

RECORDATION NO. 21121-AB

FILED

JAN 12 '98

11-35 AM

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January 9, 1998

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies each of an Indenture Supplement, and a Trust Indenture and Security Agreement, both dated December 30, 1997, both secondary documents as defined in the Board's Rules for the Recordation of Documents.

The enclosed documents relate to the Memorandum of Trust Indenture and Security Agreement previously filed with the Board under Recordation Number 21121.

The names and addresses of the parties to the enclosed documents are:

Owner Trustee	:	First Security Bank, National Association 79 South Main Salt Lake City, Utah 84111
Indenture Trustee	:	Wilmington Trust Company 1100 North Market Street Wilmington, Delaware 19890

A description of the railroad equipment covered by the enclosed documents was set forth on Exhibit A attached to the Memorandum of Trust Indenture and Security Agreement previously filed herein.

*Counterpart - Alvord*

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

JAN 12 11 35 AM '98

Mr. Vernon A. Williams  
January 9, 1998  
Page 2

Also enclosed is a check in the amount of \$48.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed documents to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Alvord", with a stylized flourish at the end.

Robert W. Alvord

RWA/bg  
Enclosures

RECORDATION NO. 21121-A FILED

JAN 12 '98 11-35 AM

F:\NLR\JOHAM64\TRUSTIN.EXE:1/08/98

EXECUTION DRAFT

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TRUST INDENTURE AND SECURITY AGREEMENT

dated as of December 30, 1997

Between

FIRST SECURITY BANK, NATIONAL ASSOCIATION  
as Owner Trustee,

and

WILMINGTON TRUST COMPANY,  
as Indenture Trustee

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Leveraged Lease  
Financing of  
Rail Hopper Cars

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Exhibit A - 1: Form of Series A Note

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Schedule 1 to Trust Indenture and Security Agreement - Description of Equipment

APPENDIX A to Trust Indenture and Security Agreement - Definitions

THIS TRUST INDENTURE AND SECURITY AGREEMENT is dated December 30, 1997, between First Security Bank, National Association, a national banking association not in its individual capacity, except as otherwise specifically set forth herein, but solely as Owner Trustee under the Trust Agreement referred to below ("Owner Trustee"), and Wilmington Trust Company, a banking corporation organized under the laws of the State of Delaware, as indenture trustee hereunder ("Indenture Trustee"). All capitalized terms used herein have the respective meanings set forth or referred to in Section 1.

RECITALS:

A. The Beneficiary and the Owner Trustee have entered into the Trust Agreement whereby, among other things, the Owner Trustee declared a certain trust for the use and benefit of Beneficiary.

B. Immediately prior to the execution and delivery of this Indenture, the Owner Trustee, the Indenture Trustee, the Beneficiary and the Purchasers have entered into a Note Purchase Agreement dated as of the date hereof pursuant to which the Owner Trustee has been authorized and directed to execute and deliver this Indenture and by this Indenture, among other things, to (a) issue the Notes and (b) grant to the Indenture Trustee, for the benefit of the Purchasers and the Holders from time to time, the first and prior security interest in the Indenture Estate contemplated hereby.

NOW, THEREFORE, THIS INDENTURE WITNESSETH that, in consideration of the premises and other good and valuable consideration the receipt of which is hereby acknowledged, in order to secure (a) the prompt payment when and as due and payable of the principal of and Make Whole Amount and interest on the Notes and of all other indebtedness secured hereby and all other amounts payable or to be distributed by the Owner Trustee or the Lessee to or for the benefit of the Purchasers or the Holders hereunder or under the Notes or any of the other Operative Documents and (b) the performance and observance by the Owner Trustee, for the benefit of the Purchasers and the Holders, of all the covenants and agreements contained herein and in the other Operative Documents, in each case for the uses and purposes and subject to the terms and provisions hereof:

GRANTING CLAUSE:

The Owner Trustee hereby grants, conveys, assigns, transfers, mortgages and pledges to the Indenture Trustee and its successors and assigns for the security and benefit of the Purchasers and the Holders from time to time, and creates a security interest in favor of the Indenture Trustee and its successors and assigns for the security and benefit of the Purchasers and the Holders from time to time, in the following described property, rights and privileges, other than Excepted Payments (collectively, the "Indenture Estate"), to wit:

(1) Each of the Lease Documents and all payments due to, and rights of, the Owner Trustee thereunder, including, without limitation, (a) all amounts of Interim Rent, Basic Rent, other rent and all other payments payable to the Owner Trustee of any kind for or with respect to the Equipment and all rights to enforce payments thereunder, (b) all rights of the Owner Trustee to exercise any election or option or to make any decision or

determination or to give any notice, consent, waiver or approval or to take any other action under or with respect to any of the foregoing or to accept any surrender or redelivery of the Equipment or any part thereof, as well as all rights, powers and remedies on the part of the Owner Trustee, whether acting under any of the foregoing or by statute or at law or in equity, or otherwise, and (c) all estate, right, title and interest of the Owner Trustee as a secured party or lienholder thereunder;

(2) All the Equipment, as more particularly described in the Indenture Supplements executed and delivered from time to time, and all replacements thereof and substitutions therefor and all additions and accessions thereto acquired by the Owner Trustee;

(3) All rents, issues, profits, revenues and other income from or on account of the property, rights and privileges subjected or required to be subjected to the lien of this Indenture;

(4) All condemnation and requisition proceeds with respect to the Equipment, and all insurance proceeds with respect to the Equipment;

(5) All moneys and securities now or hereafter paid or deposited or required to be paid or deposited to or with the Indenture Trustee pursuant to any term of this Indenture or any other Operative Document and held or required to be held by the Indenture Trustee hereunder; and

(6) All proceeds of the foregoing;

in each case, whether now owned or thereafter acquired and including all property hereafter specifically subjected to the lien of this Indenture by an Indenture Supplement or any mortgage supplemental hereto BUT EXCLUDING from the property, rights and privileges subject to this Granting Clause all Excepted Payments. Concurrently with the delivery hereof, the Owner Trustee is delivering to the Indenture Trustee the original executed counterpart of the Lease and each Lease Schedule constituting the original of such Lease Schedule for chattel paper purposes and certified copies of each of the other Lease Documents.

TO HAVE AND TO HOLD all and singular the aforesaid property, rights and privileges unto the Indenture Trustee, its successors and assigns, in trust for the benefit and security of the Purchasers and Holders from time to time and for the uses and purposes and subject to the terms and provisions set forth in this Indenture.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Owner Trustee shall remain liable under the Operative Documents to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Indenture Trustee, the Purchasers and the Holders shall have no obligation or liability under any thereof by reason of or arising out of the assignment hereunder, nor shall the Indenture Trustee, the Purchasers or the Holders be required or obligated in any manner to perform or fulfill any obligations of the Owner Trustee under or pursuant to any of the Operative Documents, except as herein expressly provided, to make any payment, or to make any

inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Owner Trustee does hereby irrevocably constitute the Indenture Trustee the true and lawful attorney of the Owner Trustee with full power (in the name of the Owner Trustee or otherwise) to ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys (in each case including insurance, condemnation and requisition proceeds and in each case subject to the rights of the Owner Trustee set forth in Section 6.08) due and to become due under or arising out of the Operative Documents and all other property which now or hereafter constitutes part of the Indenture Estate, to endorse any checks or other instruments or orders in connection therewith and to file any claims in connection with an Event of Loss or to take any action or to institute any proceedings which the Indenture Trustee may deem to be necessary or advisable in the premises. Pursuant to the Lease, the Lessee has been directed to make all payments of Rent (other than Excepted Payments) and all other amounts which are required to be paid to or deposited with the Owner Trustee pursuant to the Lease directly to the Indenture Trustee at such address or addresses as the Indenture Trustee shall specify, for application as provided in this Indenture. The Owner Trustee agrees that promptly on receipt thereof, it will transfer to the Indenture Trustee any and all moneys from time to time received by it constituting part of the Indenture Estate, for distribution by the Indenture Trustee pursuant to this Indenture, except that the Owner Trustee shall accept for distribution pursuant to the Trust Agreement any amounts distributed to it by the Indenture Trustee under this Indenture.

The Owner Trustee agrees that at any time and from time to time, upon the written request of the Indenture Trustee, the Owner Trustee will promptly and duly execute and deliver or cause to be duly executed and delivered any and all such further instruments and documents as the Indenture Trustee may reasonably deem desirable in obtaining the full benefits of the assignment hereunder and of the rights and powers herein granted.

The Owner Trustee does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Indenture shall remain in effect and shall not have been terminated pursuant to Section 10.01, any of its estate, right, title or interest hereby assigned, to anyone other than the Indenture Trustee, and that, with respect to such estate, right, title and interest hereby assigned, it will not, except as otherwise provided in this Indenture, (i) accept any payment from the Lessee, (ii) execute any waiver or modification of, or consent under, the terms of any of the Lease Documents (other than those relating to Excepted Payments), (iii) settle or compromise any claim arising under any of the Lease Documents (other than those relating to Excepted Payments), or (iv) submit or consent to the submission of any dispute, difference or other matter (other than those relating to Excepted Payments) arising under or in respect of any of the Lease Documents to arbitration thereunder.

It is hereby further agreed that any and all property described or referred to in the granting clauses hereof which is hereafter acquired by the Owner Trustee 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 Lien of this Trust Indenture as fully and completely as though specifically described herein, but nothing contained in this paragraph shall be deemed to modify or change the obligations of the Owner Trustee contained in the foregoing paragraphs.

The Owner Trustee hereby ratifies and confirms the Lease and does hereby agree that it will not take any action not permitted by this Indenture or omit to take any action required by this Indenture, the taking or omission of which might result in an alteration or impairment of any of the Operative Documents or of any of the rights created by any thereof or the assignment hereunder.

IT IS HEREBY COVENANTED AND AGREED by and between the parties, as follows:

## SECTION 1. DEFINITIONS

Unless the context shall otherwise require, capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in Appendix A hereto for all purposes hereof (such definitions to be equally applicable to both the singular and plural forms of the terms defined). References in this Indenture to Sections, subsections and paragraphs are to Sections, subsections, and paragraphs in this Indenture unless otherwise indicated.

## SECTION 2. THE NOTES

### 2.01 Issuance.

(a) Designation. The Notes issuable hereunder shall be issued in two series designated, respectively, Series A Leased Backed Notes due January 1, 2017, and Series B Lease Backed Notes due January 1, 2017.

(b) Creation. Upon verbal authorization from the Beneficiary the Owner Trustee will issue at the Closing Date \$41,780,309.38 in aggregate principal amount of its Series A Notes and \$29,312,362.11 in aggregate principal amount of its Series B Notes.

(c) Terms and Form. The terms and form of each Series A Note shall be substantially as set forth in Exhibit A-1 hereto, the terms and form of each Series B Note shall be substantially as set forth in Exhibit A-2 hereto.

(d) Original Issue. The Notes issued on any Closing Date shall be dated such Closing Date, shall be registered in the name of such Purchaser or its nominee, and shall be in the aggregate principal amounts for such series of Notes set forth in Schedule A to the Purchase Agreement.

(e) Interest. Each series of Notes shall bear interest at the Applicable Rate therefor, and such interest shall be due and payable in arrears on each Payment Date as provided in the form of Note for such series. The aggregate amount of interest due on each Payment Date on each series of Note is as specified in Exhibit B hereto.

(f) Principal Amount. The aggregate principal of the Notes shall be due and payable in the installments as specified in Exhibit B hereto, payable on the Payment Dates specified in such Exhibit B.

(g) Default Interest. Each Note shall bear interest at the Applicable Default Rate (computed on the basis of a year of 360 days, and actual days elapsed) on any principal thereof, and Make Whole Amount and, to the extent permitted by applicable law, on any interest and other amounts due thereunder not paid when due (whether at stated maturity, by acceleration or otherwise), payable on demand by the Holder thereof.

(h) Authorization and Authentication. The Notes shall be executed on behalf of the Owner Trustee by one of its Authorized Officers. Notes bearing the signatures of individuals who were at any time the proper officers of the Owner Trustee shall bind the Owner Trustee, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the respective dates of such Notes. The Owner Trustee may from time to time execute and deliver Notes (not, however exceeding in aggregate original principal amount set forth in Section 2.01(b) for such Series) to the Indenture Trustee for authentication upon original issue and such Notes shall thereupon be authenticated and delivered by the Indenture Trustee upon the written request of the Owner Trustee signed by an Authorized Officer, provided, that each such request shall specify the aggregate original principal amount of each series of Notes to be authenticated hereunder on original issue. No Note shall be secured by or entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication executed by the Indenture Trustee by the manual signature of one of its Authorized Officers and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

2.02 Limitations on Prepayments; Currency. (a) The Notes shall not be subject to prepayment except as provided in Sections 2.13, 2.15, 3.02, 3.03 and 4.04 hereof.

(b) The obligations of the Owner Trustee payable hereunder or under the Notes are payable solely in Dollars.

