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**TRUST INDENTURE AND SECURITY AGREEMENT**

Dated as of January 25, 1995

between

NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, not in its individual  
capacity except as expressly stated herein,  
but solely as Owner Trustee

Owner Trustee,

and

MANUFACTURERS AND TRADERS TRUST COMPANY,  
not in its individual capacity except as expressly  
stated herein, but solely as Indenture Trustee

Indenture Trustee

Railroad Rolling Stock

F-554LB

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This Trust Indenture and Security Agreement  
was Filed with the Interstate Commerce Commission  
Pursuant to 49 U.S.C. Section 1103 on January \_\_, 1995  
at \_\_\_\_\_ .m. Recordation No. \_\_\_\_\_ and deposited  
with the Office of the Registrar General of Canada  
Pursuant to Section 90 of the Railway Act of Canada  
on January \_\_, 1995 at \_\_\_\_\_, \_\_.m.

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ANNEX I - Definitions

## TRUST INDENTURE AND SECURITY AGREEMENT

This TRUST INDENTURE AND SECURITY AGREEMENT dated as of January 25, 1995 ("Indenture") between NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity but solely as owner trustee under the Trust Agreement ("Owner Trustee"), and MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking organization, not in its individual capacity, except as expressly stated herein, but solely as indenture trustee for the Holders of the Notes, together with each successor as such indenture trustee, hereunder, the "Indenture Trustee").

### W I T N E S S E T H:

WHEREAS, all capitalized terms used herein shall have the respective meanings set forth or referred to in Article 1 hereof;

WHEREAS, Owner Participant and NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION have, immediately prior to the execution and delivery of this Indenture entered into the Trust Agreement, whereby among other things NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION has declared a certain trust for the use and benefit of Owner Participant, subject, however, to the Lien of this Indenture, and Owner Trustee is authorized and directed to execute and deliver this Indenture;

WHEREAS, Owner Trustee and Indenture Trustee have entered with NORLEASE, INC., a Delaware corporation ("Owner Participant"), PRINCIPAL MUTUAL LIFE INSURANCE COMPANY ("Loan Participant"), Occidental Petroleum Corporation, a Delaware corporation ("Guarantor"), and Oxy Petrochemicals Inc., a Delaware corporation ("Lessee"), into a Participation Agreement dated as of the date hereof ("Participation Agreement") providing for, among other things (1) the issuance by Guarantor of the Guarantee as security for Lessee's Obligations and (2) the commitment of Owner Trustee to acquire the Leased Equipment and to lease the Leased Equipment to Lessee pursuant to the Lease;

WHEREAS, under the Participation Agreement, Loan Participant commits to purchase from Owner Trustee and Owner Trustee commits to issue and sell to Loan Participant on the Closing Date the Notes to be issued hereunder in an aggregate principal amount as provided in the Participation Agreement but not in excess of Loan Participant's Purchase Commitment subject to the Lease on the Closing Date;

WHEREAS, Owner Trustee desires by this Indenture, among other things (i) to provide for the issuance of Notes by Owner Trustee to Loan Participant to evidence the Owner Trustee's repayment obligations to Loan Participant in respect of the loans made by Loan Participant as its participation in the payment of the Lessor's Cost for the Leased Equipment and (ii) to provide for the assignment, mortgage and pledge by Owner Trustee to Indenture Trustee, as part of the Trust Indenture Estate hereunder, among other things, of certain of Owner Trustee's right, title and interest in and to the Leased Equipment and the Assigned Agreements and certain payments and other amounts received thereunder or in respect thereof in accordance with the terms hereof, as security for, among other things,

Owner Trustee's obligations to the Loan Participants and for the benefit and security of the Loan Participants;

WHEREAS, all things have been done to make the Notes, when executed and delivered by Owner Trustee and authenticated, issued and delivered hereunder, the legal, valid and binding obligations of Owner Trustee; and

WHEREAS, all things necessary to make this Indenture the legal, valid and binding obligation of Owner Trustee, for the uses and purposes herein set forth, in accordance with its terms, have been done and performed and have happened;

### GRANTING CLAUSE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS INDENTURE WITNESSETH: that Owner Trustee, in consideration of the premises and the acceptance of the Notes by Loan Participant, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the prompt payment of the principal of and interest and Make Whole Premium, if any, on the Notes and all other amounts due from time to time hereunder and under any other Operative Agreement by Guarantor, Lessee, Owner Trustee or Owner Participant to Loan Participants, and in order to secure the performance by Owner Trustee and Lessee of their respective covenants contained herein and in the Notes and the Participation Agreement in each case to Loan Participants (such payment, performance and observance by Guarantor, Owner Trustee, Lessee and Owner Participant being hereinafter sometimes collectively called the "Indebtedness"), has specifically Granted and by these presents does hereby specifically Grant unto Indenture Trustee and its successors in the trust hereby created and its assigns forever for the benefit and security of all present and future Holders a security interest in, and a mortgage lien on, all the following described property, whether tangible or intangible, wherever located or situated, whether now owned or hereafter acquired, together with the proceeds thereof (herein called the "Trust Indenture Estate"):

I. All its estate, right, title and interest in, to and under any and all of the following described property:

(a) all Leased Equipment, now owned or hereafter acquired, leased or to be leased to Lessee by Owner Trustee pursuant to the Lease, including but not limited to, the equipment described on Schedule 1 of the Lease together with all substitutions for, and all parts, instruments, accessories, alterations, modifications, replacements, additions and accessions to, the Leased Equipment in which Owner Trustee shall from time to time acquire an interest as provided in the Lease and all records and other documents maintained with respect to the foregoing and together also with all rights of Owner Trustee under, and all representations, warranties and covenants contained in, all bills of sale and other instruments transferring to Owner Trustee title to or other rights and interests with respect to the property described in this subclause (a) together with all the rents, issues, income and profits therefrom;

(b) the Lease including extensions of the term of the Lease, together with all rights, power, privileges, options and other benefits of the Owner Trustee as lessor under the Lease, including, without limitation:

(i) the immediate and continuing right to receive and collect all Rent, Casualty Loss Value and Termination Value payments, insurance proceeds, condemnation awards, issues, profits, revenues, income and other payments, tenders and security of the property subjected to the Lien of this Indenture now or hereafter payable to or receivable by Owner Trustee under the Lease pursuant thereto as well as all rights of Owner Trustee to enforce such rights to receive;

(ii) the right to receive from the Lessee, certificates and other documents and any information which the Lessee is required to give or furnish to the Owner Trustee, and to inspect the Leased Equipment and all records relating thereto;

(iii) the right to give or withhold consents, make all waivers and agreements and to enter into any amendments, modifications or supplements relating to the Lease or any other Assigned Agreement or any provision thereof; and

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

(c) the Guarantee and each other Assigned Agreement, together with all rights, powers, privileges, licenses, easements, options and other benefits of Owner Trustee under each thereof including, without limitation, (x) all amounts or other payments of any kind payable by the obligors thereunder or in respect thereof to Owner Trustee in its capacity as Lessor, (y) the right to make demands, give or withhold consents, make all waivers and agreements, give and receive all notice and other instruments or communications, take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by law or equity, and do any and all other things which Owner Trustee is or may be entitled to do thereunder and (z) any right to restitution from the Lessee or Guarantor in respect of any determination of the invalidity of any such document;

(d) any and all rents, issues, profits, revenues and other income of the property subjected to the Lien of this Indenture and all moneys or securities now or hereafter paid or deposited with Indenture Trustee by or for the account of Owner Trustee pursuant to

the terms of any Operative Agreement and held by Indenture Trustee hereunder, including all payments or proceeds payable to Owner Trustee or Indenture Trustee with respect to any Unit as the result of the sale, lease or other disposition thereof; and

(e) all proceeds of any kind from any of the foregoing described collateral;

provided, that any and all Excepted Payments are hereby excluded from the Trust Indenture Estate and are retained by the Owner Trustee.

II. Any and all moneys and other property including, without limitation, general intangibles, including each amendment or supplement to any and all instruments included in the Trust Indenture Estate, which may from time to time, by delivery to Indenture Trustee or by any instrument, including this Indenture, be subjected to the Lien of this Indenture by Owner Trustee or by anyone on its behalf or with its consent or which may come into the possession or be subject to the control of Indenture Trustee pursuant to this Indenture, or pursuant to any instrument included in the Trust Indenture Estate, it being the intention of Owner Trustee and Indenture Trustee and it being hereby agreed by them that all property in which Owner Trustee acquires an interest that is required to be subjected to the Lien of this Indenture or intended so to be shall forthwith upon the acquisition thereof by Owner Trustee be as fully embraced within the Lien of this Indenture as if such property were now owned by Owner Trustee and were specifically described in this Indenture and Granted hereby or pursuant hereto; and Indenture Trustee is hereby authorized to receive any and all such property as and for additional security for the payment of the Notes and all other sums secured or intended to be secured hereby.

TO HAVE AND TO HOLD all and singular the Trust Indenture Estate, whether now owned or held or hereafter acquired, unto Indenture Trustee, its successors and assigns, forever.

IN TRUST, NEVERTHELESS, with power of sale for the benefit and security of the holders from time to time of the Notes, without any priority of any one Note over any other, except as herein otherwise expressly provided and for the uses and purposes, and subject to the terms and provisions, set forth in this Indenture.

Owner Trustee does hereby constitute Indenture Trustee the true and lawful attorney of Owner Trustee, irrevocably, with full power (in the name of Owner Trustee or otherwise) to ask, require, demand and receive any and all moneys and claims for moneys (in each case including insurance and requisition proceeds but excluding Excepted Payments) due and to become due under or arising out of the Assigned Agreements and all other property which now or hereafter constitutes part of the Trust Indenture Estate, to endorse any checks or other instruments or orders in connection therewith and to file any claims or to take any action or to institute any proceedings which Indenture Trustee may deem to be necessary or advisable in the premises including, without limitation, the express power to execute and deliver bills of sale conveying title to the Leased Equipment to Indenture Trustee on and subject to the terms and conditions of Article V of this Indenture (including without limitation, restrictions with respect to the time powers granted hereunder and remedies

hereunder and under the Lease may be exercised). So long as the Lien of the Indenture shall not have been discharged, under the Lease the Lessee is directed to make all payments of Rent (other than Excepted Payments) and all other amounts which are required to be paid to or deposited with Owner Trustee pursuant to the Lease (other than Excepted Payments) directly to Indenture Trustee at such address or addresses as Indenture Trustee shall specify, for application as provided in this Indenture. Further, Owner Trustee agrees that promptly on receipt thereof, it will transfer to Indenture Trustee any and all monies from time to time received by it constituting part of the Trust Indenture Estate, whether or not expressly referred to in the immediately preceding sentence, but including, without limitation, any thereof constituting a payment under the Lease or the Guarantee (except to the extent constituting Excepted Payments), for distribution by Indenture Trustee pursuant to this Indenture, except that Owner Trustee shall accept for distribution pursuant to the Trust Agreement any amounts distributed to it by Indenture Trustee under this Indenture.

## **ARTICLE I**

### **DEFINITIONS**

SECTION 1.01. Definitions. Unless otherwise defined herein, the capitalized terms used herein shall have the same meanings as defined in Appendix I to the Participation Agreement (a copy of which is attached as Appendix I hereto) and shall include the singular as well as the plural. Section, Article and Exhibit references herein are to Sections, Articles and Exhibits of this Indenture unless otherwise indicated.

## **ARTICLE II**

### **THE NOTES**

SECTION 2.01. Form of Notes. The Notes shall each be substantially in the form set forth below:

[FORM OF NOTE]

**THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAW, AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF ANY SUCH SECURITIES LAWS.**

**NORWEST BANK MINNESOTA,  
NATIONAL ASSOCIATION,  
not in its individual capacity, but solely as Owner  
Trustee under Trust Agreement dated as of  
January 25, 1995**

NO. R-\_\_\_\_\_

New York, New York

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

\_\_\_\_\_, 199\_\_\_\_\_

**8.57% NON-RECOURSE SECURED NOTE DUE JULY 31, 2015  
(PPN )**

NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity but solely as Owner Trustee (referred to herein as "Owner Trustee") under that certain Trust Agreement dated January 25, 1995 between the Owner Participant named therein and Norwest Bank Minnesota, National Association (in its individual capacity only as expressly stated in said Agreement and otherwise solely as Owner Trustee thereunder), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, (i) the principal sum of \$ \_\_\_\_\_ together with interest on the unpaid balance thereof from the date of this Note until paid at the rate of 8.57% per annum (computed on the basis of a 360-day year of twelve 30-day months), said principal and interest being payable on the dates and in the number of installments of interest or interest and principal, as the case may be, as set forth in the Schedule attached hereto, commencing on the second date listed under the column entitled "Date" on such Schedule and ending on the last date on which a principal payment appears in said Schedule, each principal installment to be in the amount calculated by multiplying the original principal amount hereof by the percentage of principal amount set forth under the column entitled "Principal Repayment Percentage" in such Schedule (as it may be amended from time to time pursuant to the terms of Section 2.02(c) of the Indenture and as such amount may be adjusted in accordance with Section 2.02(b) of the Indenture to reflect any partial prepayment hereof); provided, that if any such date is not a Business Day (as such term is defined in the Indenture described below), such payment shall be due and payable on the next Business Day as though made on such scheduled date and provided further, that the last such payment of principal and interest shall in all events be in an amount sufficient to discharge the accrued interest on, and premium, if any, and unpaid principal of this Note and (ii) interest (computed on the basis of a 360-day year of twelve 30-day months) at a rate equal to (a) two percentage points above the interest rate payable in respect of this Note, or (b) if less, the maximum interest rate permitted by law, on any overdue principal, premium and (to the extent permitted by applicable law) overdue interest, from the due date thereof to the date of payment, payable on demand. Accrued interest hereon shall be payable in arrears on each January 31 and July 31 of each year (beginning on the second date listed under the column entitled "Date" on the Schedule attached hereto) and on the date this Note is paid in full.

This Note is one of the Notes to which reference is made in, and which has been issued by Owner Trustee under and pursuant to the terms of, the Trust Indenture and Security Agreement dated as of January 25, 1995, as amended or supplemented from time to time in accordance with its terms (hereinafter called the "Indenture", the defined terms therein,

not otherwise defined herein, being used herein with the same meanings), between Owner Trustee and Indenture Trustee thereunder (hereinafter together with its successors and assigns, called "Indenture Trustee"). Reference is hereby made to the Indenture for a statement of the rights of the Holder of, and the nature and extent of the security for, this Note and of the rights of the Holders of, and the nature and extent of the security for, the other Notes, of certain limitations on the transfer of this Note as set forth in Section 2.06 of the Indenture and of certain rights of Owner Trustee, including the right to purchase the Notes as contemplated by Article V of the Indenture, as well as for a statement of the terms and conditions of the trusts created by the Indenture, to all of which terms and conditions each Holder hereof agrees by its acceptance of this Note.

All payments of principal, Make Whole Premium, if any, and interest to be made by Owner Trustee hereunder shall be made only from the income and proceeds from the Trust Indenture Estate and shall be payable by Indenture Trustee only to the extent that Indenture Trustee shall have sufficient income or proceeds from the Trust Indenture Estate to make such payments to the Holder hereof in accordance with the terms of Article III or Article V of the Indenture; and each Holder hereof, by its acceptance of this Note, agrees that it will look for such payments (except in the case of a purchase of this Note pursuant to Section 5.03(b) of the Indenture) solely to the income and proceeds from the Trust Indenture Estate to the extent available for distribution to the Holder hereof as provided in the Indenture and that neither Owner Trustee, Owner Participant (except in the case of a purchase of this Note pursuant to Section 5.03(b) of the Indenture) nor Indenture Trustee shall be personally liable to the Holder hereof for any such payments. Principal, premium, if any, and interest and other amounts due hereunder shall be payable by 11:00 a.m. New York time on the respective due dates at the office of Indenture Trustee at One M&T Plaza, Buffalo, New York 14203, Attention: Corporate Trust Department or at the office of any successor Indenture Trustee, in immediately available funds. The Indenture provides that Indenture Trustee shall remit all such amounts so received by it to such address and in such manner (by wire transfer of immediately available funds if not otherwise specified) as the holder hereof shall have designated to Indenture Trustee in writing. The Indenture provides that Indenture Trustee shall remit all amounts received by it prior to 11:00 a.m. New York time on the due date thereof by 1:00 p.m. New York time on such day; otherwise, Indenture Trustee shall remit such amounts promptly, but not later than 11:00 a.m. New York time the next succeeding Business Day. In the event that Indenture Trustee shall fail to make any such payment as provided in the immediately foregoing sentence after its receipt of funds at the place and by the time specified above, the Indenture provides that Indenture Trustee, in its individual capacity and not as trustee, hereby agrees to compensate the holder of this Note for its loss of use of funds at an interest rate equal to the Default Interest Rate for the period from the date such amount is due to, but excluding, the date such amount is paid in full; provided, that Indenture Trustee shall not be required to compensate the holder hereof except for a failure by Indenture Trustee to exercise ordinary care with respect to such payment. The Indenture provides that all such payments by Owner Trustee and Indenture Trustee shall be made free and clear of and without reduction for or on account of all wire and other similar charges.

The Notes are issuable as registered Notes in the denominations of \$100,000 or any amount greater than \$100,000. As provided in the Indenture, and subject to certain

limitations therein set forth, the transfer or exchange of this Note may be registered on the register maintained therefor by Indenture Trustee at its office at One M&T Plaza, Buffalo, New York 14203, Attention: Corporate Trust Department.

Prior to the due presentment for registration of transfer of this Note, the Owner Trustee and Indenture Trustee may deem and treat the Person in whose name this Note shall have been issued and registered as the absolute owner and Holder hereof for the purpose of receiving payment of all amounts payable by Owner Trustee with respect to this Note and for all other purposes, and neither Owner Trustee nor Indenture Trustee shall be affected by any notice to the contrary.

Each Holder hereof by its acceptance of this Note agrees that, except as otherwise provided in Article V of the Indenture, each payment received by it hereunder shall be applied, first, to the payment of interest due and payable on this Note to the date of such payment as well as any interest on overdue principal, or to the extent permitted by law, interest and other amounts due hereunder 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). The balance, if any, remaining thereafter shall be returned to Indenture Trustee for disposition pursuant to the Indenture.

This Note is not subject to prepayment or purchase except as contemplated by Articles III, IV and V of the Indenture sometimes with and sometimes without premium. Upon the occurrence of a Default under and as specified in the Indenture, the principal hereof and the interest accrued and unpaid thereon, under certain circumstances specified in the Indenture, may become forthwith due and payable, which acceleration may thereafter be terminated under certain circumstances specified in the Indenture.

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

Unless the certificate of authentication hereon has been executed by or on behalf of Indenture Trustee by manual signature, this Note shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

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

NORWEST BANK MINNESOTA,  
NATIONAL ASSOCIATION,  
not in its individual capacity,  
but solely as Owner Trustee

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

Name:

Title:

**[FORM OF INDENTURE TRUSTEE'S CERTIFICATE OF AUTHENTICATION]**

This is one of the Notes to which reference is made in the within-mentioned Indenture.

