

**This Supplemental Indenture**, dated as of March 11, 1996 (the "Indenture"), between FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity except as specifically set forth herein, but solely as trustee under this Indenture ("Trustee"), and TRANSACCESS II, L.P., a California limited partnership ("Lessor").

**INTRODUCTION**

A. Pursuant to an indenture (the "Principal Indenture"), Lessor agreed, among other things, (a) to provide for the terms and conditions of Loans to be made by Noteholders to Lessor, evidenced by the Notes, to be made pursuant to the Participation Agreement (capitalized terms being used as defined in the Principal Indenture), and (b) to provide for the grant of a first priority security interest by Lessor to Trustee, as part of the Collateral, in among other things all of Lessor's right, title and interest in the Equipment, the Bill of Sale, the Modification Agreement including warranties thereunder and related thereto, the Lease and the other Assigned Documents, and all payments and other amounts received hereunder or thereunder in accordance with the terms hereof or thereof, as security for the Obligations.

B. This Indenture relates to Equipment or part thereof, as the case may be, described in Schedule A hereto. A counterpart of this Indenture or a memorandum thereof will be deposited in the office of the Surface Transportation Board to validate the mortgage of and security interest in the Equipment and certain other Collateral described herein.

**ACCORDINGLY**, in consideration of the premises and mutual covenants contained herein, the parties hereto hereby agree, for the benefit of the Noteholders, as follows:

**Section 1. Definitions.**

Unless the context otherwise requires, capitalized terms used herein shall have the respective meanings assigned thereto in Annex 1 to the Principal Indenture for all purposes hereof (such definitions, unless otherwise indicated, to be equally applicable to both the singular and plural forms of the terms defined).

**Section 2. Loan and Notes.**

**2.1 Interest.**

Lessor hereby promises and agrees to pay to Trustee for the pro rata benefit of the Noteholders interest on the principal portion of the Loans evidenced by the Notes at the rates, in the amounts, at the times and calculated and payable in the manner prescribed by the Principal Indenture. Interest payable under the Principal Indenture on the Loans and Notes does not exceed 25% per annum.

**2.2 Repayment of Loan.**

Lessor hereby promises and agrees to pay to Trustee for the pro rata benefit of the Noteholders the principal amount of the Loans evidenced by the Notes in the amounts at the

scheduled maturities and payable to the extent and in the manner prescribed by the Principal Indenture. The Trustee shall be entitled to rely upon the certification of the Initial Noteholder with respect to the amount of principal or interest owing on any Loan Payment Date.

### **2.3 Payments; Computations.**

(a) All amounts payable by Trustee to any Noteholder hereunder will be payable by wire transfer of such amounts in Dollars in immediately available funds to the banking institution identified by such Noteholder in writing to Trustee, in all cases without any presentment or surrender of any Note. All amounts payable by Trustee to Lessor hereunder will be payable to Lessor by wire transfer of such amounts in Dollars in immediately available funds to the banking institution specified by Lessor in writing to Trustee. Such payments shall be made on the date directed herein so as to assure receipt thereof by 11:00 a.m., San Francisco time, if Trustee has, holds or receives immediately available funds by the close of business on the preceding Business Day; funds received or becoming available after the close of business on the preceding Business Day shall be disbursed in accordance with the foregoing as soon as possible, but not later than the next Business Day.

(b) Lessor shall make each payment (including any prepayment) required or permitted to be made by it hereunder or under the Notes not later than 10:00 a.m., San Francisco time, on the day when due (or such prepayment is specified to be paid) in Dollars and in funds immediately available to Trustee's Account. Trustee shall apply or distribute payments received hereunder pursuant to Section 6. All payments hereunder shall be made without setoff or counterclaim. Any payments received by any Noteholder after 11:00 a.m., San Francisco time, shall not be deemed to have been received until the next Business Day, and interest shall accrue thereon accordingly.

(c) All computations of interest or fees hereunder shall be based on a 360-day year for actual days elapsed.

### **2.4 Prepayments.**

#### **(a) Mandatory Prepayments:**

The Lessor hereby promises and agrees to prepay to Trustee for the pro rata benefit of the Noteholders the Loans in the amounts, at the times and payable to the extent and in the manner prescribed by the Principal Indenture.

#### **(b) Voluntary Prepayment.**

Subject to the terms and conditions of the Principal Indenture, Lessor may voluntarily prepay to Trustee for the pro rata benefit of the Noteholders the Loans in the amounts, at the times and payable to the extent and in the manner prescribed by the Principal Indenture, including the Prepayment Premium and Break Funding Costs, as applicable.

(c) Break Funding Costs.

Payment of the Break Funding Cost shall be in addition to any other costs, expenses, liabilities, or other amounts that may become due to Trustee or Noteholders by the terms hereof, under any of the other Basic Documents, or by the operation of law or otherwise. Lessor agrees that the amount of any Break Funding Costs payable to Noteholders under this Indenture is a reasonable estimate of Noteholders' loss under the circumstances contemplated hereby and is not a penalty.

(d) Application of Prepayments.

No mandatory or voluntary prepayment of the Loan will reduce any future principal installment due under the Loan until repayment in full thereof except as provided in Section 2.3(c) of the Principal Indenture.

(e) Certain Notices.

Notices by Lessor to Noteholders of voluntary prepayment of any Loan shall be in writing (or by telephone promptly confirmed in writing) and shall be effective only if received by Trustee not later than 2:00 p.m., San Francisco time, five Business Days before the date of the relevant prepayment or designation. Each such notice of prepayment or designation shall specify the reason for such prepayment.

(f) No Other Prepayment

No amount of any Loan payment may be reborrowed. Except as provided in this Section 2.5, the Loan may not be prepaid in whole or in part.

(g) Maturity of Prepayments.

If, in connection with a prepayment made pursuant to this Section 2.4, Lessor fails to pay or cause the Loan to be prepaid on the date fixed for such prepayment, without waiving any rights of Noteholders against either Lessee or Lessor arising from such failure, Lessor shall indemnify and hold Trustee and each Noteholder harmless against all costs and expenses incurred by such Person, including redeployment and break funding costs arising from transactions entered into in reliance upon such prepayment.

**2.5 Payment on Non-Business Day.**

Whenever any payment to be made hereunder is stated to be due on a day that is not a Business Day, such payment shall be made on the preceding Business Day.

**2.6 Fees.**

The Lessor hereby promises and agrees to pay to Trustee for the pro rata benefit of the Noteholders the Commitment Fee at the rate, in the amounts, at the times and calculated and payable in the manner prescribed by the Principal Indenture.

## **2.7 Personal Liability.**

Except to the extent of the Collateral, neither the Trustee nor any Noteholder shall have any claim based on the Lessor's obligations under the Basic Documents against anyone other than the Lessor, including for payment of any sums now or hereafter owing by the Lessor under the Basic Documents or for the performance of any of the obligations of the Lessor contained herein or therein. Nothing contained in this Section 2.7 shall (a) be deemed to be a release or impairment of the Obligations or any part thereof of the Lessor hereunder and under the other Basic Documents, (b) limit or otherwise prejudice in any way the Trustee's right to foreclose or otherwise exercise rights with respect to the Collateral, (c) limit or otherwise prejudice in any way the right of the Trustee to enforce any other rights or remedies under this Indenture and the other Basic Documents, or (d) limit or otherwise prejudice in any way Trustee's rights or remedies against any Obligor other than the Lessor, to the extent that such Obligor has breached any of its representations, warranties or covenants made by it in any of the Basic Documents (whether singly or jointly and severally with Lessor or any other Obligor) or has committed fraud or willful misconduct.

