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JUN 30 1994 -9 10 AM

INTERSTATE COMMERCE COMMISSION

LOAN AND SECURITY AGREEMENT

Dated as of June 30, 1994

between

WILMINGTON TRUST COMPANY,
not in its individual capacity except
as otherwise expressly provided,
but as Owner Trustee,

and

NATIONAL CITY LEASING CORPORATION,
as Lender

This Loan and Security Agreement was filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on June 30, 1994 at _____ __.m., Recordation Number _____.

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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated as of June 30, 1994 ("*Loan Agreement*"), between Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity, but solely as trustee under that certain Trust Agreement dated as of the date hereof (in such capacity, together with each successor in such capacity, the "*Owner Trustee*"), and National City Leasing Corporation, a Kentucky corporation (the "*Lender*"):

RECITALS

A. The capitalized terms used in this Loan Agreement and not hereinabove defined have the meanings indicated in Section 1.01 of this Loan Agreement.

B. The Owner Trustee, the Lender, the Lessee and the Owner Participant have entered into the Participation Agreement which provides, among other things, for the commitment of the Lender to purchase a Note or Notes on the Closing Date, the proceeds of which will be applied to finance a portion of the Equipment Cost of the Equipment to be purchased by the Owner Trustee and leased to the Lessee pursuant to the Lease.

C. The Owner Trustee, not in its individual capacity except as expressly set forth therein, and the Owner Participant have entered into the Trust Agreement which provides, among other things, for the creation of the Trust with respect to the Equipment.

D. The Notes and all principal thereof, Premium, if any, and interest thereon and all other Secured Indebtedness are to be paid and performed in accordance with the terms and conditions of this Loan Agreement.

E. All of the requirements of law relating to the transactions contemplated hereby have been fully complied with and all other authorizations, acts and things necessary to make this Loan Agreement a valid, binding and legal instrument of the parties hereto and to grant to the Lender the security interest in the Collateral have been duly taken.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the covenants herein contained, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS; GRANT OF SECURITY

Section 1.01. **Definitions**. The capitalized terms used in this Loan Agreement and not otherwise defined herein shall have the respective meanings specified in Annex A to the Participation Agreement dated as of June 30, 1994, among Owner Trustee, Lender, Costain Coal

Inc., a Delaware corporation, as Lessee, Wilmington Trust Company, in its individual capacity, and KBID Leasing Corporation, an Idaho corporation, as Owner Participant.

Section 1.02. **Grant of Security**. As security for the Secured Indebtedness, the Owner Trustee hereby assigns, transfers and grants to the Lender and its successors and permitted assignees as the "Lender" for the benefit of the Lender and each Holder a security interest in all right, title and interests of Owner Trustee in and to the following property, whether tangible or intangible, wherever located or situated, whether now existing, owned or held or hereafter acquired or arising, excluding the Excepted Rights in Collateral (all of which property, other than the Excepted Rights in Collateral, collectively and severally, the "*Collateral*"):

(a) All accounts, contract rights, general intangibles, chattel paper, instruments, documents, money, deposit accounts, goods, equipment, inventory and uncertificated securities consisting of or arising from any of the following:

(1) all Equipment leased or to be leased to the Lessee by the Owner Trustee pursuant to the Lease, including, without limitation, the Units of Equipment described in the Lease Supplement and the Loan Supplement executed and delivered on the Closing Date, the form of which Loan Supplement is attached hereto as Exhibit A and made a part hereof, together with (A) all Parts, whether now owned or hereafter acquired, which become the property of the Owner Trustee under the Lease, (B) all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of such Equipment, which become the property of the Owner Trustee under the Lease, together with all the rents, issues, income and profits therefrom, and (C) any and all payments or proceeds payable to the Owner Participant or the Owner Trustee with respect to any Unit as the result of the sale, lease or other disposition thereof;

(2) the Lease, including all extensions of the terms of the Lease, together with all rights, powers, privileges, options and to the benefits of the Owner Trustee as Lessor under the Lease, including, without limitation:

(A) the immediate and continuing right to receive and collect (for application as provided in the Lease and this Loan Agreement) all Basic Rent, Supplemental Rent (including, with limitation, any Stipulated Loss Value payments), insurance proceeds, condemnation awards, patent indemnity payments and other payments, tenders and security now or hereafter payable to or receivable by the Lessor under the Lease;

(B) subject to Section 5.07 hereof, the right (i) to receive from the Lessee certificates, notices and other documents and information which the Lessee is required to give or furnish to the Lessor, the Owner Trustee or the Owner Participant and (ii) to inspect the Equipment and all records relating thereto;

(C) subject to Section 5.07 hereof, the right to make all waivers and agreements and to enter into any amendment relating to the Lease or any provision thereof;

(D) except as otherwise provided in Article V of this Loan Agreement, the right to take such action upon the occurrence of a Lease Default or a Lease Event of Default, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or at law or in equity, and to do any and all other things whatsoever which the Owner Trustee is or may be entitled to do under the Lease, it being the intent and purpose hereof that the assignment and transfer to the Lender of said rights, powers, privileges, options and other benefits shall be an immediate and present assignment;

(3) the Bill of Sale, the Purchase Agreement Assignment and any and all other contracts and agreements transferring to the Owner Trustee title to the Equipment or otherwise relating to the Equipment (including any sublease thereof) or any rights or interest therein to which the Owner Trustee is now or thereafter a party or the beneficiary thereof and all representations, warranties and covenants contained therein (collectively, with the Lease, the "*Assigned Agreements*"), together with all rights, powers, privileges, licenses, easements, options and other benefits of the Owner Trustee under each Assigned Agreement, including, without limitation:

(A) subject to Section 5.07 hereof, the immediate and continuing right to make all waivers and agreements relating to the Assigned Agreements or any provision thereof;

(B) subject to Section 5.07 hereof, the right to give and receive all notices and other instruments or communications;

(C) except as otherwise provided in Article V of this Loan Agreement, the right to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or at law or in equity, and to do any and all other things which the Owner Trustee is or may be entitled to do thereunder, it being the intent and purpose hereof that the assignment and transfer to the Lender of said rights, powers, privileges, licenses, easements, options and other benefits shall be an immediate and present assignment;

(4) any and all moneys and other property (including, without limitation, each amendment or supplement to any and all property included in the Collateral) which may from time to time, by delivery to the Lender or by any instrument, including, without limitation, this Loan Agreement or any Loan Supplement, be expressly subjected to the lien hereof by the Owner Trustee or by anyone on its behalf or with its express consent, or pursuant to any instrument included in the Collateral, it being the intention of the Owner Trustee and the Lender and it being hereby agreed by them that all property hereafter acquired by the Owner Trustee and required under the terms hereof to be subjected to the lien of this Loan Agreement or intended so to be shall forthwith upon the acquisition thereof by the Owner Trustee be as fully embraced within the lien of this Loan Agreement as if such property were now owned by the Owner Trustee and were specifically described in this Loan Agreement and the Lender is hereby authorized to receive any and all such property as and for additional security for the payment of the Secured Indebtedness; and

(b) all proceeds of the foregoing (including, without limitation, whatever is receivable or received when Collateral or proceeds is sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including rights to payment and return premiums and insurance with respect to any Collateral, and all rights to payment with respect to any cause of action affecting or relating to the Collateral).

Section 1.03. **Financing and Continuation Statements**. Without limiting the generality of Section 7.04 hereof, the Owner Trustee hereby authorizes the Lender to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral, without the signature of Owner Trustee where permitted by law. A carbon, photographic or other reproduction of this Loan Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

Section 1.04 **Lender and Collateral Agent**. Lender hereby acknowledges that if at anytime there is a Holder other than Lender, the Lender shall be the agent of all Holders for the purpose of being the secured party hereunder, receiving and applying of funds pursuant to Article III hereof, exercising remedies hereunder and under the Lease pursuant to Article V hereof and otherwise exercising the rights and performing the obligations of Lender hereunder. Except as otherwise provided herein, the Lender shall take any action permitted (but not required) by Lender hereunder or under the Operative Agreements only upon the written instructions of 66 2/3% in interest of the Holders.

Section 1.05. **Limitation on Lender's Duty in Respect of the Collateral**. Beyond the safe custody and preservation thereof in accordance with applicable law and except as provided in Section 3.07 hereof, the Lender shall not have any duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of it or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

ARTICLE II

THE NOTES

Section 2.01. **Forms of Notes**. The Notes shall be substantially in the form set forth below:

[FORM OF NOTE]

WILMINGTON TRUST COMPANY, AS OWNER TRUSTEE
NOTE DUE OCTOBER 30, 2009

No. R - _____ _____, 19__
$_____

WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity but solely as Owner Trustee (in such capacity, the "*Owner Trustee*") under the Trust Agreement dated as of June 30, 1994 between WILMINGTON TRUST COMPANY and KBID LEASING CORPORATION, an Idaho corporation, hereby promises to pay to NATIONAL CITY LEASING CORPORATION (the "*Lender*"), or its registered assignees, (1) the principal sum of $_____, (2) interest on the unpaid principal amount of this Note from the date of this Note until paid at a rate per annum equal to _____ percent (9.48%) (computed on the basis of a 360-day year and twelve (12) thirty (30)-day months). Such principal and interest are payable in one hundred eighty-five (185) consecutive monthly installments of principal and accrued interest on the thirtieth (30th) day of each month (except for the month of February, in which case payment shall be due on the last day thereof), commencing July __, 1994 and continuing thereafter to and including October 30, 2009; provided, however, that any amount of principal hereunder not paid when due (whether at stated maturity, by acceleration or otherwise) and (to the extent permitted by applicable law) Premium and overdue interest, shall bear interest computed as aforesaid at the Late Rate from the due date thereof, payable on demand. Each installment of principal shall be in the dollar amount set forth on Schedule 1 attached hereto opposite the payment date of such installment. The last payment of principal and interest shall in all events be in an amount sufficient to discharge the accrued interest on, unpaid principal of and Premium, if any, on this Note. If any date upon which a payment is due hereunder is not a Business Day, then the amount otherwise payable on such date shall be due and payable on the next succeeding Business Day with the same force and effect as though made on such prior date and with no adjustment for interest.

This Note has been issued by the Owner Trustee under and pursuant to the terms of the Loan and Security Agreement dated as of June 30, 1994, (as amended or supplemented the "*Loan Agreement*", the defined terms therein, not otherwise defined herein, being used herein with the same meanings), between the Owner Trustee and National City Leasing Corporation, as the lender thereunder (hereinafter, together with its successors and assignees as holder of this Note, called the "*Holder*"). Reference is hereby made to the Loan Agreement for a statement of the rights of the Holder in, and the nature and extent of the security for, this Note and of certain rights of the Owner Trustee, including, but not limited to, the right to purchase the Note as contemplated by Article V of the Loan Agreement.

