

# PEPPER, HAMILTON & SCHEETZ

ATTORNEYS AT LAW

PHILADELPHIA, PENNSYLVANIA

HARRISBURG, PENNSYLVANIA

DETROIT, MICHIGAN

WRITER'S DIRECT NUMBER

(202) 828-1400

1300 NINETEENTH STREET, N.W.  
WASHINGTON, D.C. 20036

202-828-1200

TELEX CABLE ADDRESS 440653 (ITT)

FAX (202) 828-1665

LOS ANGELES, CALIFORNIA

BERWYN, PENNSYLVANIA

WILMINGTON, DELAWARE

LONDON, ENGLAND

NOTE: Documents For  
Recordation

INTERSTATE COMMERCE COMMISSION  
April 26, 1990

Noreta R. McGee, Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, NW  
Washington, D.C. 20423

APR 26 1990 -9 35 AM  
INTERSTATE COMMERCE COMMISSION

Re: Recordation of Equipment Trust Agreement and  
Lease Agreement Covering 892 Auto Racks  
(Conrail 1990 Equipment Trust A)

Dear Ms. McGee:

I have enclosed an original and four notarized copies of each of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

The first document is an Equipment Trust Agreement, a primary document, dated April 1, 1990. The second document is a Lease Agreement, a primary document, dated April 1, 1990.

The names and addresses of the parties to these documents are as follows:

(1) Equipment Trust Agreement

(a) Owner Trustee:

Meridian Trust Company  
35 North Sixth Street  
Reading, Pennsylvania 19603  
Attn: Corporate Trust Administration

(b) Equipment Trust Trustee:

Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890  
Attn: Corporate Trust Administration

*Robert A. Stewart*

16849 A

FILED 1990

0-116A00 16849

PEPPER, HAMILTON & SCHEETZ

Noreta R. McGee  
April 26, 1990  
Page 2

(2) Lease Agreement

(a) Lessor:

Meridian Trust Company  
35 North Sixth Street  
Reading, Pennsylvania 19603  
Attn: Corporate Trust Administration

(b) Lessee:

Consolidated Rail Corporation  
Six Penn Center Plaza  
Philadelphia, Pennsylvania 19103  
Attn: Law Department

A description of the equipment covered by both documents follows:

- (1) 327 fully-enclosed, tri-level Auto Racks  
Builder: Thrall Car Manufacturing Company  
Identification Numbers: CR 8673 to CR 8999 (inclusive)
- (2) 565 fully-enclosed, bi-level Auto Racks  
Builder: Thrall Car Manufacturing Company  
Identification Numbers: CR 8000 to CR 8564 (inclusive)

A fee of \$15.00 is enclosed. Please return the original and any extra copies not needed by the Commission to the undersigned.

Short summaries of both documents to appear in the index follow:

(1) Primary Document

Equipment Trust Agreement between Meridian Trust Company, 35 North Sixth Street, Reading, Pennsylvania 19603, and Wilmington Trust Company, Rodney Square North, Wilmington, Delaware 19890, dated April 1, 1990, and covering 327 fully-enclosed, tri-level Auto Racks and 565 fully-enclosed, bi-level Auto Racks by Thrall Car Manufacturing Company.

PEPPER, HAMILTON & SCHEETZ

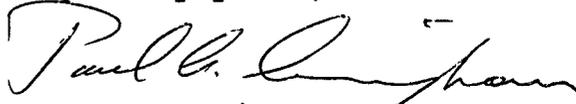
Noreta R. McGee  
April 26, 1990  
Page 3

(2) Primary Document

Lease Agreement between Meridian Trust Company, 35 North Street, Reading, Pennsylvania 19603, and Consolidated Rail Corporation, Six Penn Center Plaza, Philadelphia, Pennsylvania 19103, dated April 1, 1990, and covering 327 fully-enclosed, tri-level Auto Racks and 565 fully-enclosed, bi-level Auto Racks by Thrall Car Manufacturing Company.

Please call me if you have any questions or desire additional information.