## **Section 3. Security Agreement and Assignment.**

### **3.1 Grant of Security Interest.**

In consideration of, to induce Noteholders to make, and to secure the due and punctual payment of the Loans in accordance herewith and with the Principal Indenture and the Notes, and to secure the due and punctual payment of all other amounts due Trustee and Noteholders under the Principal Indenture, hereunder and under the other Debt Documents, and the payment of all other indebtedness that this Indenture by its terms secures and compliance with all the terms hereof and of the Notes, and to secure the performance and observance by Lessor of the agreements and conditions applicable to it contained herein or in any of the other Basic Documents and the performance and observance (a) by Lessor of its obligations to Trustee and Noteholders contained in any of the Assigned Documents, including Premium, Break Funding Costs, and Deferred Costs, and (b) by Lessee of all of its agreements and covenants contained in the Lease or other Basic Documents for the benefit of Noteholders, (collectively the "Obligations"), Lessor does hereby grant, bargain, sell, mortgage, warrant, pledge, assign, transfer and convey, and grant a first priority security interest in, with power of sale, to Trustee and to its successors and assigns, forever, for the security and benefit of Noteholders, all of Lessor's estate, right, title and interest in the following properties whether now owned or hereafter acquired (all such properties, together with the "Collateral" as defined in the Security Agreements, but excluding Excepted Payments, being the "Collateral"):

(a) the Equipment;

(b) the Lease, the Guarantee, the Modification Agreement including warranties thereunder or related thereto, the Bill of Sale, the Purchase Agreement, the Guaranty (as defined in the Purchase Agreement), any other lease or rental agreement relating to the Equipment, together with all renewals, amendments and modifications thereof (collectively, the "Assigned

Documents”), including, without limitation, (i) all amounts of Rent, insurance proceeds (including, without limitation, return premiums) and condemnation, requisition and other awards and payments of any kind for or with respect to the Equipment payable to or for the account of Lessor (including, without limitation, proceeds and payments payable on account of or received pursuant to the exercise of any of the remedies provided in Section 18 of the Lease and of Stipulated Loss Value payments), and (ii) all rights of Lessor to exercise any election or option or to make any decision or determination or to give or receive any notice, consent, waiver or approval or declaration of default or to take any other action under or in respect of any Assigned Document or to accept any surrender or redelivery of the Units as well as all the rights, powers and remedies on the part of Lessor, whether arising under any such Assigned Document or by statute or at law or in equity, or otherwise, arising out of any Lease Default or Lease Event of Default;

(c) any sublease, assignment, or user contract relating to the Equipment or Units, together with all renewals of any such sublease, assignment, or user contract executed or in effect from time to time, and all payments, including, without limitation, all payments of rent, all insurance proceeds (other than public liability insurance proceeds) (including, without limitation, return premiums) and all other amounts due or to become due thereunder;

(d) all tolls, rents, issues, profits, products, revenues and other income from or on account of the property, rights and privileges subjected or required to be subjected to the Lien of this Indenture;

(e) any right to restitution from any party to any Assigned Document in respect of any determination of invalidity of any Assigned Document;

(f) all moneys and securities now or hereafter paid or deposited or required to be paid or deposited to or with Trustee by or for the account of Lessor or Noteholders pursuant to any provision contained in this Indenture, or any Assigned Document and held or required to be held by Trustee hereunder or thereunder, including without limitation the Trustee’s Account, funds on deposit therein, and any interest accrued thereon;

(g) all instruments, documents of title, books and records of Lessor concerning the foregoing property, including, without limitation, all data and records of inspection, modification, maintenance and overhaul and component lists and manuals relating to the Equipment;

(h) all other property of every kind and description, real, personal and mixed, and any interest therein, acquired, received or held by Lessor pursuant to any term of any Assigned Document, wherever located and whether or not subjected to the Lien of this Indenture by agreement supplemental hereto; and

(i) all proceeds of any of the foregoing.

EXCLUDING, HOWEVER, from all of the foregoing Collateral all Excepted Payments.

### **3.2 Equal and Ratable Security.**

All Obligations owing at any time under the Basic Documents to any Noteholder shall be equally and ratably secured by this Indenture, without preference, priority or distinction on account of the date or dates on which, or the Basic Document pursuant to which, such Obligations arise.

### **3.3 Present Assignment.**

Subject to the rights of Lessor under Section 5.3 of the Principal Indenture, Lessor presently and irrevocably assigns, transfers, conveys and sets over to Trustee and its successors and assigns, all present and future estate, right, title and interest of Lessor in, to and under the Assigned Documents, including, without limitation, (i) all rights of Lessor to exercise any election or option, or make any decision or determination, to give any notice, consent, waiver or approval under or in respect of any Assigned Document, and (ii) all moneys and claims for moneys due and to become due to Lessor pursuant to the Assigned Documents, and all claims of Lessor for damages in respect of any Event of Loss with respect to any Collateral and all other payments of any kind for or with respect to the Collateral pursuant to the Assigned Documents other than with respect to Excepted Payments.

### **3.4 Continuing Obligations of Lessor.**

Notwithstanding anything contained herein, Lessor shall remain liable under the Assigned Documents to perform all obligations assumed by it thereunder, and neither Trustee nor Noteholders shall have any obligation or liability under or arising out of any Assigned Documents by reason of or arising out of the assignment hereunder, and neither Trustee nor Noteholders shall be required or obligated in any manner to perform or fulfill any obligation of any other party under or arising out of any Assigned Document (until such time as Trustee actually becomes the owner of the Collateral or Lessor under the Lease after a foreclosure or acceptance of a bill of sale in lieu of a foreclosure, and then only to the extent of Lessor's obligations and liabilities as such owner or Lessor under any Assigned Document) or, except as expressly provided herein, to make any payment, to make any inquiry as to the nature or sufficiency of any payment received by it, to present or file any claim, or to take any action to collect or enforce the payment of any amount assigned to it or to which it may be entitled at any time.

### **3.5 Payments.**

Lessor agrees to direct Lessee to make all payments of Rent and payments for other amounts required to be paid to or deposited with Lessor pursuant to the Lease or the other Basic Documents, excepting only Excepted Payments, directly to Trustee's Account, for application as provided for in this Indenture. Lessor shall, promptly upon receipt thereof, transfer to Trustee any and all moneys from time to time received by it constituting part of the Collateral for application and distribution by Trustee pursuant to this Indenture.

### **3.6 Assignment; Security Agreement.**

Section 3.3 hereof shall constitute an assignment and the remainder of this Indenture shall constitute a mortgage and security agreement and, cumulative of all other rights of Trustee and Noteholders hereunder, Trustee and Noteholders shall have all of the rights conferred upon secured parties by any applicable Uniform Commercial Code or other similar or applicable legislation. Lessor agrees that if, upon an Indenture Event of Default, Trustee and Noteholders proceed to dispose of or utilize any Collateral in accordance with the Uniform Commercial Code, 10 calendar days' notice by Noteholders to Lessor shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code requiring such notice. For all purposes of this Indenture, the terms "Lien of this Indenture," "Lien hereof," "Lien created hereby" or words of similar import shall, unless the context otherwise requires, be deemed to include reference to the security interest, mortgage and other rights granted to Trustee under this Indenture.

### **3.7 Appointment of Trustee as Attorney.**

Lessor hereby constitutes and irrevocably appoints Trustee as the true and lawful attorney of Lessor, with full power in the name of Lessor or otherwise, to do any of the following at any time that an Indenture Event of Default exists: (i) enforce compliance with the Lease by Lessee thereunder, (ii) ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due and to become due that are part of the Collateral or arise out of or under the Lease or the other Assigned Documents, and (iii) endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which Trustee deems necessary or advisable in the performance of Trustee's duties hereunder.

### **3.8 Partial Invalidity.**

The invalidity of the Lien of this Indenture as to any item or type of Collateral shall not invalidate the security interest as to all or any part of any other item or type of Collateral as to which such Lien is otherwise valid.