All payments of principal and interest to be made by the Owner Trustee hereunder shall be made only from the income and proceeds from the Collateral in accordance with the terms of Article III, Article IV or Article V of the Loan Agreement. The Holder, by its acceptance of this Note, agrees that it will look solely to the income and proceeds from the Collateral for any amounts payable to it under this Note as provided in the Loan Agreement and that neither the Owner Trustee nor the Owner Participant shall be personally liable to the Holder for any such amounts. Principal, Premium, if any, and interest shall be payable on the respective due dates at the office of the Lender as the Lender may advise the Owner Trustee in writing, in lawful money of the United States of America in immediately available funds.

The Note is issuable as a registered Note in the amount of its face value. As provided in the Loan Agreement, and subject to certain limitations therein set forth, the transfer or exchange of this Note shall be registered on the register maintained therefor by the Owner Trustee

at its office at its corporate trust office, initially located at Rodney Square North, 1100 North Market Street, Wilmington, Delaware, 19890-0001 or at such other office as the Owner Trustee may advise the Lender in writing. Prior to due presentment for registration and transfer of this Note in accordance with the Loan Agreement, the Owner Trustee shall deem and treat the Person in whose name this Note shall be registered as the absolute owner and Holder for the purpose of receiving payment of all amounts payable by the Owner Trustee with respect to this Note, and for all other purposes, and the Owner Trustee shall not be affected by any notice to the contrary.

The Holder, by its acceptance of this Note agrees that, except as otherwise provided in Article III or Article V of the Loan Agreement, each payment received by it hereunder shall be applied, first, to the payment of accrued interest on this Note to the date of such payment and second, to the payment of the principal amount of and Premium, if any, on this Note then due (whether by maturity, prepayment, acceleration or otherwise).

This Note is not subject to prepayment except as contemplated by Article III, Article IV or Article V of the Loan Agreement; any such prepayments may result in a reduction in principal installments pursuant to Article II of the Loan Agreement. Upon the occurrence of a Loan Event of Default under and as specified in the Loan Agreement, the principal hereof and the interest accrued and unpaid thereon, under certain circumstances specified in the Loan Agreement, may become forthwith due and payable, which acceleration may thereafter be terminated under certain circumstances specified in the Loan Agreement.

The Owner Trustee agrees to pay all costs and expenses, including reasonable attorneys' fees, expended or incurred in connection with the enforcement of this Note, the collection of any sums due hereunder or under the Loan Agreement, any actions for declaratory relief in any way related to this Note, or the protection or preservation of any rights of the Holders, including any such costs and expenses incurred in connection with any appeal of a judgment.

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

IN WITNESS WHEREOF, the Owner Trustee has caused this Note to be executed in its corporate name by one of its authorized officers as of the date hereof.

Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee

By _____

Its

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD OR TRANSFERRED WITHOUT SUCH REGISTRATION OR EXEMPTION THEREFROM UNDER THE ACT.

[Amortization schedule to be attached as Schedule 1 to Note.]

Section 2.02. **Terms of Notes**.

(a) Generally. The Notes are to be substantially in the form set forth in Section 2.01 hereof. The Notes shall have a final maturity date of October 30, 2009. Subject to the provisions of Section 2.02(b) hereof, the principal amount of each Note shall be payable in accordance with Schedule 8 to the Participation Agreement, each such installment in an amount equal to the percentage for the date of such installment set forth in Schedule 8 to the Participation Agreement multiplied by the original principal amount of such Note, and the Owner Trustee, subject to the prior approval of each Holder, shall prepare and attach to the Note a schedule of principal installments in dollars for the Note as computed. The Notes will (1) be dated the date of issue, (2) bear interest from such date of issue at a rate per annum equal to Note Rate, computed on the basis of a 360-day year and twelve 30-day months and (3) be payable in one hundred eighty-five (185) consecutive monthly installments of principal and accrued interest on the thirtieth (30th) day of each calendar month (except for the month of February, in which case payment shall be due on the last day thereof) beginning on July 30, 1994 to and including October 30, 2009. The Note shall bear interest (computed as aforesaid) at the Late Rate on any part of principal and (to the extent permitted by applicable law), Premium and overdue interest from the date thereof, payable on demand. The last payment of principal and interest shall in all events be in an amount sufficient to discharge the accrued interest on, unpaid principal of, and Premium, if any, on the Note.

(b) Revision of Schedule. In the event of a prepayment of the Note pursuant to Section 3.02(a) hereof with respect to any Unit, each future installment of principal on the Note shall be reduced to an amount equal to the product obtained by multiplying (i) the corresponding installment set forth in the original schedule of principal installments for the Note by (ii) a fraction, the numerator of which shall be the Equipment Cost of all remaining Equipment and the denominator of which shall be the original Equipment Cost of all Units. Promptly after receiving a request therefor from a Holder, the Owner Trustee and the Lessee shall prepare and furnish to such Holder a revised schedule of principal installments for the Note.

Section 2.03. **Payments from Collateral Only**. All payments to be made by the Owner Trustee under the Notes shall be made only from the income and the proceeds from the Collateral. Each Holder, by its acceptance of a Note, agrees that it will look solely to the income and proceeds from the Collateral for any amounts payable to it under such Note as herein provided and that neither the Owner Trustee nor the Owner Participant shall be personally liable to such Holder for any such amounts.

Section 2.04. **Method of Payment**. The principal of, Premium, if any, and interest on the Notes will be payable on the due dates at the office of the Lender or at such other office as the Lender may advise the Owner Trustee in writing in lawful money of the United States of America in immediately available funds. The Lender shall cause all amounts received by the Lender in respect of the Notes or constituting Rent under the Lease to be distributed to the Holders and to the other Persons to whom such amounts are due in accordance with Article III

hereof. All such payments so made to any Holder or upon its order shall be valid and, to the extent of the sum or sums paid, effectual to satisfy and discharge liabilities for moneys due on its Note. Notwithstanding any provision of the Note or of this Section 2.04 to the contrary, the Owner Trustee will pay the Lender all amounts payable in respect of principal of, Premium, if any, and interest on the Notes without presentment thereof and without any notation of such payment being made on the Notes.

Section 2.05. **Termination of Interest in Collateral**. Each Holder shall have no further interest in, or other right with respect to, any Collateral (i) upon release of the Lien of this Loan Agreement in respect of such Collateral pursuant to Section 6.03 hereof; or (ii) upon termination of this Loan Agreement pursuant to Section 10.01 hereof; or (iii) upon ceasing to be a Holder.

Section 2.06. **Registration of Note; Transfer and Exchange**. The Owner Trustee shall maintain at its corporate trust office a register for the purpose of registering transfers and exchanges of the Notes. Prior to due presentment for registration of transfer of a Note in accordance with this Loan Agreement, the Owner Trustee shall deem and treat the Person in whose name such Note shall have been issued and registered as the absolute owner of such Note for the purpose of receiving payment of all amounts payable by the Owner Trustee with respect to such Note and for all other purposes, and, prior to due presentation for registration of transfer of such Note, the Owner Trustee shall not be affected by any notice to the contrary. If the Holder intends to transfer such Note, or if Holder intends to exchange the Note for a new Note, the Holder, shall surrender the outstanding Note at the corporate trust office of the Owner Trustee, together with a written request for the issuance of a new Note, specifying in the case of a transfer the name and address of the transferee, and the Owner Trustee will, prior to the delivery of the Note, make or cause to be made a notation thereon of the date to which interest has been paid thereon, and if not theretofore made, a notation on the Note of the extent to which payment has been made on account of the principal thereof. If required by the Owner Trustee in the case of a Note being presented for registration of transfer, the Note shall be accompanied by a written instrument of transfer in form satisfactory to Owner Trustee duly executed by the Holder or its duly authorized attorney and, if reasonably requested by the Owner Trustee, the Holder shall furnish Owner Trustee with an opinion of counsel, addressed to Owner Trustee and reasonably satisfactory to Owner Trustee, to the effect that such transfer of the Note need not be registered under the Securities Act of 1933, as amended, and will not result in a non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code. Promptly upon receipt of such documents, the Owner Trustee shall execute and deliver a new Note or Notes in the same original face amount and dated the same date or dates as the surrendered and registered in the name of the Holder or the transferee, as the case may be; provided, however, that if more than one new Note is to be issued upon a transfer or exchange of an outstanding Note, the original face amount of each such new Note shall be not less than $500,000 or such lesser amount as will represent all of the respective transferring Holder's Notes. The Owner Trustee shall make a notation on the new Note of the amount of all payments of principal previously made on the old Note with respect to which the new Note is issued and the date to which interest on the old Note has been paid. The Owner Trustee shall not be required to transfer or exchange the surrendered any Note as above provided during the period of ten (10) Business Days preceding the due date

of any payment on the Note. Notwithstanding the foregoing, no Note nor any interest therein may be transferred except in compliance with the Participation Agreement.

Section 2.07. **Mutilated, Destroyed, Lost or Stolen Note**. If the Note shall become mutilated, destroyed, lost or stolen, the Owner Trustee shall, upon the written request of the Holder thereof execute and deliver to such Holder, in replacement thereof, a new Note, in the same face 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 Owner Trustee for cancellation. If the Note being replaced has been destroyed, lost, stolen, or so mutilated that it is, in the reasonable opinion of the Owner Trustee, destroyed, the Holder shall furnish to the Owner Trustee such security or indemnity as may be required by Owner Trustee to save it harmless and evidence satisfactory to the Owner Trustee of the destruction, loss, or theft of the Note and the ownership thereof; provided, however, that if the Holder is an institutional investor with a net worth of $100,000,000 or more, the written indemnity of the Holder delivered to the Owner Trustee shall be sufficient security and indemnity. The Owner Trustee shall make a notation on the new Note of the amount of all payments of principal previously made on the mutilated, destroyed, or stolen Note with respect to which the new Note is issued and the date to which interest on the old Note has been paid.

Section 2.08. **Payment of Expenses on Transfer**. Upon the issuance of a new Note or Notes pursuant to Section 2.06 or Section 2.07 hereof, the Owner Trustee may require from the Holder payment of a sum sufficient to reimburse the Owner Trustee for, or to provide funds for, the payment of any tax or other governmental charge or any charges and expenses connected with such tax or other governmental charge paid or payable by the Owner Trustee in connection with such issuance.

Section 2.09. **Transfer of Lender Interest**. If there is a Holder other than Lender, Lender shall not transfer its interest as "Lender" and secured party hereunder other than to a bank having trust powers or to a trust company having its principal place of business in the continental United States and having a combined capital and surplus of at least $100,000,000. Such successor Lender shall execute and deliver to Lender, Owner Trustee and Lessee an instrument accepting such assignment and thereupon without further act become vested with all the estate, rights, powers, duties and obligations of Lender hereunder. Any corporation into which Lender may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Lender is a party, or any corporation to which substantially all the business of Lender may be transferred, shall be Lender hereunder without further act.