MANUFACTURERS AND TRADERS  
TRUST COMPANY,  
not in its individual capacity  
but solely as Indenture Trustee

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

Schedule to Notes

Schedule of Principal Amortization

Date	Principal Repayment Percentage	Interest Percentage	Debt Service Percentage	Balance
25-Jan-95	0.000000000	0.000000000	0.000000000	100.000000000
24-Jul-95	0.000000000	4.2611944683	4.2611944683	100.000000000
31-Jul-95	0.0523343620	0.1666388550	0.2189732170	99.9476656380
31-Jan-96	0.000000000	4.2827575408	4.2827575408	99.9476656380
31-Jul-96	1.5698355250	4.2827575408	5.8525930658	98.3778301130
31-Jan-97	0.000000000	4.2154900225	4.2154900225	98.3778301130
31-Jul-97	1.7043705616	4.2154900225	5.9198605841	96.6734595514
31-Jan-98	0.000000000	4.1424575630	4.1424575630	96.6734595514
31-Jul-98	1.8504349611	4.1424575630	5.9928925241	94.8230245903
31-Jan-99	0.000000000	4.0631666330	4.0631666330	94.8230245903
31-Jul-99	2.0090173406	4.0631666330	6.0721839736	92.8140072497
31-Jan-00	0.000000000	3.9770800649	3.9770800649	92.8140072497
31-Jul-00	2.1811899573	3.9770800649	6.1582700222	90.6328172924
31-Jan-01	0.000000000	3.8836160136	3.8836160136	90.6328172924
31-Jul-01	2.3681180598	3.8836160136	6.2517340735	88.2646992325
31-Jan-02	0.000000000	3.7821422423	3.7821422423	88.2646992325
31-Jul-02	2.5710656026	3.7821422423	6.3532078448	85.6936336300
31-Jan-03	0.000000000	3.6719719659	3.6719719659	85.6936336300
31-Jul-03	2.5418673727	3.6719719659	6.2138393386	83.1517662573
31-Jan-04	0.000000000	3.5630531758	3.5630531758	83.1517662573
31-Jul-04	1.9656522235	3.5630531758	5.5287053994	81.1861140338
31-Jan-05	2.1328339607	3.4788248753	5.6116588359	79.0532800731
31-Jul-05	0.000000000	3.3874331274	3.3874331274	79.0532800731
31-Jan-06	2.2284066806	3.3874331274	5.6158398080	76.8248733925
31-Jul-06	0.000000000	3.2919456062	3.2919456062	76.8248733925
31-Jan-07	6.7525343156	3.2919456062	10.0444799218	70.0723390769
31-Jul-07	0.000000000	3.0025997926	3.0025997926	70.0723390769
31-Jan-08	4.0477113747	3.0025997926	7.0503111673	66.0246277022
31-Jul-08	0.000000000	2.8291554289	2.8291554289	66.0246277022
31-Jan-09	4.3461916355	2.8291554289	7.1753470644	61.6784360667
31-Jul-09	0.000000000	2.6429208649	2.6429208649	61.6784360667
31-Jan-10	7.2170565208	2.6429208649	9.8599773857	54.4613795459
31-Jul-10	0.000000000	2.3336702372	2.3336702372	54.4613795459
31-Jan-11	8.0659128168	2.3336702372	10.3995830540	46.3954667291
31-Jul-11	0.000000000	1.9880459837	1.9880459837	46.3954667291
31-Jan-12	8.7881076863	1.9880459837	10.7761536700	37.6073590428
31-Jul-12	0.000000000	1.6114753677	1.6114753677	37.6073590428
31-Jan-13	9.4830924695	1.6114753677	11.0945678372	28.1242665733
31-Jul-13	0.0879360041	1.2051246769	1.2930606810	28.0363305692
31-Jan-14	9.8932111263	1.2051246769	11.0945678372	18.1431194429
31-Jul-14	0.5156279390	0.7774327419	1.2930606810	17.6274915039
31-Jan-15	10.3392296209	0.755382164	11.0945678372	7.2882618830
31-Jul-15	7.2882618830	0.3123021970	7.6005640800	0.0000000000
31-Jan-16	0.000000000	0.0000000000	0.0000000000	0.0000000000
31-Jul-16	0.000000000	0.0000000000	0.0000000000	0.0000000000
31-Jan-17	0.000000000	0.0000000000	0.0000000000	0.0000000000

**SECTION 2.02. Terms of Notes.** (a) Upon receipt from Indenture Trustee or Loan Participant of immediately available funds in the principal amount of each Note to be issued by Owner Trustee to Loan Participant on the Closing Date, pursuant to the Participation Agreement, Owner Trustee shall deliver to Loan Participant one or more duly executed Notes, dated the Closing Date in an aggregate principal amount equal to the amount of funds delivered by or on behalf of Loan Participant on the Closing Date to finance a portion of the Lessor's Cost of all Units. The Notes executed by Owner Trustee pursuant to this Section 2.02 and Section 2(a) of the Participation Agreement shall be authenticated by Indenture Trustee and thereupon delivered to Loan Participant. The Notes so delivered to Loan Participant on the Closing Date shall be in such denominations (which shall be \$100,000 or any amount greater than \$100,000); and shall be issued and registered in the name of Loan Participant or its nominee as listed on Schedule 1 to the Participation Agreement. Each Note shall bear interest on the principal amount thereof from time to time outstanding from the date thereof until such principal is paid in full at the rate of 8.57% per annum, computed on the basis of a 360-day year of twelve 30-day months and as set forth in the Notes. Accrued interest on each Note shall be payable in arrears on January 31 and July 31 of each year. The aggregate principal amount of Notes shall be due in the number of semi-annual consecutive installments as set forth in the Schedule to the Form of Note (subject to adjustment pursuant to Section 2.02(c) hereof), each such installment to be in an amount calculated by multiplying the original principal amount of such Note by the percentage set forth opposite the relevant payment date on said Schedule; provided, that if any such date is not a Business Day, such payment shall be due and payable on the next Business Day as though made on such scheduled date and provided, further, that the last such payment of principal and interest being due shall in all events be in an amount sufficient to discharge the accrued interest on, and unpaid principal of, the Notes. Each Note shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) at the Default Interest Rate on any part of principal, premium, if any, and (to the extent permitted by applicable law) interest and other amounts due under such Note not paid when due for any period during which the same shall be overdue.

(b) In the event of a prepayment of any Note pursuant to Section 3.02 hereof with respect to any Unit, each future installment of principal on such Note shall be adjusted by multiplying the percentages set forth in the Schedule to such Note by a fraction, the numerator of which shall be Lessor's Cost of all Units which are still subject to the Lease and the denominator of which shall be Lessor's Cost of all Units.

(c) The Owner Trustee and the Indenture Trustee shall execute and deliver a supplement to this Indenture together with any and all other documents necessary to reflect any adjustment to Rent, Casualty Value, Termination Value or Early Purchase Option Price and other items set forth on Schedule A hereto to the extent required pursuant to Section 15 of the Participation Agreement.

**SECTION 2.03. Non-Recourse Obligations; Payments from Trust Indenture Estate Only.** Owner Trustee agrees to pay over to Indenture Trustee for distribution in accordance with this Indenture any and all amounts received by Owner Trustee in respect of indemnity amounts paid by Lessee in respect of Loan Participants pursuant to Section 5 or 7

of the Participation Agreement or by Guarantor in respect of such obligations. All such payments and payments to be made by Owner Trustee or Indenture Trustee in respect of principal of, or Make Whole Premium or interest on, the Notes shall be made only from the income and the proceeds from the Trust Indenture Estate and only to the extent that Indenture Trustee shall have sufficient income or proceeds from the Trust Indenture Estate to make such payments to each Holder of a Note in accordance with Article III or Article V hereof. Each Holder of a Note, by its acceptance of such Note, agrees that it will look for such payments (except in the case of a purchase of Notes pursuant to Section 5.03(b) hereof) solely to the income and proceeds from the Trust Indenture Estate to the extent available for distribution to such Holder as herein provided and that neither Owner Trustee, Owner Participant (except in the case of a purchase pursuant to Section 5.03(b) hereof) or Indenture Trustee shall be personally liable to the Holder of any Note for any such payments.

**SECTION 2.04. Method of Payment.** (a) The principal of, and premium, if any, and interest on each Note and all other amounts due hereunder or under any Note shall be payable on their respective due dates at the office of Indenture Trustee at One M&T Plaza, Buffalo, New York 14203, Attention: Corporate Trust Department, or at the office of any successor Indenture Trustee, in immediately available funds prior to 11:00 a.m. New York time on such date. Indenture Trustee shall remit all such amounts so received by it to such address and in such manner (by wire transfer of immediately available funds if not otherwise specified) to each Holder each Holder shall have designated to Indenture Trustee in writing. Indenture Trustee shall remit all amounts received by it prior to 11:00 a.m. New York time on the due date thereof by 1:00 p.m. New York time on such day; otherwise, Indenture Trustee shall remit such amounts promptly, but not later than 11:00 a.m. New York time the next succeeding Business Day. In the event that Indenture Trustee shall fail to make any such payment to a Holder as provided in the immediately foregoing sentence after its receipt of funds at the place and by the time specified above, Indenture Trustee, in its individual capacity and not as trustee, hereby agrees to compensate such Holder for its loss of use of funds at an interest rate equal to the Default Interest Rate for the period from the date such amount is due to, but excluding, the date such amount is paid in full; provided, that Indenture Trustee shall not be required to compensate such Holder except for a failure by Indenture Trustee to exercise ordinary care with respect to such payment. All such payments by Owner Trustee and Indenture Trustee shall be made free and clear of and without reduction for or on account of all wire and other similar charges.

(b) Each payment of principal and interest due on each Note shall be applied, first, to the payment of interest on such Note due and payable to the date of such payment as in such Note provided, as well as any interest on overdue principal or, to the extent permitted by law, interest and other amounts thereunder, second, to the payment of the principal of such Note then due thereunder and third, the balance, if any, remaining thereafter, to the payment of principal of such Note remaining unpaid (provided, that such Note shall not be subject to prepayment or purchase without the consent of the Holder thereof except as provided in Section 3.02, Article IV and Section 5.03(b) hereof). The information in Schedule 1 to the Participation Agreement with respect to Loan Participant shall meet the requirement of notice with respect to the matters specified therein until such time as such Loan Participant shall notify Indenture Trustee to the contrary as provided above. After final payment with respect

to any Note and upon request, such Note shall be surrendered to Indenture Trustee for cancellation. Owner Trustee and Indenture Trustee may deem and treat the Person in whose name any Note shall have been issued and registered as the absolute owner and Holder of such Note for the purpose of receiving payment of all amounts payable by Owner Trustee with respect to such Note and for all other purposes, and prior to due presentment for registration of transfer of a Note, neither Owner Trustee nor Indenture Trustee shall be affected by any notice to the contrary. All such payments so made to any such Holder or upon its order shall be valid and, to the extent of the sum or sums paid, effective to satisfy and discharge liabilities for moneys due on any such Note. Owner Trustee shall not have any responsibility for the distribution by the Indenture Trustee of any payments to the Holders of the Notes.

**SECTION 2.05. Termination of Interest in Trust Indenture Estate.** A Holder of a Note shall have no further interest in, or other right with respect to, the Trust Indenture Estate and this Indenture shall terminate when and if all obligations of Owner Trustee under this Indenture have been performed and the principal of, and premium, if any, and interest on all Notes held by such Holder and all other sums constituting the Indebtedness shall have been paid in full.

**SECTION 2.06. Registration of Notes; Transfer and Exchange; Legend.** Indenture Trustee shall maintain at its Corporate Trust Office a register (and Indenture Trustee is hereby appointed Note Registrar) for the purpose of registering transfers and exchanges of Notes. A Holder of a Note intending to transfer such Note to a new payee, or a Holder of a Note intending to exchange an outstanding Note for new Notes of authorized denominations, shall surrender such outstanding Note or Notes at the Corporate Trust Office of Indenture Trustee, together with a written request from such Holder for the issuance of a new Note or Notes, specifying the name and address of the new payee or payees and shall otherwise comply with Section 17 of the Participation Agreement. If required by Owner Trustee or Indenture Trustee, the Note or Notes so surrendered shall be duly endorsed, or, in the case of a Note being presented for registration of transfer, be accompanied by a written instrument of transfer in form reasonably satisfactory to Indenture Trustee duly executed by such Holder or its duly authorized attorney. Promptly upon receipt of such documents and the receipt of, in the case of any transferee that is a Non-U.S. Person, a properly completed and currently effective Form 1001 (or such successor form as may be required by the United States Treasury Department), Form 4224 or W-8 or other certificate or form establishing exemption from withholding of United States federal income tax, Indenture Trustee will request that Owner Trustee execute a new Note or Notes (and, subject to the requirements of this Section 2.06, Owner Trustee agrees to comply with such request) and upon such execution, Indenture Trustee will authenticate and deliver such new Note or Notes in the same aggregate original face amount and dated the same date or dates as the Note or Notes surrendered, and in such denomination or denominations and registered in the name of such payee or payees as such Holder may specify by written request; provided, 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 \$100,000 (or such lesser amount as shall equal the entire outstanding principal of all Notes held by such Holder). All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of Owner Trustee

evidencing the same security and benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange. Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal previously made on the old Note or Notes with respect to which such new Note is issued and the date to which interest on such old Note or Notes has been paid. Neither Owner Trustee nor Indenture Trustee shall be required to transfer or exchange any surrendered Note as above provided during the period of five Business Days preceding the due date of any payment on such Note. All Notes issued hereunder shall be endorsed with a legend which shall read substantially as follows: "THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAW, AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF ANY SUCH SECURITIES LAWS".

SECTION 2.07. Mutilated, Destroyed, Lost or Stolen Notes. If any Note shall become mutilated, destroyed, lost or stolen, Indenture Trustee shall, upon the written request of the Holder of such Note, request that Owner Trustee execute a new Note in the same face amount and dated the same date as the Note so mutilated, destroyed, lost or stolen (and, subject to the requirements of this Section 2.07, Owner Trustee agrees to comply with such request), and upon such execution Indenture Trustee shall authenticate and deliver to such Holder, in replacement thereof such replacement Note. If the Note being replaced has become mutilated, such Note shall be surrendered to Indenture Trustee. If the Note being replaced has been destroyed, lost or stolen, the Holder of such Note shall furnish to Indenture Trustee and Owner Trustee such security or indemnity as may be required by them to save each of them harmless and evidence satisfactory to Indenture Trustee and Owner Trustee of the destruction, loss or theft of such Note and the ownership thereof; provided, that if the Holder of such Note is a Loan Participant or a subsequent Holder which is an institutional investor, the written undertaking of such Holder delivered to Indenture Trustee and Owner Trustee in form reasonably satisfactory to each of them shall be sufficient security and indemnity. Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal previously made on the mutilated, destroyed, lost or stolen Note or Notes with respect to which such new Note is issued and the date to which interest on such old Note or Notes 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, Owner Trustee or Indenture Trustee may require from the party requesting such new Note or Notes payment on an after-tax basis of a sum sufficient to reimburse Owner Trustee and Indenture 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 Owner Trustee or Indenture Trustee in connection with such issuance.

SECTION 2.09. Taxes; Withholding. Indenture Trustee agrees, to the extent required by applicable law, to withhold from each payment due hereunder or under any Note to a Non-U.S. Person United States federal withholding taxes at the appropriate rate, and, on a timely basis, to deposit such amounts with an authorized depository and make such reports, filings and other reports in connection therewith, and in the manner, required under applicable law. Subject to Section 2.06 hereof, Indenture Trustee shall promptly (but in no event later

than the date 30 days after the due date of the relevant payment) furnish to each Loan Participant a U.S. Treasury Form 1042S and Form 8109-B (or similar forms as at any relevant time in effect), if applicable, indicating payment in full of any Taxes withheld from any payments by Indenture Trustee to such Loan Participant together with all such other information and documents reasonably requested by such Loan Participant and necessary or appropriate to enable such Person to substantiate a claim for credit or deduction with respect thereto for income tax purposes of any jurisdiction with respect to which such Person is required to file a tax return. Provided that each Loan Participant which is a Non-U.S. Person has furnished to Indenture Trustee a properly completed and currently effective U.S. Treasury Form 1001 (or such successor form as may be required by the United States Treasury Department) during the calendar year in which the payment is made, or in either of the two preceding calendar years, and has not notified Indenture Trustee of the withdrawal of such Form prior to the date of each interest payment, only the reduced amount required by applicable law shall be withheld from payments under the Note held by such Loan Participant in respect of United States federal income tax. Provided further that each Loan Participant which is a Non-U.S. Person has furnished to the Indenture Trustee a properly completed and currently effective U.S. Treasury Form 4224, W-8 or other certificate or form establishing exemption from withholding of United States federal income tax during the calendar year in which the payment is made, and has not notified Indenture Trustee of the withdrawal of such Form or certificate prior to the date of each interest payment, no amount shall be withheld from payments under the Certificates held by such Certificate Holder in respect of United States federal income tax.

### ARTICLE III

#### RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM THE TRUST INDENTURE ESTATE; PREPAYMENTS

SECTION 3.01. Receipt of Funds. Except as otherwise provided in Section 3.02 and Section 3.03 hereof, each payment of Interim Rent, Basic Rent and any portion of Lessor Interim Amount paid by Lessee as Supplemental Rent pursuant to Section 5(c) of the Lease which is part of the Trust Indenture Estate, including those payable with respect to any renewal of the Lease, as well as any interest on overdue installments of such Basic Rent, and any payment received by Indenture Trustee as contemplated by Section 5.03(a)(i) hereof received by Indenture Trustee shall be promptly distributed by Indenture Trustee on the Rental Payment Date on which such Basic Rent is due from Lessee (or as soon thereafter as such payment in immediately available funds shall be received by Indenture Trustee) in the following order of priority; first, so much of such payment as shall be required to pay in full the interest then due under all outstanding Notes as well as any interest on overdue principal, and to the extent permitted by law, interest and other amounts due thereunder, shall be distributed to the Holders ratably, in the proportion that the amount of interest then due under each such Note bears to the aggregate amount of interest then due under all such Notes; second, so much of such payment as shall be required to pay in full the aggregate principal amount then due, whether by maturity, prepayment, acceleration or otherwise, under all outstanding Notes shall be distributed to the Holders of such Notes ratably, in the proportion

that the principal amount then due under each such Note bears to the aggregate principal amount then due under all such Notes; and third, the balance, if any, of such payment remaining thereafter shall be distributed to Owner Trustee.

SECTION 3.02. Prepayments and Purchase. (a) There shall be no prepayment or purchase of any Note except as permitted under this Section 3.02 by Owner Trustee and under Section 5.03(b) hereof by Owner Participant or its nominee.