### **3.9 Cash Collateral.**

If Lessor is entitled to or receives any compensation from any Government Body or any other Person (other than Lessee) on account of the use of the Equipment, or if Lessee provides any collateral for its obligations under the Lease or other Basic Documents, or if insurance proceeds are to be held by Lessor pending compliance by Lessee with the terms of the Lease, including, without limitation, under Section 18 of the Lease, all such compensation, collateral and insurance proceeds other than Excepted Payments shall be paid and delivered directly to Trustee's Account, or if paid to Lessor shall immediately be paid or delivered to Trustee's Account, to be held (until applied to the Obligations) by it as additional collateral hereunder and shall constitute part of the Collateral. Any such insurance proceeds, provided no Lease Default or Lease Event of Default then exists, will be paid to Lessee to the extent required by, and in accordance with the terms of, the Lease. Subject to the immediately preceding sentence, upon

the occurrence of an Indenture Event of Default, any such Collateral held by Trustee shall be applied to the Obligations in accordance with Section 6.

### **3.10 Release Upon Event of Loss.**

Trustee shall release any Unit from the Lien of this Indenture upon the payment by Lessee to the Trustee of the Stipulated Loss Value with respect to such Unit following an Event of Loss with respect thereto.

## **Section 4. Affirmative Covenants.**

During the term of this Indenture and until its performance of all Obligations, Lessor will:

### **4.1 Principal Indenture - Affirmative Covenants**

Duly observe and punctually perform the affirmative covenants set forth in Section 4 of the Principal Indenture.

### **4.2 Further Assurances; Financing Statements.**

From time to time, upon the request of the Majority in Interest of Noteholders, promptly and duly execute and deliver any and all such further instruments and documents as the Majority in Interest of Noteholders may reasonably deem desirable in obtaining the full benefits of the Lien created or intended to be created hereby and of the rights and powers herein granted. Upon the instructions from time to time of the Majority in Interest of Noteholders, Lessor shall execute and cause to be filed any financing statement (and any continuation statement with respect to any such financing statement), or any other similar or other document relating to the Lien of this Indenture, presented to it in proper form for signing or filing as may be specified in such instructions in any jurisdiction specified to Lessor that the Majority in Interest of Noteholders may reasonably deem necessary or desirable and pay or cause to be paid any filing or other fees in connection therewith.

### **4.3 Renewal of Powers of Attorney.**

At the Majority in Interest of Noteholders' or Trustee's request, take such actions as required to maintain the effectiveness of the appointments of Trustee as Lessor's attorney-in-fact in Sections 3.7 or 8.5.

## **Section 5. Negative Covenants.**

During the term of this Indenture and until its performance of all Obligations, Lessor shall not violate the negative covenants set forth in Section 5 of the Principal Indenture.

## **Section 6. Application of Proceeds from Collateral.**

All moneys received and other amounts realized by Trustee pursuant to any Basic Document shall be applied or distributed in the amounts, at the times, to the extent and in the manner prescribed by the Principal Indenture.

### **6.1 Retention of Amounts by Noteholders.**

Except as provided in Section 6.4 of the Principal Indenture, if at the time Trustee receives any payment of Rent (whether or not then overdue), or any payment in respect of interest on any overdue installment of Rent or any payment otherwise distributable pursuant to this Section 6, an Indenture Default or Indenture Event of Default exists, Trustee shall apply such payment to the extent necessary to pay amounts then due to Noteholders (other than Deferred Costs) pursuant to Sections 6.1, 6.2 and 6.3 of the Principal Indenture and shall retain the remainder of such payment as part of the Collateral until distributed under Section 6.4 of the Principal Indenture or such Indenture Default or Indenture Event of Default is cured or waived.

### **6.2 Trustee Expenses.**

Before distribution of any moneys pursuant to this Section 6, Trustee shall, if not previously reimbursed, first reimburse itself from such moneys for any costs, expenses (including any attorneys' fees and disbursements), taxes, or other losses for which it is indemnified hereunder.

### **6.3 Investment of Amounts Held by Trustee.**

Any amounts held by Trustee pursuant to this Indenture shall be invested by Trustee from time to time in Permitted Investments selected by Lessor unless an Indenture Default or Indenture Event of Default exists, during which time such amounts shall be invested by Trustee at the direction of the Majority in Interest of Noteholders; provided, however, that if the Trustee has not received an investment designation as to any funds required to be invested hereunder from the Lessor, where no Indenture Default or Indenture Event of Default exists, or from the Majority in Interest of Noteholders, where an Indenture Default or Indenture Event of Default exists, the Trustee shall invest such funds in a Permitted Investment described in clause (iv) of the definition thereof, without any obligation to select or allocate among the types thereof on any basis of yield, obligor or otherwise; provided, further, however, that Trustee shall not permit investments of such funds in any Permitted Investment that would cause the perfected lien of this Indenture to become unperfected, it being agreed that Trustee may rely upon an opinion of counsel to Lessor or any Noteholder with regard to such perfection. Unless otherwise expressly provided in this Indenture, any income realized as a result of any such investment, net of Trustee's reasonable fees and expenses in making such investment, shall be held and applied by Trustee in the same manner as the principal amount of such investment is to be applied, and any losses, net of earnings and such reasonable fees and expenses, shall be charged against the principal amount invested. Trustee may sell any investment hereunder without regard to its

maturity without instructions whenever Trustee reasonably believes such sale is necessary to make an application or distribution hereunder.

#### **6.4 Withholding Taxes.**

All distributions by Trustee hereunder shall be made free and clear of, and without deduction or withholding, on account of any taxes, unless and until Lessor certifies to Trustee and each Noteholder pursuant to Section 3.1 of the Noteholder Indemnity Agreement, or Trustee otherwise determines based upon advice of independent counsel, that Taxes (as defined in the Noteholder Indemnity Agreement) are required to be paid pursuant to Applicable Law, in which case Trustee shall make distributions hereunder net of such Taxes. Any distribution to a Noteholder hereunder that is made net of Taxes shall, for purposes of determining compliance with this Indenture and the Notes, be deemed to have been made in the amount of such distribution actually made to such Noteholder plus the amount of such Taxes paid by Trustee on account of such distribution. As provided in Section 2.10 of the Principal Indenture and the Noteholder Indemnity Agreement, certain of such Taxes constitute Deferred Costs.

#### **Section 7. Intentionally Omitted.**

#### **Section 8. Remedies, etc.**

##### **8.1 Action Upon Indenture Event of Default.**

If an Indenture Event of Default exists, the commitment of Noteholders to make advances under the Participation Agreement shall terminate and the Majority in Interest of Noteholders may declare the principal of the Loan due and payable immediately with or without notice to Lessor (except that in the case of Indenture Events of Default occurring with respect to Lessor under Sections 7.7, 7.8 and 7.9 of the Principal Indenture, the principal of the Loans shall be deemed to have become automatically due and payable) and upon such acceleration, such principal, accrued interest thereon, Break Funding Cost, and Premium on the amount accelerated and all other amounts payable hereunder (including Deferred Costs) shall become due and payable immediately without further act or notice of any kind. In addition, upon the direction of the Majority in Interest of Noteholders following a Lease Event of Default, if an Event of Default under the Lease exists, whether or not the Majority in Interest of Noteholders has exercised any of the rights described in the preceding sentence, Trustee, as assignee hereunder of the Lease, shall declare the Lease in default pursuant to Section 18 of the Lease. Upon such declaration or, if such declaration is prohibited by law or court order, upon such event, Trustee, as assignee hereunder of the Lease or as secured party and mortgagee hereunder of the Equipment or otherwise, shall, to the exclusion of Lessor (notwithstanding Section 5.3 of the Principal Indenture), exercise any right and power and pursue any remedy under Section 18 or any other Section of the Lease, and this Section 8. If Trustee at any time declares any Loan to be in default causing the unpaid principal amount of all Loans then outstanding and accrued interest thereon to become immediately due and payable as a consequence of an Indenture Event of Default which is also a Lease Event of Default, then Trustee shall also declare the Lease to be in default pursuant to Section 18 thereof unless such declaration is prohibited by law or court order.