ARTICLE III

RECEIPT, DISTRIBUTION, AND APPLICATION OF INCOME FROM THE COLLATERAL

Section 3.01. **Receipt of Funds**.

(a) Basic Rent. Except as otherwise provided in this Article III, each payment of Basic Rent, and any interest on overdue installments of such Basic Rent received by the Lender shall be distributed by the Lender in the following order of priority: first, so much of such payment as shall be required to pay in full the interest (including but not limited to interest on overdue principal and, to the extent permitted by applicable law, overdue interest) then due under each Note shall be distributed to the Holder thereof; second, so much of such payment as shall be required to pay in full the principal amount then due under each Note, whether by maturity, prepayment, acceleration or otherwise, shall be distributed to the Holder thereof; and third, the balance, if any, of such payment remaining thereafter shall be distributed by the Lender to the Owner Trustee.

(b) Supplemental Rent. Except as otherwise provided in this Article III, the amount, if any, from time to time received by the Lender which constitutes payment of Supplemental Rent pursuant to Section 2.1(b) of the Lease shall be applied by the Lender as follows:

(i) Stipulated Loss Value payments shall be applied as set forth in Section 3.02(a) hereof;

(ii) all other amounts of Supplemental Rent shall be applied first, so much of such payment as shall be required to pay in full any other Secured Indebtedness then due and owing shall be distributed to each Person who shall promptly certify that such Secured Indebtedness is then due and owing ratably, in the proportion that the amount then due such Person bears to the aggregate amount of all such Secured Indebtedness; and second, the balance, if any, shall be paid to or upon the order of the Owner Trustee.

(c) Insurance Proceeds. So long as no Lease Event of Default has occurred and is continuing, the amounts received by the Lender from time to time which constitute proceeds of property or casualty insurance maintained by the Lessee on the Equipment shall be held by the Lender as a part of the Collateral and shall be applied by the Lender from time to time as follows:

(1) If the Units are to be repaired or restored, such proceeds shall be released to the Owner Trustee to pay to the Lessee the full amount of such proceeds within five (5) days following receipt by the Lender of a written application signed by the Lessee for payment accompanied by an Officer's Certificate of the Lessee stating that (A) the Lessee has complied with the applicable provision of the Lease, (B) no Lease Event of Default has occurred and is continuing, and (C) any damage to such Unit in respect of which such proceeds were paid has been fully repaired or restored as required by the Lease.

(2) If the Lessee shall have notified the Lender in writing that the Lease is to be terminated in respect of such Unit in accordance with the provision of Section 11 of the Lease then the insurance proceeds shall be applied by the Lender as provided for by Section 3.02(a) hereof, provided that if (a) the Stipulated Loss Value due as a result of the termination of the Lease with respect to such Unit has already been paid in full or (b) the Lessee has substituted

a replacement Unit pursuant to Section 11.7 of the Lease, the insurance proceeds shall, upon the receipt thereof by Lender, be paid to the Lessee.

Any portion of any such amount which is not so paid to Lessee because a Lease Event of Default has occurred and is continuing, shall be held by the Lender and paid to the Lessee at such time as there shall not be continuing any Lease Event of Default, unless the Lender shall have theretofore declared the Lease to be in default pursuant to Section 15 thereof, in which case such amount shall be applied as provided in Section 3.03 hereof.

(d) Condemnation Awards. So long as no Lease Event of Default has occurred and is continuing, any amounts received by or payable to the Lender from time to time which constitute the award, compensation or damages payable for the condemnation or taking (including, without limitation, pursuant to Section 11.6 of the Lease) of all or any part of the Equipment for any public or quasi-public use (less the actual costs, fees and expenses incurred in the collection thereof) (a) shall (1) be released to or upon the order of the Owner Trustee or the Lessee, as their interest may appear, if such condemnation or taking does not constitute an Event of Loss or (2) be paid to Lessee if Lessee shall replace such Unit as provided in Section 11.7 of the Lease or if Lessee shall have paid the Stipulated Loss Value due as a result of the termination of the Lease, and (b) otherwise shall be applied in accordance with Section 3.02(a) hereof.

Section 3.02. **Prepayments**.

(a) Mandatory Prepayments.

(1) Event of Loss. Except as otherwise provided in this Article III, if the Lessee delivers to the Lender a notice duly delivered pursuant to Section 11 of the Lease by the Lessee to the Owner Trustee and the Lender of an Event of Loss with respect to a Unit and Lessee shall not have substituted a Replacement Unit therefor pursuant to Section 11.7 of the Lease, the Lender shall cause to be prepaid (without Premium) in accordance with and subject to the provisions of Article IV hereof, on the date on which the Stipulated Loss Value for such Unit is paid to the Lender under the Lease, Notes in a principal amount equal to the product obtained by multiplying the principal amount of all Notes (after deduction for principal then due and paid out of Basic Rent pursuant to Section 3.01(a) hereof) by a fraction, the numerator of which shall be the Equipment Cost of such Unit and the denominator of which shall be the Equipment Cost of all Equipment still subject to the Lease including such Unit (determined prior to the termination of the Lease with respect to such Unit). The amount paid to the Lender under Section 11 of the Lease in respect of a Unit as the Stipulated Loss Value shall be distributed in the following order of priority: first, so much of such amount as shall be required to prepay the principal amount of the Notes to be prepaid in respect of such Event of Loss together with interest accrued on such principal amount prepaid to the date of prepayment (including but not limited to interest on overdue principal and, to the extent permitted by applicable law, overdue interest), shall be distributed to the Holders ratably, in the proportion that the amount of such prepayment of principal and interest under each such Notes bears to the aggregate amount of such prepayment of principal and interest then due on all such Notes; second, so much of such as shall be required to pay in full any other Secured Indebtedness then due and owing shall be distributed to such Person who shall promptly certify that such Secured Indebtedness is then due and owing ratably, in the

proportion that the amount then due to such Person bears to the aggregate amount of all such Secured Indebtedness then due and owing; and third, the balance, if any, of such amount remaining thereafter shall be distributed by Lender to the Owner Trustee.

(2) Event of Termination. Except as otherwise provided in this Article III, if the Lessee delivers to the Lender and the Owner Trustee a notice duly delivered pursuant to Section 12 of the Lease of a proposed termination of the Lease with respect to a Terminated Unit, the Lender shall cause to be prepaid in accordance with and subject to the provisions of Article IV hereof, on the date on which the Stipulated Loss Value for such Terminated Unit is paid to the Lender under Section 12 of the Lease, Notes in an aggregate principal amount equal to the product obtained by multiplying the principal amount of all Notes outstanding at the time of such prepayment (after deduction for principal then due and paid out of Basic Rent pursuant to Section 3.01(a) hereof) by a fraction, the numerator of which shall be the Equipment Cost of such Terminated Unit and the denominator of which shall be the Equipment Cost for all Equipment including still subject to the Lease such Terminated Unit (determined prior to the termination of the Lease with respect to such Terminated Unit). There shall also be due and owing in connection with any such prepayment a Premium with respect to the principal being prepaid. The amount paid to the Lender under Section 12 of the Lease in respect of a Terminated Unit as the Stipulated Loss Value and the Premium paid pursuant to Section 12.1(d) of the Lease shall be distributed in the following order of priority: first, so much of such amount as shall be required to prepay the principal amount of the Notes to be prepaid in respect of such termination together with Premium and interest accrued on such principal amount prepaid to the date of prepayment (including but not limited to interest on overdue principal and, to the extent permitted by applicable law, overdue interest) shall be distributed to the Holders of such Notes ratably, in the proportion that the amount of such prepayment of principal, Premium, and interest under each such Note bears to the aggregate amount of such prepayment of principal, Premium and interest then due on all such Notes; second, so much as shall be required to pay in full any other Secured Indebtedness then due and owing shall be distributed to such Person who shall promptly certify that such Secured Indebtedness is then due and owing ratably, in the proportion that the amount then due to each such Person bears to the aggregate amount of all such Secured Indebtedness then due and owing; and third, the balance, if any, of such amount remaining thereafter shall be distributed to the Owner Trustee.

(b) There shall be no prepayment of the Note except as permitted or contemplated under this Article III of this Loan Agreement.

Section 3.03. **Payment After Loan Event of Default**. All payments received and amounts realized by the Lender as part of the Collateral after a Loan Event of Default shall have occurred and be continuing (including but not limited to any amounts realized by the Lender from the exercise of any remedies pursuant to Section 15 of the Lease, but excluding any payment made by the Owner Trustee pursuant to Section 5.03(a) or Section 5.03(b) and excluding any amounts required to be paid to Lessee under the Lease or under Sections 3.01(c) or 3.01(d) hereof, so long as no Lease Event of Default has occurred and is continuing, as well as all payments or amounts then held or thereafter received by the Lender as part of the Collateral while such Loan Event of Default shall be continuing (except any amounts held by the Lender for prepayment of the Note or portions thereof which became due and payable before the Lender

declared the Lease to be in default and excluding any amounts required to be paid to Lessee under the Lease Sections or under 3.01(c) or 3.01(d) hereof, so long as no Lease Event of Default has occurred and is continuing), shall be distributed forthwith by the Lender in the following order of priority: first, so much of such payments or amounts as shall be required to reimburse the Lender for any tax, expense or other loss (including but not limited to reasonable attorneys' fees and disbursements, which shall include reasonable attorneys' fees and disbursements on appeal) incurred by the Lender (to the extent not previously reimbursed and to the extent incurred in connection with its duties as the Lender) shall be distributed to the Lender; second, if any interest on each Note is due and unpaid, so much of such payments or amounts remaining as shall be required to pay the interest accrued to the date of distribution under the Note shall be distributed to the Holder thereof by the Lender; third, if any principal and Premium on the Note is due and unpaid, whether by maturity, prepayment, acceleration, or otherwise, so much of such payments or amounts remaining as shall be required to pay in full such unpaid principal and Premium, if any, on each Note shall be distributed to the Holder thereof; fourth, so much of such payments as shall be required to pay in full any other Secured Indebtedness shall be distributed to each Person who shall properly certify such Secured Indebtedness is owing, ratably in the proportion that the amount then due to such Person bears to the aggregate amount of all such Secured Indebtedness then due and owing; and fifth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed by Lender to the Owner Trustee.

Section 3.04. **Application of Payments According to Lease Provisions**.

(a) In General. All payments received by the Lender that are not part of the Collateral and, except as otherwise provided in this Article III, any other payments received by the Lender for the application of which is made in the Lease or the Participation Agreement, shall be applied as provided in the Lease or the Participation Agreement, as the case may be.