2.03 Withholding Taxes. The Indenture Trustee agrees, to the extent required by applicable law, to withhold from each payment due under any Note applicable withholding taxes at the appropriate rate, and, on a timely basis, to deposit such amounts with an authorized depository and make such reports, filings and other reports in connection therewith, and in the manner, required under applicable law. The Indenture Trustee shall promptly furnish to the affected Holder (but in no event later than the date 30 days after the due date thereof) a U.S. Treasury Form 1042S and such other form reasonably required by the affected Holder (or similar forms as at any relevant time in effect), indicating payment in full of any Taxes withheld from any payments by the Indenture Trustee to such Holder together with all such other information and documents reasonably requested by such Holder and necessary or appropriate to enable such Holder to substantiate a claim for credit or deduction with respect thereto for income tax purposes of the country where such Holder is located. Each Holder which is a Non-U.S. Person shall be responsible for delivering to the Indenture Trustee from time to time such certificates, statements or other documents which may be required by law to evidence such Holder's entitlement to exemption from or reduction in rate of United States Federal income tax with respect to payments under any Note pursuant to any applicable income tax convention or otherwise. In the event that the withholding of tax is required by applicable law on a payment to a Holder and the Indenture Trustee does not withhold such tax, such Holder shall pay the Indenture Trustee, the Owner

Trustee or the Beneficiary (as the case may be) (a "Withholding Agent") an amount equal to the sum of (a) the tax that should have been withheld and (b) interest thereon from the date the tax should have been withheld to the date the Withholding Agent is paid at the applicable interest rate payable by the Withholding Agent on the tax deficiency.

2.04 Equally and Ratably Secured. All Notes at any time outstanding under this Indenture shall be equally and ratably secured by this Indenture, without preference, priority or distinction on account of the date or dates or the actual time or times of the issue or maturity of such Notes, so that all Notes at any time issued and outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture.

2.05 Payments from Indenture Estate Only. All payments of principal, Make Whole Amount and interest to be made by the Owner Trustee under the Notes and under this Indenture shall be made only from the income and proceeds from the Indenture Estate, and only to the extent that there shall be sufficient income or proceeds from the Indenture Estate to enable the Indenture Trustee to make such payments in accordance with the terms hereof. Each Holder, by its acceptance of a Note, agrees that, except as otherwise expressly provided in this Indenture or the Purchase Agreement, it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to such Holder as herein provided, and, except as otherwise expressly provided in this Indenture or the Purchase Agreement, that none of the Owner Trustee, the Beneficiary nor the Indenture Trustee is personally liable to any Purchaser or Holder for any amounts payable under the Notes, this Indenture or the Purchase Agreement.

2.06 Method of Payment. The principal of and Make Whole Amount and interest on each Note and other amounts due hereunder shall be payable by wire transfer in immediately available funds no later than 2:00 p.m. (New York City time) on the due date thereof, to the Indenture Trustee to the account of the Indenture Trustee at:

Wilmington Trust Company

Wilmington, Delaware

ABA No. 031100092

Credit to the Account of: Trust Indenture and Security Agreement dated as of December 30, 1997 with First Security Bank, N.A. as Owner Trustee

Account No.: 09974-0 Income

Attention: Irene Lennon

Corporate Trust Administration

Phone: (302) 651-8920

Fax: (302) 651-8882

or such other account as shall be designated in writing by the Indenture Trustee to the Lessee, the Owner Trustee and each Holder (such office called the "Indenture Trustee Account") and the Indenture Trustee shall distribute all such amounts so received by it promptly after the receipt thereof to the Persons entitled thereto in accordance with the priorities set forth in Section 3. In the case of a Holder, such distribution shall be made to the Holders at such address and in such manner (by wire transfer of immediately available funds if not otherwise specified) as specified for such Holder in the Note Register or, in the case of a Purchaser, as set forth on Schedule A to the Purchase Agreement or as such Purchaser or Holder shall have otherwise designated to the

Indenture Trustee in writing. In the event the Indenture Trustee shall fail to make any such payment as provided in the immediately foregoing sentence after its receipt of funds at the place specified above, the Indenture Trustee, in its individual capacity and not as Trustee, agrees to compensate the Holders for loss of use of funds at the Applicable Rate.

2.07 Application of Payments. Each payment distributed in respect of a Note shall, except as otherwise provided herein, be applied, first, to the payment of accrued interest (including interest on overdue principal, Make Whole Amount and, to the extent permitted by law, interest) on such Note to the date of such payment, second, to the payment of any other amount (other than principal) due on such Note or then due to the Holder of such Note under any of the other Operative Documents and third, to the payment of the principal amount of such Note then due thereunder and fourth, the balance, if any, remaining thereafter, to the payment of the principal of such Note remaining unpaid (provided that such Note shall not be subject to prepayment without the consent of the Holder thereof except as permitted by Sections 2.13 and 2.15 hereof). The amounts paid pursuant to clause "fourth" above shall be applied to the installments of principal of such Note in inverse order of maturity.

2.08 Termination of Interest in Indenture Estate. A Holder shall have no further interest in, or other right with respect to, the Indenture Estate when and if the principal of and Make Whole Amount and interest on all Notes held by such Holder, and all other sums payable to such Holder hereunder or under the Purchase Agreement and under such Notes, shall have been indefeasibly paid in full.

2.09 Registration; Transfer of Notes. The Indenture Trustee agrees with the Owner Trustee to maintain at the Corporate Trust Office a register (the "Note Register") for the purpose of registering Notes and transfers and exchanges of Notes and the names, addresses and fax numbers of the Holders and the Indenture Trustee is hereby appointed "registrar" for the purpose of registering Notes and transfers and exchanges thereof and the names, addresses and fax numbers of the Holders. In order to register the transfer of or exchange a Note, for Notes of different denominations (provided, a Note may only be exchanged for a Note or Notes of the same Series as the Note being so exchanged or transferred) such Note shall be surrendered to the Indenture Trustee at the Corporate Trust Office, together with a duly executed request for the issue of a new Note or Notes, specifying, in the case of a request for the issue of more than one new Note, the denominations of such Notes (which shall be \$2,000,000 or larger) and, in the case of a surrender for registration of transfer, the name, address and fax number of the new payee or payees, which information, as it may be modified by the last sentence of this Section 2.09, shall be for all purposes the name, address and fax number for such new payee or payees set forth in the Note Register. Promptly upon receipt of such documents and subject to compliance with paragraph 15.1 of the Purchase Agreement, the Owner Trustee shall execute and deliver and the Indenture Trustee shall authenticate a new Note or Notes of the same series, in the same aggregate original principal amount and dated the same date as the Note or Notes surrendered and in such denomination or denominations and payable to such new payee or payees as shall be specified in the written request from such Holder. Each Note so surrendered shall be duly endorsed or be accompanied by a written instrument of transfer duly executed by the registered Holder of such Note or its attorney duly authorized in writing and, if requested by the Indenture Trustee or the Owner Trustee, accompanied by evidence satisfactory to it as to the transfer's compliance with the Securities Act and paragraph 15.1 of the Purchase Agreement and by the transferee's address

and fax number. All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Owner Trustee evidencing the same respective obligations, and entitled to the same security and benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal and interest previously made on the old Note or Notes with respect to which such new Note is issued and the date on which such new Note is issued and the date to which interest on such old Note or Notes shall have been paid. The Owner Trustee shall not be required to register the transfer of or exchange any surrendered Note as above provided during the 5 calendar day period preceding the due date of any payment on such Note. Any Holder may change its address and/or fax number in the Note Register by sending notice of such change to the Indenture Trustee in accordance with Section 10.05 and the Indenture Trustee will provide notice of any such change to the Owner Trustee. Upon the request of the Owner Trustee, the Indenture Trustee will provide the Owner Trustee and the Beneficiary an updated list of the identities of the Holders and their addresses and fax numbers.

2.10 Mutilated, Destroyed, Stolen or Lost Notes. Upon the mutilation, destruction, loss or theft of any Note, the Owner Trustee shall, upon the written request of the Holder thereof, execute and deliver in replacement thereof and the Indenture Trustee shall authenticate a new Note of the same series, payable in the same original principal amount, and dated the same date as the Note so mutilated, destroyed, lost or stolen. If the Note being replaced has become mutilated, such Note shall be surrendered to the Indenture Trustee for delivery by it to the Owner Trustee. If the Note being replaced has been destroyed, lost or stolen, the Holder of such Note shall furnish to the Indenture Trustee and the Owner Trustee such security or indemnity as may be required by them to save them harmless and evidence satisfactory to them of the destruction, loss or theft of such Note and of the ownership thereof, provided, that if the affected Holder is a Purchaser or a Qualified Institutional Buyer, the written notice of such destruction, loss or theft and the written undertaking to indemnify and save harmless the Owner Trustee and Indenture Trustee of such Holder delivered to the Owner Trustee and the Indenture Trustee shall be sufficient evidence, security and indemnity. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal and interest previously made on the old Note or Notes with respect to which such new Note shall have been issued and the date to which interest on such old Note or Notes shall have been paid.

2.11 Payment of Expenses on Transfer. Upon the issuance of a new Note or Notes pursuant to Section 2.09 or 2.10, the Owner Trustee and/or the Indenture Trustee may require from the party requesting such new Note or Notes, without any right or reimbursement under any Operative Document, payment of a sum to reimburse the Owner Trustee and the Indenture Trustee for, or to provide funds for, the payment of any tax or other governmental charge in connection therewith or any charges and expenses connected with such tax or governmental charge paid or payable by the Owner Trustee or the Indenture Trustee.

2.12 Ascertainment of Status of Holder. Prior to due presentation for registration or transfer, the Owner Trustee, the Beneficiary and the Indenture Trustee may treat the Person in whose name any Note shall be registered as provided in Section 2.09, whether or not such Note shall be overdue, as the absolute owner and holder of such Note for the purpose of receiving payments of principal, Make Whole Amount and interest thereon and any other amounts payable with respect thereto, for the purpose of determining the Required Holders and for all

other purposes whatsoever, and the Owner Trustee, the Beneficiary and the Indenture Trustee shall not be affected by any notice to the contrary.

2.13 Optional Prepayment. The Owner Trustee shall have no right voluntarily to prepay the principal amount of the Notes, in whole or in part, except that the Owner Trustee may prepay upon at least 30, but not more than 60, calendar days' irrevocable prior written notice (which states the date such prepayment is to be effected) to the Indenture Trustee and the Holders, in whole but not in part, all, but not less than all of the Notes, at their respective principal amounts, together with interest accrued thereon to the date of prepayment and all other amounts payable to the Holders hereunder and under the Purchase Agreement, plus the Make Whole Amount. Upon the giving of any such notice, the Notes shall become due and payable in full, together with accrued interest thereon to the date of payment plus the Make Whole Amount and all other amounts payable to the Holders hereunder and under the Purchase Agreement on the date fixed for such prepayment in such notice.

2.14 Purchase upon Lease Event of Default. During the 20 Business Days following the date the Indenture Trustee gives the Owner Trustee written notice that a Lease Event of Default has occurred, the Beneficiary or the Owner Trustee may elect by written notice to the Indenture Trustee, to purchase all, but not less than all, of the Notes then outstanding from all Holders. If, after the date the Indenture Trustee gives the Owner Trustee written notice that a Lease Event of Default has occurred the Indenture Trustee gives an Enforcement Notice, the Beneficiary and the Owner Trustee shall have an additional right to purchase the Notes during the lesser of the 20 Business Days following the date of the Enforcement Notice or until the date the Indenture Trustee takes any enforcement action pursuant to such Enforcement Notice. Upon receipt of written notice of such election from the Beneficiary or the Owner Trustee, as the case may be, which notice shall be irrevocable and shall designate a date not sooner than five (5) Business Days nor more than twenty (20) calendar days thereafter as the payment date, each Holder agrees that it will, upon receipt from the Beneficiary or the Owner Trustee of (i) an opinion of counsel in form and substance reasonably satisfactory to the Required Holders that such purchase and sale would not result in the violation of any applicable law, rule or regulation, including without limitation, the Securities Act or the Indenture Act and (ii) an amount equal to the sum of (a) the unpaid principal amount of its Note, plus (b) the Make Whole Amount thereon, plus (c) accrued and unpaid interest thereon to the date of payment, plus (d) any other amount then due and payable to such Holder under such Note or under any of the other Operative Documents, forthwith sell, assign, transfer and convey to the Beneficiary or Owner Trustee, as the case may be (without recourse or warranty of any kind except as to title and for its own acts), all right, title and interest of such Holder in and to such Note, the Indenture Estate, this Indenture and the other Operative Documents, and the Beneficiary or the Owner Trustee, as the case may be, shall assume all of such Holder's obligations under this Indenture and other Operative Documents. Nothing in this Section 2.14 shall, however, limit the Indenture Trustee's right to exercise such rights and remedies to which it is otherwise entitled under this Indenture and the Lease Documents during any period that the Owner Trustee and the Beneficiary have the right to purchase the Notes under this Section 2.14.