## **8.2 Legal Proceedings.**

If any one or more Indenture Defaults or Indenture Events of Default exists, the Majority in Interest of Noteholders may proceed to protect and enforce their rights by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

## **8.3 No Waiver.**

Neither failure nor delay on the part of Trustee or Noteholders to exercise any right, remedy, power or privilege provided for herein or in the Notes or by statute or at law or in equity or otherwise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## **8.4 Foreclosure; Power of Sale.**

If any Indenture Event of Default occurs and the Loan is accelerated pursuant to this Section 8, Trustee, upon direction of the Majority in Interest of Noteholders, shall at any time:

(a) proceed at law or in equity or otherwise (i) to enforce the payment of the principal of the Loan at the time outstanding in accordance with the terms hereof and of the Notes, and (ii) if the outstanding principal amount of the Loan becomes due and payable immediately pursuant to this Section 8 (or if the final installment of any Loan is not paid when due), to foreclose the Lien of this Indenture in one or more proceedings to the extent permitted in law or in one or more public or private, judicial or nonjudicial sales of all or any part of the Collateral, or any interest therein, or proceed to take any of such actions; or

(b) sell, assign, transfer and deliver from time to time any part of the Collateral or any interest therein, at private sale or public auction, with or without demand, advertisement or notice (except as expressly provided for below in this Section 8.4), for cash or credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Majority in Interest of Noteholders in their sole discretion may determine, or as may be required by law. Trustee shall give Lessor at least 30 calendar days' notice (which Lessor agrees is reasonable notification within the meaning of Section 9-504(3) of the Uniform Commercial Code) of any public or private sale. The notice, in case of public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times within ordinary business hours as Trustee shall fix in the notice of sale. At any such sale, the Collateral may be sold in one lot as an entirety or in separate parcels. Trustee shall not be obligated to make any sale pursuant to any such notice. Trustee may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for such sale, and any such sale may be made at any time or place to which the same may be so adjourned without further notice or publication.

### **8.5 Trustee Authorized to Execute Deeds, etc.**

Lessor hereby unconditionally and irrevocably appoints Trustee as its true and lawful attorney-in-fact, to the extent permitted by Applicable Law, in its name and stead and on its behalf, for the purpose of effectuating any sale, assignment, transfer or delivery hereunder, if an Indenture Event of Default exists, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such deeds, bills of sale, assignments, releases (including releases of the Lease on the records of the STB) and other proper instruments as Trustee may reasonably consider necessary or appropriate, with full power of substitution, Lessor hereby ratifying and confirming all that such attorney or any substitute shall lawfully do by virtue hereof. If so requested by Trustee, or any purchaser, Lessor shall ratify and confirm any such lawful sale, assignment, transfer or delivery by executing and delivering to Trustee or such purchaser, all deeds, bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

### **8.6 Purchase of Collateral by Trustee or any Noteholder.**

Trustee or any Noteholder may be a purchaser of the Collateral or of any part thereof or of any interest therein at any sale thereof, whether pursuant to foreclosure or power of sale or otherwise hereunder, and may apply upon the purchase price the indebtedness secured hereby owing to such purchaser, to the extent of such purchaser's distributive share of the purchase price. Any such purchaser shall, upon any such purchase, acquire title to the properties so purchased, free of the Lien of this Indenture.

### **8.7 Receipt a Sufficient Discharge to Purchaser.**

Upon any sale of the Collateral or any part thereof or any interest therein, whether pursuant to foreclosure or power of sale or otherwise hereunder, the receipt of the officer making the sale under judicial proceedings or of Trustee shall be sufficient discharge to the purchaser for the purchase money, and the purchaser shall not be obliged to see to the application thereof.

### **8.8 Waiver of Appraisalment, Valuation, etc.**

Lessor waives, to the extent it may lawfully do so, the benefit of all appraisalment, valuation, stay, extension and redemption laws now or hereafter in force and all rights of marshaling if the Collateral or any part thereof or any interest therein is sold.

### **8.9 Sale a Bar.**

Any sale of the Collateral or any part thereof or any interest therein, whether pursuant to foreclosure or power of sale or otherwise hereunder, shall be a perpetual bar against Lessor after the expiration of the period, if any, during which Lessor shall have the benefit of any redemption laws.

### **8.10 Application of Proceeds of Sale.**

The proceeds of any sale of the Collateral or any part thereof or any interest therein, whether pursuant to foreclosure or power of sale or otherwise, together with any moneys at the time held by Trustee as part of the Collateral, shall be applied in the order of priority set forth in Section 6.

### **8.11 Appointment of Receiver.**

Subject to the rights of Lessee under the Lease, if an Indenture Event of Default exists, Trustee at the direction of the Majority in Interest of Noteholders, shall, to the extent permitted by law, be entitled to the appointment of a receiver for all or any part of the Collateral, whether such receivership be incidental to a proposed sale of the Collateral or otherwise. Lessor consents to the appointment of such receiver and agrees not to oppose any such appointment.

### **8.12 Possession, Management and Income.**

If any Indenture Event of Default exists, subject to the rights of Lessee under the Lease, Trustee may take possession of the Collateral or any part thereof without judicial process, by summary proceedings or otherwise, and may remove Lessor and all other Persons claiming under or through Lessor and any and all property therefrom, and may hold, operate and manage the same, and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof. At the request of Trustee, at the direction of the Majority in Interest of Noteholders, Lessor shall promptly execute and deliver to Trustee such instruments of title and other documents as Trustee may deem necessary or advisable to enable Trustee, or an agent or representative designated by Trustee, at such time or times and place or places as Trustee may specify, to obtain possession of all or any part of the Collateral. If Lessor fails for any reason to execute and deliver such instruments and documents after such demand by Trustee, Trustee, at the direction of the Majority in Interest of Noteholders, may obtain a judgment conferring on Trustee the right to immediate possession and requiring Lessor to deliver such instruments and documents to Trustee, it being understood that Lessor hereby specifically consents to the entry of such judgment. Except as expressly provided in any Basic Document, Trustee shall be under no liability for or by reason of any such taking of possession, removal or holding, operation or management, except that any amounts so received by Trustee shall be applied to pay:

(a) all costs and expenses of so taking possession of, holding, operating and managing the Collateral or any part thereof, all other fees and expenses of Trustee and Noteholders hereunder, and any taxes, assessments or other charges, prior to the Lien of this Indenture that Trustee may consider it necessary or desirable to pay; and

(b) thereafter as provided in the order of priorities set forth in Section 6.

### **8.13 Right of Noteholders to Perform Covenants, etc.**

If Lessor fails to make any payment or perform any act required to be made or performed hereunder by it and not by Lessee under any Assigned Document, or if Lessor fails to release any

Lien affecting the Collateral that it is required to release under this Indenture, Trustee, without notice to or demand upon Lessor and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Lessor and may take all such action with respect thereto as, in Trustee's opinion, may be necessary or appropriate therefor. All sums so paid by Trustee and all costs and expenses (including, without limitation, legal fees and expenses) so incurred together with interest thereon at the Late Rate from the date of payment or incurrence, shall constitute additional indebtedness secured by this Indenture and shall be paid by Lessor to Trustee.

#### **8.14 Remedies, Etc., Cumulative.**

Each right, power and remedy of Trustee provided for in this Indenture or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Indenture or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Trustee of any one or more of the rights, powers or remedies provided for in this Indenture or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise of any such right, power or remedy with respect to any part of the Collateral, shall not preclude the simultaneous or later exercise by Trustee of any or all such other rights, powers or remedies, or the simultaneous or later exercise by Trustee of any such right, power or remedy with respect to any other part of the Collateral.