(b) Excepted Rights in Collateral. Any amounts received by the Lender in payment of any Excepted Rights in Collateral shall be promptly forwarded to the party to whom such payment is owed.

Section 3.05. **Other Payments**. Except as otherwise provided in this Article III, (a) any payments received by the Lender as part of the Collateral for which no provision as to the application thereof is made in the Lease or the Participation Agreement or elsewhere in this Article III, (b) all payments received and amounts realized by the Lender as part of the Collateral under the Lease or otherwise with respect to the Equipment (including but not limited to all amounts realized upon the sale of the Equipment after the termination of the Lease with respect thereto), to the extent received or realized at any time after payment in full of the principal of, Premium, if any, and interest on the Notes and payment and performance of all other Secured Indebtedness has been made or duly provided for, and (c) any other amount remaining as part of the Collateral after payment in full of the principal of, Premium, if any, and interest on the Notes and payment and performance of all other Secured Indebtedness has been made or duly provided for, shall be distributed by the Lender in the following order of priority: first, so much of such payments or amounts as shall be required to reimburse the Lender for any tax, expense, or other loss (including but not limited to reasonable attorneys' fees and disbursements, which shall include reasonable attorneys' fees and disbursements on appeal) incurred by the Lender (to the extent not

previously reimbursed and to the extent incurred in connection with its duties as the Lender) shall be distributed to the Lender, and second, the balance, if any, of such payments or amounts remaining thereafter shall be distributed by Lender to the Owner Trustee.

Section 3.06. **Distribution After Loan Default**. Anything in this Article III to the contrary notwithstanding, but except for payments to Lessee pursuant to the Lease and Sections 3.01(c) and 3.01(d) hereof after a Loan Default, all amounts which are part of the Collateral that, but for the provisions of this Section 3.06, would otherwise be distributed by the Lender to the Owner Trustee or the Lessee shall be held by the Lender as part of the Collateral subject to Section 3.07 hereof.

Section 3.07. **Funds Held By Lender**. In the event any balance of amounts otherwise payable to the Owner Trustee pursuant hereto shall be held by the Lender due to the occurrence and continuance of a Loan Default hereunder, then such balances (including any investment income thereon) shall be held by the Lender as part of the Collateral and invested as hereinafter provided in this Section 3.07 until the earliest to occur of (a) the date on which such Loan Default shall have been cured or waived, (b) the date on which the Notes shall have been accelerated pursuant to Article V hereof, (c) the date on which the Lender shall be stayed from exercising any such remedy (or otherwise be prevented from doing so by law, court order, or judgment), or (d) the 180th day from the commencement of such Loan Default. If the earliest to occur is an event referred to in clause (a) above, such sum so withheld plus earnings thereon shall be distributed to the Owner Trustee. If the earliest to occur is an event referred to in clause (d) above, such sum withheld plus earnings thereon shall be distributed pursuant to Section 3.01(b) hereof, as if such amounts were Supplemental Rent. If the earliest to occur is an event referred to in clause (b) above or an event referred to in clause (c) above which is continuing, such sum so withheld (including any investment income thereon) shall be held as part of the Collateral and applied in the manner provided in Section 3.03 hereof if the Lender is not stayed, or otherwise prevented by law, court order, or judgment, from doing so, or, if so stayed or prevented from doing so, held by the Lender as part of the Collateral and invested as hereinafter provided in this Section 3.07. Funds held by the Lender pursuant to this Section 3.07 plus earnings thereon shall be invested by the Lender as directed from time to time in writing by the Owner Trustee and at the expense and risk of the Owner Trustee in Permitted Investments.

Section 3.08. **Payments to the Owner Trustee**. The Lender will pay all amounts payable by the Lender to the Owner Trustee, as requested by the Owner Trustee at least five (5) Business Days prior to the due date of the payment, (a) unless otherwise requested pursuant to clause (b) below, by transferring the amount to be distributed to the Owner Trustee by wire transfer of immediately available funds to any bank in the United States which is a member of the Federal Reserve System as shall have been specified in such notice, for credit to the account of the Owner Trustee maintained at such bank, or (b) by any other method requested by the Owner Trustee that is acceptable to the Lender. If no such request is made, the Lender, shall make such payment by check payable to the Owner Trustee. The information in Schedule C attached hereto with respect to the Owner Trustee shall meet the requirement of notice with respect to the matters specified therein.

Section 3.09. **Payments to the Lessee**. The Lender will pay all amounts payable by the Lender to the Lessee, as requested by the Lessee at least five (5) Business Days prior to the due date of the payment, (a) unless otherwise requested pursuant to clause (b) below, by transferring the amount to be distributed to the Lessee by wire transfer of immediately available funds to any bank in the United States which is a member of the Federal Reserve System as shall have been specified in such notice, for credit to the account of the Lessee maintained at such bank, or (b) by any other method requested by the Lessee that is acceptable to the Lender. If no such request is made, the Lender, shall make such payment by check payable to the Lessee. The information in Schedule C attached hereto with respect to the Lessee shall meet the requirement of notice with respect to the matters specified therein.

ARTICLE IV

PREPAYMENT OF THE NOTE

Section 4.01. **Applicability of Article**. Prepayment of the Notes, if required or permitted by any provision of Article III or Article V hereof, shall be made in accordance with such provisions and this Article IV.

Section 4.02. **Method of Payment**. If any notice of prepayment shall have been given as provided in Section 3.02 hereof, the Notes (or specified portions thereof) designated for prepayment shall become due and payable on the date and at the place specified in said notice in accordance with Section 2.04 hereof, together with the Premium, if any, and interest accrued on the principal amounts to be prepaid to the prepayment date.

Section 4.03. **Cessation of Interest**. If a Note or specified portion thereof shall have become due and payable as provided in Section 4.04 hereof and the Lender shall have received funds available and in amount sufficient to effect such prepayment (including Premium and interest on overdue amounts, if any), interest shall cease to accrue on the Note or specified portion thereof on and after the later of the date specified for prepayment thereof and the date such funds are received.

ARTICLE V

REMEDIES OF LENDER

Section 5.01. **Occurrence of Owner Default; Acceleration**.

(a) Definition of Owner Default. Each of the following is called an "Owner Default":

(1) (A) The Owner Trustee shall default in respect of any payments required to be made to the Lender under the Notes and such default shall continue for five (5) Business Days or (B) the Owner Trustee shall default in performance of any of its other obligations hereunder, or under the Notes, or shall default in any of its obligations under the

Participation Agreement or the Owner Participant shall default in performance of any of its obligations under the Participation Agreement and any such default shall continue for thirty (30) days after receipt of written notice to the Owner Trustee and the Owner Participant from the Lender or any Holder; or

(2) Any representation or warranty made by the Owner Trustee or the Owner Participant in the Operative Agreements or herein or in any certificate furnished to the Lender in connection herewith or therewith or pursuant hereto or thereto shall prove to be false or incorrect in any material respect when made or given and such incorrectness shall continue to be material and unremedied for a period of thirty (30) days after knowledge thereof by a Responsible Officer of the Owner Trustee or the Owner Participant, as the case may be; or

(3) The Owner Trustee or the Owner Participant shall (A) apply for or consent to the appointment of a trustee, receiver, liquidator, custodian or the like of itself or its property, (B) be unable, or admit in writing the inability, to pay its debts as they mature, (C) make an assignment for the benefit of creditors, (D) commence a voluntary case under the Bankruptcy Code, (E) file a petition or answer seeking reorganization or an agreement with creditors or to take advantage of any insolvency law or other law providing for the relief of debtors or an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or (F) take any corporate action for the purpose of effecting any of the foregoing and provided that in the case of any such event involving the Owner Trustee, no Owner Default shall be deemed to have occurred if, within forty-five (45) days after the earlier of the Lender giving the Owner Participant notice of such event or knowledge thereof by the Owner Participant, a substitute institution shall have been appointed Owner Trustee pursuant to Section 7.01 of the Trust Agreement; or

(4) An involuntary case under a chapter of the Bankruptcy Code, as amended, shall be commenced, or any other proceeding shall be instituted without the application, approval, or consent of the Owner Trustee or the Owner Participant, as applicable, seeking in respect of the Owner Trustee or the Owner Participant, as applicable, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator, custodian, or the like of the Owner Trustee or the Owner Participant, as applicable, or of all or any substantial part of its assets or other like relief or the issuance of a writ of attachment, execution or similar process in a material amount against any material part of the property of the Owner Trustee or the Owner Participant, as applicable, and the Owner Trustee or the Owner Participant, as applicable, shall either fail to contest such proceedings in good faith or such proceedings shall continue for any period of sixty (60) consecutive days and provided that in the case of any such event involving the Owner Trustee, no Owner Default shall be deemed to have occurred if, within forty-five (45) days after the earlier of the Lender giving the Owner Participant notice of such event or knowledge thereof by the Owner Participant, a substitute institution shall have been appointed Owner Trustee pursuant to Section 7.01 of the Trust Agreement.

(b) Remedies Generally. (1) If an Owner Default shall have occurred and be continuing, or (2) if a Lease Event of Default shall have occurred and the Lender shall have declared the Lease in default pursuant to Section 15 of the Lease, then, and in every such case,

subject however, to the Owner Trustee's rights under Section 5.03 hereof, the Lender, as assignee hereunder of the Lease or as secured party hereunder of the property included in the Collateral or otherwise, may exercise any or all of the rights and powers and pursue any and all of the remedies of a secured party under the Uniform Commercial Code as in effect in the applicable jurisdiction and otherwise available to the Lender at law or in equity. Without limiting the generality of the foregoing, the Lender may exercise any one or more of the remedies hereinafter set forth. In the event the Lender has declared the Lease to be in default in accordance with Section 15 of the Lease, the Lender may proceed to foreclose the lien and security interest of this Loan Agreement including, without limitation, taking possession of the Collateral and excluding the Owner Trustee and all Persons claiming under it totally or partly therefrom.

(c) Acceleration. (1) In the event the Lender shall at any time declare the Lease to be in default pursuant to Section 15 of the Lease, or (2) upon the occurrence and continuance of any Owner Default, the Lender may, subject to Section 5.03, by written notice to the Owner Trustee declare the entire principal amount of the Notes to be due and payable, whereupon the unpaid principal amount of all Notes then outstanding with accrued interest thereon shall immediately become due and payable without further act or notice of any kind. If the Lender terminates the Lease pursuant to Section 15 thereof the unpaid principal amount of all Notes then outstanding with accrued interest thereon shall immediately become due and payable without further act or notice of any kind.

