may be executed and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Indenture Supplement.

Section 1.2. Governing Law. This Indenture Supplement shall be construed in accordance with any governed by the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York.

Section 1.3. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Indenture Supplement nor shall they affect its meaning, construction or effect.

lN WITNESS WHEREOF, the Owner Trustee has caused this Indenture Supplement to be executed, and the Indenture Trustee in evidence of its acceptance of the trusts hereby created, has caused this Indenture Supplement to be executed on its behalf by one of its duly authorized officers.

FIRST SECURITY BANK OF UTAH, N.A.,
not individually but solely as
Owner Trustee under Itel Rail
Trust No. 89-__

By_____
Its:_____

AS OWNER TRUSTEE

CONTINENTAL BANK, NATIONAL ASSOCIATION

By_____
Its:_____

AS INDENTURE TRUSTEE

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

On this ____ day of September, 1989, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is a _____ of FIRST SECURITY BANK OF UTAH, N.A., that said instrument was signed and sealed on September ___, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

(SEAL)

My commission expires:

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

On this ____ day of September, 1989, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is a _____ of CONTINENTAL BANK, NATIONAL ASSOCIATION, that said instrument was signed and sealed on September ___, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

(SEAL)

My commission expires:

Annex I to
Security Agreement and
Trust Indenture

DEFINITIONS

Re: Itel Rail Trust No. 89-2

General Provisions

The following terms shall have the following meanings for all purposes of the Operative Agreements referred to below, unless otherwise defined in an Operative Agreement or the context thereof shall otherwise require. In the case of any conflict between the provisions of this Definition Schedule and the provisions of the main body of any Operative Agreement, the provisions of the main body of such Operative Agreement shall control the construction of such Operative Agreement.

Unless the context otherwise requires, (i) references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented and otherwise modified from time to time, and (ii) references to parties to agreements shall be deemed to include the successors and permitted assigns of such parties.

Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of the Operative Agreements, this shall be done in accordance with generally accepted accounting principles at the time in effect, to the extent applicable, except where such principles are inconsistent with the requirements of any Operative Agreement.

Defined Terms

"Affiliate" of any Person shall mean any other Person which directly or indirectly controls, or is controlled by, or is under a common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether

DEFINITIONS

Re: Itel Rail Trust No. 89-2

General Provisions

The following terms shall have the following meanings for all purposes of the Operative Agreements referred to below, unless otherwise defined in an Operative Agreement or the context thereof shall otherwise require. In the case of any conflict between the provisions of this Definition Schedule and the provisions of the main body of any Operative Agreement, the provisions of the main body of such Operative Agreement shall control the construction of such Operative Agreement.

Unless the context otherwise requires, (i) references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented and otherwise modified from time to time, and (ii) references to parties to agreements shall be deemed to include the successors and permitted assigns of such parties.

Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of the Operative Agreements, this shall be done in accordance with generally accepted accounting principles at the time in effect, to the extent applicable, except where such principles are inconsistent with the requirements of any Operative Agreement.

Defined Terms

"Affiliate" of any Person shall mean any other Person which directly or indirectly controls, or is controlled by, or is under a common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"After-Tax Basis" shall mean, with respect to any payment received or deemed to have been received by

any Person, the amount of such payment supplemented by a further payment to that Person so that the sum of the two payments shall, after deduction of all Federal, state and local income taxes (taking into account any credits or deductions arising therefrom and the timing thereof), computed using an assumed combined effective Federal, state and local income tax rate (taking into account the deductibility of state and local taxes in computing Federal income taxes) determined by using the maximum marginal Federal and state (including any applicable local income taxes) income tax rate in effect for such taxable year, resulting from the receipt (actual or constructive) of such two payments, be equal to such payment received or deemed to have been received.

"Applicable Percentage" shall mean, with respect to any Loan Participant, the fraction expressed as a percentage, the numerator of which is the principal balance of the Loan Certificate which such Loan Participant is committed to purchase or then holds, and the denominator of which is the principal balance of all Loan Certificates (including the Loan Certificate committed to or held by such Loan Participant). The Applicable Percentage of each original Loan Participant is set forth by such Loan Participant's name on Schedule 2 to the Participation Agreement.