(b) If (i) a Casualty Occurrence has occurred with respect to a Unit (unless Lessee has replaced such Unit suffering such Casualty Occurrence pursuant to Section 11(c) of the Lease), the Notes or portions thereof shall be prepaid in whole or in part, (ii) a Unit is sold on a Termination Date, retained by Owner Trustee on a Termination Date or the Termination Value (or part thereof) is paid by Lessee on such Termination Date in accordance with the provisions of Section 4 of the Lease, the Notes shall be prepaid in whole or in part, (iii) Lessee exercises the purchase option provided for in Section 6(b)(ii) of the Lease (and does not elect to assume the Notes), the Notes or portions thereof shall be prepaid in whole or in part or (iv) the Lessee shall have elected, in the circumstances contemplated by Section 16(c) or (d) of the Participation Agreement, to cause a Refinancing of the Notes or portions thereof in respect of which such election shall have been made shall be prepaid; and in each such case the principal amount of the Notes so to be prepaid, together with interest accrued thereon, plus any applicable Make Whole Premium and all other amounts due to Loan Participants and Indenture Trustee under the Operative Agreements shall become due and payable (unless any required notices by the Lessee with respect to any events described in clauses (ii) or (iii) shall have been rescinded in accordance with the Lease) and otherwise in accordance with and subject to the provisions of Article IV hereof, on the Casualty Loss Payment Date, Termination Date, Early Purchase Option Date or PT Payment Date, as applicable. In the case of any prepayment pursuant to clauses (i) through (iii) above, such prepayment shall be in an aggregate principal amount equal to the product obtained by multiplying the principal amount of all such Notes outstanding at the time of such prepayment (after deduction for principal then due and paid) by a fraction, the numerator of which shall be Lessor's Cost of such Unit and the denominator of which shall be Lessor's Cost of all Units with respect to such Notes which are included in the Trust Estate (including such Unit assuming, in the case of a Casualty Occurrence, such Casualty Occurrence had not occurred) plus the aggregate amount of interest accrued and unpaid to such date on such principal amount plus, in the case of a prepayment pursuant to clause (ii) or (iii) above, the Make Whole Premium, if any. In the case of a prepayment pursuant to clause (iv) above, any such Note shall be prepaid in an amount equal to the principal amount of such Note required to be prepaid in order to cure the prohibited transaction identified in the PT Notice plus the aggregate amount of interest accrued and unpaid to such date on such principal amount plus, in the case of a prepayment in respect of which an assignee shall be obligated pursuant to Section 19 of the Lease to pay the Make Whole Premium, the Make Whole Premium with respect to such Note or portion thereof. In the event any prepayment amount due under clauses (ii), (iii) or (iv) is not received by Indenture Trustee when and as the same shall be due, such prepayment shall be deemed rescinded without adverse effect hereunder.

(c) The Owner Trustee may prepay all of the Notes in whole, but not in part, on any Business Day. Owner Trustee shall give irrevocable notice in the manner specified in Section 10.05 hereof at least 30 days prior to the date fixed for prepayment specifying it is a notice of prepayment pursuant to this Section 3.02(c) and the date fixed for prepayment. Upon the giving of such notice, the principal amount of the Notes so to be prepaid, together with interest thereon accrued to the date of payment, and the Make Whole Premium, if any, shall become due and payable on the date specified in such notice. On or before the date of such prepayment, Owner Trustee shall deposit with the Indenture Trustee an amount equal to the principal amount of the Notes to be prepaid plus the Make Whole Premium and interest accrued thereon to the date fixed for such prepayment. Any prepayment pursuant to this subsection (c) of Section 3.02 shall be in accordance with and subject to the provisions of Article IV hereof and, except as otherwise provided in Section 3.03 hereof, shall be on the date the funds required for such prepayment are provided to Indenture Trustee.

(d) The amount paid to Indenture Trustee in respect of any prepayment of Notes under this Section 3.02 shall be distributed in the following order of priority: so much of such payment as shall be required first, to pay the Make Whole Premium, if any, with respect to such Notes required pursuant to Section 3.02(b) hereof, second, to pay interest accrued on the principal amount prepaid to the date of prepayment, third, to prepay the aggregate principal amount of the Notes being prepaid shall be applied to such prepayment on the date fixed for such prepayment and fourth, the balance, if any, of such payment remaining after such prepayment or provision therefor shall be distributed on the date fixed for such prepayment to Owner Trustee.

(e) In the event that in connection with the purchase by Lessee of all Units pursuant to Section 6(b)(ii) of the Lease, Lessee shall have elected by written notice to Owner Trustee to assume the rights and obligations of Owner Trustee under this Indenture and the Notes, Owner Trustee shall so notify Indenture Trustee and each Holder and, so long as no Incipient Default or Event of Default described in Section 6(b)(i)-(iii) of the Lease shall have occurred and be continuing on the purchase date and date of assumption (the "Assumption Date") specified in such notice, which date shall be not less than 30 nor more than 60 days after the date of such notice, upon delivery to Indenture Trustee of the documents referred to below, the Lessee shall assume all of the rights and obligations of the Owner Trustee hereunder and under the Notes then outstanding:

(i) (A) an instrument of assumption (the "Assumption Agreement") pursuant to which Lessee irrevocably and unconditionally assumes and undertakes, with full recourse to the Lessee, Owner Trustee's obligations (the "Assumed Obligations") with respect to principal, interest and all other amounts (including, without limitation, Make Whole Premium) payable to the Holders, or Indenture Trustee under the Notes, this Indenture and the Participation Agreement and which incorporates therein events of default substantially similar in scope and effect to those set forth in the Lease (and eliminating those no longer relevant with respect to the Owner Participant) and covenants substantially similar to the covenants of the Lessee under the Lease, (B) an agreement (the "Confirmation") in form and substance satisfactory to the Holders under which confirms its obligations under the Guarantee after

giving effect to the transactions contemplated hereby and expressly acknowledges and agrees that each of the Assumed Obligations constitutes a Guaranteed Obligation for all purposes of the Guarantee, and (C) if requested by a Majority in Interest of Loan Participants, Lessee shall also issue, and Indenture Trustee shall also authenticate, new Notes evidencing such assumption and the full recourse nature of Lessee's obligations thereunder;

(ii) a supplement to this Indenture and/or such other instruments and documents (including, without limitation, Uniform Commercial Code financing statements covering all of the security interests created by or pursuant to this Indenture that are not covered by the recording system established by the Interstate Commerce Commission and Railway Act of Canada, and in all other places necessary or, in the reasonable opinion of the Holders, advisable under the Uniform Commercial Code or, if applicable, the comparable laws of such other jurisdiction;

(iii) a bill of sale evidencing that as of the Assumption Date the Lessee has good title to all Units free and clear of all Liens other than the Lien of, and the security interest created by, this Indenture and other Permitted Liens (other than Lessor's Liens);

(iv) a certificate from Lessee to the effect that after giving effect to the Assumption Agreement no Default or Potential Default shall have occurred and be continuing;

(v) an opinion of internal counsel of Lessee in form and substance reasonably satisfactory to the Holders and Indenture Trustee, addressed to the Holders and Indenture Trustee and dated the Assumption Date, with customary qualifications, to the effect that (A) the execution, delivery and performance of the Assumption Agreement, the supplement to this Indenture referred to in paragraph (ii) of this Section 3.02(d), and instruments and documents executed and delivered by the Lessee in connection with the assumption of the obligations contemplated by this Section 3.02(d) or otherwise necessary for the continued perfection of the security interests referred to in paragraph (ii) of this Section 3.02(e) have, in each instance, been duly authorized by all necessary action; (B) the Assumption Agreement, such supplement to this Indenture, all such other documents and instruments referred to above are legal, valid and binding obligations of Lessee enforceable in accordance with their terms (with customary qualifications); (C) the Assumption Agreement, such supplement, and all such other documents and instruments referred to above do not and will not contravene any provision of Lessee's articles of incorporation or by-laws or any law or regulation applicable to Lessee or any agreement, mortgage or instrument to which Lessee is a party or by which Lessee is bound; (D) after giving effect to the transactions contemplated hereby, the Lien of this Indenture continues to constitute a valid and (to the extent not covered by the opinion of counsel referred to in clause (x) below) duly perfected Lien on the Units subject to no prior Liens of record and (E) to such further effect with respect to such other matters (including, without limitation, any matters included in the opinion delivered with respect to Lessee pursuant to the

Participation Agreement, to the extent such matters are relevant at the time of the assumption contemplated by this Section 3.02(e) as the Holders may reasonably request);

(vi) opinions of counsel reasonably satisfactory to the Holders and Indenture Trustee in form and substance reasonably satisfactory to the Holders and Indenture Trustee, addressed to Holders and Indenture Trustee and dated the Assumption Date, to the effect that (A) all documents executed in connection with the assumption of the obligations contemplated by this Section 3.02 (e) and required to be filed with the ICC and Registrar of Canada (and in Mexico, to the extent the proviso of Section 9(d) of the Lease shall no longer be operative) are in proper form, and all steps necessary have been taken, for the Lien of this Indenture with respect to the Units to continue to be duly perfected and (B) to such further effect with respect to such other matters (including, without limitation, any matters included in the opinions delivered pursuant to the Participation Agreement with respect to the filings with the ICC and Registrar of Canada on the Closing Date, to the extent such matters are relevant at the time of the assumption contemplated by this Section 3.02(d)) as the Holders may reasonably request;

(vii) an opinion of internal counsel of Guarantor reasonably satisfactory to the Holders and Indenture Trustee in form and substance reasonably satisfactory to the Holders and the Indenture Trustee, addressed to the Holders and Indenture Trustee and dated the Assumption Date, with customary qualifications, to the effect that (i) the execution, delivery and performance of the Confirmation has been duly authorized by all necessary action, (ii) the Confirmation constitutes a legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, and (iii) to such further effect with respect to such other matters as the Holders may reasonably request; and

(viii) such other documentation or evidence reasonably requested by the Majority in Interest of Loan Participants (in form and substance reasonably satisfactory to the Holders and Indenture Trustee) to amend the Operative Agreements (including, without limitation, the Guarantee, to give effect to the foregoing and in order to establish the authority of Lessee, Guarantor, Owner Trustee, Indenture Trustee and the Owner Participant to consummate the transactions contemplated by the assumption and the taking of all corporate proceedings in connection therewith.

Neither Lessee nor any other Person may assume the Notes except pursuant to and in accordance with the provisions of this Section 3.02(e). Lessee shall pay all reasonable costs, expenses (including counsel's fees and disbursements) and Taxes of Owner Trustee, Owner Participant, Indenture Trustee and the Holders in connection with the consummation of the transactions contemplated by this Section.

**SECTION 3.03. Payment After Default.** All payments received and amounts realized by Indenture Trustee as part of the Trust Indenture Estate after a Default shall have occurred and be continuing and the Notes have been accelerated pursuant to Section 5.01(b)

hereof, including any amounts realized by Indenture Trustee from the exercise of any remedies pursuant to Section 18 of the Lease, as well as all payments or amounts then held by Indenture Trustee as part of the Trust Indenture Estate, but excluding any amounts held by Indenture Trustee for prepayment of Notes or portions thereof which became due and payable before Indenture Trustee declared the Lease to be in default, shall be distributed forthwith by Indenture Trustee in the following order of priority: first, so much of such payments or amounts as shall be required to reimburse Indenture Trustee for any tax, expense or other loss (including reasonable attorneys' fees and disbursements) incurred by Indenture Trustee and to pay the reasonable remuneration of Indenture Trustee shall be distributed to Indenture Trustee; second, so much of such payments or amounts as shall be required to reimburse any Holders of Notes for any expenses incurred pursuant to an indemnity; provided, that in accordance with Section 6.04 hereof shall be distributed to such Holders ratably, in proportion to the expenses incurred by each such Holder; third, so much of such payments or amounts remaining as shall be required to pay in full any other Indebtedness (other than that described in "fourth" and "fifth" below); fourth, so much of such payments or amounts remaining as shall be required to pay the interest accrued to the date of distribution under all outstanding Notes shall be distributed to the Holders of such Notes ratably, in the proportion that the amount of interest so accrued under each such Note bears to the aggregate amount of interest so accrued under all such Notes; fifth, so much of such payments or amounts remaining as shall be required to pay in full the aggregate unpaid principal amount of all outstanding Notes shall be distributed to the Holders of such Notes ratably, in the proportion that the unpaid principal amount of each such Note bears to the aggregate unpaid principal amount of all such Notes; and sixth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to Owner Trustee.

**SECTION 3.04. Application of Payments According to Lease Provisions.** All Payments received by Indenture Trustee which are not part of the Trust Indenture Estate and, except as otherwise provided in Section 3.03 hereof, any other payments received by Indenture Trustee, provision for the application of which is made in the Lease or the Participation Agreement, shall (except as provided or limited in the next sentence) be applied as provided in the Lease or the Participation Agreement, as the case may be. Indenture Trustee shall distribute promptly upon receipt any indemnity or other payment received by it from Owner Trustee or Lessee in respect of the Indenture Trustee in its individual capacity or any Holder pursuant to Section 5 or 7 of the Participation Agreement directly to the Person entitled thereto. Any payment of Supplemental Rent received by Owner Trustee or Indenture Trustee pursuant to the last paragraph of Section 5.03(a) hereof shall so long as no Default or Incipient Default in respect of the type of obligations described in Section 17(a) of the Lease or in respect of the events or circumstances described in 17(e) or (f) of the Lease shall have occurred and be continuing, and except to the extent applied as provided in Section 3.03 hereof, be promptly distributed to Owner Participant.

**SECTION 3.05. Other Payments; Application of Payments under Guarantee.** Except as otherwise provided in Section 3.03 and Section 3.04 hereof, (a) any payments received by Indenture Trustee as part of the Trust Indenture Estate 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 Indenture Trustee as part of

the Trust Indenture Estate under the Lease or otherwise with respect to the Leased Equipment, including, without limitation, all amounts realized upon the sale of the Leased 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 and interest on all Notes and all other Indebtedness has been made or duly provided for, and (c) any other amount remaining as part of the Trust Indenture Estate after payment in full of the principal of and interest on all Notes and all other Indebtedness has been made or duly provided for, shall be distributed by Indenture Trustee in the following order of priority, first, in the manner provided in clause "first" of Section 3.03 hereof; and second, in the manner provided in clause "second" of Section 3.03 hereof; and third, in the manner provided in clause "sixth" of Section 3.03 hereof. In the event that any amounts which are not Excepted Payments are received by Owner Trustee under the Lease directly from Lessee while the Indenture is in force, Owner Trustee shall forthwith upon obtaining knowledge of such receipt transfer such amounts to Indenture Trustee not later than the first Business Day following such receipt.

All payments received by Indenture Trustee pursuant to the Guarantee shall be distributed forthwith by Indenture Trustee in the same order of priority, and in the same manner, as it would have been required under the terms of this Indenture to distribute the payment in respect of which such payment under the Guarantee was received.

SECTION 3.06. Distribution After Default. Anything in this Article III to the contrary notwithstanding, after Indenture Trustee shall have knowledge of a Default or an Incipient Default with respect to the obligations referred to in Section 17(a) of the Lease or the events or conditions described in Section 17(e) or (f) of the Lease (each, a "Fundamental Default"), all amounts which are part of the Trust Indenture Estate which, but for the provisions of this Section 3.06, would otherwise be distributed by Indenture Trustee to Owner Trustee shall be held by Indenture Trustee as part of the Trust Indenture Estate, subject to Section 3.07 hereof, and, if such Default or Fundamental Default shall cease to be continuing prior to the time such amounts are distributed pursuant to Section 3.03 hereof, such amounts shall be distributed in accordance with Section 3.01 or 3.02, as applicable.

SECTION 3.07. Funds Held by Indenture Trustee. In the event (a) any balance of amounts otherwise payable to Owner Trustee pursuant hereto shall be held by Indenture Trustee due to a Default or Fundamental Default, or (b) any such balances shall be withheld from distribution to Owner Trustee due to the occurrence and continuance of a Default or Fundamental Default hereunder, but Indenture Trustee shall not have proceeded to exercise any of its remedies pursuant to Article V hereof other than the retention of such balances, then in either such case such balances (including any investment income thereon) shall be held by Indenture Trustee as part of the Trust Indenture Estate and invested as hereinafter in this Section 3.07; provided, that until the earliest to occur of (i) the date on which Indenture Trustee shall have received notice that all Fundamental Defaults or Defaults shall have been cured or waived, (ii) Sections 3.02(b) or 3.03 hereof shall be applicable (in which case the application prescribed in said sections shall be followed) or (iii) the 180th day from the commencement of such withholding. Upon the occurrence of an event referred to in clause (ii) above, such sum so withheld plus earnings thereon shall be distributed to Owner Trustee. Funds held by Indenture Trustee pursuant to the first sentence of this Section 3.07

plus earnings thereon shall be invested by Indenture Trustee as directed from time to time in writing by Owner Trustee (at the direction of the Owner Participant) and at the expense and risk of the Trust Estate but only in Permitted Investments.

SECTION 3.08. Payments to Owner Trustee. Subject to Section 3.06 and 3.07, all amounts payable to the Owner Trustee hereunder shall be paid to it, when and to the extent received in immediately available funds, by wire transfer of funds of the type received by the Indenture Trustee to the account of the Owner Trustee specified in Schedule 1 to the Participation Agreement or to such other account or accounts as shall be designated by notice from the Owner Trustee to the Indenture Trustee from time to time. The obligations of the Indenture Trustee set forth in this Section shall be obligations of the Indenture Trustee in its individual capacity.

## ARTICLE IV

### MANNER OF PREPAYMENT OF NOTES

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

SECTION 4.02. Allocation of Partial Prepayments. If less than all of the outstanding Notes are to be prepaid pursuant to clause (i), (ii) or (iii) of Section 3.02(b) hereof, Indenture Trustee shall allocate the principal amount so to be prepaid among all outstanding Notes in proportion to the respective unpaid principal amounts thereof.

SECTION 4.03. Notice of Prepayment; Calculation of Make Whole Premium. Promptly and in any event within five days after its receipt of any of the notices with respect to events giving rise to prepayment of the Notes pursuant to Section 3.02 hereof and providing all of the information required by the next sentence of this Section 4.03, Indenture Trustee shall give notice of prepayment to each Holder of a Note to be prepaid in whole or in part specifying the date of prepayment, which date shall be the date specified on such notice received by Indenture Trustee. Such notices shall (a) specify the provisions of this Indenture pursuant to which such prepayment is to be made and the aggregate amount of such prepayment, (b) if less than all outstanding Notes are to be prepaid, specify the principal amount and number of each Note to be prepaid, (c) designate the date for such prepayment in accordance with this Section 4.03, and (d) state that on said date there will become and be due and payable upon each such Note, at the Corporate Trust Office of Indenture Trustee, the amount of the principal thereof, so specified, together with accrued interest on such prepaid principal amount to said date, and that from and after said date interest on such specified amount shall cease to accrue, except as provided in the last sentence of Section 2.02(a) hereof. Promptly and in any event within five days after its receipt of any rescission of notice of termination or purchase given under the Lease, Indenture Trustee shall give notice of such to each Holder.

Concurrently with any notice (given under the Lease or hereunder) of any event giving rise to any prepayment made pursuant to Section 3.02(b) in respect of which a Make Whole Premium is due, Owner Trustee shall deliver to Indenture Trustee a certificate setting forth computations in reasonable detail showing the manner of calculation of any such Make Whole Premium as if the Notes had been prepaid on the date of such notice. On the day two Business Days prior to such prepayment, Owner Trustee shall deliver a certificate to Indenture Trustee setting forth the calculation of the Make Whole Premium to be paid on the relevant payment date and attaching a copy of the source of the market data by reference to which the Treasure Yield was determined in connection with such computations.