(d) Lender May Exercise Rights of Owner Trustee. (1) In the event the Lender shall at any time declare the Lease to be in default pursuant to Section 15 of the Lease, or (2) upon the occurrence and continuance of an Owner Default, subject to Section 5.07 hereof, the Lender may, subject to Section 5.03, proceed to exercise all rights, privileges and remedies of the Owner Trustee under the Lease and may exercise all such rights and remedies either in the name of the Lender or in the name of the Owner Trustee for the use and benefit of the Lender.

(e) Judicial and Equitable Remedies. (1) In the event the Lender shall at any time declare the Lease to be in default pursuant to Section 15 of the Lease, or (2) upon the occurrence and continuance of an Owner Default, the Lender may proceed to protect and enforce this Loan Agreement and the Notes by suit or suits or proceedings, in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure proceedings, or for the appointment of a receiver or receivers for the Collateral or any part thereof, or subject to Section 9.13(b) of the Participation Agreement, for the recovery of judgment for the Secured Indebtedness or for the enforcement of any other proper, legal or equitable remedy available under applicable law.

(f) Notwithstanding the foregoing, or anything contained in this Loan Agreement to the contrary, in the event that any Loan Event of Default results solely from the occurrence of one or more Lease Event of Default, the Lender shall not exercise any remedy under this Loan Agreement unless it is then exercising in good faith one or more remedies under the Lease and, in addition, shall not foreclose the lien and security interest of this Loan Agreement unless (A) the maturity of the Notes has been accelerated pursuant to Section 5.02(c) hereof and (B) the Lease shall have been declared to be in default in accordance with Section 15 thereof and

the Lender is then exercising in good faith one or more remedies under the Lease for the purpose of repossessing the Equipment; provided, however, that the Lender shall not be limited in exercising remedies hereunder if and to the extent the Lender is then prevented by operation of law or stayed by law, court order or judgment from exercising such remedy or remedies against the Lessee; provided, further, that if the Lender is so stayed or prevented by operation of law as a result of a case or proceeding under the Bankruptcy Code in respect of the Lessee's bankruptcy, the Lender will not foreclose the lien of this Loan Agreement (i) until two (2) Business Days following the expiration of the 60-day period provided for in Section 1168 of the Bankruptcy Code for the Lessee's bankruptcy trustee to agree to perform all obligations of the Lessee under the Lease (or such later date to which the expiration of such period shall be extended with the prior written consent of the Lender) or (ii) if, within said period, such trustee agrees to perform all obligations of the Lessee under the Lease and to effect a cure for any outstanding Loan Event of Default as provided in said Section 1168 and such trustee cures all outstanding Loan Events of Default prior to the expiration of such period.

Section 5.02. **Taking Possession of Collateral; Rights of the Lender**. The Owner Trustee agrees, to the full extent that it lawfully may, but subject to the Lessee's rights under Section 5.06 hereof, that, in case (a) the Lender shall have declared the Lease to be in default pursuant to Section 15 of the Lease, or (b) upon the occurrence and continuance of an Owner Default, then, and in every such case, the Lender may, either personally or through its agents and attorneys, take immediate possession of all or any part of the Collateral and for that purpose may pursue the same wherever it may be found and may enter any of the premises of Owner Trustee, with or without notice, demand, process of law or other legal process, and search for, take possession of, remove, keep and store the same, or use or operate or lease the same until sold, and collect and receive all earnings, revenues, rents, issues, proceeds and income of the Collateral and every part thereof, and make alterations thereon or remove and dispose of all or any portion of the Collateral and otherwise exercise any and all of the rights and powers of the Owner Trustee with respect thereof and may exclude the Owner Trustee, the Owner Participant, and all Persons claiming under the Owner trustee or Owner Participant wholly or partly therefrom. The Lender may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements and to the rights of Lessee under Section 5.06 hereof, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, sell and dispose of all of the Collateral, or any part thereof, and all estate, right, title, interest, claim, and demand therein, at one or more public or private sales, as an entirety or otherwise and upon such terms as the Lender may determine. The Lender shall give the Owner Trustee and the Lessee notice of the time and place of such sale in writing at least ten (10) Business Days prior to the date of such sale, or as may be expressly required by law; provided, however, that with respect to any sale of Equipment by Lender pursuant to a Loan Event of Default resulting solely from a Lease Event of Default the notice of sale shall be given to Owner Trustee and the Lessee at least ninety (90) days prior to the date of such sale, provided further, that such ninety (90) day period shall run concurrently with any waiting periods set forth in Section 5.01(b) above with respect to Lessee's bankruptcy.

To the extent that it lawfully may, the Owner Trustee agrees that it will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any applicable present or future stay, extension, or moratorium law which may affect observance

or performance of the provisions of this Loan Agreement or the Notes; nor claim, take, or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Collateral or any portion thereof prior to any sale or sales thereof which may be made under or by virtue of this Article V or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales, claim or exercise any right, under any applicable present or future law or otherwise, to redeem the Collateral or any portion thereof so sold; and the Owner Trustee, to the extent that it lawfully may, expressly waives all benefit or advantage of any such law or laws, and covenants not to invoke or utilize any such law or laws, hinder, delay or impede the exercise of any right or remedy herein permitted to be exercised by the Lender, but to suffer and permit the exercise of every such right or remedy as though no such law or laws were in effect. The Owner Trustee, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Collateral or any other security for the Notes or any thereof marshaled upon any foreclosure. At the request of the Lender, the Owner Trustee shall promptly execute and deliver to the Lender such instruments of title and other documents as the Lender may deem necessary or advisable to enable the Lender or an agent or representative designated by the Lender, at such time or times and place or places as the Lender may specify, to obtain possession of all or any part or any rights in respect of the Collateral to the possession of which the Lender shall at the time be entitled hereunder. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title and interest, claim and demand whatsoever, either at law or in equity, of the Owner Trustee in and to the property sold, and shall be a perpetual bar, both at law and in equity, against the Owner Trustee, its successors and assigns, and against any and all Persons claiming the property sold or any part thereof under, by or through the Owner Trustee, its successors or assigns (subject, however, to the then existing rights, if any, of the Lessee under the Lease).

Section 5.03. **Certain Rights of the Owner Trustee**. If any Loan Default shall have occurred and be continuing, the Owner Trustee shall have the following rights hereunder:

(a) Right to Cure.

(1) In the case of any Loan Default occurring hereunder due to the occurrence of a Lease Default, the Owner Trustee shall, for the applicable period ending five (5) Business Days or thirty (30) calendar days after delivery of notice to the Owner Trustee and the Lessee by the Lender declaring the Lease to be in default pursuant to Section 15 thereof (the "*Five-Day Cure Period*," and the " *Thirty-Day Cure Period*," respectively) have the right, but shall not be obligated, to cause such Loan Default to be cured as follows:

(A) If, as a result of such a Lease Default in respect of the payment of Basic Rent under the Lease, there are insufficient funds to pay any payment of principal of and interest on any Note on the day it becomes due and payable, the Owner Trustee may, but shall not be obligated to, at any time prior to the expiration of the Five-Day Cure Period, pay to the Lender an amount equal to any principal and interest (including but not limited to interest, if any, on overdue payments of principal and to the extent permitted by Applicable Law, interest) then due and payable on the Notes. If the Owner Trustee makes such payment on or before the expiration of the Five-Day Cure Period, such payment shall be deemed to cure any Loan Event of Default which would otherwise have arisen on account of the nonpayment by the

Lessee of Basic Rent under the Lease; provided, however, that such right to cure shall be subject to the following Limitations:

(i) no more than twelve (12) such Lease Events of Default occasioned by consecutive defaults in respect of the payment of Basic Rent may be cured through the exercise of such right; and

(ii) no more than twenty-four (24) Lease Events of Default in respect of the payment of Basic Rent may be cured through the exercise of such right.

(B) In the event of the occurrence of a Loan Default due to the occurrence of a Lease Default with respect to the failure of the Lessee to pay any other amount to perform or observe any covenant, condition, or agreement to be paid, performed, or observed by the Lessee under the Lease or under any other Operative Agreement which can be cured by the payment of money alone (other than the covenants and agreements to pay Basic Rent), the Owner Trustee may, but shall not be obligated to at any time prior to the expiration of the Thirty-Day Cure Period, or, in the case of any default under Section 10 of the Lease, the expiration of the Five-Day Cure Period, cure such Lease Default (and such cure shall be deemed to cure any Loan Default arising therefrom).

(2) The Lender may not exercise any remedy or remedies it is authorized to exercise pursuant to this Loan Agreement prior to the expiration of the Five-Day Cure Period or Thirty-Day Cure Period, as applicable.

(3) Except as hereinafter provided in this Section 5.03(a), the Owner Trustee, upon exercising the right to cure any such Lease Default, shall not obtain any lien, charge, or encumbrance of any kind on the Equipment or any part thereof or any part of the Collateral or on account of costs or expenses incurred in connection with the exercise of such right, nor shall any claims of the Owner Trustee against the Lessee or any other party for the repayment of such costs or expenses impair the prior right and security interest of the Lender in and to the Collateral. Upon such payment by the Owner Trustee of the amount of principal and interest then due and payable on the Notes or performance by the Owner Trustee of such other actions necessary to cure such Lease Default, the Owner Trustee shall be subrogated to the rights of the Lender in respect of such Rent which was overdue at the time of such payment and such interest payable by the Lessee on account of its being overdue, and therefore, if no other Lease Event of Default shall have occurred and be continuing and if all Secured Indebtedness then due has been paid or performed at the time of receipt by the Lender of such Rent, the Owner Trustee shall be entitled to receive such Rent and such interest upon receipt thereof by the Lender and so long as no Loan Event of Default shall have occurred and be continuing shall be entitled to receive all other amounts owed to it by the Lessee in connection with the exercise of the Owner Trustee's right to cure and to initiate and prosecute legal action against the Lessee for the payment of such amounts and for specific performance under the Lease; provided, however, that (A) in the event the principal and interest on the Notes shall have at any time become due and payable pursuant to Section 5.01(c) hereof, such subrogation shall, until all principal of and interest on all Notes and all other Secured Indebtedness shall have been paid or performed in full, be subordinate in full to the rights of the Lender in respect of such payment of Basic Rent and

such interest on such overdue Basic Rent, and (B) the Owner Trustee shall not be entitled to seek to recover any such payment (or any payment in lieu thereof) except pursuant to the foregoing subordinated right of subrogation.

(b) Option to Purchase Notes.