"Appraisal" shall have the meaning specified in Section 4.3(a) of the Participation Agreement.

"Appraisal Procedure" shall mean the following procedure for determining the Fair Market Sales Value or the Fair Market Rental Value, as the case may be, of any Units: If either party to the Lease shall have given written notice to the other party requesting determination of such value by the Appraisal Procedure, the parties shall consult for the purpose of appointing a qualified independent expert appraiser by mutual agreement. If no such appraiser is so appointed within fifteen (15) days after such notice is given, each party shall appoint a qualified independent expert appraiser within thirty (30) days after such notice is given. If one party appoints an appraiser pursuant to the preceding sentence, the appraisal shall be made by such appraiser if the other party fails to appoint a second appraiser within the applicable time limit. If both parties appoint appraisers, the two appraisers so appointed shall, within forty-five (45) days after such notice is given, appoint

a third independent expert appraiser. If no such third appraiser is appointed within forty-five (45) days after such notice is given, either party may apply to the American Arbitration Association to make such appointment, and both parties shall be bound by any such appointment. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine one or more of the Fair Market Sales Value or the Fair Market Rental Value of such Units within twenty (20) days after its or their appointment. If the parties shall have appointed a single appraiser, its determination of values shall be final. If three appraisers shall be appointed, the values determined by the three appraisers shall be averaged, the determination which differs most from such average shall be excluded, the remaining two determinations shall be averaged and such average shall be final.

"Appraiser" shall have the meaning specified in Section 4.3(a) of the Participation Agreement.

"Assigned Agreements" shall have the meaning specified in Section 1.3 of the Indenture.

"Bankruptcy Code" shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, 11 U.S.C. § 101 et seq.

"Basic Rent" shall mean all rent payable by the Lessee to the Lessor pursuant to Section 2.1(b) of the Lease for the Basic Term, and all rent payable pursuant to Section 20.3 of the Lease for any Renewal Term.

"Basic Term" shall have the meaning specified in Section 3 of the Lease.

"Basic Term Commencement Date" shall have the meaning specified in Section 2.1(a) of the Lease.

"Basic Term Expiration Date" shall mean March 28, 2011.

"Beneficial Interest" shall mean the interest of the Owner Participant under the Trust Agreement.

"Bills of Sale" shall have the meaning specified in Section 4.1(g) of the Participation Agreement.

"Business Day" shall mean any day other than a Saturday, Sunday or day on which banks in the States of Illinois, Utah, New York or California are authorized or permitted to be closed.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall have the meaning specified in Section 1 of the Indenture.

"Commitment Letter" shall mean the commitment letter dated July 26, 1989 among the Lessee and the Owner Participant.

"Coupon Rate" shall have the meaning specified in Section 4 of the Lease Supplement[s].

"Cure Period" shall have the meaning specified in Section 7.3(a) of the Indenture.

"Delivery Dates" shall have the meaning specified in Section 2.3(a)(i) of the Participation Agreement.

"Economic Return" shall mean the aggregate after-tax cash flow, nominal after-tax yield under the multiple investment sinking fund method of analysis, and average life of the Owner Participant's net equity investment in the aggregate.

"Equipment" shall mean collectively those items of railroad rolling stock described in the Lease Supplements and the Indenture Supplements, together with any and all accessions, additions, improvements and replacements from time to time incorporated or installed on any item thereof which are the property of the Owner Trustee pursuant to the terms of the Lease, and "Unit" shall mean individually the various items thereof.

"Equipment Cost" shall mean, for each Unit, the purchase price therefor paid by the Owner Trustee to the Lessee or the Manufacturer thereof, as the case may be, pursuant to Section 2 of the Participation Agreement and as set forth in the Lease Supplement with respect to such Unit.

"Equipment Type" shall mean Equipment Types B through D described in Section 1 of the Lease Supplements.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor law.