**SECTION 4.04. Method of Payment.** Upon the relevant Casualty Loss Payment Date, Termination Date, Early Purchase Option Date, PT Payment Date (or if any notice of prepayment shall have been given as provided in Section 3.02(c) or Section 5.03 hereof on the date specified in such notice), the Notes (or specified portions thereof) designated for prepayment shall become due and payable on such relevant date and at the place specified in accordance with Section 2.04 hereof, together with interest accrued on the principal amounts to be prepaid to the prepayment date and any Make Whole Premium required to be paid with respect thereto pursuant to Section 3.02(b) hereof. In connection therewith immediately available funds shall be deposited by Owner Trustee in the account of Indenture Trustee at the time and place and otherwise as provided in Section 2.04 hereof. In the event any prepayment amount due under clauses (ii), (iii) or (iv) of Section 3.02(b) hereof is not received by Indenture Trustee when and as the same shall be due prepayment shall be deemed rescinded without adverse effect hereunder.

**SECTION 4.05. Cessation of Interest.** If any Note or specified portion thereof shall have become due and payable as provided in Section 4.04 hereof and Indenture Trustee shall have received funds available and in amount sufficient to effect such prepayment, interest shall cease to accrue on such Note or specified portion thereof on and after the date specified for prepayment thereof, except as provided in the last sentence of Section 2.02(a) hereof.

## **ARTICLE V**

### **COVENANTS OF OWNER TRUSTEE; DEFAULTS; REMEDIES OF INDENTURE TRUSTEE**

**SECTION 5.01. Covenants of Owner Trustee and Occurrence of Default.**

(a) Owner Trustee hereby covenants and agrees as follows:

(i) subject to Section 2.03 hereof, Owner Trustee will duly and punctually pay the principal of, Make Whole Premium, if any, and interest on and other amounts due under the Notes and hereunder in accordance with the terms of the Notes and this Indenture;

(ii) in the event a Responsible Officer in the Corporate Trust Department of Owner Trustee shall have actual knowledge of a Default or Potential Default or Casualty Loss, Owner Trustee will give prompt written notice of such event to Indenture Trustee, Lessee, Owner Participant and each Holder;

(iii) Owner Trustee will furnish to Indenture Trustee, promptly upon receipt thereof, true and correct duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to Owner Trustee under Lease, to the extent that the same shall not have been required to be furnished to Indenture Trustee pursuant to the Lease;

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

(v) Owner Trustee will not enter into any business or other activity other than the business of owning the Leased Equipment, the leasing thereof to Lessee and the carrying out of the transactions contemplated hereby, the Lease, the Participation Agreement, the Trust Agreement and the other Operative Agreements; and

(vi) Owner Trustee agrees it will not take any action to subject the Trust Estate or the trust established by the Trust Agreement, as debtor, to the reorganization or liquidation provisions of the Bankruptcy Code, or any other applicable bankruptcy or insolvency statute.

(b) The following events shall constitute "Defaults" (whatever the reason and whether voluntary or involuntary or as a result of or effected by operation of law or pursuant to or in compliance with any judgment, decrees or order of any court or any rule, order, regulation of any administrative or governmental body):

(i) an Event of Default under Lease (other than in respect of any Excepted Payments, unless Owner Participant shall in its sole discretion direct in writing that such failure constitutes a Default);

(ii) the failure of Owner Trustee to pay when due scheduled payments of principal and interest on any Note or prepayments of principal, interest and Make Whole Premium, if any, on any Note and such failure shall continue unremedied for a period of 10 days or the failure of the Owner Trustee to pay when due any other amount due and payable under any Note or any Operative Agreement and such default shall continue unremedied for a period of 30 days after notice thereof, unless such failure results from the failure of Lessee to make any payments pursuant to the Lease;

(iii) any Lessor Lien required to be discharged by Owner Participant or Owner Trustee or Norwest under this Agreement or the Participation Agreement shall remain undischarged for a period of 45 days after the existence of the same shall have first become known to such Person;

(iv) any failure of Owner Trustee to observe its covenants or agreements in Section 6.07 hereof or (a)(v) or (a)(vi) of this Section 5.01;

(v) any failure by Owner Trustee or Owner Participant in the due observance or performance of any other covenant or agreement to be observed or performed by it under the Notes or hereunder or to be performed by it for the benefit of the Loan Participants under the Participation Agreement, and any such default shall continue unremedied for 30 days after notice thereof has been given to Owner Trustee or Owner Participant, as the case may be;

(vi) any representation or warranty made by Owner Trustee or Owner Participant in the Participation Agreement or herein or in any certificate furnished to any Loan Participant in connection herewith or therewith or pursuant hereto or thereto shall prove to be incorrect or misleading in any material respect when made; and if such misrepresentation is capable of being corrected and if such correction is being sought diligently, such misrepresentation shall not have been corrected as of a day within 30 calendar days following notice thereof being given to Owner Trustee and Owner Participant;

(vii) either Trust Estate or Owner Trustee (with respect thereto) or Owner Participant shall (A) apply for or consent to the appointment of a trustee, receiver, liquidator, custodian or similar official of itself or for all or any substantial part of its respective 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 a chapter of the Bankruptcy Code or other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, (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; or

(viii) an involuntary case under a chapter of the Bankruptcy Reform Act of 1978, as amended, shall be commenced, or any other proceeding shall be instituted without the application, approval or consent of Trust Estate or Owner Trustee (with respect thereto) or Owner Participant, as applicable, seeking in respect of Trust Estate, Owner Trustee or 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 similar official of Trust Estate, Owner Trustee or Owner Participant, as applicable, or of all or a substantial part of their respective assets or other like relief or the issuance of a writ of

attachment, execution or similar process in a material amount against the property of Trust Estate, Owner Trustee or Owner Participant, as applicable, and such proceedings shall continue unstayed and in effect for any period of 60 consecutive days.

(c) If a Default, other than a Default described in Section 5.01(b)(vii) or (viii) hereof or an Event of Default, other than an Event of Default described in Section 17(e) or (f) of the Lease shall have occurred and be continuing then, at the request of a Majority of Interest of Loan Participants and upon written notice of acceleration from Indenture Trustee to Owner Trustee, the unpaid principal amount of the Notes then outstanding together with accrued and unpaid interest thereon, shall immediately become due and payable. If a Default described in Section 5.01(b)(vii) or (viii) hereof or of an Event of Default described in Section 17(e) or (f) of the Lease shall have occurred and be continuing then, without further action or notice of any kind, the unpaid principal amount of the Notes then outstanding together with accrued and unpaid interest thereon, shall immediately become due and payable.

**SECTION 5.02. Remedies.** (a) If a Default shall have occurred and be continuing and so long as the same shall be continuing unremedied, then and in every such case the Indenture Trustee (1) may, subject to Sections 5.03 and 5.06 hereof and to the extent consistent with this Section 5.02, exercise any or all of the rights and powers and pursue any and all of the remedies pursuant to this Section 5.02, (2) shall have and may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code and, (3) if such Event of Default is an Event of Default referred to in Section 5.01(b)(i) hereof and any applicable cure period referred to in Section 5.03 shall have lapsed, shall have any and all of the remedies pursuant to Section 18 of the Lease and may take possession of all or any part of the properties covered or intended to be covered by the Lien and security interest created hereby or pursuant hereto (but, in the case of the Leased Equipment, only as permitted by Section 18 of the Lease) and may exclude Owner Participant, Owner Trustee and Lessee and all Persons claiming under any of them wholly or partly therefrom. Without limiting any of the foregoing, it is understood and agreed that Indenture Trustee may exercise any right of sale of any or all of the Leased Equipment available to it, even though it shall not have taken possession of the Leased Equipment and shall not have possession thereof at the time of such sale. Notwithstanding the foregoing, it is further agreed and understood that if Indenture Trustee shall proceed to foreclose the Lien of this Indenture by reason of the occurrence of a Default resulting from an Event of Default, it shall, to the extent Indenture Trustee is then entitled to do so hereunder and under the Lease, and is not then stayed or otherwise prevented from doing so by operation of law, proceed (to the extent it has not already done so) to exercise one or more of the dispossessory remedies referred to in Section 18 of the Lease (as it shall determine in its good faith discretion); provided, that, during any period with respect to which the Indenture Trustee is stayed or otherwise prevented from exercising one or more of such remedies referred to in Section 18 of the Lease, Indenture Trustee shall not foreclose the Lien of this Indenture, if and so long as such stay or other prohibition shall remain in effect, (x) until the earlier of (i) the expiration of the 120 calendar day period commencing on the date such stay or other prohibition shall have initially been imposed or (ii) the date of repossession of the Leased Equipment from Lessee under or pursuant to the Lease or (y) after such stay or prohibition was imposed, the Lessee (with the approval of the relevant bankruptcy court) has agreed in writing to perform or assume the Lease in accordance with its

terms and such court shall have approved such agreement and agreed that all payments to be made under the Lease shall be administrative claims under the Bankruptcy Code and no other Event of Default (other than described in Section 17(e) or (f) of the Lease) shall be continuing. For the avoidance of doubt, it is expressly understood and agreed that the limitation on the ability of the Indenture Trustee to exercise any right or remedy under the Lease described in the proviso to the preceding sentence of this Section and the limitation on the ability of Indenture Trustee to foreclose the Lien of the Indenture described in the preceding sentence of this Section shall not (i) except as otherwise expressly provided in such preceding sentence, prevent Indenture Trustee from exercising all of its rights, powers and remedies under this Indenture, including without limitation this Section 5.02, nor (ii) be construed so as to restrict Indenture Trustee from declaring the Notes to be (or to prevent the Notes from automatically becoming) due and payable in accordance with the provisions of clauses (b) and/or (c) of this Section and thereupon making demand on the Guarantor for any and all sums then due and payable under the Guarantee, including, without limitation, sums payable in respect of the provisions of Section 18 of the Lease.

(b) If a Default referred to in clause (vii) or (viii) of Section 5.01(b) hereof shall have occurred, or a Lease Event of Default referred to in Section 17(e) or (f) of the Lease shall have occurred with respect to Lessee or Guarantor, then and in every such case the unpaid principal of all Notes then outstanding, together with interest accrued but unpaid thereon, and all other amounts due thereunder and hereunder, shall immediately and without further act become due and payable, without presentment, demand, protest or notice, all of which are hereby waived.

(c) If any other Default shall have occurred and be continuing, then and in every such case Indenture Trustee (i) may, by written notice or notices to Owner Trustee (with a copy to Lessee), declare all the Notes to be due and payable, whereupon the unpaid principal of all Notes then outstanding, together with accrued but unpaid interest thereon, and other amounts due thereunder, shall immediately become due and payable without presentment, demand, protest or notice, all of which are hereby waived and (ii) shall, upon the request of a Majority in Interest of Loan Participants, by written notice or notices to Owner Trustee (with a copy to Lessee and Owner Participant), declare all the Notes to be due and payable, whereupon the unpaid principal of all Notes then outstanding, together with accrued but unpaid interest thereon, and other amounts due thereunder, shall immediately become due and payable without presentment, demand, protest or notice, all of which are hereby waived.

(d) The Holders shall be entitled, at any sale pursuant to Section 18 of the Lease, to credit against any purchase price bid at such sale by such Holder all or any part of the unpaid obligations owing to such Holder and secured by the Lien of this Indenture.

(e) Anything in this Indenture to the contrary notwithstanding, in the event the Notes shall have become due and payable pursuant to this Section 5.02 by reason of the occurrence and continuance of an Event of Default referred to in Section 5.01(b)(i) hereof, a Majority in Interest of Loan Participants may thereupon instruct the Indenture Trustee, subject to the rights of Owner Trustee and Owner Participant hereunder, to exercise the remedy referred to in Section 18(c)(i) of the Lease and make demand under the Guarantee for

payment of the sum due and payable under the Lease as a consequence thereof; it being expressly understood and agreed that Indenture Trustee shall not exercise any other remedy with respect to the Trust Indenture Estate under or pursuant to this Indenture or otherwise except upon the written consent or instructions of a Majority in Interest of Loan Participants.

(f) At the request of Indenture Trustee, Owner Trustee shall promptly execute and deliver to Indenture Trustee such instruments of title and other documents as Indenture Trustee may deem necessary or advisable to enable Indenture Trustee or an agent or representative designated by Indenture Trustee, at such time or times and place or places as Indenture Trustee may specify, to obtain possession of all or any part or any rights in respect of the Trust Indenture Estate to the possession of which Indenture Trustee shall at the time be entitled hereunder. If Owner Trustee shall for any reason fail to execute and deliver such instruments and documents after such demand by Indenture Trustee, Indenture Trustee may (i) obtain a judgment conferring on Indenture Trustee the right to immediate possession and requiring Owner Trustee to deliver such instruments and documents to Indenture Trustee, to the entry of which judgment Owner Trustee hereby specifically consents, and (ii) pursue all or part of such Trust Indenture Estate wherever it may be found and may enter any of the premises wherever such Trust Indenture Estate may be, or may be supposed to be, and search for such Trust Indenture Estate and take possession of and remove such Trust Indenture Estate. Upon every such taking of possession, Indenture Trustee may, but shall be under no obligation to, from time to time, at the expense of the Trust Indenture Estate, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Trust Indenture Estate, as Indenture Trustee may deem proper. In each such case, Indenture Trustee shall have the right to use, operate, store, control or manage the Trust Indenture Estate and to carry on the business and to exercise all rights and powers of Owner Trustee relating to the Trust Indenture Estate as Indenture Trustee shall deem best, including the right to enter into any and all such agreements with respect to the maintenance, operation, leasing, storage or disposition of the Trust Indenture Estate or any part thereof as Indenture Trustee may determine; and Indenture Trustee shall be entitled to collect and receive all tolls, rents, revenues, issues, income, products and profits of the Trust Indenture Estate and every part thereof, without prejudice, however, to the right of Indenture Trustee under any provision of this Indenture to collect and receive all cash held by, or required to be deposited with, Indenture Trustee hereunder. Such tolls, rents, revenues, issues, income, products and profits shall be applied to pay the expenses of holding and operating the Trust Indenture Estate and of conducting the business thereof, and of all maintenance, repairs, replacements, alterations, additions and improvements, and to make all payments which Indenture Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Trust Indenture Estate or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of Owner Trustee), and all other payments which Indenture Trustee may be required or authorized to make under any provision of this Indenture, as well as just and reasonable compensation for the services of Indenture Trustee, and of all Persons properly engaged and employed by Indenture Trustee.

(g) Notwithstanding anything herein to the contrary, and in addition to and without limiting any other right or remedy of Indenture Trustee hereunder, or at law, Owner

Trustee agrees that, upon the occurrence of an Event of Default, or event which with the lapse of time or giving of notice or both would constitute an Event of Default, Indenture Trustee shall be entitled, without notice to Owner Trustee and without any obligation to exercise any other remedy permitted hereunder, to make immediate demand upon Guarantor and exercise all rights of Owner Trustee under the Guarantee in respect of such Event of Default.

SECTION 5.03. Certain Rights of Owner Trustee Upon Event of Default. If a Default shall have occurred and be continuing, Owner Trustee shall have the following rights hereunder:

(a) Right to Cure. If such Default results from an Event of Default and no other Default not arising from an Event of Default shall have occurred and be continuing, Indenture Trustee shall not for a period of 10 Business Days (the "Stay Period") from the date it gives written notice of such Default to Owner Trustee and Owner Participant exercise any remedy or remedies described in Section 5.02 involving the foreclosure of the Lien and security interest created hereby or the sale of the Trust Indenture Estate or termination of the Lease. If such a Default that is an Event of Default shall have occurred and be continuing, the Owner Trustee shall have the following rights hereunder:

(i) In the event that as a result of the occurrence of a Default in respect of the payment of Basic Rent under the Lease, the Indenture Trustee shall have insufficient funds to pay any payment or prepayment of principal and interest on any Note on the day it becomes due and payable (and Owner Trustee shall have been furnished with sufficient funds therefor from Owner Participant) the Owner Trustee may, but shall not be obligated to, pay (as provided in Section 2.04 hereof for application in accordance with Section 3.01 hereof) the Indenture Trustee prior to expiration of a period equal to the Stay Period referred to above plus 10 Business Days, an amount equal to any principal and interest (including interest, if any, on overdue payments of principal and interest) then due and payable on the Notes (not taking into account any acceleration of the Notes), such payment by the Owner Trustee shall be deemed to cure the Event of Default in respect of the payment of Basic Rent and any Default arising therefrom; provided, that this Section 5.03(a)(i) shall not apply to cure any Default if the Owner Trustee has previously cured three successive Defaults in respect of the payment of Basic Rent under the Lease or has cured six previous Defaults in respect of the payment of Basic Rent under the Lease.

(ii) In the event of the occurrence of a Default due to the occurrence of an Event of Default with respect to the failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by the Lessee under the Lease or under any other Operative Agreement (other than the covenants and agreements to pay Basic Rent) which can be cured by the payment of money (and Owner Trustee shall have been furnished with sufficient funds therefor from Owner Participant), on or prior to the expiration of the Stay Period plus 10 Business Days, Owner Trustee may, but shall not be obligated to, cure such Event of Default, and such cure shall be deemed to cure any Default arising therefrom, by making such

payment as may be necessary to accomplish the observance or performance of such defaulted covenant, condition or agreement to the party entitled to the same.

If, on the basis specified in the preceding clauses (i) and (ii), any Event of Default shall be deemed to be cured, then any declaration pursuant to the Lease that the Lease is in default due to such Event of Default, and any acceleration of the Notes or declaration that a Default exists hereunder, based upon such Event of Default, shall be deemed to be rescinded.

The Owner Trustee shall not, as a result of exercising the right to remedy any such Default, obtain any Lien on any of the Trust Indenture Estate or any Rent payable under the Lease for or on account of costs or expenses incurred in connection with the exercise of such right, nor shall any claim 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 Indenture Trustee in and to the Trust Indenture Estate. Upon any payment by the Owner Trustee of the amount of principal and interest then due and payable on the Notes out of any installment of Basic Rent which was not timely paid by Lessee, the Owner Trustee shall be subrogated to the rights of the Indenture Trustee and the holders of the Notes in respect of such Basic Rent, and thereafter, if Lessee shall make such payment of Basic Rent and provided that (i) no other Default or Fundamental Default shall have occurred and be continuing and (ii) all principal and interest payments due on the Notes have been paid at the time of receipt by the Indenture Trustee of such Basic Rent, the Owner Trustee shall be entitled to receive such Basic Rent and such interest upon receipt thereof by the Indenture Trustee; but, provided further that (i) in the event the principal and interest on the Notes shall have become due and payable pursuant to Section 5.01(b), such subrogation shall, until principal of and interest on all Notes shall have been paid in full, be subordinate to the rights of the Indenture Trustee and the Holders of the Notes in respect of such payment of Basic Rent and such interest on such overdue Basic Rent prior to receipt by the Owner Trustee of any amount pursuant to such subrogation, and (ii) 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 right of subrogation.