2.15 Mandatory Prepayment. The Notes shall be prepaid (which shall be a partial prepayment to the extent the Event of Loss is with respect to less than all of the Equipment), together with accrued interest on the principal amount to be prepaid to the date of

prepayment, Make Whole Amount thereon (unless, pursuant to Section 12 of the Master Lease and Section 5.06, Replacement Equipment shall have been substituted for the Equipment subject to such Event of Loss) in a principal amount equal to the aggregate principal amount of the Notes then outstanding (after deduction of any principal of the Notes to be repaid from any concurrent payment of Basic Rent, but only to the extent such Basic Rent is in fact paid) multiplied by a fraction, the numerator of which is the Equipment Cost of the Equipment subject to such Event of Loss as set forth in the applicable Equipment Schedule and the denominator of which is the aggregate of the Total Equipment Costs as set forth in both Lease Schedules. Such prepayment shall be made on the date such payment of Stipulated Loss Value is required to be paid as provided in Section 12 of the Master Lease.

2.16 Application of Partial Payments. In the case of payment of less than the entire unpaid principal, interest, and Make Whole Amount, if any, then due on Notes, the amount paid shall be applied pro rata to all outstanding Notes according to the respective unpaid principal amounts thereof.

2.17 Calculation of Make Whole Amount. A Make Whole Amount is due and payable upon any voluntary prepayment of the Notes pursuant to Section 2.13, any purchase of Notes pursuant to Section 2.14, any required prepayment pursuant to Section 2.15 and upon any acceleration of the Notes pursuant to Section 4.04, *provided* if upon the calculation of the Make Whole Amount, the Make Whole Amount is determined to be zero or a negative number, no Make Whole Amount will in fact be due. Concurrently with any such prepayment, purchase or acceleration of the Notes, the Indenture Trustee shall furnish to each Holder a certificate of an officer in the Corporate Trust Office of the Indenture Trustee setting forth computations in reasonable detail showing the manner of calculation with such prepayment and attaching a copy of the source of market data by reference to which the Reinvestment Yield was determined in connection with such computations.

### SECTION 3. DISTRIBUTION OF PAYMENTS

3.01 Interim Rent and Basic Rent. Except as otherwise provided in Section 3.03, each payment of Interim Rent and Basic Rent, any payment of interest on any overdue installment of Interim Rent and Basic Rent, and any payment received by the Indenture Trustee as contemplated by the first sentence of Section 4.03 received by the Indenture Trustee at any time shall be distributed by the Indenture Trustee on the date such payment is due from the Lessee (or as soon thereafter as such payment shall be received by the Indenture Trustee) in the following order of priority.

First, so much of such payment as shall be required to pay in full the aggregate amount of principal, Make Whole Amount and interest (including any interest on overdue principal, Make Whole Amount, and, to the extent permitted by law, overdue interest) then due under all Notes shall be distributed to the Holders ratably, without priority of one over the other, in the proportion that the amount then due and payable under each such Note bears to the aggregate amount then due under all such Notes; and

Second, the balance, if any, of such payment remaining thereafter shall be distributed to the Owner Trustee for distribution pursuant to the Trust Agreement,

provided, however, that if an Indenture Default shall have occurred and be continuing, then such balance shall not be distributed as provided in this clause "second" but shall be held by the Indenture Trustee as part of the Indenture Estate until whichever of the following shall first occur: (i) all Indenture Defaults shall have been cured, in which event such balance shall be distributed as provided in this clause "second", (ii) such Indenture Default shall have continued for a period of 180 days, in which event such balance shall be distributed as provided in this clause "second", or (iii) Section 3.03 shall be applicable in which event such balance shall be distributed in accordance with the provisions of said Section 3.03.

### 3.02 Payments of Stipulated Loss Value

(a) Except as otherwise provided in Section 3.03 or 3.02(c), any payment received by the Indenture Trustee as a result of an Event of Loss (other than a payment of Basic Rent which shall be applied as set forth in Section 3.01) with respect to an item of Equipment shall be applied to the prepayment of the Notes and to all other amounts payable hereunder as provided in Section 2.15 by applying such funds first to pay the principal amount of the Notes required to be prepaid pursuant to Section 2.15 plus the Make Whole Amount due thereon and all accrued interest thereon to the date of prepayment to the extent not otherwise paid from Basic Rent due on such date of prepayment and second, to the extent not required to be paid to the Lessee in reimbursement of payment of Stipulated Loss Value pursuant to Section 12 of the Master Lease, as provided in clause "fifth" of Section 3.03; provided that if Replacement Equipment is to be substituted for the Equipment subject to such Event of Loss as provided in Section 12 of the Master Lease and Section 5.06, any proceeds which result from such Event of Loss and are paid to the Indenture Trustee shall be held by the Indenture Trustee as part of the Indenture Estate and, unless otherwise applied pursuant to Section 3.03 (but subject to Section 3.02(c)), such proceeds shall be released to the Lessee upon the release of such damaged Equipment.

(b) Except as otherwise provided in Section 3.02(a) or 3.03, any amounts received directly or indirectly from any governmental authority or insurer or other party pursuant to any provision of Section 12 or 13 of the Master Lease shall be applied as provided in the applicable provisions of the Lease and, if and to the extent that any portion of such amounts held for account of the Lessee are not at the time required to be paid to the Lessee pursuant to the applicable provisions of Section 12 or 13 of the Master Lease, such portion shall be held by the Indenture Trustee as security for the obligations of the Lessee under the Lease and shall be invested in accordance with the terms of Section 3.07 and at such time as the conditions specified in the Lease for payment of such amounts to the Lessee shall be fulfilled, such portion, and the net proceeds of any investment thereof, shall be paid to the Lessee to the extent provided in the Lease, unless, subject to Section 3.02(c), the Notes shall have theretofore become due and payable pursuant to Section 4.04, in which event such portion shall be distributed forthwith upon such declaration in accordance with the provisions of Section 3.03.

(c) Notwithstanding Section 3.03 or any reference to Section 3.03 contained in paragraph (a) or (b) of this Section 3.02, any amount held by the Indenture Trustee, including, without limitation, pursuant to Section 12 or 13 of the Master Lease, which are payable to the Lessee pursuant to the terms of the Lease shall be so paid to the Lessee in accordance with the applicable provisions of the Lease.

3.03 Payments After Indenture Event of Default. Except as otherwise provided in Section 3.04(b) or 3.04(c), all payments received and amounts held or realized by the Indenture Trustee after an Indenture Event of Default shall have occurred and so long as such Indenture Event of Default shall be continuing and after (x) the Indenture Trustee shall have received a request in accordance with the first sentence of Section 5.02(b) or (y) the outstanding principal amount of all the Notes shall have become or been declared due and payable pursuant to Section 4.04(b) or 4.04(c), and all amounts then held or thereafter received by the Indenture Trustee under this Indenture as part of the Indenture Estate, shall be distributed by the Indenture Trustee in the following order of priority:

First, so much of such payments or amounts as shall be required to reimburse the Indenture Trustee for any expense (including any legal fee or expense) or other charge or loss incurred by it (including, without limitation, all amounts to be expended at the expense of, or charged upon the tolls, rents, revenues, issues, products and profits of, the property included in the Indenture Estate pursuant to Section 4.06(b)) (to the extent incurred in connection with its duties as the Indenture Trustee and to the extent not previously reimbursed, including, without limitation, the expenses of any sale, taking or other proceeding, reasonable attorneys' fees and expenses, court costs, and any other expenditures incurred or expenditures or advances made by the Indenture Trustee in the protection, exercise or enforcement of any right, power or remedy sustained by the Indenture Trustee, liquidated or otherwise, upon such Indenture Event of Default) shall be distributed to the Indenture Trustee in reimbursement of such expenses;

Second, so much of such payments and amounts remaining as shall be required to reimburse each then or prior Holder for amounts paid by it pursuant to Section 5.03 (to the extent not previously reimbursed) shall be distributed to such Holders ratably, without priority of one over any other, in the proportion that such amounts paid by and not reimbursed to each such Holder bear to the aggregate of such amounts paid by and not reimbursed to all such Holders in reimbursement of such expenses;

Third, so much of such payments and amounts remaining as shall be required to pay the then existing or prior Holders the amounts payable to them pursuant to the provisions of Sections 14 and 17 of the Master Lease or any other provision of any Operative Document and secured hereunder (other than amounts payable pursuant to clause "second" or "fourth") shall be distributed to the Holders entitled to indemnity or other payment under such provisions (to the extent not theretofore paid to such Holder or the predecessor Holder or Holders thereof) ratably, without priority of one such Holder over the other, in the proportion that the amount of such indemnity or other payments to which each such Holder is entitled bears to the aggregate amount of such indemnity or other payments to which all such Holders are entitled;

Fourth, so much of such payments and amounts remaining as shall be required to pay in full the aggregate unpaid principal amount of all Notes then outstanding, plus any due but unpaid Make Whole Amount and any accrued but unpaid interest thereon to the date of distribution (including interest on overdue principal, over due Make Whole Amount and, to the extent permitted by applicable law, overdue interest), shall be distributed to the Holders ratably, without priority of one over the other in the proportion

that the aggregate unpaid principal amount of all such Notes held by each such Holder, plus any due but unpaid Make Whole Amount thereon and any such accrued but unpaid interest thereon, bears to the aggregate unpaid principal amount of all such Notes held by all such Holders, plus any due but unpaid Make Whole Amount thereon and any such accrued but unpaid interest thereon; and

Fifth, the balance, if any, of such payments and amounts remaining thereafter shall be distributed to the Owner Trustee for distribution pursuant to the Trust Agreement.

3.04 Application of Certain Other Payments. (a) Except as otherwise provided in this Indenture, any payment received by the Indenture Trustee for which provision as to the application thereof is made in the Lease or the Purchase Agreement, but not elsewhere in this Indenture, shall be applied forthwith to the purpose for which such payment was made in accordance with the terms of the Lease or the Purchase Agreement, as the case may be.

(b) The Indenture Trustee will distribute promptly upon receipt any indemnity or other payment received by it from the Owner Trustee or the Lessee in respect of the Indenture Trustee in its individual capacity or in respect of any Holder or Purchaser pursuant to any relevant provision of the Lease or the Purchase Agreement directly to the person entitled thereto.

(c) Notwithstanding anything to the contrary contained in this Section 3, any sums received by the Indenture Trustee which constitute Excepted Payments shall be distributed promptly upon receipt by the Indenture Trustee directly to the Persons entitled thereto.

3.05 Other Payments. Any payments received by the Indenture Trustee for which no provision as to the application thereof is made in the Purchase Agreement, the Lease, or elsewhere in this Indenture shall be distributed by the Indenture Trustee (i) to the extent received or realized at any time prior to the payment in full of all obligations to the Holders secured by the lien of this Indenture, in the order of priority specified in Section 3.01, and (ii) to the extent received or realized at any time after payment in full of all obligations to the Holders secured by the lien of this Indenture, in the following order of priority: first, in the manner provided in clause "first" of Section 3.03, and second, in the manner provided in clause "fifth" of Section 3.03.;

3.06 Payments to Owner Trustee. Any amounts distributed hereunder by the Indenture Trustee to the Owner Trustee shall be paid to the Owner Trustee by wire transfer of funds of the type received by the Indenture Trustee at such office and to such account or accounts of such entity or entities as shall be designated by notice from the Owner Trustee to the Indenture Trustee from time to time. The Owner Trustee hereby notifies the Indenture Trustee that unless and until the Indenture Trustee receives notice to the contrary from the Owner Trustee, all amounts to be distributed to the Owner Trustee pursuant to clause "second" of Section 3.01 shall be distributed by wire transfer of funds of the type received by the Indenture Trustee to the account specified in Schedule 4 to the Purchase Agreement.

3.07 Investment of Amounts Held by Indenture Trustee. Any amounts held by the Indenture Trustee pursuant to the proviso to Section 3.01 or pursuant to the proviso to Section 3.02(a) shall be invested by the Indenture Trustee from time to time in Permitted Investments selected in writing in a timely manner by the Owner Trustee. Unless otherwise expressly

provided in this Indenture, any income realized as a result of any such investment, net of the Indenture Trustee's ordinary fees and reasonable expenses in making such investment, shall be held and applied by the Indenture Trustee in the same manner as the principal amount of such investment is to be held and applied and any losses, net of earnings and such ordinary fees and reasonable expenses, shall be charged against the principal amount invested. The Indenture Trustee shall not be liable for any loss resulting from any investment required to be made by it under this Indenture other than by reason of its wilful misconduct or gross negligence (ordinary negligence in the handling of funds), and any such investment may be sold (without regard to its maturity) by the Indenture Trustee without instructions wherever the Indenture Trustee reasonably believes such sale is necessary to make a distribution required by this Indenture.

#### SECTION 4. COVENANTS OF OWNER TRUSTEE; EVENTS OF DEFAULT; REMEDIES OF INDENTURE TRUSTEE

##### 4.01 Covenants of Owner Trustee.

(i) the Owner Trustee will duly and punctually pay the principal of, Make Whole Amount, and interest on and other amounts due under the Notes and hereunder in accordance with the terms of the Notes and this Indenture and all amounts payable by it to the Holders under the Purchase Agreement;

(ii) in the event an officer in the Corporate Trust Office of the Owner Trustee shall have actual knowledge of an Indenture Default or an Event of Loss, the Owner Trustee will give prompt written notice of such Indenture Default or Event of Loss to the Indenture Trustee and to the Beneficiary.