"Escrowed Funds" shall have the meaning specified in Section 2.3(a) of the Participation Agreement.

"Event of Loss" shall have the meaning specified in Section 11.1 of the Lease.

"Excepted Rights in Collateral" shall mean (i) all indemnity payments (including without limitation, payments under the Tax Indemnity Agreement) to which the Owner Trustee or the Owner Participant, or any of their respective Affiliates (or the respective successors, assigns, agents, officers, directors or employees of the Owner Trustee or the Owner Participant), is entitled, (ii) any amounts payable under any Operative Agreement to reimburse the Owner Trustee or the Owner Participant, or any of their respective Affiliates (including the reasonable expenses of the Owner Trustee or the Owner Participant incurred in connection with any such payment), for performing or complying with any of the obligations of the Lessee under and as permitted by any Operative Agreement, (iii) any amount payable to the Owner Participant by any Transferee as the purchase price of the Owner Participant's Beneficial Interest, (iv) any insurance proceeds (or payments with respect to risks self-insured) under liability policies to which the Owner Trustee or the Owner Participant, or any of their respective Affiliates (or the respective successors, assigns, agents, officers, directors or employees of the Owner Trustee or the Owner Participant), is entitled, (v) any interest or late charge on any amount payable under clauses (i) through (iv) hereof, and (vi) all rights with respect to the foregoing (subject to the provisions of Section 3.6(a) of the Indenture) and all rights and interests with respect to the Tax Indemnity Agreement.

"Excess Amount" shall have the meaning specified in Section 9.8 of the Participation Agreement.

"Expenses" shall have the meaning specified in Section 8.2(a) of the Participation Agreement.

"Fair Market Rental Value" shall mean with respect to the Equipment or any Unit, the fair market rental value of the Equipment or such Unit, determined in accordance with Section 20.5 of the Lease.

"Fair Market Sales Value" shall mean with respect to the Equipment or any Unit, the fair market sales value of the Equipment or such Unit, determined in accordance with Section 20.5 of the Lease.

"First Delivery Date" shall have the meaning specified in Section 2.3(a)(i) of the Participation Agreement.

"Fixed Rate Renewal Term" shall have the meaning specified in Section 20.3(a) of the Lease.

"Foreign Person" shall mean any Person who, for United States Federal income tax purposes, is a foreign corporation, a nonresident alien individual, a nonresident alien fiduciary of a foreign estate or trust, or a foreign partnership one or more members of which is, for United States Federal income tax purposes, a foreign corporation, a nonresident alien individual or a nonresident alien fiduciary of a foreign estate or trust.

"Guidelines" shall mean the guidelines set forth in Revenue Procedure 75-21, 1975-1 C.B. 715, as further set forth in Revenue Procedure 75-28, 1975-1 C.B. 752, and as modified in Revenue Procedure 76-30, 1976-2 C.B. 647 and Revenue Procedure 79-48, 1979-2 C.B. 529 that are applied by the Internal Revenue Service in determining, for advance ruling purposes, whether leveraged lease transactions (other than transactions which are treated as leases pursuant to Section 168(f)(8) of the Code) are leases for Federal income tax purposes.

"Income Inclusions" shall have the meaning specified in Section 6 of the Tax Indemnity Agreement.

"Indemnified Party" shall mean each of the Participants, the Owner Trustee, the Trust Estate and the Indenture Trustee, and the successors, permitted assigns, agents, servants, officers and employees of each of the foregoing.

"Indemnitee" shall have the meaning specified in Section 6.2 of the Participation Agreement.

"Indemnitor" shall have the meaning specified in Section 6.2 of the Participation Agreement.

"Indemnity Payment" shall mean any payment made by the Lessee to an Indemnified Party pursuant to Section 8 of the Participation Agreement or pursuant to the Tax Indemnity Agreement.

"Indenture" shall mean the Security Agreement and Trust Indenture dated as of September 15, 1989 between the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, as amended, supplemented or otherwise modified from time to time.