#### **8.15 Cure.**

Upon the occurrence of an Indenture Event of Default under Section 7.5 of the Principal Indenture before the Conversion Date, and provided that such Indenture Event of Default can be cured by the payment of money, and provided, further, that no other Indenture Event of Default exists hereunder, at any time within five days after the Lessor shall have Actual Knowledge of the occurrence of such Indenture Event of Default, the Lessor shall have the option (but not the obligation) to cure such Indenture Event of Default (a) in the case of nonpayment of Rent pursuant to the Lease, by the payment to the Trustee in full of such Rent and any late rate charge due thereon, and (b) in the case of any other such Indenture Event of Default which may be cured by the payment of money, by the cure of such Indenture Event of Default to the satisfaction of the Majority in Interest of Noteholders. Each such payment by the Lessor of the amount as provided in clause (a) of the preceding sentence or such other amounts as provided in clause (b) of the preceding sentence shall be deemed to cure such related Indenture Event of Default. The foregoing cure right may not be exercised with respect to more than two Rent payment Indenture Events of Default in any six month period, nor with respect to more than a total of six Rent payment Indenture Events of Default nor at any time after the Conversion Date under any circumstances. Upon such payment by the Lessor to the Trustee the Lessor shall, to the extent of such payment, be subrogated to the rights of the Trustee's, but the Lessor shall not be entitled to bring an action against the Lessee, unless Trustee otherwise consents, to recover the amount of such payment until the Obligations shall have been paid in full. If the Trustee shall receive any amounts from the Lessee on account of any such payment or expenditure by the Lessor, so long

as no Indenture Default or Indenture Event of Default exists, the Trustee shall, notwithstanding any other provision hereof to the contrary, promptly pay such amounts to the Lessor.

## **Section 9. Duties Of Trustee; Certain Rights Of Lessor; Release Of Collateral.**

### **9.1 Action Upon Default.**

If Trustee shall have knowledge of an Indenture Default or Indenture Event of Default, Trustee shall give prompt telefacsimile, notice thereof (confirmed by mail) to Lessor and each Noteholder. The notice shall set forth in reasonable detail the circumstances of such default known to Trustee. Subject to Section 10.3, Trustee shall take, or refrain from taking, such action with respect to any Default as it shall be instructed by the Majority in Interest of Noteholders. In the absence of actual knowledge by a Responsible Officer of Trustee that an event or condition exists, Trustee shall not be deemed to have knowledge of any such event or condition unless it has been notified in writing by Lessor or any Noteholder.

### **9.2 Action, Waiver or Approval Upon Instructions Generally.**

Subject to Section 10.3, upon the instructions at any time and from time to time of the Majority in Interest of Noteholders, Trustee shall take such of the following actions as may be specified in such instructions: (a) exercise such election or option, or make such decision or determination, or give such notice, consent, waiver or approval or exercise such right, remedy or power or take such other action hereunder or under any other Basic Document as shall be specified in such instructions; (b) take such action with respect to, or to preserve or protect, the Collateral as shall be specified in such instructions and as is consistent with this Indenture; and (c) take such other action in respect of the subject matter of this Indenture as is consistent with the terms hereof and the other Basic Documents.

### **9.3 Action Without Instructions.**

Trustee shall take, without other instructions, such actions under or in connection with this Indenture or any other Basic Document as may be expressly required to be taken by it by the terms hereof or thereof.

### **9.4 Continuation Statements.**

Trustee shall execute any continuation or similar statement delivered to it by any Noteholder or Lessor and accompanied by a statement that such continuation or similar statement is necessary or desirable to continue, protect or preserve any of the Liens governed by this Indenture or the rights of Lessor under the Lease.

### **9.5 Release of the Lien of the Indenture.**

Upon the payment in full of all Obligations for the payment of money and the performance of all other Obligations then capable of being performed, Trustee shall promptly execute and deliver, at Lessor's expense, the Trustee's Release Notice to Lessor and Lessee and,

upon the written request of Lessor, (1) execute and deliver to, or as directed in writing by, Lessor any other appropriate instrument (in due form for recording) sufficient to release all property subject to the Lien of this Indenture from such Lien, and (2) deliver all moneys, investments, and certificates of title held hereunder to Lessor. If any Unit has suffered an Event of Loss, and Trustee shall have received payment of Stipulated Loss Value in immediately available funds in Dollars with respect thereto, then Trustee shall, upon the written request of Lessor and at Lessor's expense, execute and deliver to, or as directed in writing by, Lessor an instrument of release with respect to such Unit that has suffered such an Event of Loss. In addition, after the Bridge Loan has been repaid in full, Trustee shall, if no Indenture Default or Indenture Event of Default exists, upon the written request of Lessor and at Lessor's expense, execute and deliver to, or as directed in writing by, Lessor an instrument of release with respect to (i) each Unit that has not been accepted under the Lease and that is the subject of a Termination Event under Section 6(e) of the Modification Agreement and (ii) Lessor's rights and remedies against Modifier under the Modification Agreement with respect to such Units.

#### **9.6 Certain Liens.**

Trustee, in its individual capacity and at its own cost and expense, will take promptly such action as may be necessary duly to discharge all Liens on any part of the Collateral which result from claims against the Collateral, as trustee hereunder or in its individual capacity, arising out of events or conditions not related to its interest in the Equipment or the administration of the Collateral.

#### **9.7 Furnishing of Notices.**

Trustee will furnish to each Noteholder promptly upon receipt thereof, a duplicate or copy of each report, notice, request, demand, instruction, certificate, financial statement or other instrument furnished to Trustee hereunder or under any other Basic Document, unless Trustee has reasonable cause to believe (based on the face of such document or otherwise) that such document has already been so distributed.

### **Section 10. Trustee.**

#### **10.1 Acceptance of Trusts and Duties.**

Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same and to receive and disburse all monies received by it as trustee hereunder in accordance with the terms hereof. Trustee is entering into this Indenture solely as trustee for the Noteholders and not in its individual capacity, except as provided in Section 9.6, and in no case shall Trustee be personally liable on, or for any loss in respect of, the Notes, the Agreement, the Principal Indenture, this Indenture or any other Basic Documents, as to all of which all interested parties shall look solely to the Lessor, the Collateral and such other monies or property as are from time to time held by Trustee as trustee hereunder; provided that Trustee shall be responsible in its individual capacity to Lessor and to the Noteholders for (a) its own willful misconduct or gross negligence, (b) the inaccuracy of any representation or warranty contained or referred to in

Section 10.4, (c) failure to perform its obligations under the third sentence of Section 9.1, or (d) failure to comply with Section 9.6, and shall not be liable for any action or inaction of Lessor.

#### **10.2 No Duties or Actions Except as Specified.**

Trustee shall have no duty or obligation to, and shall not, manage, control, use, sell, dispose of or otherwise deal with the Units or any other part of the Collateral, or otherwise to take or refrain from taking any action under, or in connection with, this Indenture or any other Basic Documents except as expressly provided by the terms hereof or thereof, or, to the extent not so provided, as expressly provided in written instructions from Initial Noteholder or the Majority in Interest of Noteholders, and no implied duties or obligations of Trustee shall be read into this Indenture.

#### **10.3 No Requirement of Action Without Indemnification.**

Trustee shall not be required to take any action or refrain from taking any action under Section 8 or Section 9 (other than the first and third sentences of Section 9.1) unless it shall have received indemnification from the Noteholders. Trustee shall not be required to take any action under this Indenture if it shall have been advised by counsel (who shall not be an employee of Trustee) that such action is contrary to the terms hereof or another Basic Document by which Trustee is bound, or is contrary to law.

#### **10.4 Segregation of Monies; Interest.**

Any monies received by Trustee hereunder shall be maintained by Trustee in segregated accounts held in the name of Trustee for the benefit of Noteholders, and Trustee shall not be liable for any interest thereon except to the extent invested as provided in Section 3.9.