(b) Option to Purchase Notes. Notwithstanding anything in this Indenture to the contrary, if a Default which results from an Event of Default has occurred and is continuing and no other Default has occurred and is continuing, and the Indenture Trustee (i) has declared the Notes due and payable pursuant to Section 5.01(b), or (ii) has not pursued any significant remedy under the Lease for a period of 180 days after such Default, then, in each such case, upon the written request of Owner Participant specifying a payment date not more than 10 days thereafter (that (x) shall be irrevocable; provided, that if the Event of Default giving rise to such election shall no longer be continuing, the election to purchase Notes hereunder shall be deemed to be automatically withdrawn and (y) must be given if at all to each Noteholder), each Holder of a Note agrees that it will, upon receipt from the Owner Participant or its nominee on such date of an amount equal to the aggregate unpaid principal amount of all Notes then held by such Holder, together with accrued interest thereon to the date of payment, if any; plus (in the case of any such payment date that occurs after the 180th day following such Default but before the 360th day thereafter) the Make Whole

Premium with respect thereto, plus all other sums or Indebtedness then due and payable to such Holder or Indenture Trustee hereunder or under the Participation Agreement, the Lease or such Notes, forthwith sell, assign, transfer and convey to the Owner Participant or its nominee on such day (without recourse or warranty of any kind except against Liens on such Notes arising by, through or under such Holder), all of the right, title and interest of such Holder in and to the Notes held by such Holder, and the Owner Participant or its nominee shall assume all of such Holder's obligations under the Participation Agreement arising from and after the date of such sale; provided, that Owner Participant or its nominee on or before such day immediately succeeding the date of such request shall so purchase all of the Notes then outstanding hereunder. If Owner Participant or its nominee on or before the date of such request shall so request, such Holder will comply with all the provisions of Section 2.06 to enable new Notes to be issued to Owner Participant or its nominee in such denominations as Owner Participant shall request. All charges and expenses in connection with the issuance of any such new Note shall be borne by Owner Participant.

SECTION 5.04. Remedies Cumulative. Each and every right, power and remedy herein specifically given to Indenture Trustee in this Indenture 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 Indenture Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by Indenture Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any Default on the part of Owner Trustee or Lessee or to be an acquiescence therein. No waiver by Indenture Trustee of any Default shall be deemed to be a waiver of any other or similar, previous or subsequent Default.

SECTION 5.05. Discontinuance of Proceedings. In case Indenture Trustee shall have proceeded to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to Indenture Trustee, then and in every such case Owner Trustee, Indenture Trustee and the Holders shall be restored to their former positions and rights hereunder with respect to the Trust Indenture Estate, and all rights, remedies and powers of Indenture Trustee 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 Indenture to the contrary, so long as no Event of Default shall have occurred and be continuing, neither Owner Trustee nor Indenture Trustee shall take any action contrary to the rights of Lessee under the Lease except in accordance with the provisions of the Lease, this Indenture and the other Operative Agreements.

**SECTION 5.07. Certain Rights of Owner Trustee During Term of this Indenture.** Notwithstanding any other provision of the Indenture, Owner Trustee shall have and be entitled to exercise:

(a) to the exclusion of Indenture Trustee, all rights of 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 Lessee on account of any Excepted Payments;

(b) to the exclusion of Indenture Trustee, the right of Owner Trustee to maintain separate insurance pursuant to Section 7(g) of the Lease (and all rights with respect thereto);

(c) all rights of Owner Trustee, but not to the exclusion of Indenture Trustee, (i) to seek specific performance of the covenants of the Lessee under the Lease relating to the protection, insurance, maintenance, possession and use of the Leased Equipment, (ii) to exercise inspection rights pursuant to Section 9(c) of the Lease, (iii) to receive from the Lessee or Guarantor, as the case may be, all notices, certificates, reports, financial statements, filings, opinions of counsel and other documents and information which the Lessee is permitted or required to give or furnish to Owner Trustee pursuant to any Operative Agreement, and (iv) to do acts or make expenditures pursuant to Section 23 of the Lease;

(d) to the exclusion of Indenture Trustee, all rights of Owner Trustee with respect to the adjustment of Basic Rent, Casualty Loss Values, Termination Values and Early Purchase Option Prices pursuant to Section 15 of the Participation Agreement, subject to the limitations set forth in Section 15(d) of the Participation Agreement;

(e) so long as no Default shall have occurred and be continuing, to the exclusion of Indenture Trustee, all rights of Owner Trustee with respect to purchase options and renewal options under Section 6 of the Lease;

(f) the right, jointly (but not independently) with Indenture Trustee, to consent to or approve any matter in connection with a replacement pursuant to Section 11(c) of the Lease;

(g) the right, jointly (but not independently) with Indenture Trustee, (i) so long as no 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 Assigned Agreement and (ii) if a 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) Section 4, 5, 6(b), (c) and (d) or 11 of the Lease, (B) Section 7 of the Lease in respect of liability insurance policies and the proceeds thereof which by the terms of such policies are to be payable to Owner Participant or Owner Trustee, and (C) provided, that such Default results solely from an Event of Default, any other provision of the Lease if such amendment, modification, supplement or waiver, would impose any additional material

obligations upon or otherwise materially adversely affect Owner Trustee or the Owner Participant;

(h) so long as no Default shall have occurred and be continuing, the right, jointly with Indenture Trustee, 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 Agreement as requiring or being subject to the consent or approval of Owner Trustee; and

(i) all rights of Owner Trustee under the Guarantee with respect to the rights of Owner Trustee specified under each of the foregoing clauses (a) through (h), which rights under the Guarantee shall be to the exclusion of Indenture Trustee, not to the exclusion of Indenture Trustee or jointly (but not independently) with Indenture Trustee as specified in such respective clause.

Upon consummation of a foreclosure of the lien of the Indenture on the Trust Indenture Estate, all rights of Owner Trustee or Owner Participant (as the case may be) under this Section 5.07 shall terminate, except in so far as such rights relate to Excepted Payments.

**SECTION 5.08. Waiver of Past Defaults.** Upon written instructions from a Majority in Interest of Loan Participants, Indenture Trustee shall waive any past default hereunder and its consequences and upon any such waiver such default shall cease to exist and any Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon; in the absence of written instructions from the Holders of all Notes then outstanding, Indenture Trustee shall not, except as otherwise provided in Section 6.01(a) hereof, waive any default (i) in the payment of the principal of, Make Whole Premium, if any, or interest on, or other amounts due under, any Note then outstanding, or (ii) in respect of a covenant or provision hereof which, under Article IX hereof, cannot be modified or amended without the consent of each Holder of a Note then outstanding.

## **ARTICLE VI**

### **DUTIES OF LESSOR AND INDENTURE TRUSTEE**

**SECTION 6.01. (a) Notice of Event of Default.** In the event Indenture Trustee shall have knowledge of a Potential Default, Indenture Trustee shall give prompt written notice thereof to Owner Trustee, Owner Participant, each Holder and Lessee. Subject to the terms of Sections 5.02, 5.03, 5.06, 5.07 and 6.04 hereof, Indenture Trustee shall take such action, or refrain from taking such action, with respect to such Default or Potential Default (including with respect to the exercise of any rights or remedies hereunder) as Indenture Trustee shall be instructed in writing by the Majority in Interest of Loan Participants. Subject to the provisions of Section 6.04 hereof, if Indenture Trustee shall not have received instructions as above; provided, that within 30 calendar days after mailing notice of such Default or Potential Default to the Holders, Indenture Trustee may, subject to

instructions thereafter received pursuant to the preceding provisions of this Section 6.01, take such action, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Default or Potential Default as it shall determine advisable in the best interests of the Holders; and shall use the same degree of care and skill in connection therewith as a prudent man would use under the circumstances in the conduct of his own affairs; provided, that Indenture Trustee may not sell any Leased Equipment without the consent of the Majority in Interest of Loan Participants. In the event Indenture Trustee shall at any time declare the Lease to be in default pursuant to Section 17 thereof or subject to Article V hereof shall elect to foreclose or otherwise enforce this Indenture, Indenture Trustee in its discretion may, or upon receipt of a written demand therefor from a Majority in Interest of Loan Participants shall, subject to Owner Participant's and Owner Trustee's rights under Article V hereof, declare the unpaid principal amount of all Notes then outstanding with the accrued interest thereon, and other amounts due thereunder to be immediately due and payable, upon which declaration such principal amount and such accrued interest, and other amounts due thereunder shall immediately become due and payable without further act or notice of any kind. In the event Indenture Trustee shall at any time declare the Lease to be in default pursuant to Section 17 thereof or, subject to Article V hereof, shall elect to foreclose or otherwise enforce this Indenture, Indenture Trustee shall forthwith notify Owner Participant, the Holders, Owner Trustee and Lessee. This Section 6.01, however, is subject to the condition that, if at any time after the principal of the Notes shall have become so due and payable, and before any judgment or decree for the payment of the money so due, or any thereof, shall be entered, all overdue payments of interest upon the Notes and all other amounts payable under the Notes (except the principal of the Notes which by such declaration shall have become payable) shall have been duly paid, and every other Default and Potential Default with respect to any covenant or provision of this Indenture shall have been cured, then and in every such case a Majority in Interest of Loan Participants may (but shall not be obligated to), by written instrument filed with Indenture Trustee, rescind and annul Indenture Trustee's declaration and its consequences; but no such rescission or annulment shall extend to or affect any subsequent Default or Potential Default or impair any right consequent thereon. For all purposes of this Indenture, in the absence of actual knowledge of any officer of Indenture Trustee in its Corporate Trust Department, Indenture Trustee shall not be deemed to have knowledge of a Default or Potential Default (except the failure of Lessee (a) to pay any installment of Basic Rent within two Business Days after the same shall become due, (b) to maintain insurance as required under Section 7 of the Lease if an officer of Indenture Trustee in its Corporate Trust Department shall receive notice thereof from an insurer or broker or (c) to pay any other amount to Indenture Trustee on the due date therefor after Indenture Trustee shall have received notice of intent to make any such payment) and to the extent notice was not rescinded or payment extended unless notified in writing thereof by a Holder, Owner Trustee or Lessee.

(b) Other Notices. Indenture Trustee will furnish to the Holders at the time outstanding promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to Indenture Trustee in connection with the Trust Indenture Estate or under or pursuant to any Operative Agreement to the extent the same shall not have been otherwise directly distributed to such Holders pursuant to the express provision of any Operative Agreement.

**SECTION 6.02. Action Upon Instructions Generally.** (a) Subject to the terms of Sections 6.01, 6.04 and 9.01 hereof, upon the written instructions at any time and from time to time of a Majority in Interest of the Loan Participants, Indenture Trustee shall take such of the following actions as may be specified in such instructions: (i) exercise such election or option, or make such decision or determination, or give such notice, consent, waiver or approval or exercise such right, remedy or power or take such other action hereunder or under any other Assigned Agreement or in respect of any part or all of the Trust Indenture Estate as shall be specified in such instructions; (ii) take such action with respect to, or to preserve or protect, the Trust Indenture Estate (including the discharge of Liens) as shall be specified in such instructions and as are consistent with this Indenture; and (iii) take such other action in respect of the subject matter of this Indenture as is consistent with the terms hereof and the other Assigned Agreements.

(b) If any Event of Default shall have occurred and be continuing, on request of a Majority in Interest of Loan Participants and subject to Article V hereof, Indenture Trustee shall exercise such remedies under Section 17 of the Lease as shall be specified in such request. Indenture Trustee agrees to provide to the Holders, Owner Trustee and Owner Participant concurrently with such exercise by the Indenture Trustee, notice of such exercise by Indenture Trustee; provided, that the failure to give any such notice to such Holders, Owner Trustee or Owner Participant does not affect the validity of such action. If any amount of Rent shall not be paid when due under the Lease or the Lessee fails to comply with any other obligation thereunder, the Indenture Trustee, on request of any Holder, shall promptly demand payment in respect of such Rent under the Guaranty or demand performance of such obligations by the Guarantor, as the case may be, and Indenture Trustee shall notify each of the Holders of such request.

(c) Indenture Trustee shall execute 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 Trust Indenture Estate as may be requested by Lessee or specified from time to time in written instructions of a Majority in Interest of Loan Participants (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the form of such documents so to be filed).

**SECTION 6.03. Release of Equipment.** (a) So long as no Default or Potential Default has occurred and is continuing, upon partial termination of the Lease with respect to any Unit pursuant to Sections 4(b) or 11(b) or 6(b)(ii) of the Lease and after payment in full of the principal amount of Notes, together with accrued interest thereon and Make Whole Premium, if any, to be prepaid in connection therewith pursuant to Section 3.02 hereof, Indenture Trustee shall, at the expense of the requesting party, execute and deliver to, or as directed by, Lessee, such instruments (in due form for recording as may be reasonably requested and furnished by Lessee) releasing such Unit from the Lien of this Indenture and from the assignment and pledge thereof hereunder.

(b) After payment in full of all the principal of and interest and premium, if any, on all Notes pursuant to the terms thereof and hereof and all other Indebtedness then due

and owing, Indenture Trustee shall, upon the written request and at the expense of Owner Trustee, execute and deliver to, or as directed by, Owner Trustee such instruments (in due form for recording) as may be reasonably requested and furnished by Owner Trustee releasing the Leased Equipment from the Lien of this Indenture and releasing the Trust Indenture Estate from the assignment and pledge thereof hereunder.

(c) In the event a Replacement Unit is being substituted as specified in Section 11 of the Lease, Owner Trustee and Indenture Trustee agree for the benefit of the Holders and the Lessee, subject to fulfillment of the conditions precedent and compliance by the Lessee with its obligations set forth in Section 11 of the Lease to execute and deliver an Indenture Supplement and Lease Supplement as contemplated by such Section of the Lease; and, promptly upon receipt by the Indenture Trustee of a written request specifically describing the Leased Equipment to be so released, to execute and deliver to the Lessee an appropriate instrument, in due form for recording, releasing the Leased Equipment so replaced from the Lien of this Indenture. Upon an Event of Loss with respect to any Item of Leased Equipment, upon tender of the Casualty Loss Value payable with respect thereto pursuant to the Lease, the Indenture Trustee agrees for the benefit of the Owner Trustee and the Lessee that it shall promptly execute and deliver as directed by the Owner Trustee an appropriate instrument, in due form for recording, releasing such Leased Equipment in respect of which such payment was made from the Lien of this Indenture.

(d) In the event of the substitution of a Replacement Unit as contemplated by Section 11 of the Lease and Section 6.03 hereof, all provisions of this Indenture relating to the Units being replaced shall be applicable to such Replacement Units with the same force and effect as if such Replacement Units were the same equipment as the Units being replaced but for, in the case of a Casualty Occurrence, such occurrence with respect to the Units being replaced.

(e) Notwithstanding any provision of this Indenture to the contrary, there shall be no release of the Lien of this Indenture except as provided in this Section 6.03 and in Section 10.01 hereof.

**SECTION 6.04. Indemnification, Etc.** Indenture Trustee shall not be required to take any action or refrain from taking any action under any provision hereof (other than the giving of notices required under Section 6.01 hereof) or under any provision of any other Operative Agreement or towards the execution or enforcement of the trusts hereby created or otherwise hereunder or under any provision of any other Operative Agreement, whether on its own motion or on the request of any other Person which, in its reasonable opinion, shall be likely to involve expense or liability, unless one or more of the Holders of the Notes, from time to time, shall offer and furnish to Indenture Trustee indemnity, deemed reasonable by Indenture Trustee in the exercise of its reasonable judgment, against all liability, costs and expenses (including reasonable attorneys' fees, reasonable compensation of Indenture Trustee and disbursements on appeal); provided, that the written undertaking of a Holder delivered to Indenture Trustee (if satisfactory to Indenture Trustee in its sole discretion) shall be deemed to be sufficient indemnity. Indenture Trustee shall not be required to take any action under Sections 6.01 (other than the giving of notices required under Section 6.01 hereof), 6.02, 6.03

or 6.08 or Article V hereof, nor shall any other provision of this Indenture or under any provision of any other Operative Agreement be deemed to impose a duty on Indenture Trustee to take any action, if Indenture Trustee shall have been advised by counsel (who shall not be an employee of Indenture Trustee) that such action is contrary to the terms hereof or thereof (as the case may be) or of any of the documents contemplated hereby to which Indenture Trustee is a party or is otherwise contrary to law.

**SECTION 6.05. No Duties Except as Specified.** It is expressly agreed that anything herein contained to the contrary notwithstanding, Indenture Trustee shall have no obligation or liability under any of the Assigned Agreements by reason of or arising out of the assignment thereof contained herein, nor shall Indenture Trustee be required or obligated in any manner, except as expressly provided herein or on the instruction of a Majority in Interest of Loan Participants, to perform or fulfill any obligations of Owner Trustee under or pursuant to any of the Assigned Agreements, or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times. Indenture Trustee shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Leased Equipment or any other part of the Trust Indenture Estate, or otherwise to take or refrain from taking any action under, or in connection with, this Indenture except as expressly provided by the terms of this Indenture or any other Operative Agreement or as expressly provided in written instructions from a Majority in Interest of Loan Participants received pursuant to the terms of Section 6.01 or Section 6.02 hereof; and no implied duties or obligations shall be read into this Indenture or any other Operative Agreement against Indenture Trustee. Indenture Trustee nevertheless agrees that it will, in its individual capacity and at its own cost and expense, promptly take such action as may be necessary to duly discharge all Liens on any part of the Trust Indenture Estate which result from claims against Indenture Trustee not related to the ownership of the Leased Equipment or the administration of the Trust Indenture Estate or any other transaction pursuant to this Indenture or any document in the Trust Indenture Estate.

**SECTION 6.06. No Action Except Under Lease, Indenture or Participation Agreement.** Owner Trustee and Indenture Trustee agree that they will not manage, control, use, operate, store, lease, sell, dispose of or otherwise deal with the Leased Equipment or other property part of the Trust Indenture Estate except (a) as expressly required or permitted by the terms of the Lease and (b) in accordance with the express terms hereof.

**SECTION 6.07. Assigned Agreements.** Owner Trustee hereby warrants and covenants that it will not, except as provided in this Indenture and except with respect to Excepted Payments (i) enter into any agreement amending or supplementing any of the Assigned Agreements, (ii) accept any payment from Lessee Guarantor or any Affiliate thereof in connection with the transactions contemplated hereby, (iii) settle or compromise any claim against Lessee or any affiliate thereof in connection with the future transactions contemplated hereby or arising under the Assigned Agreements, or 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 or (iv) execute any consents or waivers under the Assigned Agreements

without the consent of Indenture Trustee. Owner Trustee shall not exercise the remedies of Owner Trustee under, or terminate or accept a surrender of, the Lease (except as otherwise expressly provided herein). Owner Trustee hereby ratifies and confirms the Assigned Agreements, and does hereby agree that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of any of the Assigned Agreements, or the assignment herein or of any of the rights created by any of the Assigned Agreements or this Indenture.