(iii) the Owner Trustee will furnish to each Holder at the time outstanding and to the Indenture Trustee, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to the Owner Trustee under the Lease, including, without limitation, a copy of each report or notice received pursuant to Section 3 of the Master Lease, to the extent that the same shall not have been furnished to such Holder or the Indenture Trustee pursuant to the Lease;

(iv) except as contemplated by the Operative Documents or with the consent of the Indenture Trustee (acting pursuant to instructions given in accordance with Section 9.01), the Owner Trustee will not contract for, create, incur, assume or suffer to exist any Debt, and will not guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing, or otherwise), endorse or otherwise be or become contingently liable, directly or indirectly, in connection with the Debt of any other Person; and

(v) the Owner Trustee will not enter into any business or other activity other than the business of owning the Equipment, the leasing thereof to the Lessee and the carrying out of the transactions contemplated hereby and the other Operative Documents.

4.02 Indenture Event of Default. Any one of the following events or conditions (for whatever reason) shall constitute an Indenture Event of Default:

(a) any Lease Event of Default (other than the failure of the Lessee to pay any amount which shall constitute an Excepted Payment unless the Beneficiary shall notify the Indenture Trustee that such failure shall be deemed to be an Indenture Event of Default);

(b) the failure of the Owner Trustee (other than by reason of a Lease Event of Default) to pay when due any payment of principal of or interest or Make Whole Amount on any Note and such failure shall have continued unremedied for 10 days; or the failure of the Owner Trustee to pay when due any other amount due and payable under any Note or hereunder or any of the other Operative Documents and such failure shall have continued unremedied for 10 Business Days after the Owner Trustee shall receive written demand therefor from the Indenture Trustee;

(c) any failure by the Beneficiary to perform its obligations under paragraph 10.8 of the Purchase Agreement (unless such obligation has been terminated pursuant to the terms thereof);

(d) any failure by the Owner Trustee or the Beneficiary to perform or observe any covenant or agreement to be performed or observed by it under any of the Operative Documents (other than a failure referred to in clause (b) above) and such failure shall continue unremedied for a period of 30 days after written notice of such failure shall have been given to the Owner Trustee by the Indenture Trustee;

(e) any representation or warranty made by the Owner Trustee, or the Beneficiary herein or in any of the other Operative Documents shall prove to have been false or incorrect in any material respect when made, and, if such misrepresentation is capable of being corrected, such misrepresentation shall not have been corrected within 30 days following the earlier of (x) written notice thereof being given by the Indenture Trustee to the Owner Trustee or (y) the day on which the Owner Trustee or the Beneficiary shall first have actual knowledge of such falsity or incorrectness;

(f) either the Owner Trustee with respect to the Trust Estate or the Beneficiary shall (i) be unable to pay its debts generally as they become due within the meaning of Title 11 of the United States Code, (ii) file, or consent by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) make a general assignment for the benefit of its creditors or (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or any substantial part of its property;

(g) a court shall enter an order appointing, without consent by the Owner Trustee with respect to the Trust Estate or the Beneficiary, as the case may be, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any

bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Trust Estate or the Owner Trustee with respect thereto (and not in its individual capacity) or the Beneficiary, as the case may be; or

(h) any petition for any relief specified in the foregoing paragraph (i) shall be filed against the Owner Trustee with respect to the Trust Estate or the Beneficiary, as the case may be, and such petition shall not be dismissed within 60 days.

4.03 Certain Rights. (a) In the event of any Lease Event of Default arising from the failure of the Lessee to pay any installment of Basic Rent when due under the Lease, the Owner Trustee or the Beneficiary may, without the consent or concurrence of any Holder pay, as provided in Section 2.06, no more than 10 Business Days after the Owner Trustee and the Beneficiary shall have received notice from the Indenture Trustee of such Lease Event of Default (and prior to the expiration of such 10 Business Day period, the Indenture Trustee shall not exercise any of its rights, powers or remedies under this Indenture or the Lease Documents other than its right to make demand upon the Lessee or the Guarantor or otherwise to the extent the Indenture Trustee, as directed by the Required Holders, deems such exercise necessary to protect, preserve or maintain the Indenture Trustee's rights under the Lease Documents against third parties), for application in accordance with Section 3.01, a sum equal to the amount of all (but not less than all) principal, Make Whole Amount and interest as shall then (without regard to any acceleration pursuant to Section 4.04(b) or (c)) be due and payable on the Notes. In the event of any default by the Lessee in any obligation under the Lease other than the payment of Basic Rent, which constitutes a Lease Event of Default, if such default can be remedied by the payment of money (it being understood that defaults requiring action such as the obtaining of insurance and the procuring of maintenance can be so remedied) the Owner Trustee or the Beneficiary may, not more than 10 Business Days after the Owner Trustee, and the Beneficiary shall have received notice from the Indenture Trustee of such Lease Event of Default (and prior to the expiration of such 10 Business Day period, the Indenture Trustee shall not exercise any of its rights, powers or remedies under this Indenture or the Lease Documents other than its right to make demand upon the Lessee or the Guarantor or otherwise to the extent the Indenture Trustee, as directed by the Required Holders, deems such exercise necessary to protect, preserve or maintain its rights under the Lease Documents against third parties), without the consent or concurrence of any Holder, pay or perform such obligation of the Lessee by payment of the amount necessary for such Lease Event of Default to be cured. Solely for the purpose of determining whether there exists an Indenture Event of Default, (a) any timely payment by the Owner Trustee or the Beneficiary pursuant to, and in compliance with, the first sentence of this Section 4.03 shall be deemed to remedy (but solely for purposes of this Indenture) any default by the Lessee in the payment of installments of Basic Rent or Interim Rent theretofore due and payable and to remedy (but solely for purposes of this Indenture) any default by the Owner Trustee in the payment of any amount due and payable under the Notes or hereunder, and (b) any timely payment or performance by the Owner Trustee or the Beneficiary of any obligation of the Lessee under the Lease pursuant to, and in compliance with, the second sentence of this Section 4.03 shall be deemed to remedy (but solely for purposes of this Indenture) any Lease Event of Default to the same extent that like payment or performance by the Lessee itself would have remedied such Lease Event of Default (but any such payment or performance shall not relieve the Lessee of its duty to pay all Rent and perform all of its obligations pursuant to the Lease). If, on the basis specified in the preceding sentence, any such Lease Event of Default shall have been remedied, then any declaration

pursuant to this Indenture that the Notes are due and payable or that an Indenture Event of Default exists hereunder on the basis of such Lease Event of Default shall be deemed to be rescinded.

(b) Notwithstanding anything in this Section 4.03 to the contrary:

(x) the first sentence of Section 4.03(a) shall not apply with respect to any default in the payment of Basic Rent due under the Lease if the Lessee itself shall have theretofore failed to pay Basic Rent in the manner required under the Lease on (i) each of the three Rent Payment Dates immediately preceding the date of such default or (ii) more than nine Rent Payment Dates during the Basic Term, and

(y) the second sentence of Section 4.03(a) shall cease to apply, and no performance of any obligation of the Lessee under the Lease by the Owner Trustee shall be deemed to remedy or to have remedied any Lease Event of Default for the purposes of this Indenture, if during the twelve-month period immediately preceding the relevant Lease Event of Default by the Lessee there shall have been expended by the Owner Trustee or the Beneficiary pursuant to the second sentence of Section 4.03(a) (and which shall have not been reimbursed by the Lessee itself to the Owner Trustee or the Beneficiary) an amount in excess of \$3,000,000.

(c) The Owner Trustee and the Beneficiary (without the consent of the Holders) shall not have the right to cure any Lease Event of Default except as provided in this Section 4.03.

4.04 Certain Remedies. (a) If an Indenture Event of Default shall have occurred and be continuing and so long as the same shall be continuing unwaived, then, and in every such case, the Indenture Trustee may (subject to the limitations contained herein), and shall upon the written request of the Required Holders, exercise any or all of the rights and powers and pursue any and all of the remedies pursuant to this Section 4 and shall have and may exercise all of the rights and remedies of a secured party or secured creditor under the UCC and any other applicable law and, in the event such Indenture Event of Default is a Lease Event of Default, but subject to the provisions of Section 2.14 and Section 4.03, any and all of the remedies pursuant to Section 25 of the Master Lease, may take possession of all or any part of the properties covered or intended to be covered by the lien and security interest created hereby or pursuant hereto and may exclude the Beneficiary, the Owner Trustee and (but only in accordance with the provisions of the Lease) the Lessee and all Persons claiming under any of them wholly or partly therefrom. Without limiting any of the foregoing, it is understood and agreed that the Indenture Trustee may exercise any right of sale of the Equipment available to it, even though it shall not have taken possession of such Equipment and shall not have possession thereof at the time of such sale. It is further understood and agreed that the Indenture Trustee shall not proceed to foreclose the lien of this Indenture (which term shall include any sale or other final disposition of, or taking title to, or any other action with comparable effect under the laws of the State of New York or any other relevant jurisdiction) until three (3) Business Days after it has given an Enforcement Notice and if such Indenture Event of Default is a Lease Event of Default, it shall, to the extent that it is then entitled to do so hereunder and under the Lease, and is not then stayed or otherwise prevented from doing so by operation of law, have exercised or be exercising one or more remedies referred to in Section 25 of the Master Lease for the purpose of terminating the Lease and repossessing the Equipment; *provided, however*, that the Indenture Trustee may proceed to foreclose the Lien of

this Indenture if (i) the Indenture Trustee shall have been stayed or otherwise prevented by operation of law from exercising such remedies under the Lease for a continuous period of 180 days, or (ii) such stay or prevention no longer applies and the Lessee (or its bankruptcy trustee) has not assumed the Lease or entered into an agreement with the Indenture Trustee providing for the continued use of the Equipment by Lessee.

(b) If an Indenture Event of Default referred to in clause (f), (g) or (h) of Section 4.02 shall have occurred, or a Lease Event of Default of the type referred to in Section 23(d), (e) or (f) of the Master Lease shall have occurred, then and in every such case the unpaid principal of all Notes then outstanding together with the Make Whole Amount and all interest accrued but unpaid thereon and all other amounts due thereunder and hereunder, shall immediately and without further act become due and payable, without presentment, demand, protest or notice, all of which are hereby waived.

(c) If any other Indenture Event of Default shall have occurred and be continuing, then and in every such case the Indenture Trustee may at any time, by written notice to the Owner Trustee, declare all the Notes to be due and payable, whereupon the unpaid principal of all Notes then outstanding, together with the Make Whole Amount and all accrued but unpaid interest thereon and other amounts due thereunder and hereunder, shall immediately become due and payable without presentment, demand, protest or notice, all of which are hereby waived.

4.05 Reinstatement. If at any time after the outstanding principal amount of the Notes shall have become due and payable by acceleration pursuant to Section 4.04(b) or (c), and no judgment or decree for any amounts so becoming due and payable shall have been entered, then if (a) all amounts of principal, Make Whole Amount and interest which shall have become due and payable in respect of all the Notes otherwise than pursuant to Section 4.04(b) or (c) shall have been paid in full, together with interest on all such overdue principal, Make Whole Amount and (to the extent permitted by applicable law) interest at the Applicable Default Rate and all other amounts then due hereunder or under the Notes to the Holders or the Indenture Trustee, and (b) every other Indenture Event of Default shall have been remedied or waived, then the Required Holders may, by written notice to the Owner Trustee, rescind and annul such acceleration and any related declaration of default under the Lease, and their respective consequences, but no such rescission and annulment shall extend to or affect any subsequent Indenture Default or impair any right consequent thereon, and no such rescission and annulment shall require any Holder to repay any interest, principal or Make Whole Amount actually paid as a result of such acceleration.

4.06 Additional Remedies. The Owner Trustee agrees, to the full extent that it lawfully may, that, if one or more Indenture Events of Default shall have occurred and be continuing and if either the Lease shall have been declared in default pursuant to Section 25 of the Master Lease, or the outstanding principal amount of all the Notes shall have been accelerated pursuant to Section 4.04(b) or (c), then and in every such case (but subject to Section 4.04 and 5.01 and the rights of the Owner Trustee and the Beneficiary under Sections 2.14 and 4.03(a)), the Indenture Trustee may, to the extent permitted by applicable law, exercise all the following rights, privileges and remedies:

(a) Taking Possession of Indenture Estate. At the request of the Indenture Trustee, the Owner Trustee shall promptly execute and deliver to the Indenture Trustee, without warranty

or recourse, such instruments of title and other documents as the Indenture Trustee may deem necessary or advisable to enable the Indenture Trustee or an agent or representative designated by the Indenture Trustee, at such time or times and place or places as the Indenture Trustee may specify, to obtain possession of all or any part of the Indenture Estate as to the possession of which the Indenture Trustee shall at the time be entitled hereunder. If the Owner Trustee shall for any reason fail to execute and deliver any such instruments or documents after such demand by the Indenture Trustee, the Indenture Trustee may (i) obtain a judgment conferring on the Indenture Trustee the right to immediate possession and requiring the Owner Trustee to deliver such instruments and documents to the Indenture Trustee, to the entry of which judgment the Owner Trustee hereby specifically consents to the fullest extent it may lawfully do so and for the purpose of obtaining which judgment the Owner Trustee hereby constitutes the Indenture Trustee its attorney-in-fact and (ii) to the extent permitted by law pursue all or part of such Indenture Estate wherever it may be found and enter any of the premises of the Owner Trustee or the Lessee wherever such Indenture Estate may be or be supposed to be and search for and take possession of and remove the same (but not in violation of the Lease). All expenses of obtaining such judgment or of pursuing, searching for and taking such property shall, until paid, be secured by the lien of this Indenture.