(1) The Owner Trustee may, at its option, purchase all of the Notes upon written notice (the "*Purchase Notice*") to each Holder which notice shall specify the Owner Trustee's election to purchase such Notes on a date thirty (30) days following the giving of such Purchase Notice (the "*Purchase Date*") at a purchase price equal to the sum (i) the unpaid principal amount of the each Note, together with accrued interest thereon to the date of payment, but without any Premium and, (ii) any other Secured Indebtedness then due and payable to the Lender solely in the following circumstances: (w) the occurrence of a Lease Event of Default which [A] continues for six months or more after knowledge thereof by a Responsible Officer of the Lender without the Lender's declaring a Lease Default and exercising its remedies against the Lessee and [B], if waivable solely by the Lender pursuant to Section 5.07 hereof, is not waived by the Lender in writing within ten (10) days after receipt of the Purchase Notice; (x) the occurrence of a Lease Event of Default under Section 15.1(f) or (g) of the Lease, if the Lessee's bankruptcy trustee has not agreed to perform all obligations of the Lessee under the Lease within the 60-day period provided for in Section 1168 of the Bankruptcy Code; (y) the Lender enters into a consent, waiver, or other modification to the Operative Agreements, without the Owner Participant's consent, that Owner Participant reasonably deems prejudicial or burdensome; or (z) the Lender accelerates its indebtedness or exercises any other remedy under this Loan Agreement as a result of a Lease Event of Default or an Event of Default. The giving of each such Purchase Notice shall obligate the Owner Trustee to purchase the Notes on the Purchase Date.

(2) On the Purchase Date, against payment of the specified purchase price to the Lender in immediately available funds, each Holder will forthwith sell, assign, transfer and convey to Owner Trustee or its designee as specified in the Purchase Notice, without recourse or warranty of any kind, all of the right, title and interest of such Holder in and to this Loan Agreement, the Collateral and the Notes held by such Holder, and the Owner Trustee shall assume all of the Lender's obligations thereafter arising under the Participation Agreement; provided, however, that a Holder shall not be required so to sell the Note held by it without indemnity satisfactory to it if it shall have reasonable cause to believe that any such sale violates applicable law. If the Owner Trustee shall so request, the Lender will comply with all the provisions of Section 2.06 hereof to enable a new Note to be issued to the Owner Trustee. All charges and expenses required pursuant to Section 2.08 hereof in connection with the issuance of the new Note shall be paid by the Owner Trustee.

Section 5.04. **Remedies Cumulative**. Each and every right, power, and remedy herein specifically given to the Lender in this Loan Agreement or otherwise existing shall be cumulative and shall be in addition to every other right, power, and remedy herein specifically given or now or hereafter existing 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 Lender, and the exercise or the beginning of the exercise of any right, 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 Lender, in the exercise of any right, power, or remedy, or in the pursuance of any remedy shall impair any such right, power, or remedy or be construed to be a waiver of any Loan Default or Loan Event of Default on the part of the Owner Trustee or the Lessee or to be an acquiescence therein. No waiver by the Lender of any Loan Default or Loan Event of Default shall be deemed to be a waiver of any other or similar, previous, or subsequent Loan Default.

Section 5.05. **Discontinuance of Proceedings**. In case the Lender shall have proceeded to enforce any right, power, or remedy under this Loan Agreement 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 Lender, then and in every such case the Owner Trustee, the Lender, and the Lessee shall be restored to their former positions and rights hereunder with respect to the Collateral, and all rights, remedies, and powers of the Lender shall continue as if no such proceedings had been taken.

Section 5.06. **No Action Contrary to Rights Under Lease**. Notwithstanding any of the provisions of this Loan Agreement to the contrary, neither the Owner Trustee nor the Lender shall take any action contrary to the rights of the Lessee under the Lease and under the Participation Agreement, unless there has occurred a Lease Event of Default and the Lender has declared the Lease to be in default pursuant to Section 15 of the Lease and then only in accordance with the provisions of the Lease. Without limiting the generality of the foregoing, no exercise of any right, remedy or privilege by the Owner Trustee or the Lender pursuant to this Loan Agreement, including, without limitation, the enforcement of remedies by Lender under Article V of this Loan Agreement or otherwise, shall limit, impair, interfere with or otherwise affect the Lease or any of Lessee's rights thereunder, except in accordance with the terms of the Lease.

Section 5.07. **Certain Rights of the Owner Trustee**. Notwithstanding any provision to the contrary in this Loan Agreement, including Sections 1.02, as between the Lender and the Owner Trustee, the Owner Trustee shall have the right (acting pursuant to instructions of the Owner Participant):

(a) to the exclusion of the Lender, so long as no Loan Event of Default shall have occurred and be continuing, to exercise all rights as Lessor with respect to any determination of Fair Market Rental Value or Fair Market Sales Value and with respect to any matter under Sections 14 and 20 of the Lease;

(b) jointly with the Lender, whether or not a Loan Default shall have occurred and be continuing, to exercise all rights of Lessor under Sections 11.3 (with respect to accepting Replacement Unit) and 17 (to the extent permitted by Section 5.03 hereof) of the Lease;

(c) for itself but not with respect to the separate and independent rights of the Lender, whether or not a Loan Default shall have occurred and be continuing, to exercise the rights of Lessor under Sections 9 and 10.1 (with respect to insurance coverage and endorsements) of the Lease and to receive from the Lessee all notices, financial statements, certificates, opinions

of counsel, and other documents and all information that the Lessee is permitted or required to give or furnish to the Lessor pursuant to the Lease;

(d) to the exclusion of the Lender, whether or not a Loan Default shall have occurred and be continuing, (i) all rights of the Owner Trustee to exercise any election or option or make any decision or determination or give or receive any notice, consent, waiver, or approval in respect of, or demand, collect, sue for, or otherwise obtain all amounts due from the Lessee on account of, any Excepted Rights in Collateral and (ii) the right of the Owner Trustee to maintain separate insurance pursuant to Section 10.3 of the Lease;

(e) the right, jointly (but not independently) with the Lender, (1) so long as no Loan Event of Default shall have occurred and be continuing, to consent to or approve or enter into any amendment, modification, or supplement of, or to grant any waiver in respect of, any of the Assigned Agreements and (2) if a Loan Event of Default shall have occurred and be continuing, to consent to or approve or enter into any amendment, modification, or supplement of, or grant any waiver in respect of (A) any provision of the Lease if the effect thereof is to decrease the amount or defer the payment of any Rent, including any amounts payable under Section 2, 11, 15, 20, or 21 of the Lease, (B) Sections 7, 14 and 16 (but only in respect of return condition) of the Lease, (C) Section 10 of the Lease in respect of insurance policies and the proceeds thereof which by the terms of such policies are payable to the Owner Participant or the Owner Trustee and not to the Lender, and (D) any other provision of the Lease if such amendment, modification, supplement, or waiver would impose any additional affirmative obligations upon the Owner Trustee or the Owner Participant, provided, however, that with respect to any other amendment, modification, supplement, or waiver, if a Loan Event of Default shall have occurred and be continuing, the Lender shall, prior to taking such action, consult with the Owner Participant and the Owner Trustee, and provided further that the provisions of clause (2)(A) and (2)(B) of this Section 5.07(e) shall not affect the right of the Lender to approve or consent to any matter or accept any modified performance under the Lease without the consent of the Owner Trustee or the Owner Participant, so long as such consent, approval or acceptance does not purport to bind the Owner Trustee vis a vis the Lessee or purport to constitute, as between the Owner Trustee and the Lessee, a waiver of the rights of the Owner Trustee under the Lease or an amendment or modification of the obligations of the Lessee under the Lease;

(f) So long as no Loan Event of Default shall have occurred and be continuing, the right, jointly with the Lender, to exercise all other rights, powers, privileges, and remedies under any Assigned Agreement or consent to or approve any other matter referred to in any Assigned Documents as requiring or being subject to the consent or approval of the Owner Trustee; and

(g) the right jointly, and subject to the express consent of the Lender, to exercise remedies under Section 15.2 of the Lease as a result of a Lease Event of Default (as defined in the Lease) arising solely from breach by the Lessee of its obligations under the Tax Indemnity Agreement.

Upon consummation of a foreclosure of the lien and security interest of the Loan Agreement on the Collateral, all rights of the Owner Trustee or the Owner Participant (as the case

may be) under this Section 5.07 shall terminate, except insofar as such rights relate to Excepted Rights in Collateral.

ARTICLE VI

DUTIES OF THE OWNER TRUSTEE AND THE LENDER

Section 6.01. **Action Upon Loan Event of Default**. In the event a Responsible Officer of either the Owner Trustee or the Lender shall have knowledge of a Loan Default or Loan Event of Default, such party shall give to the other party, the Owner Participant and the Lessee prompt telephonic and facsimile or telegraphic notice thereof followed by prompt written notice thereof sent by first class registered mail, postage prepaid.

Section 6.02. **Continued Perfection**. The Owner Trustee shall execute and file such deeds, conveyances, financing statements, continuation statements with respect to financing statements, and such other documents relating to the security interest created hereunder in the Collateral as may be specified from time to time in written instructions of the Lender.

Section 6.03. **Release of Units**.

(a) Partial Termination of Lease. Upon termination of the Lease Term for any Unit pursuant to Section 11 of the Lease, and so long as no Lease Event of Default has occurred and is continuing, and after payment in full to the Lender of the Stipulated Loss Value for such Unit, as the case may be, the lien of this Loan Agreement in such Unit shall, without further act, be released and extinguished, and the Lender shall, at the expense of the requesting party, execute and deliver to, or as directed by, the Lessee or the Owner Trustee, as the case may be, such instruments (in due form for recording) as may be reasonably requested and furnished by the Lessee or the Owner Trustee, as the case may be, releasing such Unit from the lien of this Loan Agreement and from the assignment and pledge thereof hereunder.

(b) Payment in Full of Secured Indebtedness. After payment in full of all the principal of, Premium, if any, and interest on the Notes pursuant to the terms thereof and hereof and payment or performance of the other Secured Indebtedness, the lien of this Loan Agreement shall, without further act, be extinguished with respect to the Collateral and the Lender shall, upon the written request and at the expense of the Owner Trustee, execute and deliver to, or as directed by, the Owner Trustee such instruments (in due form for recording) as may be reasonably requested and furnished by the Owner Trustee releasing the Equipment from the lien of this Loan Agreement and releasing the Collateral from the assignment and pledge thereof hereunder.

(c) Replacement. In any case in which an item of equipment is, pursuant to and in accordance with Section 11.7 of the Lease, replaced for a Unit of Equipment as to which an Event of Loss has occurred (1) the lien of this Loan Agreement in such Unit shall, without further act, be released and extinguished, and the Lender shall, at the expense of the Lessee, execute and deliver to, or as directed by, the Lessee such instruments (in due form for recording) as may be reasonably requested and furnished by the Lessee releasing such Unit from the lien of

this Loan Agreement and from the assignment and pledge thereof hereunder, (2) all provisions of this Loan Agreement relating to such damaged or destroyed Unit shall be applicable to the Replacement Unit with the same force and effect as if such Replacement Unit were the same item as the item being replaced for under the Lease, and (3) the Lessee shall execute and the Owner Trustee shall execute and deliver such instruments requested by the Lender to perfect the security interest of the Lender in such Replacement Unit.