Very truly yours,



Paul A. Cunningham  
Attorney for Consolidated Rail  
Corporation

PAC/ras  
Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

4/26/90

OFFICE OF THE SECRETARY

Paul A. Cunningham  
Pepper Hamilton & Scheetz  
1300 19th St. N.W.  
Washington, D.C. 20036

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/26/90 at 9:35am and assigned recordation number(s). 16849 & 16849-A

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

---

EQUIPMENT TRUST AGREEMENT

16849  
APR 26 1990 -9 35 AM  
INTERSTATE COMMERCE COMMISSION

dated as of April 1, 1990

between

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

and

WILMINGTON TRUST COMPANY,  
Equipment Trust Trustee

---

892 Auto Racks

---

Conrail 1990 Equipment Trust A

---

Filed with the Interstate Commerce Commission pursuant to  
49 U.S.C. Section 11303 on \_\_\_\_\_, 1990, at \_\_:\_\_ .m.,  
recording number \_\_\_\_\_, and deposited in the office of  
the Registrar General of Canada pursuant to Section 90 of the  
Railway Act of Canada on \_\_\_\_\_, 1990, at \_\_:\_\_ .m.

TABLE OF CONTENTS TO EQUIPMENT TRUST AGREEMENT

		<u>Page</u>
ARTICLE 1	DEFINITIONS AND INCORPORATION BY REFERENCE .	2
1.01	Definitions .....	2
ARTICLE 2	THE CERTIFICATES .....	2
2.01	Certificates; Title and Terms .....	2
2.02	Execution and Delivery .....	3
2.03	Temporary Certificates .....	3
2.04	Registrar and Paying Agent .....	4
2.05	Transfer and Exchange .....	4
2.06	Holder Lists; Ownership of Certificates .....	5
2.07	Mutilated, Destroyed, Lost or Stolen Certificates .....	6
2.08	Cancellation .....	6
2.09	Payment on Certificates; Defaulted Interest .....	6
2.10	Payment from Estate Only .....	8
2.11	Guaranties of Owner Trustee .....	10
2.12	Execution, Delivery and Dating of Certificates upon Original Issuance .....	11
2.13	Withholding .....	11
2.14	ERISA Plan Prohibition .....	11
ARTICLE 3	RECEIPT, DISTRIBUTION AND APPLICATION OF FUNDS IN THE EQUIPMENT TRUST ESTATE .....	12
3.01	Payment upon Purchase of an Item of Equipment .....	12
3.02	Payment in Case of Redemption .....	12
3.03	Application of Rent When No Event of Acceleration Is Continuing .....	13
3.04	Payments During Continuance of Event of Acceleration .....	13
3.05	Payments for which Application Is Provided in Other Documents .....	14
3.06	Payments for Which No Application Is Otherwise Provided .....	15
3.07	Order of Application of Payments .....	15
3.08	Subrogation .....	15
3.09	Excepted Property .....	16

		<u>Page</u>
ARTICLE 4	LEASE OF ITEMS OF EQUIPMENT BY OWNER TRUSTEE TO THE COMPANY .....	16
4.01	Agreement to Lease .....	16
4.02	Disposition and Release of Property Included in the Equipment Trust Estate During Continuation of Lease .....	16
4.03	Assignment and Grant of Security Interest .....	17
ARTICLE 5	LEASE OF ITEMS OF EQUIPMENT BY EQUIPMENT TRUST TRUSTEE TO OWNER TRUSTEE .....	21
5.01	Agreement to Lease .....	21
5.02	Term of ETA Lease .....	22
5.03	ETA Rent .....	23
5.04	No Setoff, Counterclaim, Etc. ....	24
5.05	Equipment Trust Trustee Representations and Warranties .....	25
5.06	Credit Against ETA Rent in Respect of Certificates Surrendered for Cancellation .....	26
ARTICLE 6	REDEMPTION OF CERTIFICATES .....	26
6.01	No Redemption Prior to Maturity .....	26
6.02	Redemption of Certificates .....	26
6.03	Notice of Redemption to Holders .....	28
6.04	Deposit of Redemption Price .....	29
6.05	Certificates Payable on Redemption Date .....	29
6.06	Credit Against Redemption Price, Selection of Certificates to Be Redeemed, Etc. ....	30
ARTICLE 7	REMEDIES OF THE EQUIPMENT TRUST TRUSTEE UPON AN EVENT OF ACCELERATION .....	31
7.01	Events of Acceleration .....	31
7.02	Acceleration; Rescission and Annulment .....	32
7.03	Other Remedies Available to Equipment Trust Trustee .....	33
7.04	Waiver of Owner Trustee .....	41
7.05	Waiver of Existing Defaults .....	41
7.06	Control by Majority .....	42