(b) Management of and Income from Indenture Estate. Upon every such taking of possession of the Indenture Estate, the Indenture Trustee may, from time to time, at the expense of the Indenture Estate, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Equipment as it may reasonably determine to be necessary or proper. In each such case, the Indenture Trustee shall have the right to maintain, use, insure, operate, store, lease, control, manage or dispose of the Indenture Estate and to carry on the business (without limiting the express provisions of Section 6.08) and to exercise all rights and powers of the Owner Trustee relating to the Indenture Estate as the Indenture Trustee shall reasonably determine to be necessary or proper, including the right to enter into any and all such agreements with respect to the maintenance, use, insurance, operation, leasing, storage, control, management or disposition of the Indenture Estate or any part thereof as the Indenture Trustee may determine; and the Indenture Trustee shall be entitled to collect and receive all tolls, rents, issues, profits, products, revenues and other income of the Indenture Estate and every part thereof (except Excepted Payments), without prejudice, however, to the right of the Indenture Trustee under any provision of this Indenture to collect and receive all cash held by, or required to be deposited with, the Indenture Trustee hereunder. Such tolls, rents, issues, profits, products, revenues and other income shall be applied to pay the expenses of the maintenance, use, insuring operation, storage, leasing, control, management or disposition of the Indenture Estate and of conducting the business thereof, and of all maintenance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Indenture Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Indenture Estate or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Owner Trustee relating to the Indenture Estate), and all other payments which the Indenture Trustee may be required or authorized to make under any provision of this Indenture or the Lease, as well as just and reasonable compensation for the services of the Indenture Trustee, and of all Persons properly engaged and employed by the Indenture Trustee and any surplus therefrom shall be distributed by the Indenture Trustee in the order of priority set forth in Section 3.03.

(c) Indenture Trustee Authorized to Execute Document. The Owner Trustee irrevocably appoints the Indenture Trustee the true and lawful attorney-in-fact of the Owner Trustee in its name and stead and on its behalf, for the purpose of effectuating any sale, assignment, transfer or delivery for the enforcement of the lien of this Indenture, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such bills of sale, assignments and other instruments as the Indenture Trustee may consider necessary or appropriate, with full power of substitution, the Owner Trustee hereby ratifying and confirming all that such attorney or any substitute shall lawfully do by virtue hereof. Nevertheless, if so requested by the Indenture Trustee or any purchaser, the Owner Trustee shall ratify and confirm any such sale, assignment, transfer or delivery, by executing and delivering to the Indenture Trustee or such purchaser on an "as-is, where-is" basis, without any representation or warranty (express or implied) by the Owner Trustee (except as to the absence of Lessor Liens), and without recourse, all bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

(d) Purchase of Indenture Estate by Indenture Trustee or Holders. The Indenture Trustee or any Holder may be a purchaser of the Indenture Estate or any part thereof or any interest therein at any sale thereof, whether pursuant to foreclosure or power of sale or otherwise. In the case of a purchase by a Holder, the Indenture Trustee may apply against the purchase price therefor the amount then due under any of the Notes of such Holder secured hereby and such Holder may apply against the purchase price therefor the amount then due under any Notes held by such Holder. The Indenture Trustee or any Holder or any nominee thereof shall, upon any such purchase, acquire title to the property so purchased free of the lien of this Indenture and, to the extent permitted by applicable law, free of all rights of redemption in the Owner Trustee.

(e) Appointment of Receiver. The Indenture Trustee shall, as a matter of right and without regard to the value or adequacy of the security for the Notes, be entitled to the appointment of a receiver (who may be the Indenture Trustee or any successor or nominee thereof) for all or any part of the Indenture Estate, whether such receivership be incidental to a proposed sale of the Indenture Estate or the taking of possession thereof or otherwise, and the Owner Trustee hereby consents to the appointment of such a receiver and will not oppose any such appointment. Any receiver appointed for all or any part of the Indenture Estate shall be entitled to exercise all the rights and powers with respect to the Indenture Estate.

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

4.07 Remedies Cumulative. Each and every right, power and remedy herein specifically given to the Indenture Trustee or otherwise in this Indenture or any other Operative Document shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing under any other Operative Document, or at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the

Indenture Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Owner Trustee or the Lessee or to be an acquiescence therein.

4.08 Discontinuance of Proceedings. In case the Indenture Trustee shall have proceeded to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee, then and in every such case the Owner Trustee, the Beneficiary, the Indenture Trustee and the Lessee shall, subject to any determination in such proceeding, be restored to their former position and rights hereunder with respect to the Indenture Estate, and all rights, powers and remedies of the Indenture Trustee shall continue as if no such proceedings had been taken.

4.09 Waiver of Past Indenture Defaults. Upon written instructions from the Required Holders, the Indenture Trustee shall waive any Indenture Default existing hereunder and its consequences and upon any such waiver such Indenture Default shall cease to exist and any Indenture Event of Default, as well as any Lease Event of Default giving rise to such Indenture Event of Default, arising therefrom shall be deemed to have been cured for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Indenture Default or impair any right consequent thereon; provided however, that in the absence of written instructions from the Holders of all Notes then outstanding, the Indenture Trustee shall not waive any Indenture Default (i) in the payment of the principal of, Make Whole Amount or interest on, or other amounts due under, any Note then outstanding, or (ii) in respect of a covenant or provision hereof which, under Section 9, cannot be modified or amended without the consent of each Holder.

## SECTION 5. DUTIES OF INDENTURE TRUSTEE; CERTAIN RIGHTS OF OWNER TRUSTEE

5.01 Action Upon Indenture Event of Default. If the Indenture Trustee shall have knowledge (which, for purposes of this Section 5.01, shall mean the actual knowledge of a person in the Corporate Trust Department of the Indenture Trustee) of an Indenture Event of Default, the Indenture Trustee shall give prompt (and in the case of the failure to pay Basic Rent or Interim Rent, not later than one Business Day after such failure) notice of such Indenture Event of Default to each Holder, the Owner Trustee and the Beneficiary, which notice shall set forth in reasonable detail the circumstances known to it with respect to such Indenture Event of Default. Subject to the terms hereof (including Sections 2.14, 4.03(a), 4.04, 4.09, 5.03 and 6.08), the Indenture Trustee shall take such action, or refrain from taking such action, with respect to an Indenture Event of Default, as the Indenture Trustee shall be instructed in writing by the Required Holders. Subject to the provisions of Section 5.03, if the Indenture Trustee shall not have received instructions as above provided within 20 days after giving notice of such Indenture Event of Default to the Holders, the Indenture Trustee may, subject to instructions thereafter received pursuant to the preceding sentence, take such action, or refrain from taking such action but shall be under no duty to take or refrain from taking such action, with respect to such Indenture Event of Default as it shall deem advisable and in the best interest of the Holders and shall use the same degree of care and skill in connection therewith as a prudent man would use under the circumstances in the conduct of its own affairs. In the event the Indenture Trustee shall at any time elect to foreclose or otherwise enforce this Indenture in accordance with Section 4 or exercise rights under Section 25 of the Master Lease as permitted by Section 4.04, the Indenture Trustee in

its discretion may, or upon receipt of a written demand therefor from the Required Holders shall, declare the unpaid principal amount of all Notes then outstanding with the accrued interest thereon and other amounts due thereunder to be immediately due and payable, upon which declaration such principal amount, Make Whole Amount and such accrued interest and other amounts due thereunder shall immediately become due and payable without further act or notice of any kind. In the event the Indenture Trustee shall at any time elect to foreclose or otherwise enforce this Indenture or exercise rights under Section 25 of the Master Lease as permitted by Section 4.04, the Indenture Trustee shall forthwith send a notice (an “Enforcement Notice”) to the Holders, the Owner Trustee and the Beneficiary, and shall not take any such action until three Business Days after such Enforcement Notice has been sent. For all purposes of this Indenture, in the absence of actual knowledge of an officer in the Corporate Trust Office of the Indenture Trustee, the Indenture Trustee shall not be deemed to have knowledge of an Indenture Event of Default (except the failure of the Lessee to pay any installment of Interim Rent or Basic Rent when the same shall become due if any portion of such installment was then required to be paid to the Indenture Trustee, which failure shall constitute knowledge of an Indenture Event of Default for purposes of the first sentence of this Section 5.01 and except in the case of the failure of the Lessee to maintain insurance as required in the Lease if the Indenture Trustee shall receive a notice thereof from an insurer or broker) unless notified in writing by a Holder, the Beneficiary, the Owner Trustee or the Lessee.

5.02 Other Action Upon Instructions. (a) Subject to the terms of Sections 4.03(a), 4.04, 4.09, 5.01, 5.03 and 6.08, upon the written instructions at any time and from time to time of the Required Holders, the Indenture Trustee shall take such of the following actions as may be specified in such instructions: (a) exercise such election or option, or make such decision or determination, or give such notice, consent, waiver or approval or exercise such right, remedy or power or take such other action hereunder or under any other Operative Document or in respect to any part or all of the Indenture Estate as shall be specified in such instructions; (b) take such action with respect to, or to preserve or protect, the Indenture Estate (including the discharge of Liens) as shall be specified in such instructions and as are consistent with this Indenture and the other Operative Documents; (c) approve as satisfactory to it all matters required by the terms of the Lease to be satisfactory to the Owner Trustee and (d) take such other action in respect of the subject matter of this Indenture as is consistent with the terms hereof and the other Operative Documents. The Indenture Trustee, upon the instructions at any time and from time to time of the Required Holders (or upon receipt of a request from the Lessee stating that such action is necessary to enable it to comply with Section 11 of the Master Lease), shall execute and the Owner Trustee shall file any financing statement (and any continuation statement with respect to any such financing statement) or any other similar document relating to the security interests or the assignments created by this Indenture as may be specified in such instructions or request (which instructions or request shall be accompanied by the form of such document to be so filed).

(b) If any Lease Event of Default shall have occurred and be continuing subject to the terms of Sections 2.14, 4.03, 4.04, 4.09, 5.01, 5.03 and 6.08, upon instructions of the Required Holders, the Indenture Trustee shall exercise such remedies under Section 25 of the Master Lease and/or make demand on the Parent Guarantor as may be specified in such request *provided*, if any amount of Rent shall not be paid when due under the Lease, the Indenture Trustee shall promptly demand payment in respect of such Rent under the Parent Guarantee and the Indenture Trustee shall notify the Owner Trustee, the Beneficiary and each of the Holders of such failure and such demand.

5.03 Indemnification of Indenture Trustee, etc. The Indenture Trustee shall not be required to take any action or refrain from taking any action under Section 5 or (other than the first sentence of 5.01 ) or Section 4 unless the Indenture Trustee shall have been indemnified by the Holders in manner and form reasonably satisfactory to the Indenture Trustee against any liability, cost or expense (including counsel fees) which may be incurred in connection with such action or inaction. The Indenture Trustee shall not be under any obligation to take any action under this Indenture and, except as specified in Section 2.06, nothing in this Indenture shall require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Indenture Trustee shall not be required to take any action under this Indenture, nor shall any other provision of this Indenture be deemed to impose a duty on the Indenture Trustee to take any action, if the Indenture Trustee shall have been advised by counsel that such action is contrary to the terms hereof or of the Lease or any other Operative Document, or is otherwise contrary to law.

5.04 No Duties Except as Specified. The Indenture Trustee shall not have any duty or obligation to insure, operate, store, lease, manage, maintain, control, use, sell, dispose of or otherwise deal with the Equipment or any part of the Indenture Estate, or otherwise to take or refrain from taking any action under, or in connection with, this Indenture, the Lease or any of the other Operative Documents or the Indenture Estate, except as expressly provided by the terms of this Indenture or the Purchase Agreement or, to the extent not so provided, as expressly provided in written instructions from the Required Holders, and no implied duties or obligations of the Indenture Trustee shall be read into this Indenture against the Indenture Trustee.

5.05 No Action Except Under Lease, Indenture or Instructions. The Owner Trustee and the Indenture Trustee each agree that it will not operate, store, lease, manage, control, use, sell, dispose of or otherwise deal with the Equipment or any other part of the Indenture Estate except (a) as required or permitted by the terms of the Lease, (b) in accordance with the powers granted to, or the authority conferred upon it pursuant to this Indenture or (c) in the case of the Indenture Trustee, in accordance with the express terms hereof or upon written instructions from the Required Holders.