**SECTION 6.08. Performance by Indenture Trustee.** Upon the written instructions of a Majority in Interest of Loan Participants, Indenture Trustee shall, upon prior written notice to Owner Trustee, perform any act which Owner Trustee is permitted to perform under the Assigned Agreements or hereunder, but which Owner Trustee shall fail to perform. If a Default shall have occurred and be continuing, Indenture Trustee may take any other action which a Majority in Interest of Loan Participants may deem necessary for the maintenance, preservation, or protection of Indenture Trustee's interest in the Trust Indenture Estate. All moneys advanced and all expenses (including legal fees) incurred by Indenture Trustee or any Loan Participant in connection with such action together with interest at the Default Interest Rate shall be repaid by Owner Trustee, subject to the terms of Section 2.03 hereof, to Indenture Trustee or such Loan Participant, as the case may be, upon demand, and shall be secured hereby as provided herein. The making of such advance by Indenture Trustee or such Loan Participant shall not, however, relieve Owner Trustee of liability for any Default hereunder until the full amount of all such moneys so advanced and such interest thereon shall have been repaid by Owner Trustee to Indenture Trustee or such Loan Participant, as the case may be, and such Default shall have otherwise been cured.

## **ARTICLE VII**

### **OWNER TRUSTEE AND INDENTURE TRUSTEE**

**SECTION 7.01. Acceptance of Trust and Duties.** Indenture Trustee accepts the trust hereby created and applicable to it and agrees to perform the same and to receive and disburse all moneys constituting part of the Trust Indenture Estate or otherwise provided herein, but only upon the terms of this Indenture. Indenture Trustee shall be individually liable for representations, warranties and covenants, made by their express terms in its individual capacity in any Operative Agreement. Except as provided in the preceding sentence, Indenture Trustee shall not be liable in its individual capacity or in its trust capacity under any circumstances, except (i) for its own willful misconduct or (ii) for its negligence with respect to its obligations under Article III hereof or its gross negligence with respect to its other obligations, and Indenture Trustee shall not be liable for any action or inaction of Owner Trustee, any Participant or any other Person.

**SECTION 7.02. Absence of Certain Duties.** Except in accordance with written instructions or requests furnished pursuant to Section 6.01, 6.02, 6.05 or 9.01 hereof and except as otherwise expressly provided herein or in the Participation Agreement, Indenture Trustee shall have no duty (a) to see to any insurance on the Leased Equipment or to effect or

maintain any such insurance whether or not 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 owing with respect to, or assessed or levied against, any part of the Trust Indenture Estate, (c) to confirm or verify any financial statements of Owner Trustee or (d) to inspect the Leased Equipment at any time or ascertain or inquire as to the performance of observance of any covenants of Lessee or any affiliate thereof under the Assigned Agreements.

**SECTION 7.03. No Representations or Warranties as to Leased Equipment or Assigned Agreements.** OWNER TRUSTEE AND INDENTURE TRUSTEE MAKE (a) NO WARRANTY AS TO THE VALUE, MERCHANTABILITY, CONDITION OR FITNESS FOR USE OF THE LEASED EQUIPMENT OR AS TO THEIR TITLE THERETO, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED EQUIPMENT WHATSOEVER except as specifically set forth in the Participation Agreement and except that Norwest warrants that on the Closing Date Owner Trustee shall have received whatever interest was conveyed to it by the Lessee subject to the rights of the parties to the Assigned Agreements, and (b) no representation or warranty as to the validity, legality or enforceability of this Indenture, 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 or therein.

**SECTION 7.04. Further Assurances.** Owner Trustee hereby warrants and represents that it has not Granted and hereby covenants that it will not Grant, so long as this Indenture shall remain in effect and the Lien hereof shall not have been released with respect to all items of Leased Equipment pursuant to Section 10.01 hereof, any of its estate, right, title or interest hereby Granted, to anyone other than Indenture Trustee in its capacity as Indenture Trustee. Owner Trustee further covenants that Owner Trustee shall at all times be organized under the laws of the United States or any state. Owner Trustee shall remain liable under the Assigned Agreements to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and to the knowledge of Owner Trustee it has performed all obligations on its part to be performed under the Assigned Agreements on or prior to the date hereof and there has not occurred on or prior to the date hereof any default under any Assigned 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 neither Indenture Trustee nor Loan Participants shall have any obligation or liability under any thereof by reason of or arising out of the assignment hereunder, nor shall Indenture Trustee nor the Loan Participants except as herein or therein expressly provided be required or obligated in any manner to perform or fulfill any obligations of Owner Trustee under or pursuant to any of the Assigned Agreements, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times. Owner Trustee will promptly and duly execute and deliver to Indenture Trustee such instruments, documents and assurances, including, without limitation, amendments to Schedule A hereto, conveyances, financing statements and continuation statements with respect to financing statements and take such further action as Indenture Trustee may from time to time reasonably request in order to obtain the full benefits of the Grant of the Trust Indenture Estate, to carry out more

effectively the intent and purpose of this Indenture, to establish and protect the rights and remedies created or intended to be created in favor of Indenture Trustee and the Holders hereunder and to create for the benefit of the Holders a valid first and prior perfected security interest in the Trust Indenture Estate and to protect Owner Trustee's and Indenture Trustee's intended interests in the Leased Equipment 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, without limitation, 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 Indenture Trustee may from time to time reasonably request.

SECTION 7.05. Reliance; Agents; Advice of Counsel. Indenture Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. Indenture Trustee may accept copies of resolutions of the Board of Directors of Lessee certified by the Secretary or an Assistant Secretary of Lessee as duly adopted and in full force and effect, as conclusive evidence that such resolutions have been duly adopted by said Board and that the same are in full force and effect. As to any fact or matter dealing with Lessee the manner of ascertainment of which is not specifically described herein, Indenture Trustee may for all purposes hereof rely on a certificate, signed by the President, any Vice President or the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of Lessee as to such fact or matter, and such certificate shall constitute full protection to Indenture Trustee for any action taken or omitted to be taken by them in good faith in reliance thereon. In the administration of the trust hereunder, Indenture Trustee may, at the reasonable expense of the Trust Indenture Estate, consult with counsel, accountants and other skilled Persons to be selected and retained by it, and Indenture Trustee shall not be liable for anything done, suffered or omitted in good faith by them in accordance with the advice or opinion of any such counsel, accountants or other skilled Persons.

SECTION 7.06. Compensation. The Indenture Trustee shall be entitled to reasonable compensation, including expenses and disbursements (including reasonable legal fees and related disbursements), for all services rendered hereunder, which compensation shall be payable pursuant to Section 5, 7 and 11 of the Participation Agreement and shall have a first priority claim on the Trust Indenture Estate for the payment of such compensation, to the extent that such compensation shall not be paid by the Lessee, and shall have the right to use or apply any moneys held by it hereunder in the Trust Indenture Estate toward such payments. The Indenture Trustee agrees that it shall have no right against any Holder or Owner Participant for any fee as compensation for its services as trustee under this Indenture.

SECTION 7.07. Not Acting in Individual Capacity. Except where otherwise expressly provided herein, Indenture Trustee acts hereunder solely as trustee as herein provided and not in its individual capacity.

SECTION 7.08. No Segregation of Moneys; No Interest. Any moneys paid to or retained by Indenture Trustee pursuant to any provision hereof and not then required to be distributed to any Holder, Lessee or Owner Trustee as provided in Article III hereof need not

be segregated in any manner except to the extent required by law, and may be deposited under such general conditions as may be prescribed by law, and Indenture Trustee shall not (except as otherwise provided in Section 3.07 hereof) be liable for any interest thereon; provided, that any payments received or applied hereunder by Indenture Trustee shall be accounted for by the Indenture Trustee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof.

SECTION 7.09. Further Assurances; Financing Statements. At any time and from time to time, upon the request of Indenture Trustee or Lessee or Owner Participant, Owner Trustee shall, at the expense of Lessee, promptly and duly execute and deliver any and all such further instruments and documents including, without limitation, chattel paper originals of subsequent leases, as may be specified in such request and as are necessary or desirable to perfect, preserve or protect the mortgage, security interests and assignments created or intended to be created hereby, or to obtain for Indenture Trustee the full benefit of the specific rights and powers herein granted, including, without limitation, the execution and delivery of Uniform Commercial Code financing statements and continuation statements with respect thereto, or similar instruments relating to the perfection of the mortgage, security interests or assignments created or intended to be created hereby.

SECTION 7.10. Indemnification of Indenture Trustee. Owner Trustee, not individually but solely in its capacity as Owner Trustee under the Trust Agreement, hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and does hereby indemnify, protect, save and keep harmless Indenture Trustee, in its individual capacity, and its successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, taxes (excluding any taxes payable by Indenture Trustee on or measured by and compensation received by Indenture Trustee for its services under this Indenture), claims, actions, suits, costs, expenses or disbursements (including reasonable legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Indenture Trustee in its individual capacity (whether or not also agreed to be indemnified against by any other Person under any other document) in any way relating to or arising out of this Indenture, the Trust Agreement, the Notes, the Indenture Agreements or the enforcement of any of the terms of any thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, non-acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the Leased Equipment (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust Indenture Estate or the action or inaction of Indenture Trustee hereunder, except only (i) in the case of willful misconduct or gross negligence (or simple negligence in connection with the handling of funds) of Indenture Trustee in the performance of its duties hereunder or (ii) as may result from the inaccuracy of any representation or warranty of the Indenture Trustee in the Participation Agreement or (iii) as otherwise provided herein or (iv) as otherwise excluded by the terms of the Participation Agreement from the Lessee's general tax indemnity and general indemnity thereunder; provided, that the indemnification provided under this Section 7.10 shall not extend to any matter (other than any matter relating to or resulting from an act or omission of Owner Participant which is not caused by an act or

omission of Lessee or Guarantor) not indemnified by Lessee under the Participation Agreement and so long as the Lease is in effect, Indenture Trustee, unless otherwise prohibited by law, shall not make any claim under this Section 7.10 for any claim or expense without first making demand on Lessee for payment of such claim or expense pursuant to the Participation Agreement. Indenture Trustee in its individual capacity shall be entitled to indemnification from the Trust Indenture Estate for any liability, obligation, loss, damage, penalty, claim, action, suit, cost, expense or disbursement indemnified against pursuant to this Section 7.10 to the extent not reimbursed by Lessee or others, but without releasing any of them from their respective agreements of reimbursement; and to secure the same Indenture Trustee shall have a prior Lien on the Trust Indenture Estate. The indemnities contained in this Section 7.10 shall survive the termination of this Indenture.

## ARTICLE VIII

### SUCCESSOR TRUSTEES AND SEPARATE TRUSTEES

SECTION 8.01. Resignation or Removal of Indenture Trustee; Appointment of Successor; Eligibility. (a) Indenture Trustee or any successor thereto may resign at any time without cause by giving at least 30 days prior written notice to Owner Trustee and each Holder of a Note, such resignation to be effective upon the acceptance of the trusteeship by a successor Indenture Trustee. In addition, a Majority in Interest of Loan Participants may at any time remove Indenture Trustee without cause by an instrument in writing delivered to Owner Trustee and Indenture Trustee. In the case of the resignation or removal of Indenture Trustee, a Majority in Interest of Loan Participants may appoint a successor Indenture Trustee by an instrument signed by such Holders. If a successor Indenture Trustee shall not have been appointed within 30 days after such resignation or removal, Indenture Trustee, any Holder of a Note or Owner Trustee may apply to any court of competent jurisdiction to appoint a successor Indenture Trustee to act until such time, if any, as a successor shall have been appointed as above provided. The successor Indenture Trustee so appointed by such court shall immediately and without further act be superseded by any successor Indenture Trustee appointed as above provided.

(b) Indenture Trustee shall (i) be a bank, insurance company or other corporation, other than a Holder, in each case having corporate power and authority to act as a trustee or a trust company, (ii) have a place of business in the continental United States and (iii) have a combined capital and surplus of at least \$250,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Indenture Trustee hereunder upon reasonable and customary terms. In case Indenture Trustee shall cease to be eligible in accordance with the provisions of this Section 8.01(b), Indenture Trustee shall resign immediately in the manner and with the effect specified in this Section 8.01.

SECTION 8.02. Successor Acceptance of Appointment. Any successor Indenture Trustee appointed hereunder shall execute and deliver to Owner Trustee and the predecessor Indenture Trustee (with a copy thereof to Loan Participant) an instrument accepting such appointment, and thereupon such successor Indenture Trustee, without further

act, shall become vested with all the estate, properties, rights, powers, duties and obligations of the predecessor Indenture Trustee hereunder in the trusts hereunder applicable to it with like effect as if originally named Indenture Trustee herein; but nevertheless upon the written request of such successor Indenture Trustee and Owner Trustee such predecessor Indenture Trustee shall execute and deliver an instrument transferring to such successor Indenture Trustee, upon the trusts herein expressed applicable to it, all the estates, properties, rights, powers, duties and obligations of such predecessor Indenture Trustee and such predecessor Indenture Trustee shall duly assign, transfer, deliver and pay over to such successor Indenture Trustee all moneys or other property then held by such predecessor Indenture Trustee hereunder.

**SECTION 8.03. Successor Indenture Trustees by Merger.** Any corporation into which Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Indenture Trustee shall be a party, or any corporation to which substantially all the business of Indenture Trustee may be transferred, shall, subject to the terms of Section 8.01(b) hereof, be Indenture Trustee under this Indenture without further act, except, that any predecessor Indenture Trustee shall remain as an Indemnitor and additional insured pursuant to the terms of the Operative Agreements, and with respect to events occurring after the date of such corporate reorganization, such predecessor Indenture Trustee shall be released from any and all duties to perform, and liabilities howsoever arising in connection with, the covenants, promises, agreements, representations, warranties and other obligations of such predecessor Indenture Trustee, whether express or implied, under the Operative Agreements.

**SECTION 8.04. Appointment of Additional, Separate and Co-Trustees.** (a) Whenever (i) Indenture Trustee shall deem it necessary or prudent in order to conform to any law of any jurisdiction in which all or any part of the Trust Indenture Estate shall be situated or to make any claim or bring any suit with respect to or in connection with the Trust Indenture Estate, this Indenture, any other Operative Agreement or the transactions contemplated by the Participation Agreement, or (ii) Indenture Trustee shall be advised by counsel, satisfactory to it, that it is so necessary or prudent in the interest of the Holders of the Notes, or (iii) in the event that Indenture Trustee shall have been requested to do so by a Majority in Interest of Loan Participants, Indenture Trustee and Owner Trustee shall execute and deliver an indenture supplemental hereto and all other instruments and agreements necessary or proper to either (1) constitute another bank or trust company or one or more individuals approved by Indenture Trustee, either to act as additional trustee or co-trustee of all or any part of the Trust Indenture Estate jointly with Indenture Trustee or to act as separate trustee or co-trustee of all or any part of the Trust Indenture Estate (each such additional trustee or co-trustee and separate trustee or co-trustee hereinafter the "Other Trustee"), in any such case with such powers as may be provided in such indenture supplemental hereto or other instruments, and to vest in such bank, trust company or individual as such Other Trustee any property, title, right or power of Indenture Trustee deemed necessary or advisable by Indenture Trustee or (2) clarify, add to or subtract from the rights, power, duties and obligations theretofore granted any such additional or separate trustee, subject to the remaining provisions of this Section 8.04. In the event Owner Trustee shall not have taken any action requested of it under this Section 8.04(a) that is permitted or

required by its terms within 15 days after the receipt of a written request from Indenture Trustee so to do, or in case a Default or Potential Default shall occur and be continuing, Indenture Trustee may act under the foregoing provisions of this Section 8.04 without the concurrence of Owner Trustee; and Owner Trustee hereby appoints Indenture Trustee its attorney-in-fact and agent to act for it under the foregoing provisions of this Section 8.04 in either of such contingencies. Indenture Trustee may execute, deliver and perform any conveyance, assignment or other instrument in writing as may be required by any Other Trustee for more fully and certainly vesting in and confirming to it or him any property, title, right or power which by the terms of such indenture supplemental hereto are expressed to be conveyed or conferred to or upon such Other Trustee, and Owner Trustee shall, upon Indenture Trustee's request, join therein and execute, acknowledge and deliver the same, and Owner Trustee hereby makes, constitutes and appoints Indenture Trustee its agent and attorney-in-fact for it and in its name, place and stead to execute, acknowledge and deliver any such deed, conveyance, assignment or other instrument in the event that Owner Trustee shall not itself execute and deliver the same within fifteen (15) days after receipt by it of such request so to do.

(b) Every Other Trustee hereunder shall, to the extent permitted by law, be appointed and act and Indenture Trustee shall act subject to the following provisions and conditions:

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

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

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

If at any time Indenture Trustee shall deem such Other Trustee no longer necessary or prudent in order to conform to any such law or take such action or shall be advised by such counsel that such Other Trustee is no longer necessary or prudent in the interest of the Holders of the Notes or in the event that Indenture Trustee shall have been requested to do so in writing by a Majority in Interest of Loan Participants, Indenture Trustee and Owner Trustee shall execute and deliver an indenture supplemental hereto and all other instruments and agreements necessary or proper or to remove any Other Trustee. In the event

that Owner Trustee shall not have joined in the execution of such instruments or agreements or such indenture supplemental hereto, Indenture Trustee may act on behalf of Owner Trustee when and to the same extent provided in Section 8.04(a).

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

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

(e) Each Other Trustee appointed pursuant to this Section shall be subject to, and shall have the benefit of, Articles III, IV, V, VI, VII and VIII hereof insofar as they apply to Indenture Trustee.

(f) Except as contemplated by clause (ii) of Section 8.04(b) hereof, notwithstanding any other provisions of this Section 8.04, the powers of any Other Trustee appointed pursuant to this Section 8.04 shall not in any case exceed those of Indenture Trustee hereunder and shall not relieve Indenture Trustee of any liability hereunder.

**SECTION 8.05. Notice of Successor Owner Trustee.** In the case of any appointment of a successor to Owner Trustee pursuant to the Trust Agreement or any merger, conversion, consolidation or sale of substantially all of the corporate trust business of Owner Trustee pursuant to the Trust Agreement, the successor Owner Trustee shall give prompt written notice thereof to the Indenture Trustee and to each Holder.

## **ARTICLE IX**

### **SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS**

**SECTION 9.01. Conditions and Limitations.** Except as provided in Section 9.02 and Section 9.03 hereof and subject to the rights of Owner Trustee under Section 5.07, at any time and from time to time, but only upon the written request of a Majority in Interest of Loan Participants: (a) Owner Trustee (with the consent of Owner Participant) may and Indenture Trustee shall execute a supplement hereto for the purpose of adding provisions to or changing or eliminating provisions of, this Indenture as specified in such request and (b)

Owner Trustee (with the consent of Owner Participant) may enter into such written amendment of or supplement to any of the Assigned Agreements to which the parties thereto may agree and as may be specified in such request (except to the extent any such amendment or supplement materially adversely affects or materially impairs the interests or rights of the Owner Trustee, in its individual capacity), or execute and deliver such written waiver or modification of the terms of any of the Assigned Agreements, as may be specified in such request; provided, that without the consent of each Holder of Notes then outstanding, no such supplement to this Indenture or amendment of or supplement to any of the Assigned Agreements, or waiver or modification of the terms of any thereof, shall (i) modify any of the provisions of this Section 9.01 or of Sections 3.02, 5.02, 5.04, 5.05, 6.01, 6.02, 6.03, or 6.04 hereof, the definitions of the terms "Trust Indenture Estate," "Majority in Interest of Loan Participants," "Owner Default," "Default" or "Event of Default" or "Make Whole Premium", (ii) reduce the amount or extend the time of payment of any amount owing or payable under any Note, reduce the interest payable on any Note or alter or modify any of the provisions of Article III hereof with respect to the order of priorities in which distributions thereunder shall be made as between the Holders of Notes and Owner Trustee, (iii) reduce, modify or amend any indemnities, (iv) reduce the amount or extend the time of payment of Rent, Termination Value, Casualty Values or Early Purchase Option Prices set forth in the Lease or the amount to be paid pursuant to the third paragraph of Section 16(c) of the Participation Agreement, (v) modify, amend or supplement the Lease or consent to any assignment of the Lease in either case releasing Lessee from its obligations in respect of the payment of Rent, Termination Value, Casualty Values or Early Purchase Option Prices or its obligation to assume the payment of a Make Whole Premium in the circumstances described in Section 19(c) of the Lease or changing the absolute and unconditional character of such obligations as set forth in Section 5 of the Lease or (vi) subject to Section 6.03 and Article X hereof, permit the creation of any Lien on the Trust Indenture Estate or any part thereof, except as herein expressly permitted, or deprive the Holder of any Note then outstanding of the Lien of this Indenture on the Trust Indenture Estate or release any property from the Trust Indenture Estate 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 Trust Indenture Estate, Owner Trustee and Indenture Trustee, without the consent of, or any written request from, any Holder of any Note, shall execute an Indenture Supplement for the sole purpose of adding to the Trust Indenture Estate such property.