"Indenture Default" shall mean an Indenture Event of Default or an event which with notice or lapse of time or both would become an Indenture Event of Default.

"Indenture Event of Default" shall have the meaning specified in Section 7.1 of the Indenture.

"Indenture Supplements" shall mean the Indenture Supplements dated each Delivery Date, substantially in the form of Exhibit B to the Indenture, between the Owner Trustee and the Indenture Trustee, covering the Equipment.

"Indenture Trustee" shall mean Continental Bank, National Association, and its successors in trust as Indenture Trustee under the Indenture.

"Interchange Rules" shall have the meaning specified in Section 6 of the Lease.

"Interest" shall mean the Beneficial Interest or a Loan Certificate, individually, and "Interests" shall mean the Beneficial Interest and the Loan Certificates, collectively.

"Interim Interest" shall have the meaning specified in Section 2.2(d) of the Participation Agreement.

"Interim Rent" shall have the meaning specified in Section 2.1(a) of the Lease.

"Interim Term" shall have the meaning specified in Section 3 of the Lease.

"Investment" shall mean, as applied to the Lessee, any direct or indirect purchase or other acquisition by the Lessee of stock or other securities, or of a beneficial interest in stock or other securities, of any other person, and any direct or indirect loan (other than loans made in the ordinary course of business of the Lessee to a Person unaffiliated with the Lessee), advance (including deposits with financial institutions, but excluding prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business and demand deposit accounts with financial institutions that are desirable for the conduct of the Lessee's business), or capital contributions by the Lessee to any other Person. The amount of any Investment shall be determined in conformity with generally accepted accounting principles at the time in effect.

"Late Rate" shall mean the higher of interest at the annual rate equal to (i) the Coupon Rate plus 2% or (ii) the Prime Rate plus 2% (or the highest rate permitted by applicable law, whichever is less).

"Lease" or "Lease Agreement" or "Equipment Lease" shall mean the Equipment Lease Agreement dated as of September 15, 1989 between the Owner Trustee, as lessor, and the Lessee as amended, supplemented or otherwise modified from time to time.

"Lease Default" shall mean a Lease Event of Default or an event which with notice or lapse of time or both would become a Lease Event of Default.

"Lease Event of Default" shall have the meaning specified in Section 15.1 of the Lease.

"Lease Rate" shall mean the rate that discounts the stream of Basic Rent to the Total Equipment Cost on the applicable Delivery Dates.

"Lease Supplement" shall mean the Lease Supplement No. 1 dated the Delivery Date, substantially in the form of Exhibit A to the Lease, between the Lessor and the Lessee, covering the Equipment.

"Lease Term" shall mean the Interim Term, the Basic Term and any Renewal Term then in effect.

"Lessee" shall mean Itel Rail Corporation, a Delaware corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"Lessee Agreements" shall mean the Operative Agreements to which the Lessee is a party.

"Lessor" shall have the meaning specified in the recitals to the Lease.

"Lessor's Liens" means any Lien affecting, on or in respect of the Equipment, the Lease, the Trust Estate, the Collateral, any payment of Rent or on any part thereof, or any amount or part thereof due or payable on the Loan Certificates arising as a result of (i) claims against or affecting the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Lease or the Participation Agreement, or (ii) acts or omissions of the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Lease or the Participation Agreement or not permitted under the Lease or under the Participation Agreement or in breach of any covenant or agreement of such Person set forth in any of the Operative Agreements, or (iii) Taxes imposed against the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant or the Trust Estate which are not indemnified against by the Lessee pursuant to the Participation Agreement or under the Tax Indemnity Agreement, or (iv) claims against the Lessor or the Owner Participant arising out of the transfer (whether voluntary or involuntary) of the Lessor or the Owner Participant (without the consent of the Lessee, the Indenture Trustee and the Loan Participants) of all or any portion of their respective interests in the Equipment, the Trust Estate or the Operative Agreements, other than a transfer pursuant to Sections 11, 12, 15.2, 20.1 or 20.2 of the Lease; provided that in each case, no such Lien need be discharged so long as it is being contested in good faith and by appropriate legal proceedings in any reasonable manner which does not adversely affect the rights or interests of the Indemnitees.