5.06 Replacement Equipment. If at any time and from time to time, the Equipment or any item thereof is to be replaced under Section 12 of the Master Lease by Replacement Equipment in accordance with Section 12 of the Master Lease, the Owner Trustee shall, at such time or times, direct the Indenture Trustee to execute and deliver to, or as directed in writing by, the Owner Trustee an appropriate instrument releasing such Equipment or item thereof as appropriate from the lien of this Indenture and the Indenture Trustee shall execute and deliver such instrument as aforesaid, but only upon receipt by or deposit with the Indenture Trustee of the following:

(1) A written request from the Owner Trustee, requesting such release and specifically describing the Equipment or item thereof so to be released and the Replacement Equipment;

(2) The documents furnished pursuant to Section 12 of the Master Lease with respect to such Replacement Equipment; and

(3) An Indenture Supplement subjecting such Replacement Equipment to the lien of this Indenture.

5.07 Indenture Supplements for Replacements. In the event of the substitution of Replacement Equipment as contemplated by Section 12 of the Master Lease, the Owner Trustee and the Indenture Trustee agree for the benefit of the Holders and the Lessee, subject to fulfillment of the conditions precedent and compliance by the Lessee with its obligations set forth in Section 12 of the Master Lease and Section 5.06, to execute and deliver an Indenture Supplement as contemplated by Section 5.06.

5.08 Effect of Replacement. In the event of the substitution of Replacement Equipment as contemplated by Section 12 of the Master Lease and, in each case, Section 5.06, all provisions of this Indenture relating to the Equipment being replaced shall be applicable to such Replacement Equipment with the same force and effect as if such Replacement Equipment were the same railcar, as the case may be, as the Equipment being replaced.

5.09 Notices, etc. The Indenture Trustee shall deliver to each Holder, promptly upon receipt thereof, duplicates or copies of all notices, requests, financial statements, opinions and other instruments received by it in connection with the Indenture Estate or under or pursuant to any Operative Document, to the extent that the same shall not have been furnished pursuant thereto or hereto to such Holders.

## SECTION 6. INDENTURE TRUSTEE

6.01 Acceptance of Trusts and Duties; Liability of Indenture Trustee. The Indenture Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture and agrees to receive and disburse all moneys constituting part of the Indenture Estate in accordance with the provisions hereof. The Owner Trustee and Indenture Trustee shall not be personally answerable or accountable under any circumstances, except (i) for their own willful misconduct or gross negligence (or negligence in the case of handling funds), (ii) in the case of the Indenture Trustee, as provided in the second sentence of Section 2.06 or in paragraph 10.02 of the Purchase Agreement, and (iii) for liabilities that may result, in the case of the Owner Trustee or the Trust Company, from the inaccuracy of any representation or warranty of the Owner Trustee or the Trust Company in any Operative Document or the failure to perform any covenant of the Owner Trustee or the Trust Company in any Operative Document including paragraph 10.01 of the Purchase Agreement or, in the case of the Indenture Trustee, from the inaccuracy of any representation or warranty of the Indenture Trustee in any Operative Document. None of the Beneficiary, the Trust Company or the Indenture Trustee shall be liable for any action or inaction of any other one of such parties.

6.02 Absence of Duties. In the case of the Indenture Trustee, except in accordance with written instructions furnished pursuant to Section 5.01, 5.02, 5.03, 5.04 and 9.01 and, in the case of the Owner Trustee, except as provided in Section 4.01, the Owner Trustee and the Indenture Trustee shall have no duty (i) to see to any registration of the Equipment or any recording or filing of the Lease or of this Indenture or any other document, or to see to the maintenance of any such registration, recording or filing, (ii) to see to any insurance on the Equipment, whether or not the Lessee shall be in default with respect thereto, (iii) to see to the

payment or discharge of any Lien of any kind against any part of the Trust Estate or the Indenture Estate (except in the case of the Owner Trustee as provided in paragraph 10.01 of the Purchase Agreement and, in the case of the Indenture Trustee as provided in paragraph 10.02 of the Purchase Agreement, (iv) to confirm, verify or inquire into the failure to receive any financial statements of the Lessee or (v) to inspect the Equipment at any time or ascertain or inquire as to the performance or observance of any of the Lessee's covenants under the Lease with respect to the Equipment.

6.03 No Representations or Warranties. NEITHER THE INDENTURE TRUSTEE NOR THE OWNER TRUSTEE NOR THE TRUST COMPANY MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, MERCHANTABILITY, COMPLIANCE WITH SPECIFICATIONS, CONDITION, DESIGN, OPERATION, ABSENCE OF LATENT DEFECTS OR FITNESS FOR USE OF THE EQUIPMENT (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT (OR ANY PART THEREOF) except that the Trust Company warrants that on the Closing Date (i) the Owner Trustee retains whatever title was conveyed to it upon delivery of the Lessee Bills of Sale and (ii) the Equipment shall be free and clear of Lessor Liens attributable to the Trust Company. Neither the Owner Trustee, the Trust Company nor the Indenture Trustee makes any representation or warranty as to the validity or enforceability of this Indenture or any other Operative Document or the Notes or as to the correctness of any statement contained in any thereof, except for the representations and warranties of the Owner Trustee, the Trust Company and the Indenture Trustee in this Indenture, the Lease and the Purchase Agreement.

6.04 No Segregation of Moneys; Interest. Except as specifically provided herein, any moneys received by the Indenture Trustee hereunder need not be segregated in any manner except to the extent required by law and may be deposited under such general conditions as may be prescribed by law in the general banking department of the Indenture Trustee, and the Indenture Trustee shall not (except as provided in Section 3.07) be liable for any interest thereon provided that any payments received or applied hereunder by the Indenture Trustee shall be accounted for by the Indenture Trustee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof.

6.05 Reliance; Agents; Advice of Counsel. Neither the Owner Trustee nor the Indenture Trustee shall incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper Person or Persons. The Owner Trustee and the Indenture Trustee may accept in good faith a copy of a resolution of the Board of Directors of any party to the Purchase Agreement, certified by the Secretary or an Assistant Secretary of such Person as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by such Board and that the same is in full force and effect. As to the aggregate unpaid principal amount of Notes outstanding as of any date, the Owner Trustee may for all purposes hereof rely on a certificate signed by any Vice President or other Authorized Officer of the Indenture Trustee. As to any fact or matter relating to the Lease the manner of ascertainment of which shall not be specifically described herein, the Owner Trustee and the Indenture Trustee may, for all purposes hereof, rely on an Officer's Certificate of Lessee, as to such fact or matter, and such certificate shall constitute

full protection to the Owner Trustee and the Indenture Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. The Indenture Trustee shall assume, and shall be fully protected in assuming, that the Owner Trustee is authorized by the Trust Agreement to enter into this Indenture and to take all action to be taken by it pursuant to the provisions hereof, and shall not inquire into the authorization of the Owner Trustee with respect thereto. In the administration of the trusts hereunder, the Owner Trustee and the Indenture Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may, at the expense of the Indenture Estate (but subject to the priorities of payment set forth in Section 3), consult with counsel (who may be counsel to the Owner Trustee, the Beneficiary or the Lessee), accountants and other skilled Persons of generally accepted competence to be selected and retained by it (other than Persons regularly in its employ), and the Indenture Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion within the scope of the competence of any such counsel, accountants or other skilled Persons so long as the Indenture Trustee shall have exercised reasonable care in selecting such counsel, accountants or other skilled Persons.

6.06 No Compensation from Holders or from Indenture Estate. The Indenture Trustee shall be entitled to reimbursement of its reasonable expenses and disbursements in connection with its services rendered hereunder and shall have a priority claim on the Indenture Estate for the payment of such compensation to the extent that such expenses and disbursements are not be paid by the Beneficiary, and shall have the right, to use or apply any moneys held by it hereunder in the Indenture Estate toward such payments. The Indenture Trustee agrees that it shall have no right against the Holders or the Owner Trustee (in its individual capacity) or the Lessee for any fee as compensation for its services as trustee under this Indenture.

6.07 Further Assurances; Financing Statements. At any time and from time to time, upon the request of the Indenture Trustee, the Owner Trustee shall promptly and duly execute and deliver any and all such further instruments and documents as may be specified in such request and as are necessary or desirable to perfect, preserve or protect the security interests, liens and assignments created or intended to be created hereby, or to obtain for the Indenture Trustee the full benefit of the specific rights and powers herein granted, including, without limitation, the execution and delivery of Uniform Commercial Code financing statements and continuation statements with respect thereto, or similar instruments relating to the perfection of the mortgage, security interests or assignments created or intended to be created hereby.

6.08 Certain Other Rights of Owner Trustee. Notwithstanding any other provision of this Indenture or any provision of any of the Operative Documents to the contrary, and in addition to any rights conferred on Owner Trustee hereby or by any other Operative Document:

(a) at all times the Owner Trustee shall have the right, but (subject to paragraph (c) of this subsection 6.08) not to the exclusion of the Indenture Trustee's rights, (i) to request and receive from the Lessee all notices, certificates, filings, insurance documents, opinions of counsel, reports and other documents and all information that the Lessee is permitted or required to give or furnish to Lessor or the Owner Trustee pursuant to the Lease or any other Operative Document, (ii) to exercise inspection rights pursuant to the Lease, (iii) to retain all rights with respect to insurance maintained by it for its own account or that of the Beneficiary which paragraph 5 of

Exhibit G the Master Lease permits the Owner Trustee or Beneficiary to maintain and (iv) to exercise, to the extent necessary to enable it to exercise its rights under Section 4.03, the rights of the Owner Trustee to cure defaults under the Lease;

(b) the Owner Trustee shall have the right, as Lessor, to seek specific performance of the covenants of the Lessee under the Lease relating to the protection, insurance, maintenance, possession and use of the Equipment; and

(c) at all times, each of the Owner Trustee (as Owner Trustee, Trust Company and as Lessor) and the Beneficiary shall have the right, to the exclusion of the Indenture Trustee, (i) to demand, collect, sue for or otherwise receive and enforce the payment of Excepted Payments due and payable to it and (ii) to exercise any election or option or make any decision, compromise or other determination or to give or receive any notice, consent, waiver or approval in respect of any Excepted Property due and payable to it; but neither Owner Trustee nor the Beneficiary shall have any remedy or right with respect to any failure to make any such payment against the Indenture Estate nor any right to collect any such payment by exercise of any of the remedies under Section 25 of the Master Lease.

#### SECTION 7. INDEMNIFICATION OF INDENTURE TRUSTEE AND HOLDERS BY OWNER TRUSTEE

7.01 Scope of Indemnification. The Owner Trustee, hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and does hereby indemnify, protect, save and keep harmless the Indenture Trustee in its individual capacity, each Holder and their respective successors, permitted assigns, agents and servants (each an "Indemnified Party"), solely from and against any and all liabilities, obligations, losses, damages, penalties, Taxes, claims, actions, suits, out-of-pocket costs, expenses or disbursements (including legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against such Indemnified Party, (whether or not also agreed to be indemnified against by any other Person under any other Operative Document) (collectively the "Indemnified Amounts") in any way relating to or arising out of this Indenture, the Trust Agreement, the Notes, the other Operative Documents or the enforcement of any of the terms of any thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, nonacceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Equipment (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or, in respect to the Indenture Trustee only, in any way relating to or arising out of the administration of the Indenture Estate or the action or inaction of the Indenture Trustee hereunder to the extent not paid by Lessee (whether or not such Indemnified Amounts are payable by the Lessee under Sections 14 or 17 of the Master Lease) and not covered by proceeds from insurance provided by Lessee pursuant to the Lease except the Owner Trustee shall have no obligation to an Indemnified Party under this Section 7.01 for Indemnified Amounts:

(i) attributable to such Indemnified Party's willful misconduct or gross negligence (negligence in the handling of funds by the Indenture Trustee);

(iii) attributable to the inaccuracy of any representation or warranty by such Indemnified Party in a Note Document or the breach by such Indemnified Party of, or such

Indemnified Party's failure to perform or observe, any of its covenants or obligations under a Note Document;

(iii) in the case of the Indenture Trustee as otherwise provided in the second sentence of Section 2.06 or resulting from a Purchasers Lien attributable to it;

(iv) representing Taxes with respect to or measured by any fees for services or interest income received by such Indemnified Party under the Indenture or such Indemnified Party's Note;

(v) incurred by such Indemnified Party as a result of its voluntary sale, assignment, transfer or other disposition of any Note or any interest of such Indemnitee in the Equipment or any part thereof, or the Indenture Estate (unless the sale, assignment, transfer or other disposition takes place after the occurrence and during the continuance of an Indenture Event of Default), or of any involuntary sale, assignment, transfer or other disposition by an Indemnitee in connection with any bankruptcy or other proceedings for the relief of debtors in which such Indemnitee is the debtor, or any foreclosure by a creditor of such Indemnitee;

(vi) representing Taxes imposed on an such Indemnified Party (without regard to whether such Taxes are collected by withholding or otherwise) imposed by any state or local government or taxing authority in the United States (and any interest, additions to tax, penalties, fines, or other charges in respect thereof) (1) that are imposed on, based on or measured by such Indemnified Party's, gross or net income or gross or net receipts (including without limitation capital gains taxes, excess profit tax, minimum taxes, alternative minimum taxes, and taxes on tax preference items) or (2) that are capital, net worth, franchise, doing business, accumulated earnings tax, personal holding company tax or similar taxes; provided, however, that the exclusion provided in this clause (vi) shall not apply to property, sales, use, rental, excise, ad valorem, stamp, luxury, or similar Taxes;