		<u>Page</u>
7.07	Limitation on Suits by Holders .....	42
7.08	Rights of Holders to Receive Payment .....	42
7.09	Equipment Trust Trustee May File Proofs of Claim .....	43
7.10	Undertaking for Costs .....	43
ARTICLE 8	EQUIPMENT TRUST TRUSTEE .....	43
8.01	Duties of Equipment Trust Trustee .....	43
8.02	Rights of Equipment Trust Trustee .....	45
8.03	Individual Rights of Equipment Trust Trustee .....	45
8.04	Funds May Be Held by Equipment Trust Trustee or Paying Agent; Investments .....	45
8.05	Notice of Defaults .....	46
8.06	Indemnification by Lessee .....	47
8.07	Replacement of Equipment Trust Trustee .....	47
8.08	Successor Equipment Trust Trustee, Agents by Merger, Etc. ....	48
8.09	Eligibility; Disqualification .....	48
8.10	Trustee's Liens .....	49
8.11	Name of Trust .....	49
ARTICLE 9	SATISFACTION AND DISCHARGE; TERMINATION OF OBLIGATIONS .....	49
9.01	Satisfaction and Discharge of Agreement; Termination of Obligations .....	49
9.02	Survival of Certain Obligations .....	50
9.03	Monies to Be Held in Trust .....	50
9.04	Monies to Be Returned to Owner Trustee .....	51
ARTICLE 10	AMENDMENTS AND WAIVERS .....	51
10.01	Amendments to this Agreement Without Consent of Holders .....	51
10.02	Amendments to this Agreement With Consent of Holders .....	52
10.03	Revocation and Effect of Consents .....	53
10.04	Notation on or Exchange of Certificates .....	53
10.05	Equipment Trust Trustee Protected .....	54

	<u>Page</u>
10.06	Amendments, Waivers, Etc. of Other Operative Documents ..... 54
10.07	Execution of Supplemental Agreements ..... 57
ARTICLE 11	ACTIONS TO BE TAKEN UPON TERMINATION OF LEASE ..... 57
11.01	Actions to Be Taken upon Termination of Lease as Applicable to an Item of Equipment ..... 57
ARTICLE 12	THE COMPANY'S RIGHT OF QUIET ENJOYMENT ..... 58
ARTICLE 13	SINKING FUND
13.01	Mandatory Sinking Fund Payments ..... 59
13.02	Satisfaction of Sinking Fund Payment with Certificates ..... 59
13.03	Redemption of Certificates for Sinking Fund ..... 59
ARTICLE 14	MISCELLANEOUS ..... 60
14.01	Repayment of Monies for Certificate Payments Held by Equipment Trust Trustee ..... 60
14.02	Notices ..... 60
14.03	Communication by Holders with Other Holders ..... 61
14.04	Certificate and Opinion as to Conditions Precedent ..... 62
14.05	Rules by Equipment Trust Trustee and Agents ..... 63
14.06	Non-Business Days ..... 63
14.07	Governing Law ..... 63
14.08	Execution in Counterparts ..... 63
Exhibit A	Form of Certificate and Form of Guaranty of Owner Trustee
Exhibit B	Sinking Fund Payments
Exhibit C	ETA Rent Schedule
Appendix A	Definitions

## EQUIPMENT TRUST AGREEMENT

THIS EQUIPMENT TRUST AGREEMENT, dated as of April 1, 1990, between MERIDIAN TRUST COMPANY, a Pennsylvania trust company, not in its individual capacity, except as otherwise expressly provided herein, but solely as Owner Trustee under the Trust Agreement (the "Owner Trustee"), and WILMINGTON TRUST COMPANY, a Delaware banking corporation (the "Equipment Trust Trustee"),

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

WHEREAS, the Owner Participant (such term and all other capitalized terms used herein being defined as hereinafter provided) and the Owner Trustee in its individual capacity have entered into the Trust Agreement whereby, among other things, (i) the Owner Trustee shall acquire and hold the Owner Trust Estate for the benefit of the Owner Participant, and (ii) the Owner Trustee has been authorized and directed to execute and deliver this Agreement;

WHEREAS, Lessee has contracted to purchase, pursuant to the Purchase Agreement, the Auto Racks described therein;