"Lien" shall mean any mortgage, pledge, security interest, lien, encumbrance, disposition of title or other charge of any kind on property.

"Loan Certificates" shall mean the Secured Loan Certificates due March 28, 2010 of the Owner Trustee, bearing interest at the Coupon Rate, substantially in the form of Exhibit A to the Indenture.

"Loan Participant" shall mean the holder of any Loan Certificate issued, registered and outstanding under the Indenture, and its respective successors and assigns.

"Loan Value" shall have the meaning specified in Section 5.1(c) of the Indenture.

"Make-Whole Amount" shall mean, in connection with any prepayment of the Loan Certificates pursuant to Sections 6.2(b), 6.2(c) and 6.2(d) of the Indenture, the excess, if any, of (i) the aggregate present value as of the date of such prepayment of each dollar of principal being prepaid and the amount of interest that would have been payable in respect of such dollar if such prepayment had not been made, determined by discounting such amounts at the Reinvestment Rate from the respective dates on which they would have been payable, over (ii) 100% of the principal amount of the outstanding Loan Certificates being prepaid. If the Reinvestment Rate is equal to or higher than the Coupon Rate, the Make-Whole Amount shall be zero.

"Manufacturers" shall have the meaning specified in recital A of the Purchase Agreement Assignment.

"Modifications" shall have the meaning specified in Section 7(b) of the Lease.

"New Loan Certificates" shall have the meaning specified in Section 2.5(a) of the Indenture.

"New Loan Participants" shall have the meaning specified in Section 9.2(b) of the Participation Agreement.

"New Loans" shall have the meaning specified in Section 9.2(a) of the Participation Agreement.

"Non-Indemnified Items" shall have the meaning specified in Section 8.1 of the Participation Agreement.

"Non-Severable Modifications" shall mean any Modification (i) that is not readily removable without

causing material damage to the Equipment or any Unit, (ii) that is required by Section 6 of the Lease or (iii) that is a Part which is a replacement of or substitution for a Part existing on the applicable Delivery Date (and any successive replacements for or substitutions of such Part).

"Offer" shall have the meaning specified in Section 6.1(h) of the Participation Agreement.

"Officer's Certificate" shall mean a certificate signed (i) in the case of a corporation by the President, any Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of such corporation, (ii) in the case of a partnership by the Chairman of the Board, the President or any Vice President, the Treasurer or an Assistant Treasurer of a corporate general partner, and (iii) in the case of a commercial bank or trust company, the Chairman or Vice Chairman of the Executive Committee or the Treasurer, any Trust Officer, any Vice President, any Executive or Senior or Second or Assistant Vice President, or any other officer or assistant officer customarily performing the functions similar to those performed by the persons who at the time shall be such officers, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

"Old Loan Certificates" shall have the meaning specified in Section 2.5(a) of the Indenture.

"Old Rail" shall have the meaning specified in Section 3.2(e) of the Participation Agreement.

"Operative Agreements" shall mean the Participation Agreement, the Purchase Agreement Assignment, the Bills of Sale, the Trust Agreement, the Lease, the Lease Supplements, the Loan Certificates outstanding at the time of reference, the Indenture, the Indenture Supplement and the Tax Indemnity Agreement.

"Original Escrowed Funds" shall have the meaning specified in Section 2.3(a)(i) of the Participation Agreement.

"Owner Participant" shall mean Chase Manhattan Service Corporation, a New York corporation, and its successors and permitted assigns of its Beneficial Interest.

"Owner Participant Agreements" shall mean the Operative Agreements to which the Owner Participant is a party.

"Owner Trustee" shall mean First Security Bank of Utah, N.A., not in its individual capacity but solely as Owner Trustee under the Trust Agreement, and its successors in trust thereunder.

"Owner Trustee Agreements" shall mean the Operative Agreements to which First Security Bank of Utah, N.A., either in its individual or fiduciary capacity, is a party.