(vii) representing Taxes imposed on such Indemnified Party (without regard to whether such Taxes are collected by withholding or otherwise) imposed by United States government (and any interest, additions to tax, penalties, fines, or charges in respect thereof), that are imposed on, based on or measured by gross or net income or receipts, or accumulated earnings taxes, personal holding company taxes, capital, net worth excise taxes, capital gains taxes, minimum taxes, taxes imposed by Section 59A of the Code and taxes on or measured by tax preferences items; provided, however, the exclusion provided in this clause (vii) shall not apply to property, sales, use, rental, excise, ad valorem or stamp Taxes or Taxes imposed under Section 4975 of the Code;

(viii) representing Taxes imposed on such Indemnified Party (without regard to whether such Taxes are collected by withholding or otherwise) imposed by any foreign government or political subdivision or taxing authority thereof of any territory or possession of the United States or any international authority (and any interest, additions to tax penalties, fines, or other charges in respect thereof) that are imposed on, based on, or measured by gross or net income or group or net receipts, capital gains taxes, excess profits taxes, minimum taxes, alternative minimum taxes, and taxes on tax preference items or that are capital, net worth, franchise, doing business, accumulated earnings, personal holding company, or similar taxes, except to the extent that such Taxes are imposed as a result of the activities of the Lessee, the

Owner Trustee or the Beneficiary; provided, further, however, that the exclusions provided in this clause (viii) shall not apply to (1) property sales, use, rental, license, excise, ad valorem, or stamp taxes, or taxes imposed under Section 4975 of the Code or (2) such Taxes that would not have been imposed but for the location of use of the Equipment in such jurisdiction or the identity, activities, or presence of Lessee, any sub-Lessee, the Owner Trustee, the Beneficiary, user or person in possession of any Equipment or affiliate of the foregoing in such jurisdiction;

(ix) representing Taxes imposed on such Indemnified Party by any taxing authority to the extent that such Taxes would not have been imposed, or to the extent that such Taxes are greater than the Taxes that would have been imposed, if the only contact of such Indemnified Party with such taxing authority had been with respect to the transactions contemplated by the Operative Documents;

(x) representing Taxes imposed in the nature of penalties, additions to tax, interest or fines in connection with the performance of, or failure to perform, any requirement imposed on such Indemnified Party if such Indemnified Party failed to use reasonable care in performing such requirement or, with respect to any return otherwise required be filed by such Indemnified Party without regard to the transactions contemplated by the Operative Documents, in connection with the preparation of filing of such tax returns by such Indemnified Party or the payment of such Indemnified Party's taxes required to be shown in such returns or the conduct of any proceeding in respect thereof;

(xi) Any Taxes imposed on such Indemnified Party to the extent such Taxes are actually utilized by such Indemnified Party as determined in good faith in the same taxable year as a credit or deduction against Taxes which are not indemnifiable under this Section 7.01;

(xii) Taxes imposed on such Indemnified Party that result of such Indemnified party engaging in transactions prohibited by or inconsistent with Operative Documents;

(xiii) In the case of the Indenture Trustee, property, sales, use, rental, license, excise, ad valorem, stamp, luxury or similar Taxes imposed on the Indenture Trustee by any state or local taxing authority, including but not limited to the Sate of Delaware, as a result of the Indenture Trustee being located or having nexus in such state or within such taxing authority;

(xiv) Taxes imposed on by way of withholding (i) if such withholding would not have been imposed but for (a) such Indemnified Party being a Non-U.S. Person or (b) payments under the Notes being attributable to a permanent establishment of such Indemnified Party in any jurisdiction other than the United States of America unless such establishment results solely from the location of all of the Equipment; or (ii) if such withholding results from a breach of any covenant of such Indemnified Party; or (iii) if such withholding results from the gross negligence, willful misconduct or fraud of such Indemnified Party.

Each Indemnified Party shall be entitled to indemnification, from the Indenture Estate, for any Indemnified Amount pursuant to this Section 7.01 to the extent not reimbursed by the Lessee or others, but without releasing any of them from their respective agreements of reimbursement; provided, that (i) so long as any of the indemnity obligations of the Lessee pursuant to the Lease

remain in effect, and if such Indemnified Amount is indemnifiable by the Lessee under Section 14 or 17 of the Master Lease, the Indenture Trustee shall not make any claim under this Section 7.01 without first making demand on the Lessee under the Lease for such claim or expense and failing to receive such indemnity payment when due pursuant to Section 14 or 17 of the Master Lease (as the case may be) and (ii) if such claim or expense is covered by insurance provided by the Lessee under the Lease, the Indenture Trustee shall not make any claim under this Section 7.01 without first asserting a claim under such insurance and failing to receive payment thereunder when due pursuant to the relevant insurance policies. The indemnities contained in this Section 7.01 shall survive the termination of this Indenture.

## SECTION 8. SUCCESSOR TRUSTEES AND SEPARATE TRUSTEES

8.01 Notice of Successor Owner Trustee. In the case of any appointment of a successor to the Owner Trustee pursuant to the Trust Agreement or any merger, conversion, consolidate on or sale of substantially all of the corporate trust business of the Trust Company pursuant to the Trust Agreement, the successor Owner Trustee shall give prompt written notice thereof to the Indenture Trustee and to each Holder.

8.02 Resignation or Removal of Indenture Trustee. The Indenture Trustee or any successor thereto may resign at any time without cause by giving at least 30 days prior notice to each Holder and the Owner Trustee, such resignation to be effective on the acceptance of appointment by the successor Indenture Trustee under Section 8.03(b). In addition, the Indenture Trustee may be removed at any time without cause by the Required Holders by an instrument in writing delivered to the Indenture Trustee and each other Holder, such removal to be effective on the acceptance of appointment by the successor Indenture Trustee under Section 8.03(b).

### 8.03 Successor Indenture Trustee.

(a) Appointment of Successor. In the case of the resignation or removal of the Indenture Trustee, the Required Holders may appoint a successor Indenture Trustee by an instrument signed by such Holders. If a successor Indenture Trustee shall not have been appointed within 30 days after the giving of the notice of such resignation or the delivery of the instrument with respect to such removal, any Holder or the Indenture Trustee may apply to any court of competent jurisdiction to appoint a successor Indenture Trustee to act until such time, if any, as a successor shall have been appointed by the Required Holders as above provided. The successor Indenture Trustee so appointed by such court shall immediately and without further act be superseded by any successor Indenture Trustee appointed by the Required Holders as above provided.

(b) Acceptance of Duties by Successor. Any successor Indenture Trustee, however appointed, shall execute and deliver to the Owner Trustee, the predecessor Indenture Trustee and to each Holder, an instrument accepting such appointment, and thereupon such successor Indenture Trustee, without further act, shall become vested with all the estates, properties, rights, powers and duties of the predecessor Indenture Trustee hereunder and in the trusts applicable to it with like effect as if originally named as Indenture Trustee herein; but nevertheless, upon the written request of such successor Indenture Trustee or the Required Holders, such predecessor Indenture Trustee shall execute and deliver an instrument transferring to such successor Indenture Trustee, upon the trusts herein expressed applicable to it, all the estates, properties, rights and

powers of such predecessor Indenture Trustee hereunder, and such predecessor Indenture Trustee shall duly assign, transfer, deliver and pay over to such successor Indenture Trustee any property or all moneys then held by such predecessor Indenture Trustee hereunder. If a successor Indenture Trustee shall be appointed in accordance with the terms of this Indenture, the Indenture Trustee shall no longer be required to act as trustee hereunder.

(c) Qualifications of Successor. Any successor Indenture Trustee, however appointed, shall be a bank or trust company incorporated under the laws of the United States of America or any of the states thereof and having a combined capital and surplus of at least \$150,000,000.

(d) Consolidation, Merger, etc. Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of Section 8.03(c), be the Indenture Trustee under this Indenture without further act.

#### 8.04 Appointment of Additional or Separate Trustee.

(a) Appointment. Whenever (i) the Indenture Trustee shall deem it necessary or prudent in order to conform to any law of any jurisdiction in which all or any part of the Indenture Estate shall be situated or to make any claim or bring any suit with respect to or in connection with the Indenture Estate, the Lease or any of the other Operative Documents or (ii) the Indenture Trustee shall be advised by counsel satisfactory to it that it is so necessary or prudent in the interest of the Holders or (iii) the Indenture Trustee shall have been requested to do so by the Required Holders, then in any such case, the Indenture Trustee and the Owner Trustee shall execute and deliver an indenture supplemental hereto and all other instruments and agreements necessary or proper to constitute another bank or trust company complying with Section 8.03(c) and approved by the Indenture Trustee, either to act as additional trustee or trustees of all or any part of the Indenture Estate jointly with the Indenture Trustee, or to act as separate trustee or trustees of all or any part of the Indenture Estate, in any such case with such powers as may be provided in such indenture supplemental hereto, and to vest in such Person as such additional trustee or separate trustee, as the case may be, any property, title, right or power of the Indenture Trustee deemed necessary or advisable by the Indenture Trustee and, subject to the remaining provisions of this Section 8.04 and such trustee's assumption of responsibility for its own willful misconduct or gross negligence. If the Owner Trustee shall not have joined in the execution of such indenture supplemental hereto within 15 days after receipt of a written request of the Indenture Trustee so to do, or in case an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee may act under the foregoing provisions of this Section 8.04 without the concurrence of the Owner Trustee; and the Owner Trustee hereby appoints the Indenture Trustee its agent and attorney-in-fact to act for it under the foregoing provisions and the following sentence of this Section 8.04(a) in either of such contingencies. The Indenture Trustee may execute, deliver and perform any conveyance, assignment or other instrument in writing as may be required by any additional trustee or separate trustee for more fully and certainly vesting in and confirming to it any property, title, right or power which by the terms of such indenture supplemental hereto shall be expressed to be conveyed or conferred to or upon such additional trustee or separate trustee, and the Owner Trustee shall, upon request of the Indenture Trustee, join

therein and execute, acknowledge and deliver the same and the Owner Trustee hereby makes, constitutes and appoints the Indenture Trustee its agent and attorney-in-fact to act in its name, place and stead to execute, acknowledge and deliver any such conveyance, assignment or other instrument if the Owner Trustee shall not itself execute and deliver the same within 15 days after receipt by it of such request so to do; provided, however, that the Indenture Trustee shall exercise due care in selecting any additional or separate trustee if such additional or separate trustee shall not be a corporation or other entity possessing trust powers under applicable law.

(b) Limitations on Powers and Actions. Every additional trustee and separate trustee hereunder shall, to the extent permitted by law, be appointed and act, and the Indenture Trustee shall act, subject to the following provisions and conditions and subject to the terms of the supplemental indenture referred to in Section 8.04(a):

(i) all powers, duties, obligations and rights conferred upon the Indenture Trustee in respect of the receipt, custody, investment and payment of moneys shall be exercised solely by the Indenture Trustee;

(ii) all other rights, powers, duties and obligations conferred or imposed upon the Indenture Trustee shall be conferred or imposed and exercised or performed by the Indenture Trustee and such additional trustee or trustees and separate trustee or trustees jointly except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Indenture Estate in any such jurisdiction) shall be exercised and performed by such additional trustee or trustees or separate trustee or trustees;

(iii) no power hereby given to, or with respect to which it is hereby provided may be exercised by, any such additional trustee or separate trustee shall be exercised hereunder by such additional trustee or separate trustee except jointly with, or with the consent of, the Indenture Trustee; and

(iv) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

If at any time the Indenture Trustee shall deem it no longer necessary or prudent to use any such additional trustee or separate trustee in order to conform to any such law or take any such action or shall be advised by such counsel that it is no longer so necessary or prudent in the interest of the Holders, or if the Indenture Trustee shall have been requested to do so by the Required Holders, the Indenture Trustee and the Owner Trustee shall execute and deliver an indenture supplemental hereto and all other instruments and agreements necessary or proper to remove any additional trustee or separate trustee. If the Owner Trustee shall not have joined in the execution of such indenture supplemental hereto within 15 days after the receipt of a written request from the Indenture Trustee so to do, or in case an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee may act on behalf of the Owner Trustee to the extent provided in Section 8.04(a).

(c) Delegation to Indenture Trustee; Successors. Any additional trustee or separate trustee may at any time by an instrument in writing constitute the Indenture Trustee its agent or attorney-in-fact, with full power and authority, to the extent authorized by law, to do all acts and things and exercise all discretions which it is authorized or permitted to do or exercise, for and in its behalf and in its name. In case any such additional trustee or separate trustee shall become incapable of acting, resign or be removed, all the assets, property, rights, powers, trusts, duties and obligations of such additional trustee or separate trustee, as the case may be, so far as permitted by law, shall vest in and be exercised by the Indenture Trustee, without the appointment of a new successor to such additional trustee or separate trustee unless and until a successor shall be appointed in the manner hereinbefore provided.