#### **10.5 Reliance.**

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 believed by it in good faith to be genuine and to be signed by the proper Person or Persons. As to any fact or matter the manner or ascertainment of which is not specifically described herein, Trustee may for all purposes hereof rely on an officer's certificate of Lessor, as to such fact or matter, and such certificate shall constitute full protection to Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. Trustee shall furnish to Lessor upon request such information and copies of such documents as Trustee may have and as are necessary for Lessor to perform its duties hereunder. Trustee may assume, and shall be fully protected in assuming, that Lessor is authorized to enter into this Indenture and to take all action to be taken by it pursuant to the provisions hereof, and shall not be under any duty to inquire into the authorization of Lessor with respect thereto. In the administration of the trusts hereunder, Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys, may consult with counsel, accountants and other skilled Persons of generally accepted competence to be selected and retained by it, and shall not be liable for anything done, suffered or omitted in good faith by it in accordance with

the advice or opinion of any such counsel, accountant or other skilled Person who is not an officer or employee of Trustee or its Affiliates, so long as Trustee shall have exercised reasonable care in good faith in the selection of such Person and such advice or opinion is within the scope of such Person's professional competence.

**10.6 No Compensation from Noteholders or from Collateral.**

Trustee shall have no right against any Noteholder, or, except as provided in Section 6.8 of the Principal Indenture, the Collateral for any fee as compensation for its services hereunder.

**Section 11. Successor Trustees And Separate Trustees.**

**11.1 Resignation or Removal of Trustee; Appointment of Successor.**

(a) Resignation or Removal.

Trustee may resign at any time without cause by giving at least 60 days' prior written notice to Lessor and Noteholders. In addition, the Majority in Interest of Noteholders may at any time remove Trustee without cause by an instrument in writing delivered to Trustee, with copies thereof to Lessor and each Noteholder. Any such resignation or removal will be effective upon the acceptance of appointment by the successor Trustee pursuant to Section 11.1(c).

(b) Appointment of Successor.

Upon any resignation or removal of Trustee, the Majority in Interest of Noteholders may appoint (with the consent of Lessor unless a Default exists) a successor Trustee by an instrument signed by the Majority in Interest of Noteholders and delivered to Lessor and each Noteholder. If a successor Trustee shall not have been appointed within 60 days after such resignation or removal, Trustee, Lessor or any Noteholder may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed by the Majority in Interest of Noteholders as above provided. Any successor Trustee so appointed by such court shall be superseded by a successor Trustee appointed by the Majority in Interest of Noteholders as above provided, upon acceptance of appointment by such successor pursuant to Section 11.1(c).

(c) Acceptance of Appointment.

Any successor Trustee, however appointed, shall execute and deliver to Lessor, each Noteholder, and the predecessor Trustee an instrument accepting such appointment, and thereupon such successor Trustee, without further act, shall become vested with all the estates, properties, rights, powers and duties of the predecessor Trustee hereunder in the trusts hereunder applicable to it with like effect as if originally named Trustee herein. In addition, upon the written request of such successor Trustee or Majority in Interest of Noteholders, such predecessor Trustee shall execute and deliver an instrument transferring to such successor Trustee, in trust as herein provided, all the estates, properties, rights and powers of such predecessor Trustee, and such predecessor Trustee shall duly assign, transfer, deliver and pay

over to such successor Trustee all monies or other property then held by such predecessor Trustee hereunder.

(d) Qualifications.

Any successor Trustee, however appointed, shall be a bank or trust company that has its principal corporate trust office in a location satisfactory to the Majority in Interest of Noteholders, has a combined capital and surplus of at least \$100,000,000, if an institution with such capital and surplus and willing to serve as Trustee can be found in any such location, and is willing, able and legally qualified to perform the duties of Trustee hereunder upon reasonable or customary terms.

(e) Merger, Etc.

Any corporation into which 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 Trustee shall be a party, or any corporation to which substantially all the corporate trust business of Trustee may be transferred, shall, subject to the terms of Section 11.1(d), be Trustee under this Indenture without further act.

**11.2 Appointment of Additional and Separate Trustees.**

(a) Appointment.

Whenever (i) 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 Collateral shall be situated or to make any claim or bring any suit with respect to or in connection with the Collateral, this Indenture, or any other Basic Document, or (ii) Trustee shall be advised by counsel satisfactory to it that it is so necessary or prudent in the interest of the Noteholders, or (iii) Trustee and Lessor shall have been requested to do so by the Majority in Interest of Noteholders, Trustee and Lessor shall execute and deliver an indenture supplemental hereto or such other instruments as may from time to time be necessary or advisable either (1) to constitute one or more banks or trust companies or one or more natural persons approved by Trustee, either to act jointly with Trustee as additional trustee or trustees of all or any part of the Collateral, or to act as separate trustee or trustees of all or any part of the Collateral, in each case with such rights, powers, duties and obligations as may be provided in such supplemental indenture or other instruments as Trustee or the Majority in Interest of Noteholders may deem necessary or advisable, or (2) to clarify, add to or subtract from the rights, powers, duties and obligations theretofore granted any such additional or separate trustee, subject in each case to the remaining provisions of this Section 11.2. If Lessor shall not have taken any action requested of it under this Section 11.2(a) that is permitted or required by its terms within fifteen days after the receipt of a written request from Trustee so to do, or if a Default exists, Trustee may act under the foregoing provisions of this Section 11.2(a) without the concurrence of Lessor; and Lessor hereby appoints Trustee its agent and attorney-in-fact to act for it under the foregoing provisions of this Section 11.2(a) in either of such contingencies. Trustee may, in such capacity, execute, deliver and perform any such supplemental indenture, or any such instrument, as may be required for the appointment of any

such additional or separate trustee or for the clarification of, addition to or subtraction from the rights, powers, duties or obligations theretofore granted to any such additional or separate trustee. In case any additional or separate trustee appointed under this Section 11.2(a) shall die, become incapable of acting, resign or be removed, all the assets, property, rights, powers, trusts, duties and obligations of such additional or separate trustee shall revert to Trustee until a successor additional or separate trustee is appointed as provided in this Section 11.2(a).

(b) Powers.

No additional or separate trustee shall be entitled to exercise any of the rights, powers, duties and obligations conferred upon Trustee in respect of the custody, investment and payment of monies, and all monies received by any such additional or separate trustee from or constituting part of the Collateral or otherwise payable under any Basic Document to Trustee shall be promptly paid over by it to Trustee. All other rights, powers, duties and obligations conferred or imposed upon any additional or separate trustee shall be exercised or performed by Trustee and such additional or separate trustee jointly except to the extent that applicable law of any jurisdiction in which any particular act is to be performed renders Trustee incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations (including the holding of title to all or part of the Collateral in any such jurisdiction) shall be exercised and performed by such additional or separate trustee. No additional or separate trustee shall take any discretionary action except on the instructions of Trustee or such vote of the Noteholders as is required for such action to be taken by Trustee hereunder. No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder, except that Trustee shall be liable for the consequences of its lack of reasonable care in selecting any additional or separate trustee which is a natural person. Each additional or separate trustee appointed pursuant to this Section 11.2 shall be subject to, and shall have the benefit of, Sections 8 through Section 12 hereof insofar as they apply to Trustee. The powers of any additional or separate trustee appointed pursuant to this Section 11.2 shall not in any case exceed those of Trustee hereunder.

(c) Removal.

If at any time Trustee shall deem it no longer necessary or prudent in order to conform to any such law or take any such action or shall be advised by such counsel that it is no longer so necessary or prudent in the interest of Noteholders, or in the event that Trustee shall have been requested to do so in writing by Majority in Interest of Noteholders, Trustee and Lessor shall execute and deliver an indenture supplemental hereto and all other instruments and agreements necessary or proper to remove any additional or separate trustee. Trustee may act on behalf of Lessor under this Section 11.2(c) when and to the extent it could so act under Section 11.2(a).

## **Section 12. Trustee Protected; Conditions To Action By Trustee.**

### **12.1 Protection of Trustee.**

If in the opinion of Trustee any document required to be executed by it pursuant to the terms of Section 13.7 adversely affects any immunity or indemnity in favor of Trustee under this Indenture, Trustee may in its discretion decline to execute such document. In the case of each document required to be executed by Trustee pursuant to the terms of Section 13.7, Trustee may require evidence that all necessary consents have been obtained and a favorable opinion satisfactory to Trustee of counsel reasonably satisfactory to Majority in Interest of Noteholders to the effect that such document complies with the provisions of this Indenture and the Basic Documents, and does not deprive Trustee, or the Noteholders of the benefits of the Lien hereby created on any property subject hereto or of the assignments contained herein and that all consents required by the terms hereof in connection with the execution of such document have been duly obtained. Trustee shall be fully protected in relying on such opinion.