"Participants" shall mean the Loan Participants and the Owner Participant.

"Participation Agreement" shall mean the Participation Agreement dated as of September 15, 1989, among the Lessee, the Participants, the Owner Trustee and the Indenture Trustee.

"Parts" means all appliances, parts, instruments, appurtenances, accessories, furnishings, linings and other equipment of whatever nature which may from time to time be incorporated or installed in or attached to the Equipment.

"Permitted Bank" shall have the meaning specified in clause (iii) of the definition of the term "Permitted Investments."

"Permitted Investments" shall mean (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency thereof and maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than 270 days from the date of creation and having at the time such Investment is made a rating of at least A-1 from Standard & Poor's Corporation or at least P-1 from Moody's Investors Service, Inc., (iii) certificates of deposit of any banking institution existing under the laws of the United States of America or any state thereof

having capital, surplus and undivided profits (or the equivalent) of at least US$100,000,000 and having at the time such Investment is made, a long term deposit rating of at least A from Standard & Poor's Corporation or its equivalent from Moody's Investors Service, Inc. (such banking institution being hereinafter referred to as a "Permitted Bank"), (iv) money market preferred stock having, at the time such Investment is made, a rating of at least AA from Standard & Poor's Corporation or its equivalent from Moody's Investors Service, Inc., (v) repurchase obligations of Permitted Banks, (vi) Investments in any Subsidiary of the Lessee, (vii) certificates of deposit of non-Permitted Banks existing under the laws of the United States of America or any state thereof in an amount not to exceed either US$10,000,000 in the aggregate or US$1,000,000 with any one such institution, or (viii) certificates of deposit of any banking institution existing under the laws of Canada or any province thereof having capital, surplus and undivided profits (or the equivalent) of at least C$1,000,000,000 or having capital, surplus and undivided profits (or the equivalent) of at least C$250,000,000 and having at the time such investment is made, a long-term deposit rating of at least Aa2 from Moody's Investors Service, Inc., not to exceed C$10,000,000 in the aggregate with respect to all certificates of deposit under this clause (viii).

"Permitted Liens" with respect to the Equipment and each Unit thereof, shall mean: (i) the interests of the Lessee and the Owner Trustee under the Lease and the Lease Supplement; (ii) the interest of the Lessee and any sublessee as provided in any sublease permitted pursuant to Section 19.4 of the Lease; (iii) any Liens thereon for taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount or validity of which is being contested so long as there exists no material danger of sale, forfeiture, loss or loss of use of such Equipment or Unit; (iv) any Liens of mechanics, suppliers, materialmen, laborers, employees, repairmen and other like Liens arising in the ordinary course of business securing obligations which are not due and payable or the amount or validity of which is being contested so long as there exists no material danger of sale, forfeiture, loss or loss of use of such Equipment or Unit; (v) the Lien and security interest granted to the Indenture Trustee under and pursuant to the Indenture, and the respective rights of the Loan Participants, the Indenture Trustee, the Owner Participant and the

Owner Trustee under the Operative Agreements; (vi) Liens arising out of any judgment or award against the Lessee (or any sublessee permitted pursuant to Section 19.4 of the Lease) with respect to which an appeal or proceeding for review is being presented in good faith and with respect to which there shall have been secured a stay of execution pending such appeal or proceeding for review; and (vii) any other Lien with respect to which the Lessee (or any such sublessee) shall have provided a bond adequate in the reasonable opinion of the Owner Trustee and the Indenture Trustee.

"Person" shall mean an individual, partnership, corporation, trust, association or unincorporated organization, and a government or agency or political subdivision thereof.

"Pricing Assumptions" shall have the meaning specified in Section 2.7(a) of the Participation Agreement.

"Prime Rate" shall mean the rate announced from time to time by The Chase Manhattan Bank, N.A. as its prime commercial lending rate.

"Pullman" shall have the meaning specified in Section 3.2(e) of the Participation Agreement.