(d) Instructions from Indenture Trustee. Any request, approval or consent in writing by the Indenture Trustee to any additional trustee or separate trustee shall be sufficient warrant to such additional trustee or separate trustee, as the case may be, to take such action as may be so requested, approved or consented to.

(e) Other Provisions of Indenture. Each additional trustee and separate trustee appointed pursuant to this Section 8.04 shall be subject to, and shall have the benefit of, Sections 5 through 10 hereof inclusive, insofar as they apply to the Indenture Trustee. Notwithstanding any other provision of this Section 8.04, the powers of any additional trustee or separate trustee appointed pursuant to this Section 8.04 shall not in any case exceed those of the Indenture Trustee hereunder.

## SECTION 9. SUPPLEMENTS AND AMENDMENTS TO INDENTURE AND OTHER DOCUMENTS

9.01 Instructions of Majority; Limitations. (a) Except as provided in Section 6.08 and 9.02, the Owner Trustee agrees it shall not enter into any written amendment of or supplement to any Lease Document or execute and deliver any written waiver or modification of, or consent under the terms of any Lease Document, unless such supplement, amendment, waiver, modification or consent is consented to in writing by the Indenture Trustee. Anything to the contrary contained herein notwithstanding, without the necessity of the consent of any of the Holders or the Indenture Trustee, any Excluded Payments payable to the Owner Trustee or the Beneficiary may be modified, amended, changed or waived in such manner as shall be agreed to by the Owner Trustee or the Beneficiary and Lessee.

(b) Without limiting the provisions of Section 9.02, the Indenture Trustee agrees with the Holders that it shall not enter into any written amendment, waiver or modification of, supplement or consent of this Indenture, any amendment, waiver or modification of, supplement or consent to this Indenture, any Lease Document or any other agreement included in the Indenture Estate, unless such supplement, amendment, waiver, modification or consent is consented to in writing by the Required Holders, and upon the written request of the Required Holders, the Indenture Trustee shall from time to time enter into any such supplement or amendment, or execute and delivery any such waiver, modification or consent, as may be specified in such request and as may be (in the case of any such amendment, supplement or modification, to the extent such agreement is required) or agreed to by the Owner Trustee and Lessee; provided that, without the consent of each Holder, no such amendment of or supplement to this Indenture or any Lease Document or waiver or modification of the terms of, or consent under, any thereof, shall

(i) modify any of the provisions of this Section 9.01 or Section 4.02 (except to add an Indenture Event of Default) Sections 4.05, 5.01 or 5.02, or the definitions of the terms "Excepted Payments", "Make Whole Amount", "Lease Default", "Lease Event of Default", "Indenture Default", "Indenture Event of Default", "Required Holders", "Operative Documents" or "Stipulated Loss Value" contained in Appendix A hereto or in any other Operative Document, (ii) reduce the amount or extend time of payment of any amount owing under any Notes or reduce the rate of interest on any Note (except that only the consent of the Holder shall be required for any decrease in any amounts of or the rate of interest payable on such Holder's Note or any extension for the time of payment of any amount payable under such Note), (iii) alter or modify the provisions of Section 3 with respect to the order of priorities in which distributions thereunder shall be made, (iv) reduce, modify or amend any indemnities in favor of any Purchaser, any Holder, the Indenture Estate or the Indenture Trustee (unless in each case consented to by the Person or Persons having the benefit of such indemnity), (v) reduce the amount or change the time of payment of Interim Rent, Basic Rent, Stipulated Loss Value or any other payments in respect of the Lease, (vi) deprive any Holder of the benefit of the lien of this Indenture on the Indenture Estate except as provided in Section 5.06 or (vii) modify, amend or supplement the Lease or consent to any assignment of the Lease so as to release the Lessee from any of its obligations in respect of the payment of Interim Rent, Basic Rent, Stipulated Loss Value or any other payments in respect of the Lease) or change the absolute and unconditional character of such obligations as set forth in the Lease, except that this proviso shall not apply to any indenture supplemental hereto permitted by, and complying with the terms of, Section 9.02 or to any amendment to the Lease to increase payments of Interim Rent, Basic Rent or Stipulated Loss Value or (viii) take any action that would reduce the Initial Term of the Lease.

(c) Form of Request. It shall not be necessary for any written request or consent furnished pursuant to Section 9.01 to specify the particular form of the proposed documents to be executed pursuant to such Section, but it shall be sufficient if such request or consent shall indicate the substance thereof.

9.02 Supplemental Indentures Without Consent. Without the consent of any of the Holders, but subject to the provisions of Section 9.03, upon the request of the Owner Trustee and with the consent of the Lessee in the case of any Lease Documents, the Indenture Trustee shall join with the Owner Trustee in entering into amendments to the Operative Documents and entering into any further indenture supplemental hereto, for one or more of the following purposes:

(a) to evidence the succession of a new trustee as Indenture Trustee hereunder, the removal of the Indenture Trustee or the appointment of any separate or additional trustee or trustees, in each case if done pursuant to the provisions of Section 8;

(b) to subject to the lien of this Indenture any additions to the Equipment;

(c) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or to make any other provisions with respect to matters arising under this Indenture which shall not be inconsistent with the provisions of this Indenture; provided, however, that such action shall not materially adversely affect the interests of the Holders; or

(d) to cure any ambiguity in any Operative Document, to correct or supplement any provision thereof which might be inconsistent with any other provision therein or to make any other provisions with respect to matters arising thereunder which shall not be inconsistent with the provisions thereof provided, however, that any such action shall not materially adversely affect the interests of the Holders.

9.03 Documents Mailed to Holders. Promptly after the execution by the Owner Trustee and the Indenture Trustee of any document entered into pursuant to 9.01 or 9.02 hereof, the Indenture Trustee shall mail, by registered or certified mail, postage prepaid, a conformed copy thereof to each Holder, but failure of the Indenture Trustee to mail such conformed copies shall not impair or affect the validity of such document.

9.04 Solicitation of Holders. No consideration shall be given to any Holder to obtain its consent to the amendment, modification or waiver of any provision of this Indenture, any Note or any Indenture Document for which such consent is required pursuant to this Section 9.04 unless such consideration is offered pro rata to all Holders for such consent.

## SECTION 10. MISCELLANEOUS

10.01 Termination of Indenture. This Indenture and the trusts created hereby shall terminate and this Indenture shall be of no further force or effect upon the earlier of (a) payment in full of the principal of and Make Whole Amount and interest on all Notes and all other amounts payable to any Purchaser or any Holder or to the Indenture Trustee hereunder and the other Operative Documents or (b) the sale or other final disposition by the Indenture Trustee or the Owner Trustee, as the case may be, of the Equipment and the final distribution by the Indenture Trustee of all moneys or other property or proceeds constituting the Indenture Estate in accordance with the terms of Section 3. Upon such payment in full of all amounts referred to in clause (a) above, the Indenture Trustee shall pay all moneys or other properties or proceeds constituting part of the Indenture Estate (the distribution of which shall not otherwise be provided for herein) to the Owner Trustee. Upon the termination of this Indenture, the Owner Trustee and the Indenture Trustee shall each execute and deliver such release, notice or other document as the other party may reasonably request for the purpose of evidencing such termination.

10.02 No Legal Title to Indenture Estate in Holders. No Holder shall have legal title to any part of the Indenture Estate. No transfer, by operation of law or otherwise, of any Note, or other right, title and interest of any Holder in and to the Indenture Estate or hereunder shall operate to terminate this Indenture or the trusts hereunder or entitle any successor or transferee of such holder to an accounting or to the transfer to it of legal title to any part of the Indenture Estate.

10.03 Sale of Equipment by Indenture Trustee Binding. Any sale or other conveyance of any Equipment by the Indenture Trustee made pursuant to the terms of this Indenture and of the Lease shall bind the Owner Trustee and the Holders and shall be effective to transfer or convey all right, title and interest of the Owner Trustee and the Holders in and to the Equipment. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Indenture Trustee.

10.04 Indenture for Benefit of Parties, Holders and Beneficiary Only. Nothing in this Indenture, whether express or implied, shall be construed to give to any Person other than the parties hereto, the Lessee, the Holders and the Beneficiary any legal or equitable right, remedy or claim under or in respect of this Indenture. This Indenture shall be for the sole and exclusive benefit of the parties hereto, the Holders and the Beneficiary.

10.05 Notices. All notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be in writing, and any such notice shall be deemed received, (i) if sent by a nationally recognized overnight courier (or for international deliveries, a reputable international courier company) or by hand, when delivered, as evidenced by a written acknowledgment of receipt at the place of delivery (whether or not the party executing such acknowledgment was authorized to accept such delivery on behalf of the party to whom such notice is being given or (ii) if sent by fax with the original sent within two Business Days after such fax is transmitted, upon receipt of electronic confirmation of the transmission of such fax or (iii) if sent in any other manner, when actually received, and shall be directed to the address of such Person set forth below:

(a) if to the Owner Trustee, addressed or faxed to it at

First Security Bank, National Association  
79 South Main Street  
Salt Lake City, Utah 84111  
Fax: (801) 246-5053,

(b) if to Indenture Trustee, addressed or faxed to it at

Wilmington Trust Company  
1100 North Market Street  
Rodney Square North  
Wilmington, Delaware 19890-0001  
Fax: (302) 651-8882

(c) if to the Beneficiary addressed or faxed to it at

Pitney Bowes Credit Corporation  
27 Waterview Drive  
Shelton, Connecticut 06484  
Fax: (203)922-4083

or such other address or addresses as the Owner Trustee shall have then provided to the Indenture Trustee and the Holders pursuant to **paragraph 14** of the Purchase Agreement.

(d) if to a Purchaser or its nominee, to it at the address or fax number specified for it for such communications in **Schedule A**,

(e) if to any other Holder, to such Holder at such address or fax number as is then specified for such Holder in the Note Register.

The Owner Trustee, the Indenture Trustee and any Purchaser may by written notice given in accordance with this **Section 10.5** change its address and/or fax number for receipt of notice.

10.06 Severability. Any provision of this Indenture which shall be prohibited or unenforceable in any jurisdiction or as to any property comprising part of the Indenture Estate shall, as to such jurisdiction or property, 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 or as to any property shall not invalidate or render unenforceable such provision in any other jurisdiction or as to any other property.

10.07 Written Changes Only. No term of this Indenture or any Note may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party or other Person against whom enforcement of the change, waiver, discharge or termination shall be sought and any waiver of the terms hereof or of any Note shall be effective only in the specific instance and for the specified purpose given.

10.08 Counterparts. This Indenture may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

10.09 Successors and Assigns. All the terms hereof shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. Any request, notice, direction, consent, waiver or other instrument or action by any Holder shall bind the successors and assigns thereof.

10.10 Headings; References. The Table of Contents and headings of the various Sections and subsections herein are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

10.11 Governing Law. This Indenture and the Notes shall in all respects be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed entirely within such State, including all matters of construction, validity and performance.

10.12 Normal Commercial Relations. Anything contained in this Indenture to the contrary notwithstanding, the Indenture Trustee, the Owner Trustee, the Beneficiary, any Purchaser or Holder or other Affiliate of any of them may conduct any banking or other financial transactions, and have banking or other commercial relationships, with the Lessee fully to the same extent as if this Indenture were not in effect, including without limitation the making of loans or other extensions of credit to the Lessee for any purpose whatsoever, whether related to any of the transactions contemplated hereby or otherwise.

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have each caused this Trust Indenture and Security Agreement to be duly executed and delivered and their corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized as of the day and year first above written.

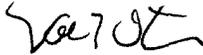
FIRST SECURITY BANK, NATIONAL ASSOCIATION, not in its individual capacity but solely as trustee under the Trust Agreement,



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

Title Vice President

Attest:



\_\_\_\_\_  
[Title] Vice President

WILMINGTON TRUST COMPANY

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

Title:

Attest:

\_\_\_\_\_  
[Title]

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have each caused this Trust Indenture and Security Agreement to be duly executed and delivered and their corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized as of the day and year first above written.

FIRST SECURITY BANK, NATIONAL  
ASSOCIATION, not in its individual  
capacity but solely as trustee  
under the Trust Agreement,

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

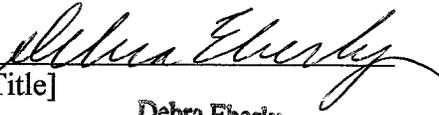
Attest:

\_\_\_\_\_  
[Title]

WILMINGTON TRUST COMPANY

By:  \_\_\_\_\_  
Title: Financial Services Officer

Attest:

  
[Title]  
Debra Eberly  
Administrative Account Manager

District of Columbia     )  
  )  
City of Washington        )     ss:

I, KIM L. BARTMAN, Notary for the District of Columbia, hereby certify that the attached "Trust Indenture and Security Agreement", dated as of December 30, 1997, between First Security Bank, National Association, as Owner Trustee, and Wilmington Trust Company, as Indenture Trustee, is a true and complete copy of the original thereof.

Certified this 12th day of January, 1998.

  
\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: 3-31-2000