(d) Exercise of Purchase Option. If Lessee exercises its right to purchase the Equipment pursuant to Section 20 of the Lease and pays all amounts required to be paid thereunder, the lien of this Loan Agreement with respect to the Equipment shall, without further act, be released and extinguished, and the Lender shall, at the expense of the Lessee, execute and deliver to, or as directed by, the Lessee such instruments (in due form for recording) as may be reasonably requested and furnished by the Lessee releasing such Unit from the lien of this Loan Agreement and from the assignment and pledge thereof hereunder.

(e) Restrictions on Release. Notwithstanding any provision of this Loan Agreement to the contrary, there shall be no release of the lien of this Loan Agreement except as provided in this Section 6.03 and in Sections 3.01(c), 3.01(d) and 10.01 hereof.

[Section 6.04. **Reserved**].

Section 6.05. **No Action Except Under Lease, Loan Agreement or Participation Agreement**. Each of the Owner Trustee and the Lender agrees that it will not manage, control, use, sell, dispose of, or otherwise deal with the Equipment or other property that is part of the Collateral except (a) as required by the terms of the Lease, the Trust Agreement, or the Participation Agreement, and (b) in accordance with the express terms hereof.

Section 6.06. **Operative Agreements**.

(a) Owner Trustee's and Lender's Duties. It is expressly agreed by the Owner Trustee that, anything herein to the contrary notwithstanding, the Owner Trustee shall remain liable under each Operative Agreement (in the capacities as stated therein) to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with and pursuant to the terms and provisions of each such Operative Agreement. Lender shall not have any obligation or liability under any Operative Agreement by reason of the assignment thereof to Lender pursuant hereto, nor shall Lender be required or obligated in any manner to perform or fulfill any of the obligations of the Owner Trustee under or pursuant to any Operative Agreement, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Operative Agreement, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned it or to which it may be entitled at any time or times. The Owner Trustee represents and warrants to the Lender that (1) it has performed all obligations on its part to be performed under the Operative Agreements on or prior to the date hereof, (2) to its knowledge, there has not occurred on or prior to the date hereof any default under any Operative Agreement by any party thereto or any event which, but for the lapse of time or the giving of notice or both, would be such default, and

(3) it has not granted and hereby covenants that it will not grant, so long as this Loan Agreement shall remain in effect, any of its right, title, or interest hereby granted, to anyone other than Lender in its capacity as secured party hereunder.

(b) Restrictions on Owner Trustee's Actions. As long as the Lien of this Loan Agreement remains in effect, the Owner Trustee does hereby agree and covenant that it will not, except as provided in this Loan Agreement and except for any action specifically anticipated and provided for in any of the Assigned Agreements as an action that does not require the consent of the Lender, (1) take any action or omit to take any required action, the taking or omission of which might result in an alteration or impairment of the Assigned Agreements or this Loan Agreement or any of the rights created by any of the Assigned Agreements or this Loan Agreement, (2) enter into any agreement amending or supplementing any of the Assigned Agreements, (3) accept any payment (other than Excepted Rights in Collateral) from the Lessee or any Affiliate thereof in connection with the transactions contemplated hereby, (4) settle or compromise any claim against the Lessee or any Affiliate thereof in connection with the transactions contemplated hereby or arising under the Assigned Agreements other than with respect to Excepted Rights in Collateral, (5) submit or consent to the submission to arbitration of any dispute, difference, or other matter arising under or in respect of any of the Assigned Agreements other than with respect to Excepted Rights in Collateral, (6) give any consents or waivers under the Assigned Agreements, or (7) exercise the remedies of the Lessor under, or terminate or accept a surrender of, the Lease.

(c) Appointment of Lender as Attorney. The Owner Trustee hereby irrevocably appoints the Lender as its attorney in fact so to do, but the Lender shall incur no liability to the Owner Trustee or any third party for failure so to do, any act that the Owner Trustee is obligated by this Loan Agreement to do, and to exercise such rights, powers and remedies as the Owner Trustee might exercise with respect to the Collateral. Anything to the contrary set forth in this Section 6.07(c) notwithstanding, the Lender agrees that it shall exercise any of the rights, powers, or remedies granted to or conferred on it pursuant to this Section 6.07(c) subject to the provisions of Article V of this Loan Agreement.

Section 6.07. **Location of Units; Inspection**. The Owner Trustee shall not remove any Unit out of the continental United States, except as permitted under the Lease. To the extent that the Owner Trustee can grant such right, the Lender shall at all times have the right to enter into and upon any premises wherein any of the Units may be situated for the purpose of locating and inspecting the same, observing its use, or otherwise protecting the security interest created herein.

Section 6.08. **Claims Against the Owner Trustee and the Lender**. Notwithstanding the provisions of Section 2.03 hereof, each of the Owner Trustee and the Lender, severally and not jointly, shall not permit, and shall in its individual capacity, indemnify, save, and hold harmless the Lender and the Owner Participant from and against any reduction in the amount payable out of the Collateral in respect of the amounts payable under the Note, as a result of (a) the willful misconduct or gross negligence of such party or the imposition or (b) the enforcement of any lien or claim (i) against the Collateral by any taxing authority because of the nonpayment by such party of taxes imposed on or measured by the net income of such party in its

individual capacity by such taxing authority or (ii) against such party in its individual capacity not related to the ownership of, or security interest in, the Equipment or the transactions contemplated by the Operative Agreements.

Section 6.09. **Performance by the Lender**. The Lender may take any action permitted under Section 17 of the Lease which it reasonably deems necessary or appropriate for the maintenance, preservation or protection of the Lender's interest in the Collateral. Any amounts so advanced shall be secured by the lien of this Loan Agreement.

ARTICLE VII

THE OWNER TRUSTEE AND THE LENDER

Section 7.01. **Acceptance of Duties**. The Lender agrees to perform its obligations hereunder upon the terms of this Loan Agreement and agrees to receive and disburse all moneys constituting part of the Collateral as set forth herein. The Lender shall not be liable under any circumstances, except for its own (a) willful misconduct or gross negligence with respect to its obligations and (b) ordinary negligence with respect to the handling or disbursement of funds pursuant to Article III hereof, and the Lender shall not be liable for any action or inaction of the Owner Trustee.

Section 7.02. **Absence of Certain Duties**. Except in accordance with written instructions or requests furnished pursuant to Section 6.01, 6.02, or 6.05 hereof and except as otherwise provided herein, the Owner Trustee and the Lender shall have no duty (a) to see to any insurance on the Equipment or to effect or to maintain any such insurance whether or not the Lessee shall be in default with respect thereto, (b) to see to the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, or assessed or levied against, any part of the Collateral, (c) to confirm or verify any financial statements of the Lessee, or (d) to inspect the Equipment at any time or ascertain or inquire as to the performance or observance of any covenants of the Lessee or any Affiliate thereof under the Assigned Agreements. The Owner Trustee agrees to furnish to the Lender 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 and not otherwise received by the Lender. The foregoing sentence shall not be construed to limit or otherwise affect Section 7.03 hereof.

Section 7.03. **No Representation or Warranties as to Equipment or Documents**. THE OWNER TRUSTEE AND THE LENDER MAKE NO WARRANTY AS TO THE VALUE, MERCHANTABILITY, CONDITION, OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OF THE UNITS OR AS TO THEIR TITLE THERETO, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE UNITS WHATSOEVER except that the Owner Trustee hereby represents and warrants to the Lender that on the Closing Date the Owner Trustee shall have received whatever title to such Units that was conveyed to it and that the Equipment shall be free of Lessor's Liens, and the Owner Trustee and the Lender make no representation or warranty as to the validity, legality, or enforceability of this Loan

Agreement, the Notes, or any of the Assigned Agreements or as to the correctness of any statement contained in any thereof, except as specifically set forth herein, therein or in the Participation Agreement.

Section 7.04. **Further Assurances**. The Owner Trustee will promptly and duly execute and deliver to the Lender such instruments, documents, and assurances, conveyances, financing statements, and continuation statements with respect to financing statements and take such further action as the Lender may from time to time reasonably request in order to obtain the full benefits of the grant of the security interest in and lien upon the Collateral, to carry out more effectively the intent and purpose of this Loan Agreement, to establish and protect the rights and remedies created or intended to be created in favor of the Lender and the Note Holders hereunder and to create for the benefit of the Note Holders a valid first and prior perfected security interest in the Collateral and to protect the Owner Trustee's and the Lender's intended interests in the Equipment and the other Collateral in the event that, contrary to the parties' intent and belief, the Lease is held to be a security agreement under the Uniform Commercial Code, including but not limited to the prompt recording or filing of counterparts hereof, or of such other documents with respect hereto, in accordance with the laws of such jurisdictions, as the Lender may from time to time reasonably request.

ARTICLE VIII

RESERVED

ARTICLE IX

SUPPLEMENTS AND AMENDMENTS TO THIS LOAN AGREEMENT AND OTHER DOCUMENTS

Section 9.01. **Conditions and Limitation**. Except as provided in Section 9.02 hereof, at any time and from time to time, the Owner Trustee, at the written request of the Lender and the Owner Participant (but only to the extent Owner Participant's request is required pursuant to Section 5.07 hereof) shall (x) enter into such written amendment of or supplement to any of the Operative Agreements as the parties thereto other than the Owner Trustee may agree to, (y) execute and deliver any consent or approval contemplated by any of the Operative Agreements or (z) execute and deliver any written waiver or modification of the terms of any of the Operative Agreements; provided however, that, except pursuant to Section 2.9 of the Participation Agreement, without the consent of each Holder, no amendment of or supplement to any of the Assigned Agreements, or waiver or modification of the terms of any thereof, shall (1) modify any of the provisions of this Section 9.01 or the definitions of the terms "Basic Term," "Excepted Rights to Payment," "Secured Indebtedness," "Event of Loss," "Reinvestment Rate," "Weighted Average Life to Maturity," "Lease Default," "Loan Default," "Stipulated Loss Value," "Collateral," "Premium," "Owner Default," "Loan Event of Default," and "Lease Event of Default" contained in Annex A to the Participation Agreement, a copy of which is attached hereto as Schedule A, (2) reduce the amount or extend the time of payment of any amount owing or

payable under the Notes, reduce the interest payable on the Notes, or alter or modify the provisions of Article III hereof with respect to the order of priorities in which distributions thereunder shall be made as between the Holder and the Owner Trustee, (3) reduce, modify, or amend any indemnities in favor of the Holder, (4) reduce the amount or extend the time of payment of Rent or Stipulated Loss Value set forth in the Lease, (5) modify, amend, or supplement the Lease or consent to any assignment of the Lease in either case releasing the Lessee from its obligations in respect of the payment of the Rent or Stipulated Loss Value or changing the absolute and unconditional character of such obligations as set forth in Section 2 of the Lease or (6) subject to Section 6.03 and Article X hereof, permit the creation of any lien on the Collateral or any part thereof or deprive the Lender of the lien of this Loan Agreement on the Collateral or release any property from the Collateral, in each case other than pursuant to the express provisions hereof and of the Assigned Agreements.