"Purchase Agreement Assignment" shall mean the Purchase Agreement Assignment dated as of September 15, 1989 between the Lessee, as assignor, and the Owner Trustee, as assignee.

"Purchase Agreements" shall mean the separate purchase orders from the Lessee, as purchaser, to each of the Manufacturers, as sellers, listed on Schedule 1 to the Purchase Agreement Assignment.

"Register" shall have the meaning specified in Section 2.3 of the Indenture.

"Reinvestment Rate" shall mean 75 basis points plus the arithmetic mean of the yields under the respective headings "This Week" and "Last Week" published in the Statistical Release under the caption "Treasury Constant Maturities" for the maturity (rounded to the nearest month) corresponding to the Weighted Average Life to Maturity of the principal of the Loan Certificates being

prepaid. If no maturity exactly corresponds to such Weighted Average Life to Maturity, yields for the two published maturities most closely corresponding to such Weighted Average Life to Maturity shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Rate shall be interpolated or extrapolated for such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For the purposes of calculating the Reinvestment Rate, the most recent Statistical Release published prior to the date of payment hereunder shall be used.

"Renewal Term" shall mean any term in respect of which the Lessee shall have exercised its option to renew the Lease pursuant to Section 20.3 thereof, including any Fixed Rate Renewal Term.

"Rent" shall mean all Interim Rent, Basic Rent and Supplemental Rent.

"Rent Payment Dates" shall mean September 28, 1990 and the twenty-seventh day of each March and September thereafter during the Lease Term, but excluding the Basic Term Expiration Date.

"Second Delivery Date" shall have the meaning specified in Section 2.3(a)(i) of the Participation Agreement.

"Secured Indebtedness" shall mean the outstanding Loan Certificates and all principal thereof (and the Make-Whole Amount, if any) and interest thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Owner Trustee under the terms of the outstanding Loan Certificates or the Indenture.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Senior Debt" of the Lessee and its consolidated Subsidiaries means indebtedness incurred by the Lessee and its consolidated Subsidiaries of any term of maturity incurred in respect of (i) money borrowed or raised, (ii) any bond, note, loan, stock, debenture or similar instrument, (iii) acceptance or documentary credit facilities, (iv) the deferred payment for assets or services acquired (other than payments deferred for not more than 60 days

for assets or services acquired, where such deferral is granted or acquisition is made in the ordinary course of business), (v) rental payments under leases (whether in respect of land, machinery, equipment or otherwise) which are treated as capitalized leases for the purposes of generally accepted accounting principles in the United States of America as in force at the date of the Lease and (vi) the present value (discounted at a per annum rate equal to the interest rate on the debt incurred by the lessor in connection with the acquisition of the equipment subject to such lease, or if there is no such rate or the Lessee does not know such rate, at the Prime Rate in effect at the inception of such lease) of all rentals under operating leases. Senior Debt shall not include any Unsecured Subordinated Debt.

"Severable Modifications" shall mean any Modification that is not a Non-Severable Modification.

"Statistical Release" shall mean the statistical release designated "H.15(519)" or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded U.S. Government Securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination hereunder, then such other reasonably comparable index which shall be designated by the holders of 66-2/3% in aggregate principal amount of the outstanding Loan Certificates.

"Stipulated Loss Value" shall mean during the Interim Term and the Basic Term the amount determined in accordance with Section 11 of the Lease and Schedule 2 to the Lease, and during any Renewal Term, the amount determined in accordance with Section 20.6 of the Lease.

"Subsidiary" of any Person shall mean any corporation, association, or other business entity of which more than 50% (by number of votes) of the Voting Stock at the time outstanding shall at the time be owned, directly or indirectly, by such Person or by any other corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by such Person and any one or more such Subsidiaries.

"Supplemental Rent" shall mean all amounts, liabilities and obligations (other than Interim Rent and Basic Rent) which the Lessee is obligated to pay under

the Operative Agreements to or on behalf of any of the other parties thereto, including, but not limited to, Termination Value and Stipulated Loss Value payments, and amounts, if any, payable, under Section 2.6 of the Participation Agreement (to the extent such payment does not give rise to a rental adjustment under Section 2.3 of the Lease) by the Lessee.