WHEREAS, the Owner Trustee and the Equipment Trust Trustee desire by this Agreement, among other things, (i) to provide for the issuance by the Equipment Trust Trustee of the Certificates, (ii) to provide for legal title to each Item of Equipment to be vested in and retained by the Equipment Trust Trustee as part of the Equipment Trust Estate solely for security purposes, and for the assignment, grant of a security interest in, mortgage and pledge by the Owner Trustee to the Equipment Trust Trustee, as part of the Equipment Trust Estate hereunder, among other things, of the Owner Trustee's rights and interest in and to the Lease and all payments and other amounts received thereunder (other than Excepted Property) and hereunder, in accordance with the terms hereof, in trust, as security for the Owner Trustee's obligations to the Equipment Trust Trustee, for the ratable benefit and security of the Holders and (iii) to provide for the lease of each Item of Equipment hereunder by the Equipment Trust Trustee to the Owner Trustee until legal title thereto is transferred to the Owner Trustee in accordance with the provisions hereof;

WHEREAS, the parties agree that the sole purpose for providing that title to each Item of Equipment will be held by the Equipment Trust Trustee is to provide the Equipment Trust Trustee with a security interest in each Item of Equipment, and that for all other purposes (including tax purposes) the Owner Trustee shall be the owner of each Item of Equipment;

WHEREAS, the Owner Trustee is entering into the Lease, whereby the Owner Trustee agrees to lease each Item of Equipment to the Lessee and Lessee agrees to lease each Item of Equipment from the Owner Trustee, subject to the terms and conditions of the Lease;

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

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, and other good and sufficient consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE 1

### DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. Definitions. All capitalized terms used herein shall have the meanings set forth in Appendix A hereto for all purposes of this Agreement. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles. All references in this Agreement to Articles, Sections and Exhibits refer, unless otherwise specified, to Articles, Sections and Exhibits of this Agreement.

## ARTICLE 2

### THE CERTIFICATES

Section 2.01. Certificates; Title and Terms. The aggregate principal amount of Certificates which may be Outstanding under this Agreement is limited to \$22,107,000.

The Certificates shall be issued in substantially the form set forth in Exhibit A hereto and shall bear the Guaranties of the Owner Trustee substantially in the form set forth in Exhibit A hereto. The Certificates shall be designated as 1990 Equipment Trust Certificates, Series A. The Certificates shall be issued in registered form only and (except as a result of a redemption of less than all of the Certificates as provided in Article 6 hereof) in denominations of \$1,000 and integral multiples thereof, shall be dated the date of execution, and shall be issued with a maturity of April 1, 2005 and shall bear interest at a rate of 9.82% per annum.

The Certificates are not redeemable prior to maturity except as provided in Article 6 hereof. Interest accrued on the Certificates shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Section 2.02. Execution and Delivery. (a) Certificates shall be executed on behalf of the Equipment Trust Trustee by the chairman of the board, the vice chairman of the board, the president, the chairman of the executive committee, an executive vice president or a vice president of the Equipment Trust Trustee. The Equipment Trust Trustee's seal shall be reproduced on the Certificates and shall be attested by an assistant vice president, corporate trust officer or assistant corporate trust officer or any other duly authorized officer of the Equipment Trust Trustee, whose signature shall be manual.

(b) A Certificate shall not be valid until executed on behalf of the Equipment Trust Trustee by the manual or facsimile signature of the officer of Equipment Trust Trustee specified in the first sentence of Section 2.02(a) hereof. Such signature and the attestation of the Equipment Trust Trustee's seal by the manual signature of the officer of the Equipment Trust Trustee specified in the second sentence of Section 2.02(a) hereof shall be conclusive evidence that the Certificate has been executed under this Agreement.

Section 2.03. Temporary Certificates. Until definitive Certificates are ready for delivery, the Equipment Trust Trustee may execute and issue Temporary Certificates. Temporary Certificates shall be substantially in the form of definitive Certificates but may have variations that the Equipment Trust Trustee considers appropriate for Temporary Certificates. Every Temporary Certificate shall be executed by the Equipment Trust Trustee and registered by the Registrar upon the same conditions, and with like effect, as

a definitive Certificate. The Equipment Trust Trustee shall issue definitive Certificates in exchange for Temporary Certificates without unreasonable delay.