### **12.2 Documents to be Mailed.**

Promptly after the execution by Lessor or Trustee of any amendment, waiver, modification or supplement entered into pursuant to Section 13.7, Trustee shall mail, by first class mail, postage prepaid, a conformed copy thereof, to Lessor and each Noteholder (but such mailing is not a condition precedent to the validity of any such amendment, waiver, modification or supplement).

## **Section 13. Miscellaneous.**

### **13.1 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 payment in full of all Obligations for the payment of money and the performance of all other Obligations that are then capable of being performed.

### **13.2 No Legal Title to Collateral in Noteholders.**

No Noteholder shall have legal title to any part of the Collateral except following a purchase of such Collateral pursuant to a public sale after an Event of Default. No transfer, by operation of law or otherwise, of any interest in the Notes or any right, title or interest of any Noteholder in and to the Collateral or otherwise shall operate to terminate this Indenture hereunder or entitle any successor or transferee of such Noteholder to an accounting or to the transfer to it of legal title to any part of the Collateral.

### **13.3 Benefits of Indenture.**

Nothing in this Indenture, whether express or implied, shall be construed to give to any Person other than the parties hereto, and the Noteholders, any legal or equitable right, remedy or

claim under or in respect of this Indenture, and this Indenture shall be held for the sole and exclusive benefit of the parties hereto, and the Noteholders.

#### **13.4 Survival.**

All indemnities shall survive the expiration or termination of this Indenture to the full extent necessary to effectuate the benefits intended hereby. All indemnities, warranties, representations and covenants made by any party herein or in any certificate or other instrument delivered by any party to the Participation Agreement to any other such party under this Indenture shall be considered to have been relied upon by such other party and shall survive the consummation of the transactions contemplated hereby regardless of any investigation made by such other party or on behalf of such other party. All statements in any such certificate or other instrument by each party hereto or on behalf of such party under this Indenture shall constitute warranties and representations by the party making such statements to the party to whom such certificate or other instrument is made, directed or delivered

#### **13.5 Entire Agreement**

This Indenture, the Principal Indenture, and the other Basic Documents constitute the entire agreement between and among the parties hereto respecting the subject matter hereof and supersede all prior proposals, agreements and understandings and all prior written and oral communications respecting such subject matter.

#### **13.6 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 or any provision in any other Basic Document or affecting the validity or enforceability of such provisions in any other jurisdiction.

#### **13.7 Amendments.**

With the written consent of the Majority in Interest of Noteholders, Trustee and Lessor may, subject to the provisions of this Section 13.7, from time to time enter into agreements amendatory or supplemental hereto or to this Indenture or the Notes for the purpose of changing any provisions of this Indenture or the Notes, or changing in any manner the rights of Noteholders, Lessor or Trustee hereunder and thereunder, or waiving compliance with any provision hereof or thereof. No such amendatory or supplemental agreement or waiver shall, (i) without the consent of all Noteholders, (a) change the maturity of the Notes, or change the rate of interest of, the time or manner of payment of, (b) change the definition of "Majority in Interest of Noteholders", (c) modify the provisions of this Section 13.7, or (d) release any portion of the Collateral; or (ii) without the consent of the Trustee, increase the obligations or liabilities or decrease the rights of the Trustee. Any such amendatory or supplemental agreement or waiver shall apply equally to each Noteholder and shall be binding on Lessor and all Noteholders.

### **13.8 Governing Law.**

THIS INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF CALIFORNIA WITHOUT REFERENCE TO ITS CHOICE OF LAW DOCTRINES.

### **13.9 Submission to Jurisdiction.**

Each of the parties hereto (i) hereby irrevocably submits to the non-exclusive jurisdiction of any state or federal court in San Francisco, California for the purposes of any suit, action or other proceeding arising out of this Indenture, the other Basic Documents, or the subject matter hereof or thereof, and (ii) to the extent permitted by Applicable Law, hereby waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts, that its property is exempt or immune from execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is inconvenient or otherwise improper, or that any of the above-mentioned documents or the subject matter thereof may not be enforced in or by such courts. Final judgment against any party hereto in any such suit shall be conclusive, and may be enforced in other jurisdictions by suit on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and of the amount of any indebtedness or liability of such party therein described. Lessor and Trustee further hereby irrevocably consent to service of process by first-class mail, postage prepaid, return receipt requested, to such Lessor or Trustee at its address provided in Annex 3 to the Participation Agreement.

### **13.10 Notices, Etc.**

All notices and other communications provided for herein shall be in writing and shall be deemed to have been given when delivered by hand or by telex, telegram, cable or telecopy or when mailed by first-class registered, certified or express mail, postage prepaid or by commercial courier, addressed to the addresses for notices and communications listed on Annex 3 to the Participation Agreement, or at such other address as such party shall have previously furnished to the other party in accordance with this Section 13.10.

### **13.11 Counterparts.**

This Indenture may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Indenture.

### **13.12 Successor and Assigns.**

This Indenture shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective permitted successors and assigns, and the Noteholders except that Lessor may not assign or transfer any of its rights or obligations under this Indenture without the prior written consent of the Majority in Interest of Noteholders.

### **13.13 Headings; Inconsistency.**

The headings of the Sections of this Indenture are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof and any reference to numbered Sections, unless otherwise indicated, are to Sections of this Indenture. In the event of any inconsistency between the provisions of this Indenture and the Principal Indenture, the Principal Indenture will prevail.

### **13.14 Noteholder Transfers.**

Each Noteholder may assign and transfer its Note and its rights and obligations thereunder and under the Basic Documents, or grant participations in such Note (either together with the other Obligations or separately therefrom) from time to time. Upon such transfer, the transferee shall have all rights and obligations of such Noteholder or Trustee to the extent of the interest so transferred. Each Noteholder may, at any time from time to time, change its Lending Office. Such Noteholder shall give notice to Lessor of the address of each Lending Office other than its initial Lending Office, but the failure to give notice of the address of an office which has become a Lending Office shall not affect the status of that office as a Lending Office.

### **13.15 Relationship Formed.**

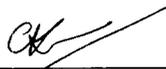
The relationship between Noteholders and Trustee, on one hand, and Lessor, on the other, shall be solely that of a creditor and debtor, and in no event shall the undertakings of the parties pursuant to the Basic Documents be deemed to constitute a partnership or joint venture between Noteholders and any other Person.

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

LESSOR:

**TRANSACCESS II, L.P.**

By: **ACCESS RAIL CORPORATION II,**  
general partner

By:   
\_\_\_\_\_  
Charles R.F. Kremer  
President

TRUSTEE:

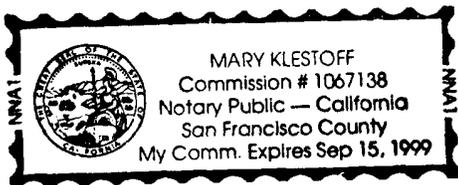
**FIRST SECURITY BANK OF UTAH, N.A.**

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

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN FRANCISCO )

On March 8, 1996, before me, the undersigned Notary Public, personally appeared CHARLES R.F. KREMER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Signature Mary Klestoff

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 1996, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as \_\_\_\_\_ of First Security Bank of Utah, N.A., and acknowledged to me that \_\_\_\_\_ executed it.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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

LESSOR:

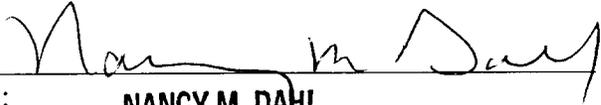
**TRANSACCESS II, L.P.**

By: **ACCESS RAIL CORPORATION II,**  
general partner

By: \_\_\_\_\_  
Charles R.F. Kremer  
President

TRUSTEE:

**FIRST SECURITY BANK OF UTAH, N.A.**

By:   
Name: NANCY M. DAHL  
Title: ASSISTANT VICE PRESIDENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN FRANCISCO )

On \_\_\_\_\_, 1996, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same on \_\_\_\_\_, 1996 in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

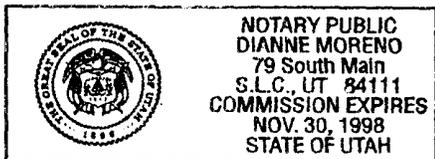
Signature \_\_\_\_\_

STATE OF Utah )  
 ) ss.  
COUNTY OF Salt Lake )

On March 11, 1996, before me, Dianne Moreno, personally appeared Nancy M. Dahl, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as ASSISTANT VICE PRESIDENT of First Security Bank of Utah, N.A., and acknowledged to me that she executed it on March 11, 1996.