"Tangible Assets" means, at any date, all of the assets of the Lessee and its consolidated Subsidiaries as determined in accordance with generally accepted accounting principles then in effect consistently applied except: (a) patents, copyrights, trademarks, trade names, franchises, goodwill, and other intangibles; (b) unamortized debt discount and expense; (c) fixed assets to the extent of any write-up in the book value thereof resulting from a revaluation effective after the Delivery Date; and (d) Investments which are not Permitted Investments.

"Tangible Net Worth" means, at any date: (a) the book value (net of depreciation, obsolescence, amortization, valuation, and other proper reserves as determined in accordance with generally accepted accounting principles consistently applied) at which Tangible Assets would be shown on a consolidated balance sheet of the Lessee and its Subsidiaries at such date prepared in accordance with generally accepted accounting principles then in effect consistently applied; less (b) the amount at which the liabilities of the Lessee and its Subsidiaries would be shown on such consolidated balance sheet.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement dated as of September 15, 1989 between the Lessee and the Owner Participant relating to Itel Rail Trust No. 89-2.

"Taxes" shall have the meaning specified in Section 8.1 of the Participation Agreement.

"Terminated Units" shall have the meaning specified in Section 12.1 of the Lease.

"Termination Date" shall have the meaning specified in Section 12.1 of the Lease.

"Termination Value" shall mean, with respect to each Unit, an amount determined in accordance with Section 12 of the Lease and Schedule 3 to the Lease.

"Total Equipment Cost" shall mean the sum of the Equipment Cost for each Unit delivered under the Lease.

"Transaction Costs" shall have the meaning specified in Section 2.6(a) of the Participation Agreement.

"Transferee" shall have the meaning specified in Section 6.1(a) of the Participation Agreement.

"Trust" shall have the meaning specified in the Trust Agreement.

"Trust Agreement" shall mean the Trust Agreement dated as of September 15, 1989 between the Owner Participant and First Security Bank of Utah, N.A., as Owner Trustee under Itel Rail Trust No. 89-2.

"Trust Estate" shall mean all the estate, right, title and interest of the Owner Trustee in, to and under the Equipment and the Operative Agreements including, without limitation, all funds advanced to the Owner Trustee by the Owner Participant, all proceeds from the sale of the Loan Certificates, all installments and other payments of Interim Rent, Basic Rent, Supplemental Rent, insurance proceeds, Stipulated Loss Values, condemnation awards, Termination Values, purchase price, sale proceeds, and all other proceeds of any kind for or with respect to the Equipment and the Operative Agreements, but excluding Excepted Rights in Collateral and payments related thereto.

"Trustee" shall mean the Owner Trustee or the Indenture Trustee, individually, and "Trustees" shall mean the Owner Trustee and the Indenture Trustee, collectively.

"Unit" shall mean each unit or item of Equipment.

"Unsecured Subordinated Debt" means any unsecured indebtedness which would be Senior Debt but for the fact that it is junior and subordinated in right of pay-

ment or otherwise to any Senior Debt of the Lessee or its consolidated Subsidiaries.

"Voting Stock" shall mean Securities of any class or classes of a corporation, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the board of directors (or persons performing similar functions).

"Weighted Average Life to Maturity" of the principal amount of the Loan Certificates being prepaid shall mean, as of the time of any determination thereof, the number of years obtained by dividing the then Remaining Dollar-Years of such principal by the aggregate amount of such principal. The term "Remaining Dollar-Years" of such principal shall mean the amount obtained by (i) multiplying (1) the remainder of (A) the amount of principal that would have become due on each scheduled payment date if such prepayment had not been made, less (B) the amount of principal on the Loan Certificates scheduled to become due on such date after giving effect to such prepayment and the application thereof, by (2) the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination and such scheduled payment date, and (ii) totalling the products obtained in (i).