Section 9.02. Supplements Not Requiring Consent or Request. At any time property is to be added to the Collateral, including without limitation a Replacement Unit, the Owner Trustee and the Lender, without the consent of, or any written request from, any Holder, shall execute a supplement to this Loan Agreement for the sole purpose of adding such property to the Collateral.

Section 9.03. Consent of Lessee. The Lender and the Owner Trustee agree for the benefit of the Lessee that no amendment or supplement to this Loan Agreement shall materially and adversely affect any right or privilege of Lessee without the prior written consent of the Lessee.

ARTICLE X

MISCELLANEOUS

Section 10.01. **Termination of Loan Agreement**. This Loan Agreement and the security interests created hereby shall terminate and this Loan Agreement shall be of no further force or effect upon the earlier of (a) the payment and performance of all of the Secured Indebtedness and the sale or other final disposition by the Lender of the Equipment constituting part of the Collateral and the final distribution by the Lender of all moneys or other property or proceeds constituting part of the Collateral in accordance with the terms of Article III hereof or (b) twenty-one (21) years less one day after the death of the last survivor of all descendants living on the date of execution of this Loan Agreement of the grandparents of David C. Rockefeller provided, however, that if any rights, privileges, or options under this Loan Agreement shall be or become valid under applicable law for a period subsequent to the twenty-first (21st) anniversary of the death of such last survivor (or without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges, and options for a period in gross exceeding the period for which such rights, privileges, and options are hereinabove stated to extend and be valid), then such rights, privileges, or options shall not terminate as foresaid but shall extend to and continue in effect, but only if such nontermination and extension shall then be valid under applicable law, until such time as the same shall, under applicable law, cease to be valid; otherwise this Loan Agreement and the trusts

created hereby shall continue in full force and effect in accordance with the terms hereof. Upon payment and performance in full of the Note, all other Secured Indebtedness, all moneys or other property or proceeds constituting part of the Collateral shall be paid to the Owner Trustee. The Lender shall promptly notify the Lessee of the termination of this Loan Agreement pursuant to this Section 10.01. In connection with such termination, the Lender shall at the expense of the owner of the Equipment file such releases and other documents as may be reasonably requested and furnished by such owner in order to effectuate the purposes of this Section 10.01.

Section 10.02. **No Legal Title to Collateral in Lender**. The Lender shall have no legal title to any part of the Collateral. No transfer, by operation of law or otherwise, of any Note or other right, title, and interest of the Lender in and to the Collateral or hereunder shall operate to terminate this Loan Agreement or entitle any successor or transferee of any Holder or the Owner Trustee to an accounting or to the transfer to it of legal title to any part of the Collateral.

Section 10.03. **Sale of Equipment by the Lender Is Binding**. Any sale or other conveyance of the Equipment or any portion thereof by the Lender made pursuant to the terms of this Loan Agreement or of the Lease shall bind the Owner Trustee and the Lender and shall be effective to transfer or convey all right, title, and interest of the Lender and the Owner Trustee in and to such 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 Lender.

Section 10.04. **Loan Agreement for Benefit of Certain Parties Only**. Nothing in this Loan Agreement, whether express or implied, shall be construed to give to any Person other than the Lender, the Holders and the Owner Trustee any legal or equitable right, remedy, or claim under or in respect of the Note or this Loan Agreement, other than the Lessee to the extent provided herein. To the extent the Lessee has rights in this Loan Agreement, Lessee is a third party beneficiary of this Loan Agreement.

Section 10.05. **Notices**. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon confirmation of receipt thereof, in each case addressed to the Owner Trustee or to the Lender or as the case may be, at its address set forth in Schedule 3 to the Participation Agreement. Any such party may change the address to which notice to such party shall be sent by giving notice of such change to such other parties. For all purposes of this Loan Agreement, in the absence of actual knowledge of any Responsible Officer of the Lender or the Owner Trustee, Lender or the Owner Trustee, as the case may be, shall not be deemed to have knowledge of a Loan Default unless notified in writing thereof by the Owner Participant, the Lender, or the Lessee.

Section 10.06. **Severability**. Any provision of this Loan Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.07. **Separate Counterparts**. This Loan Agreement 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. It shall not be necessary, when making proof of this Loan Agreement, to produce or account for more than one counterpart.

Section 10.08. **Successors and Assignees.** All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Lender and the Owner Trustee and their respective successors and assignees. Any request, notice, direction, consent, waiver, or other instrument or action by the Owner Trustee or the Lender shall bind the successors and assignees of such party.

Section 10.09. **Payments on Business Day**. Notwithstanding any provision hereof to the contrary, if any date upon which a payment is due hereunder is not a Business Day, then except as described in the next sentence, the amount otherwise payable on such date shall be due and payable on the next succeeding Business Day with the same force and effect as though made on such prior date and with no adjustment for interest.

Section 10.10. **Written Changes Only**. No term or provision of this Loan Agreement or the 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 is sought, and any waiver of the terms hereof or of any Note shall be effective only in the specific instance and for the specific purpose given.

Section 10.11. **Headings**. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 10.12. **Governing Law**. This Loan Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their respective officers thereunto duly authorized, as of the day and year first above written.

WILMINGTON TRUST COMPANY,
not individually but solely as Owner Trustee

By: _____
Its Donald G. MacKelcan
Senior Financial Services Officer

NATIONAL CITY LEASING CORPORATION

By: _____
Its

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their respective officers thereunto duly authorized, as of the day and year first above written.

WILMINGTON TRUST COMPANY,
not individually but solely as Owner Trustee

By: _____
Its

NATIONAL CITY LEASING CORPORATION

By: Howard Johnson
Its VP

DC66M260.DOC

STATE OF [illegible])
) SS
COUNTY OF [illegible])

On this [illegible] day of [illegible], before me personally appeared Donald G. MacKelcan, to me personally known, who being by me duly sworn, says that he/she is a Senior Financial Services Officer of [illegible], a [illegible] corporation, that said instrument was signed on behalf of said association by authority of its Board of Directors; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[illegible]
Notary Public
SHARON M. BRENDLE
NOTARY PUBLIC
MY COMMISSION EXPIRES AUGUST 10, 1997

(SEAL)

My commission expires: _____

STATE OF)
) SS
COUNTY OF)

On this _____ day of _____, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he/she is a _____ of the _____, that said instrument was signed on behalf of said association by authority of its Board of Directors; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

_____
Notary Public

(SEAL)

My commission expires: _____

STATE OF)
) SS
COUNTY OF)

On this _____ day of _____, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he/she is a _____ of _____, a _____ corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

(SEAL)

My commission expires: _____

STATE OF Kentucky)
) SS
COUNTY OF Jefferson)

On this 27 day of June, 1994, before me personally appeared Ronald L. Johnson, to me personally known, who being by me duly sworn, says that he/she is a vice-pres. of the _____, that said instrument was signed on behalf of said association by authority of its Board of Directors; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Carrie Clark
Notary Public

(SEAL)

My commission expires: Notary Public, State at Large, KY.
My commission expires Aug. 2, 1995

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EXHIBIT A
TO LOAN AGREEMENT

LOAN AND SECURITY AGREEMENT

SUPPLEMENT NO. _____

LOAN AND SECURITY AGREEMENT SUPPLEMENT NO. ___ (this "*Loan Supplement*") dated _____, 19___, between Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity, but solely as trustee under that certain Trust Agreement dated as of the date hereof (in such capacity, together with each successor in such capacity, the "*Owner Trustee*"), and National City Leasing Corporation (the "*Lender*").

WITNESSETH:

WHEREAS, the Loan and Security Agreement dated as of June 30, 1994 (herein called the "*Loan Agreement*") from the Owner Trustee to the Lender, provides for the execution and delivery of an Loan Supplement thereto substantially in the form hereof, which shall particularly describe the Equipment (such term and other defined terms in the Loan Agreement being herein used with the same meanings) and shall specifically grant a security interest in such Equipment;

NOW, THEREFORE, the Owner Trustee in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowledged, and intending to be legally bound, and in order to secure the equal and pro rata payment of both the principal of, and interest and Premium, if any, upon the Notes at any time outstanding under the Loan Agreement according to their tenor and effect, and to secure the payment and performance of all other Secured Indebtedness and the performance and observance of all the covenants and conditions contained in the Notes, the Loan Agreement and the Participation Agreement, does hereby convey, warrant, mortgage, assign, pledge and grant unto the Lender, its successors and permitted assignees, forever, a security interest in all right, title and interests of the Owner Trustee in the Units of Equipment described in Schedule 1 attached hereto, whether tangible or intangible, wherever located or situated, whether now existing, owned or held or hereafter acquired or arising, excluding the Excepted Rights in Collateral, leased or to be leased under the Lease, together with (a) all Parts whether now owned or hereafter acquired, which becomes the property of Owner Trustee, (b) all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of such Equipment, which becomes the property of Owner Trustee, together with all the rents, issues, income and profits therefrom, and (c) any and all payments or proceeds payable to the Owner Participant or the Owner Trustee with respect to any Unit of Equipment as the result of the sale, lease or other disposition thereof.

TO HAVE AND TO HOLD the aforesaid property unto the Lender, its successors and assigns forever, upon the terms and conditions set forth in the Loan Agreement for the benefit, security and protection of the Holders.

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

Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Loan Supplement may refer to the "Loan and Security Agreement dated as of June 30, 1994" or the "Loan Agreement" without making specific reference to this Loan Supplement, but nevertheless all such references shall be deemed to include this Loan Supplement unless the context shall otherwise require.

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

This Loan Supplement shall be construed in accordance with and governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Loan Supplement to be executed, and the Lender, has caused this Loan Supplement to be executed on its behalf by one of its duly authorized officers, as of the day and year first above written.

WILMINGTON TRUST COMPANY,
not individually but solely as Owner Trustee

By: _____
Its

NATIONAL CITY LEASING CORPORATION

By: _____
Its

Schedule 1 to Loan
Supplement No. ____

DESCRIPTION OF EQUIPMENT

STATE OF)
) SS
COUNTY OF)

On this _____ day of _____, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he/she is a _____ of _____, a _____ corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

(SEAL)

My commission expires: _____

STATE OF)
) SS
COUNTY OF)

On this _____ day of _____, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he/she is a _____ of the _____, that said instrument was signed on behalf of said association by authority of its Board of Directors; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

_____
Notary Public

(SEAL)

My commission expires: _____