WITNESS my hand and official seal.

Dianne Moreno  
Notary Public



## SCHEDULE A

### Equipment Schedule

270 rotary dump high side, 54' 7" long gondola cars manufactured by Pullman Standard in 1979-80 (car number series 1200-1899) listed on Schedule A-1 attached hereto modified to conform to the Modification Specifications, and to be remarked to bear marks SOO and numbers 68501 through 68770 (inclusive).

## SCHEDULE A-1

<u>No.</u>	<u>Mark</u>	
	<u>Initial</u>	<u>Number</u>
43	CPOX	1321
44	CPOX	1325
45	CPOX	1330
46	CPOX	1331
47	CPOX	1332
48	CPOX	1338
49	CPOX	1339
50	CPOX	1342
51	CPOX	1344
52	CPOX	1346
53	CPOX	1347
54	CPOX	1349
55	CPOX	1350
56	CPOX	1352
57	CPOX	1353
58	CPOX	1354
59	CPOX	1357
60	CPOX	1364
61	CPOX	1366
62	CPOX	1368
63	CPOX	1371
64	CPOX	1373
65	CPOX	1374
66	CPOX	1376
67	CPOX	1384
68	CPOX	1388
69	CPOX	1392
70	CPOX	1394
71	CPOX	1398
72	CPOX	1401
73	CPOX	1403
74	CPOX	1404
75	CPOX	1405
76	CPOX	1406
77	CPOX	1407
78	CPOX	1408
79	CPOX	1412
80	CPOX	1413
81	CPOX	1416
82	CPOX	1417
83	CPOX	1418
84	CPOX	1420

SCHEDULE A-1

No.	Mark	
	Initial	Number
85	CPOX	1421
86	CPOX	1424
87	CPOX	1435
88	CPOX	1445
89	CPOX	1449
90	CPOX	1455
91	CPOX	1456
92	CPOX	1457
93	CPOX	1458
94	CPOX	1461
95	CPOX	1465
96	CPOX	1468
97	CPOX	1471
98	CPOX	1476
99	CPOX	1477
100	CPOX	1480
101	CPOX	1482
102	CPOX	1486
103	CPOX	1488
104	CPOX	1490
105	CPOX	1491
106	CPOX	1495
107	CPOX	1496
108	CPOX	1497
109	CPOX	1498
110	CPOX	1500
111	CPOX	1501
112	CPOX	1509
113	CPOX	1510
114	CPOX	1512
115	CPOX	1513
116	CPOX	1514
117	CPOX	1516
118	CPOX	1517
119	CPOX	1519
120	CPOX	1521
121	CPOX	1522
122	CPOX	1526
123	CPOX	1528
124	CPOX	1531
125	CPOX	1533
126	CPOX	1534

SCHEDULE A-1

<u>No.</u>	<u>Mark</u>	
	<u>Initial</u>	<u>Number</u>
127	CPOX	1535
128	CPOX	1539
129	CPOX	1540
130	CPOX	1545
131	CPOX	1548
132	CPOX	1550
133	CPOX	1554
134	CPOX	1559
135	CPOX	1564
136	CPOX	1568
137	CPOX	1569
138	CPOX	1570
139	CPOX	1571
140	CPOX	1574
141	CPOX	1575
142	CPOX	1576
143	CPOX	1578
144	CPOX	1580
145	CPOX	1581
146	CPOX	1582
147	CPOX	1592
148	CPOX	1596
149	CPOX	1597
150	CPOX	1599
151	CPOX	1602
152	CPOX	1603
153	CPOX	1605
154	CPOX	1609
155	CPOX	1613
156	CPOX	1617
157	CPOX	1620
158	CPOX	1623
159	CPOX	1626
160	CPOX	1629
161	CPOX	1630
162	CPOX	1633
163	CPOX	1635
164	CPOX	1636
165	CPOX	1641
166	CPOX	1642
167	CPOX	1643
168	CPOX	1648

SCHEDULE A-1

<u>No.</u>	<u>Mark</u>	
	<u>Initial</u>	<u>Number</u>
169	CPOX	1649
170	CPOX	1650
171	CPOX	1651
172	CPOX	1652
173	CPOX	1658
174	CPOX	1668
175	CPOX	1669
176	CPOX	1671
177	CPOX	1672
178	CPOX	1676
179	CPOX	1677
180	CPOX	1678
181	CPOX	1680
182	CPOX	1684
183	CPOX	1686
184	CPOX	1693
185	CPOX	1696
186	CPOX	1699
187	CPOX	1701
188	CPOX	1702
189	CPOX	1703
190	CPOX	1708
191	CPOX	1709
192	CPOX	1711
193	CPOX	1713
194	CPOX	1715
195	CPOX	1716
196	CPOX	1718
197	CPOX	1724
198	CPOX	1727
199	CPOX	1731
200	CPOX	1734
201	CPOX	1741
202	CPOX	1742
203	CPOX	1746
204	CPOX	1747
205	CPOX	1748
206	CPOX	1756
207	CPOX	1759
208	CPOX	1761
209	CPOX	1764
210	CPOX	1768

SCHEDULE A-1

No.	Mark	
	Initial	Number
211	CPOX	1770
212	CPOX	1773
213	CPOX	1774
214	CPOX	1777
215	CPOX	1778
216	CPOX	1779
217	CPOX	1781
218	CPOX	1783
219	CPOX	1784
220	CPOX	1785
221	CPOX	1786
222	CPOX	1788
223	CPOX	1790
224	CPOX	1794
225	CPOX	1795
226	CPOX	1796
227	CPOX	1797
228	CPOX	1802
229	CPOX	1803
230	CPOX	1804
231	CPOX	1806
232	CPOX	1808
233	CPOX	1809
234	CPOX	1811
235	CPOX	1814
236	CPOX	1818
237	CPOX	1822
238	CPOX	1825
239	CPOX	1827
240	CPOX	1828
241	CPOX	1829
242	CPOX	1830
243	CPOX	1831
244	CPOX	1832
245	CPOX	1836
246	CPOX	1839
247	CPOX	1841
248	CPOX	1847
249	CPOX	1848
250	CPOX	1852
251	CPOX	1853
252	CPOX	1854

# SCHEDULE A-1

<u>No.</u>	<u>Mark</u>	
	<u>Initial</u>	<u>Number</u>
253	CPOX	1855
254	CPOX	1858
255	CPOX	1863
256	CPOX	1864
257	CPOX	1866
258	CPOX	1867
259	CPOX	1868
260	CPOX	1870
261	CPOX	1871
262	CPOX	1873
263	CPOX	1878
264	CPOX	1880
265	CPOX	1882
266	CPOX	1887
267	CPOX	1888
268	CPOX	1889
269	CPOX	1891
270	CPOX	1895

The CPOX reporting marks and road numbers of the 270 gondola cars referred to above will be changed to S00 68501 through S00 68770, inclusive.