**SECTION 9.03. Indenture Trustee Protected.** If in the opinion of counsel for Indenture Trustee any document required to be executed pursuant to the terms of Section 9.01 hereof adversely affects any of the rights or obligations of Indenture Trustee under this Indenture, the Participation Agreement, the Lease or any other Operative Agreement, Indenture Trustee may in its discretion decline to execute such document.

**SECTION 9.04. Documents Mailed to Holders.** Promptly after the execution by Owner Trustee or Indenture Trustee of any document entered into pursuant to Section 9.01 or Section 9.02 hereof, Indenture Trustee shall mail, by first class registered mail, postage prepaid, a conformed copy thereof to each Holder of a Note at its address last known to

Indenture Trustee, but the failure of Indenture Trustee to mail such conformed copies shall not impair or affect the validity of such document.

## ARTICLE X

### MISCELLANEOUS

SECTION 10.01. Termination of Indenture. This Indenture and the trusts created hereby shall terminate and this Indenture shall be of no further force or effect upon the earlier of the sale or other final disposition by Indenture Trustee of the Leased Equipment constituting part of the Trust Indenture Estate and the final distribution by Indenture Trustee of all moneys or other property or proceeds constituting part of the Trust Indenture Estate in accordance with the terms of Article III hereof and the payment of all of the Indebtedness; otherwise this Indenture and the trusts created hereby shall continue in full force and effect in accordance with the terms hereof. Upon payment in full of the principal of, interest on, premium or any other amount due with respect to the Notes and all other Indebtedness provided for in this Indenture, all moneys or other property or proceeds constituting part of the Trust Indenture Estate shall be paid to Owner Trustee. Indenture Trustee shall promptly notify Lessee of the termination of this Indenture pursuant to clause (a) of this Section 10.01. In connection with such termination, Indenture Trustee shall at the expense of the owner of the Leased 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 Trust Indenture Estate in Holders. The Holders of Notes shall have no legal title to any part of the Trust Indenture Estate. No transfer, by operation of law or otherwise, of any Note or other right, title and interest of any Holder of a Note or of Owner Trustee in and to the Trust Indenture Estate or hereunder shall operate to terminate this Indenture or the trust hereunder or entitle any successor or transferee of such Holder to an accounting or to the transfer to it of legal title to any part of the Trust Indenture Estate.

SECTION 10.03. Sale of Leased Equipment by Indenture Trustee is Binding. Any sale or other conveyance of the Leased Equipment or any portion thereof by Indenture Trustee made pursuant to the terms of this Indenture or of the Lease shall bind Owner Trustee and the Holders and shall be effective to transfer or convey all right, title and interest of Indenture Trustee, Owner Trustee and such Holders in and to such Leased 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 Indenture Trustee.

SECTION 10.04. Indenture for Benefit of Owner Trustee, Owner Participant, Indenture Trustee and Holders of Notes Only. Nothing in this Indenture, whether express or implied, shall be construed to give to any person other than Owner Trustee, Owner Participant, Indenture Trustee and the Holders of the Notes any legal or equitable right, remedy or claim under or in respect of this Indenture or any Note.

**SECTION 10.05. Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all notices or other communications required or permitted to be given hereunder shall be in writing, shall be made pursuant to Section 12(a) of the Participation Agreement.

Notwithstanding anything in this Indenture to the contrary, no notice or request shall be required to be delivered to Owner Trustee, Owner Trustee (in its individual capacity), Owner Participant, Guarantor or Lessor pursuant to any provision of this Indenture if the Person specified to deliver such notice or request is then stayed or otherwise prohibited by law from delivering such notice or request.

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

**SECTION 10.07. Counterparts.** This Indenture may be executed by the parties hereto in any number of 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 Indenture, to produce or account for more than one counterpart.

**SECTION 10.08. Successors and Assigns.** All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, Owner Trustee, Indenture Trustee and each Holder of a Note and their respective successors and assigns. Any request, notice, direction, consent, waiver or other instrument or action by Owner Trustee, Indenture Trustee or any Holder of a Note shall bind the successors and assigns of such party. This Indenture and the Trust Indenture Estate shall not be affected by any amendment or supplement to the Trust Agreement or by any other action taken under or in respect of the Trust Agreement, except that each reference in this Indenture to the Trust Agreement shall mean the Trust Agreement as amended and supplemented from time to time to the extent permitted hereby and thereby.

**SECTION 10.09. Payments on Business Day.** Notwithstanding any provision hereof to the contrary, any payment pursuant to this Indenture due on a day which is not a Business Day shall be paid without additional interest on the next day which is a Business Day; provided, that if the date on which the aggregate outstanding principal on the Notes shall be or become due and payable, by acceleration or otherwise, shall not be a Business Day, then the corresponding payment hereunder which shall be due on such day shall be paid on the next following Business Day and shall be increased by an amount equal to the accrued interest due on such Notes for such delay in payment.

**SECTION 10.10. Written Changes Only.** No term or provision of this Indenture or the Notes 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

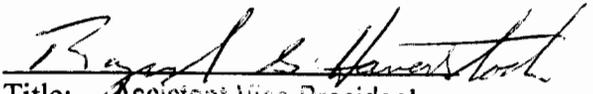
change, waiver, discharge or termination is sought, and any waiver of the terms hereof or of any Note shall be effective only in the specific instance and for the specific purpose given.

SECTION 10.11. Headings. The table of contents, captions and section headings 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 Indenture shall in all respects be governed by, and construed in accordance with, the laws of the State of New York (including all matters of construction, validity and performance excluding the laws of the State of New York relating to conflicts of laws).

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

NORWEST BANK MINNESOTA,  
NATIONAL ASSOCIATION,  
not in its individual capacity  
but solely as Owner Trustee

By:   
Title: Assistant Vice President

MANUFACTURERS AND TRADERS  
TRUST COMPANY,  
not in its individual capacity  
but solely as Indenture Trustee

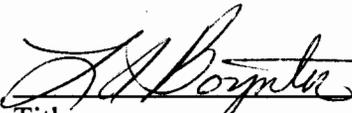
By: \_\_\_\_\_  
Title:

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

NORWEST BANK MINNESOTA,  
NATIONAL ASSOCIATION,  
not in its individual capacity  
but solely as Owner Trustee

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

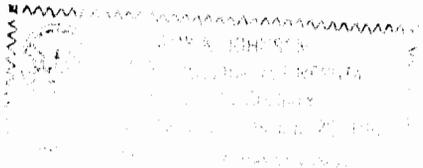
MANUFACTURERS AND TRADERS  
TRUST COMPANY,  
not in its individual capacity  
but solely as Indenture Trustee

By:   
Title: ASS'T VICE PRESIDENT

ICC ACKNOWLEDGMENT

State of Minnesota     )  
                                  ) ss.:  
County of Hennepin    )

On this 25<sup>th</sup> day of January, 1995, before me personally appeared Raymond J. Bowerstock, to me known, who, being by me duly sworn, did depose and say that she/he resides at Mpls MN; that she/he is the Assistant Vice President of NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, the corporation described in and which executed on such day the foregoing instrument; and that she/he signed his name thereto by authority of the Board of Directors of said corporation.



Amy K. Johnson  
Notary Public - Minnesota  
Hennepin County  
My Commission Expires \_\_\_\_\_

ICC ACKNOWLEDGMENT

State of New York     )  
                                  ) ss.:  
County of Erie         )

On this 20<sup>th</sup> day of JANUARY, 1995, before me personally appeared LESLIE A. BOYNTON, to me known, who, being by me duly sworn, did depose and say that she/he resides at AMHERST, NEW YORK; that she/he is the ASST. V.P. of MANUFACTURERS AND TRADERS TRUST COMPANY, the corporation described in and which executed on such day the foregoing instrument; and that she/he signed his name thereto by authority of the Board of Directors of said corporation.

*Steven J. Wattie*  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires \_\_\_\_\_

**STEVEN J. WATTIE**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires July 20, 1996

**DEFINITIONS**

"AAR" shall mean the Association of American Railroads.

"Affiliate" of any Person shall mean any entity of which 50% or more of its issued and outstanding shares of voting stock is owned, directly or indirectly, by such Person.

"Appraisal" shall have the meaning specified in Section 3(b)(xiii) of the Participation Agreement.

"Appraisal Procedure" shall mean the following for determining the Fair Market Value or Fair Market Rental Value of any Unit or property (at any time other than in connection with an Event of Default): If any party shall have given written notice to the other requesting determination of such value, the parties shall attempt to agree upon such value, and, failing such agreement within twenty (20) days after the giving of such notice, the parties shall consult for the purpose of appointing one qualified independent appraiser by mutual agreement. If no such appraiser shall be so appointed within thirty (30) days after such notice shall have been given, each party shall appoint an independent appraiser (which shall not be a manufacturer of such property) within thirty-five (35) days after such notice shall have been given, and the two appraisers so appointed shall within forty (40) days after such notice shall have been given appoint a third independent appraiser (which shall not be a manufacturer of such property). If no such third appraiser shall be so appointed within forty (40) days after such notice shall have been given, either party may apply to the American Arbitration Association (or any successor thereto) for the appointment of an appraiser and both parties shall be bound by any appointment made by such Association. Each appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value or Fair Market Rental Value, as the case may be, of the property in question within thirty (30) days after his appointment. If the parties shall have appointed a single appraiser, his determination of value shall be final and binding as the Fair Market Value or the Fair Market Rental Value, as the case may be. If three appraisers shall have been appointed as hereinabove set forth, the values determined by the three appraisers shall be averaged, the determination which shall differ the most from such average shall be disregarded, the remaining two determinations shall be averaged, and such average shall be final and binding as the Fair Market Value or the Fair Market Rental Value, as the case may be. Such parties shall equally bear all expenses of such appraisers, provided that if three appraisers are chosen, such parties shall each bear all expenses of its chosen appraiser, and further provided that if the appraisal is requested in connection with the exercise of any remedies described in the Operative Agreements or in connection with a rescinded notice to purchase or renewal given pursuant to Section 6 of the Lease, all expenses of such appraisers shall be borne by Lessee.

"Assigned Agreements" shall mean, collectively, the Participation Agreement, the Lease, the Guarantee, the Purchase Agreement Assignment (including the consent of the manufacturer) and each Bill of Sale.

"Bankruptcy Code" shall mean the Bankruptcy Code of 1978, as amended (11 U.S.C. Section 101, et seq.).

"Basic Rent" for any Unit, subject to the adjustments provided for in Section 5(d) of the Lease, shall mean for the Basic Term as of any Rental Payment Date for such Unit an amount equal to the product of the Lessor's Cost of such Unit multiplied by the percentage listed under the caption "% EC Total" on Schedule 3 to the Lease opposite such Rental Payment Date, provided that if the payment of the Termination Value or Casualty Loss Value is made on such Rental Payment Date for any Unit, no Basic Rent for such Unit shall be due or payable on such Rental Payment Date. "Basic Rent" for any Unit during any Renewal Term shall mean an amount determined in accordance with Section 6(c) or 6(d) of the Lease. Basic Rent then due on any Rental Payment Date during the Basic Term in respect of all Units shall be at least sufficient to pay in full on such date any payment then required to be made on account of the principal and interest on the Notes then outstanding in accordance with the amortization schedule and payment terms therefor set forth in the Notes.

"Basic Term" as to any Unit shall mean the period that commences on the Basic Term Commencement Date and expires at midnight on the Expiration Date.

"Basic Term Commencement Date" shall mean July 31, 1995.

"Benefit Plan" shall mean any "employee benefit plan", within the meaning of Section 3(3) of ERISA that is subject to Title I of ERISA, or any "plan", within the meaning of Section 4975(e)(1) of the Code.

"Bill of Sale" for any Unit (including any replacement Unit) shall mean a warranty bill of sale for such Unit from the Seller to Lessor, substantially in the form of Exhibit B to the Participation Agreement.

"Business Day" shall mean each day other than a Saturday, Sunday or day on which banks in the States of New York or Minnesota are required or authorized to close.

"Casualty Loss Payment Date" for any Unit that has suffered a Casualty Occurrence shall be the day that is three days after the Lessee's receipt of insurance proceeds in respect thereof or, if there is no such day, the date selected by Lessee for payment of the Casualty Loss Value for such Casualty Occurrence, which date shall not be more than 120 days from the date of such Casualty Occurrence.

"Casualty Loss Value" for any Unit suffering a Casualty Occurrence shall mean an amount equal to (i) during the Interim Term or the Basic Term of the Lease, the product of Lessor's Cost of such Unit multiplied by the percentage specified in Schedule 2 to the Lease for such Unit opposite the date on such Schedule 2 corresponding to the Casualty Loss Payment Date for the Units (or if there is no such corresponding date, opposite the date on such Schedule next succeeding such Casualty Loss Payment Date) and (ii) during any renewal term, that percentage determined in accordance with Section 6(c) or 6(d) of the Lease. Casualty Loss Value shall in all circumstances be at least sufficient to pay in full the

aggregate outstanding principal amount of the Notes plus accrued and unpaid interest thereon to such date.

**"Casualty Occurrence"** with respect to any Unit shall mean any of the events referred to in Section 11(b) of the Lease relating to such Unit.

**"Change in ERISA Law"** shall mean a change in law that articulates a clear standard under which insurance company general account assets would or would not be subject to prohibited transaction excise taxes and penalties (or would not be so subject, upon compliance with certain requirements), including, without limitation, the adoption of by the Department of Labor of a final version of the Proposed Exemption or adoption of another class exemption or regulation regarding the investment of insurance company general account assets or the issuance of any advisory opinion, ruling, notice, general counsel's memorandum or other published notice or announcement by the Internal Revenue Service or Department of Labor in connection with a program of enforcing the prohibition against Prohibited Transactions in circumstances involving the investment of insurance company general account assets.

**"Change in Tax Law"** shall mean any amendment of the Code proposed or enacted into law or any change in the regulations, revenue rulings or Internal Revenue Service interpretations under the Code, that affects the Tax Assumptions and was proposed, adopted or promulgated, as the case may be, on or prior to the Closing Date.

**"Closing"** shall mean the purchase and lease of a Unit on the Closing Date pursuant to the terms and conditions of the Participation Agreement.

**"Closing Date"** shall mean January 25, 1995 or such later Business Day as may be agreed on by Lessee, Loan Participant and Owner Participant.

**"Code"** shall mean the Internal Revenue Code of 1986, as amended, or any successor tax code thereto.

**"Commitment"** shall mean a Purchase Commitment or the Equity Commitment.

**"Corporate Trust Office of Indenture Trustee"** shall mean the office of Indenture Trustee located at One M&T Plaza, Buffalo, New York 14203 or such other office at which at any particular time its corporate trust business shall be administered, which Indenture Trustee shall have specified by notice in writing to Lessee, Owner Trustee, Loan Participants and each Holder.

**"Debt"** shall mean any liability for borrowed money, or any liability for the payment of money in connection with any letter of credit transaction or other liabilities evidenced or to be evidenced by bonds debentures, notes or other similar instruments.

**"Debt Placement Agent"** shall mean CS First Boston Corporation.

**"Default"** shall have the meaning as defined in Section 5.01(b) of the Indenture.

**"Default Interest Rate"** shall mean the interest rate per annum (computed on the basis of a 360-day year of twelve 30-day months) equal at all times to (a) a rate per annum equal to two percentage points over the interest rate payable in respect of the Notes issued on the Closing Date or any New Note issued in connection with any refinancing of such Note or (b), if less, the maximum interest rate permitted by law.

**"Disclosure Documents"** shall mean Guarantor's annual report on Form 10-K for the period ended December 31, 1993 (other than the documents and reports referred to in Part IV, Items 14(a)(3) and (b) thereof) and Guarantor's Quarterly reports on Form 10-Q for the periods ended March 31, 1994, June 30, 1994, and September 30, 1994 and each of Guarantor's Current Reports on Form 8-K, dated as of December 27, 1993, January 26, 1994, March 21, 1994, March 31, 1994, April 20, 1994, June 21, 1994, July 20, 1994, August 18, 1994 and October 19, 1994, each as filed with the Securities and Exchange Commission.

**"Early Purchase Option Date"** shall mean the first date set forth under the caption "Early Purchase Option Date" on Schedule 1 to the Lease.

**"Early Purchase Option Price"** shall mean the sum of the percentages set forth under the caption "Early Purchase Option Price Per Unit at a % of Lessor's Cost" on Schedule 1 to the Lease. The amount of the Early Purchase Option Price payable on the Early Purchase Option Date shall be at least sufficient to pay in full the aggregate outstanding principal amount of the Series of Notes to be prepaid pursuant to Section 3.02 of the Indenture plus accrued and unpaid interest thereon to the Early Purchase Option Date.

**"Economic Return"** shall mean Owner Participant's anticipated net after-tax yield (utilizing the multiple investment sinking fund method of analysis) and aggregate after-tax cash flow, computed on the basis of the same methodology and assumptions as were utilized by Owner Participant in determining Basic Rent, Casualty Loss Value, Termination Value, Early Purchase Option Price and Early Purchase Option Date schedules as set forth in Schedule 4 to the Participation Agreement.

**"Environmental Law"** shall mean any federal, state, local or foreign law, regulation, rule or ordinance relating to land use, pollution or protection of human health or species of wildlife or plants or the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including, without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances. Environmental Laws include but are not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("**FIFRA**"), the Resource Conservation and Recovery Act, as amended ("**RCRA**"), the Toxic Substances Control Act, as amended ("**TSCA**") and (vi) the Endangered Species Act of 1973, as amended.

**"Equity Commitment"** shall mean an aggregate amount equal to \$564,115.79.

**"ERISA"** shall mean the Employee Retirement Income Security Act of 1974, as amended.

**"Event of Default"** shall mean any of the events referred to in Section 17 of the Lease.

**"Excepted Payments"** shall mean the following: (a) all amounts, and all rights with respect thereto, payable under Section 5 or 7 of the Participation Agreement to Owner Participant or Owner Trustee; (b) all amounts payable and all rights under the Tax Indemnity Agreement; (c) all proceeds of and rights with respect to liability insurance policies (or self-insurance in lieu thereof) which are to be payable solely to Owner Participant or Owner Trustee (in its individual capacity and not as Owner Trustee) (i) maintained or required to be maintained by Lessee under any Operative Agreement or (ii) separately maintained by or on behalf of any such Person as permitted by Section 7(g) of the Lease; (d) all proceeds of and rights with respect to property insurance separately maintained by or on behalf of Owner Participant or Owner Trustee as permitted by Section 7(g) of the Lease; (e) all Transaction Expenses payable or reimbursable by Lessee to Owner Participant, or Owner Trustee (in its individual capacity and not as Owner Trustee) pursuant to Section 11 of the Participation Agreement; (f) all amounts of interest or late charges attributable to amounts referred to in any of clauses (a) through (e) above; and (g) all amounts payable and all rights with respect thereto under the Guarantee with respect to amounts referred to in any of clauses (a) through (f) above.

**"Excess Policies"** shall have the meaning specified in Section 7(h) of the Lease.

**"Expiration Date"** shall mean July 31, 2017.

**"FRA"** shall mean the Federal Railroad Administration.

**"Fair Market Rental Value"** shall mean an amount equal to the rental value of any Unit which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession or a used equipment dealer) and an informed and willing lessor under no compulsion to lease. For purposes of Section 18 of the Lease, Fair Market Rental Value shall be determined on an "as is" "where is" basis. For the purposes of Section 6(c) or 6(d) of the Lease, Fair Market Rental Value shall be determined on the assumption that maintenance has been performed and improvements made at least in accordance with the provisions of Section 9 of the Lease. Costs of removal from the location of current use and future lease renewal or purchase rights shall not be a deduction from such value.

**"Fair Market Value"** shall mean an amount equal to the value of any Unit, and for the purposes of Section 8(c) of the Lease, any addition or improvement to any Unit, which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than a buyer currently in possession or a used equipment dealer) and an

informed and willing seller under no compulsion to sell and shall take into consideration the costs and expenses, including any taxes associated with the transfer of ownership from Lessor to Lessee, the intent being that Lessor and Lessee each derive the same benefits and costs as in an arm's-length transaction with a third party. Costs of removal from the location of current use and future lease renewal or purchase rights shall not be a deduction from such value. For purposes of Section 18 of the Lease, Fair Market Value shall be determined on an "as is" "where is" basis. For the purposes of Section 6(b) of the Lease, Fair Market Value shall be determined on the assumption that maintenance has been performed and improvements made at least in accordance with the provisions of Section 9 of the Lease.

"Fundamental Default" shall have the meaning assigned to such term in Section 3.06 of the Indenture.

"Grant" shall mean mortgage, hypothecate, grant, bargain, sell, transfer, confirm, convey, pledge, assign and grant a security interest in; and "Granted" shall mean mortgaged, hypothecated, granted, bargained, sold, transferred, confirmed, conveyed, pledged, assigned and granted a security interest in.

"Guarantee" shall mean that certain guarantee of Guarantor dated as of January 25, 1995, from Guarantor to Owner Trustee, Owner Participant, Indenture Trustee and Loan Participants, substantially in the form of Exhibit F to the Participation Agreement.

"Guarantor" shall mean Occidental Petroleum Corporation, a Delaware corporation.

"Guarantor Documents" shall mean the Participation Agreement and the Guarantee.

"Hazardous Substances" shall mean those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the United States Environmental Protection Agency as hazardous substances (40 CFR part 302) and amendments thereto, or such substances as are designated as hazardous or toxic or regulated as such under any applicable local, state or federal law or the equivalent under applicable foreign laws including, without limitation, any materials, waste or substance which is (a) petroleum, (b) asbestos, (c) polychlorinated biphenals, (d) defined as a "hazardous material," "hazardous substance" or "hazardous waste" under applicable local, state or federal laws or the equivalent under applicable foreign laws, (e) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, (f) defined as "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, or (g) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act.

"Hazardous Substances Laws" shall mean all local, state, federal and foreign laws, ordinances, regulations, and orders relating to industrial hygiene, environmental protections, or the use, analysis, generation, manufacture, storage, disposal or transportation of any Hazardous Substances.

"Holder" shall mean a holder from time to time of one or more of the Notes in accordance with the Indenture.

"ICC" shall mean the Office of the United States Interstate Commerce Commission.

"Impositions" shall have the meaning set forth in Section 7(a) of the Participation Agreement.

"Incipient Default" shall mean an event, condition or act, which with the passage of time or the giving of notice or both, would be an Event of Default.

"Indebtedness" shall have the meaning set forth in the Granting Clause of the Indenture.

"Indemnitee" shall have the meaning set forth in Section 5(a) of the Participation Agreement.

"Indenture" shall mean the Trust Indenture and Security Agreement, dated as of January 25, 1995, between Indenture Trustee and Lessor, substantially in the form of Exhibit C to the Participation Agreement, and any amendments or supplements thereto in accordance with the terms thereof and the other Operative Agreements.

"Indenture Trustee" shall mean Manufacturers and Traders Trust Company, a New York banking corporation, not in its individual capacity, except as expressly stated, but solely as Indenture Trustee, and its successors and assigns; except, that with respect to any indemnities afforded to it, covenants to pay its fees, costs and expenses or limitations of liability, such term shall be construed to mean, Indenture Trustee in either of its capacities.

"Indenture Trustee Documents" shall mean the Participation Agreement and the Indenture.

"Interest Payment Date" shall mean each date on which an installment of interest, or principal and interest, is due and payable under Section 2.02(a) of the Indenture.

"Interim Term" shall mean the period that commences on the Closing Date and expires at midnight on the day preceding the Basic Term Commencement Date.

"Lease" shall mean the Equipment Lease Agreement, dated as of January 25, 1995, between Lessor and Lessee, in the form of Exhibit D to the Participation Agreement, and any amendments or supplements thereto in accordance with the terms thereof and the other Operative Agreements.

"Lease Term" shall mean the Interim Term, the Basic Term and any renewal or extension thereof in accordance with the provisions of the Lease.

**"Leased Equipment"** shall mean collectively those items of railroad rolling stock described in Schedule 1 to the Lease and subject to the Lease at any given time, together with any and all accessions, additions, improvements and replacements from time to time incorporated or installed in any item thereof.

**"Lessee"** shall mean Oxy Petrochemicals Inc., a Delaware corporation, and its successors and assigns as permitted under the terms hereof and the other Operative Agreements.

**"Lessee-Controlled Contest"** shall have the meaning specified in Section 7(d) of the Participation Agreement.

**"Lessee Documents"** shall mean the Participation Agreement, the Lease, the Purchase Agreement Assignment, the Bills of Sale and the Tax Indemnity Agreement.

**"Lessee Interim Rent"** shall mean an arrears rent payment due on July 31, 1995 in an amount equal to the product of the Lessor's Cost of each Unit multiplied by the percentage listed under the caption "% EC Total" on Schedule 3 to the Lease set forth opposite such date, which shall be at least sufficient to pay on such date any payment then required to be made on account of the principal and interest on the Notes then outstanding in accordance with the amortization schedule and payment terms therefor set forth in the Notes.

**"Lessor"** shall mean Owner Trustee.

**"Lessor Documents"** shall mean the Participation Agreement, the Trust Agreement, the Lease, the Purchase Agreement Assignment, the Indenture and the Notes.

**"Lessor Interim Amount"** shall mean \$82,024.21 due on July 24, 1995 which in any case shall be at least sufficient to pay in full on such date any payment then required to be made on account of the principal and interest on the Notes then outstanding in accordance with the amortization schedule and payment terms therefor set forth in the Notes.

**"Lessor Lien"** shall mean any Lien resulting from either (i) acts of, or any failure to act by, or claims (including any taxes) against Owner Trustee, Norwest or the Owner Participant which arise out of matters not related to the transactions contemplated by the Operative Agreements, or (ii) a breach by Lessor, Norwest or the Owner Participant of its obligations under the Lease.

**"Lessor's Cost"** for any Unit shall mean the cost of such Unit as set forth in Schedule 1 to the Lease.

**"Liabilities"** shall have the meaning set forth in Section 5(a) of the Participation Agreement.

"Lien" shall mean any lien, mortgage, encumbrance, charge, pledge, lease, security interest or claim of any kind (including without limitation any conditional sale or other retention agreement).

"Loan Participant" shall mean Principal Mutual Life Insurance Company and its successors and permitted assigns and each Holder from time to time of a Note or Notes.

"Majority in Interest of Loan Participants" as of a particular date of determination shall mean the Holders (other than Owner Participant, Lessor, Lessee or any Affiliate of any thereof) of a majority in aggregate unpaid principal amount of all Notes, if any, outstanding as of such date under the Indenture.

"Make Whole Premium" shall mean, in connection with any prepayment of the Note or Notes, the amount (but not less than zero) equal to the excess, if any, of

(A) the sum of the Present Values (as hereinafter defined) of (1) each installment of principal that would have been required to be made on each Rental Payment Date pursuant to the Indenture in respect of the principal amount of the Note or Notes being prepaid, (2) the principal payment of the Note or Notes to be paid upon maturity (assuming each required installment of principal is paid when due) and (3) the amount of interest (other than accrued interest being paid concurrently with required installment of principal) that would have been payable on (if not yet past, the date one day prior to six months from the Closing Date and) each Rental Payment Date on the amount of installment of principal being prepaid (assuming each required installment of principal, and the principal balance of the Note or Notes payable upon maturity and interest payments were paid when due), less

(B) the principal amount of the Note or Notes being prepaid.

For purposes of this definition, "Present Value" shall be determined to the date of prepayment in accordance with generally accepted financial practice in the United States of America on a semi-annual basis at a discount rate equal to the sum of the applicable Treasury Yield plus 0.50%; and the "Treasury Yield" for such purpose shall be determined by reference to the yield for the actively-traded U.S. Treasury security having a constant maturity equal to the then-remaining weighted average life to maturity (determined in accordance with generally accepted financial practice in the United States of America) of such Note at approximately 11:00 A.M., New York City time, on the third Business Day prior to the date of such prepayment of such Note, as reported by Telerate Access Service (page 5 or the relevant page at the date of determination indicating such yields or, if such data ceases to be available, any publicly available source of similar market data); provided that if such then-remaining weighted average life to maturity is not equal to the maturity of an actively traded U.S. Treasury security, such yield shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the yields for the two most closely corresponding actively traded U.S. Treasury securities having a constant maturity next longer and shorter than such then-remaining weighted average life.

"Manufacturer" with respect to any Unit, shall mean ACF Industries Incorporated.

"Material Adverse Effect" shall mean (i) any material and adverse effect on the consolidated financial condition of the referenced Person and its consolidated subsidiaries, taken as a whole, (ii) any material impairment of the referenced Person's ability to perform its obligations under the Operative Agreements to which such Person is a party or (iii) any adverse effect on the enforceability against the referenced Person of a material provision of an Operative Agreement to which such Person is a party.

"New Notes" shall have the meaning as defined in Section 16(a) of the Participation Agreement.

"New Note Holders" shall have the meaning as defined in Section 16(a) of the Participation Agreement.

"Non-U.S. Person" shall mean any Person other than a Person as defined in Section 7701(a)(30) of the Code.

"Norwest" shall mean Norwest Bank Minnesota, N.A., in its individual capacity.

"Note" or "Notes" shall mean any one or more Notes issued under the Indenture, substantially in the form set forth in Section 2.01 of such Indenture and shall include any note issued in exchange therefor or replacement thereof pursuant to Section 2.06 or Section 2.07 of such Indenture.

"Operative Agreements" shall mean the Participation Agreement, the Notes, the Indenture, the Trust Agreement, the Lease, the Purchase Agreement Assignment, the Bills of Sale, the Guarantee, the Tax Indemnity Agreement and the Owner Participant Guaranty.

"Owner Participant" shall mean Norlease, Inc., a Delaware corporation, and its successors and assigns.

"Owner Participant Documents" shall mean this Participation Agreement, and the Trust Agreement and the Tax Indemnity Agreement.

"Owner Participant Guaranty" shall mean that certain guaranty dated as of January 25, 1995 from The Northern Trust Company, an Illinois banking corporation, to the Obligors named therein, substantially in the form of Exhibit H to the Participation Agreement.

"Owner Trustee" shall mean Norwest Bank Minnesota, N.A., a national banking association, acting not in its individual capacity but solely as trustee under the Trust Agreement, and its successors and assigns.

"Participants" shall mean each Loan Participant, Owner Participant, Indenture Trustee and Owner Trustee.

"Participant Controlled Contest" shall have the meaning specified in Section 7(d) of the Participation Agreement.

"Participation Agreement" shall mean the Participation Agreement dated as of January 25, 1995, among Lessee, Owner Participant, Lessor, each Loan Participant, Guarantor and the Indenture Trustee, as amended from time to time.

"Payment Date" shall have the meaning specified in Section 18(c) of the Lease.

"Permitted Investments" shall mean (i) direct obligations of the United States of America and agencies thereof, (ii) obligations fully guaranteed by the United States of America, (iii) certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the States thereof having combined capital and surplus and retained earnings of at least \$500,000,000 (including Indenture Trustee if such conditions are met), and having a bond rating (for itself or its parent company) of A/A-2 or better as determined by Standard & Poor's Rating Division or of A/P-2 or better as determined by Moody's Investors Services, Inc., and (iv) commercial paper of companies, banks, trust companies, or national banking associations incorporated or doing business under the laws of the United States of America or one of the States thereof and in each case having a rating assigned to such commercial paper by Standard & Poor's Rating Division or Moody's Investors Service, Inc. (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization.

"Permitted Liens" shall mean (i) the security interest created by the Indenture; (ii) liens against one or more Units for taxes either not yet due or being contested in good faith and by appropriate proceedings diligently conducted so long as such proceedings shall stay the enforcement thereof and the sale or forfeiture of any Unit or any part thereof or interest therein and for which adequate reserves have been provided in accordance with generally accepted accounting principles; (iii) undetermined or inchoate materialmen's, mechanic's, workmen's, repairmen's or employees' liens or other like liens against one or more Units arising in the ordinary course of business and securing obligations which are not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension); (iv) the rights of any permitted sublessee or assignee under the Lease and (v) Lessor Liens.

"Person" shall mean an individual, a corporation, a partnership, an unincorporated organization, an association, a joint stock company, a joint venture, a trust, an estate, a government or any agency or political subdivision thereof, or other entity, whether acting in an individual, fiduciary or other capacity.

"Plan Assets" shall mean any assets that directly or indirectly constitute, or may be deemed under the Code, ERISA or any rulings or regulations thereunder to be, the assets of any "employee benefit plan", subject to Title I of ERISA or any applicable regulation thereunder, or an individual retirement account, individual retirement annuity or employee benefit plan subject to Section 4975 of the Code, or any trust established under any such plan, account or annuity.

"Potential Default" shall mean an event, condition or act, which with the passage of time or the giving of notice or both, would be a Default.

"Pricing Facts" shall have the meaning specified in Section 15(b) of the Participation Agreement.

"Prohibited Transaction" shall mean a transaction which is prohibited under Section 406 of ERISA or Section 4975 of the Code, unless such transaction is exempt from the prohibition under Section 408 of ERISA or Section 4975 of the Code or under any regulations, administrative exemptions or any other provision of law.

"Proposed Exemption" shall have the meaning set forth in Section 4(a)(iii)(B) of the Participation Agreement.

"PT Event" shall have the meaning set forth in Section 16(c) of the Participation Agreement.

"PT Notice" shall have the meaning set forth in Section 16(c) of the Participation Agreement.

"PT Payment Date" shall have the meanings set forth in Section 16(c), Section 16(d) and Section 17(b), as the case may require, of the Participation Agreement.

"Purchase Agreement Assignment" shall mean a Purchase Agreement Assignment respecting a new Unit between Lessee and Lessor, with the Consent and Agreement of the Manufacturer attached, substantially in the form of Exhibit G to the Participation Agreement.

"Purchase Agreements" shall mean the purchase agreements and purchaser orders for the Leased Equipment described in the Purchase Agreement Assignment.

"Purchase Commitment" shall mean an aggregate amount equal to \$1,924,911.21.

"Refinancing" shall have the meaning as defined in Section 16(a) of the Participation Agreement.

"Renewal Term" shall have the meaning specified in Section 6(c) of the Lease.

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

"Rental Payment Date" for any Unit shall mean during the Basic Term, the dates specified as such in Schedule 3 to the Lease and during any Renewal Term, the same dates occurring during such Renewal Term; provided, that if any such date shall not be a Business Day, then "Rental Payment Date" shall mean the next succeeding Business Day.

"Replacement Unit" shall mean a Tank Car substantially similar in material and dimension to the Unit with respect to which a Casualty Occurrence has occurred and which is being replaced pursuant to Section 11(c) of the Lease.

"Responsible Officer" of any corporation shall mean a corporate officer of such corporation who, in the normal performance of his or her operational responsibilities, would have knowledge of the subject matter of any covenant, agreement or obligation, as appropriate, of such entity, contained in any of the Assigned Agreements or in the Indenture.

"Securities Act" shall mean the Securities Act of 1933.

"Seller" with respect to any Unit shall mean Oxy Petrochemicals Inc., a Delaware corporation.

"Special Canadian Counsel" shall mean McCarthy Tetrault, Suite 4700, Toronto Dominion Bank Tower, Toronto Dominion Centre, Toronto, Ontario, Canada M5K 1E6.

"Special ERISA Counsel" shall mean Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017.

"Special ICC Counsel" shall mean Alvord & Alvord, 200 World Center Building, 918 Sixteenth Street, N.W., Washington D.C.

"Supplemental Rent" shall mean the amounts payable pursuant to Section 5(b) of the Lease.

"Tank Cars" shall mean the tank cars manufactured by ACF Industries, Inc. as described in Schedule 1 to the Lease.

"Tax Assumptions" shall have the meaning set forth in Section 1 of the Tax Indemnity Agreement.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement, dated as of the Closing Date between Owner Participant and Lessee.

"Termination Date" shall mean any "Termination Date" set forth on Schedule 2 to the Lease occurring after the fifth (5th) anniversary of the Basic Term Commencement

Date in respect of which Lessee has given Lessor prior notice pursuant to Section 4 of the Lease.

"Termination Value" for any Unit on any Termination Date shall mean an amount equal to the product of Lessor's Cost of such Unit multiplied by the percentage specified in Schedule 2 to the Lease opposite the applicable Termination Date for the Units and shall under any circumstances be at least sufficient to pay in full the aggregate outstanding principal amount of the Notes plus accrued and unpaid interest thereon to such date.

"Transaction Expenses" shall have the meaning set forth in Section 11 of the Participation Agreement.

"Trust Agreement" shall mean the Trust Agreement dated as of January 25, 1995 between Owner Participant and Norwest, and substantially in the form of Exhibit E to the Participation Agreement.

"Trust Estate" shall have the meaning set forth in Section 2.02 of the Trust Agreement.

"Trust Indenture Estate" shall have the meaning set forth in the Granting Clause of the Indenture.

"Underlying Policies" shall have the meaning specified in Section 7(h) of the Lease.

"Unit" shall mean individually the various items of Leased Equipment.