Section 2.04. Registrar and Paying Agent. The Equipment Trust Trustee shall maintain, or cause to be maintained, an office or agency where the Certificates may be presented for registration of transfer or for exchange ("Registrar") and an office or agency where (subject to Sections 2.05 and 2.09 hereof) Certificates may be presented for payment or for exchange ("Paying Agent"). The Registrar shall keep a register (the "Register") with respect to the Certificates and to their transfer and exchange. The Equipment Trust Trustee may appoint one or more co-registrars ("Co-Registrars") and one or more additional Paying Agents for the Certificates, and the Equipment Trust Trustee may terminate the appointment of any Co-Registrar or Paying Agent at any time upon written notice. The term "Registrar" includes any Co-Registrar. The term "Paying Agent" includes any additional Paying Agent.

The Equipment Trust Trustee shall initially act as Registrar and Paying Agent.

Section 2.05. Transfer and Exchange. At the option of the Holder thereof, Certificates may be exchanged for an equal aggregate principal amount of other Certificates of the same maturity and interest rate and of any authorized denominations upon surrender of the Certificates to be exchanged at the principal corporate trust office of the Equipment Trust Trustee, or at any office or agency maintained for such purpose pursuant to Section 2.04 hereof. Whenever any Certificate or Certificates are so surrendered for exchange, the Equipment Trust Trustee shall execute and deliver the replacement Certificate or Certificates which the Holder making the exchange is entitled to receive.

Upon surrender for transfer of any Certificate at such office or agency maintained by the Equipment Trust Trustee, the Equipment Trust Trustee shall execute and deliver, in the name of the designated transferee or transferees, one or more new Certificates of the same maturity and interest rate and of any authorized denomination.

All Certificates issued upon any registration of transfer or exchange of Certificates shall be the valid obligations of the Equipment Trust Trustee, evidencing the same obligations, and entitled to the same security and benefits under this Agreement, as the Certificates surrendered upon such registration of transfer or exchange.

Every Certificate presented or surrendered for registration of transfer or exchange shall be duly endorsed by, or be accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Certificates, but the Registrar may require payment from the relevant Holder(s) of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Certificates, other than exchanges pursuant to Sections 2.03 and 10.04 hereof not involving any transfer, in which case the Equipment Trust Trustee shall collect such tax or charge, if any, from Lessee.

The Registrar shall not be required to register the transfer of or to exchange any Certificate subject to redemption pursuant to Section 6.02 hereof.

Section 2.06. Holder Lists; Ownership of Certificates. (a) The Equipment Trust Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Equipment Trust Trustee is not the Registrar, the Registrar shall furnish (and the Lessee shall cause to be furnished) to the Equipment Trust Trustee semi-annually promptly following the first day of April and the first day of October in each year, and at such other times as the Equipment Trust Trustee may request in writing, a list, in such form and as of such date as the Equipment Trust Trustee may reasonably require, containing all the information in the possession or control of the Registrar as to the names and addresses of Holders.

(b) Ownership of the Certificates shall be proved solely by the Register. Prior to due presentment for registration of transfer of any Certificate, the Owner Trustee, the Equipment Trust Trustee, the Paying Agent and the Registrar may deem and treat the Person in whose name any Certificate is registered as the absolute owner of such Certificate for the purpose of receiving payment of principal of and Premium, if any, and (subject to Section 2.09(b) hereof) interest on such Certificate and for all other purposes whatsoever, whether or not such Certificate shall be overdue, and none of the Owner Trustee, the Equipment Trust Trustee, the Paying Agent, the Registrar nor the Owner Participant shall be affected by notice to the contrary.

Section 2.07. Mutilated, Destroyed, Lost or Stolen Certificates. If any Certificate shall become mutilated, destroyed, lost or stolen, the Equipment Trust Trustee shall, upon the written request of the Holder of such Certificate, issue, execute and deliver in replacement thereof, a new Certificate, payable to the same Holder in the same principal amount and of the same maturity and interest rate and dated the same date as the Certificate so mutilated, destroyed, lost or stolen. If the Certificate being replaced has become mutilated, such Certificate shall be surrendered to the Equipment Trust Trustee. If the Certificate being replaced has been destroyed, lost or stolen, the Holder of such Certificate shall furnish to the Equipment Trust Trustee such security or indemnity as may be required by it to save the Equipment Trust Trustee, the Equipment Trust Estate and the Owner Trustee harmless and evidence satisfactory to the Equipment Trust Trustee of the destruction, loss or theft of such Certificate and of the ownership thereof.

Section 2.08. Cancellation. The Registrar and any Paying Agent shall forward to the Equipment Trust Trustee for cancellation all Certificates surrendered to them for replacement, registration of transfer, exchange or payment (including through redemption) in full. The Equipment Trust Trustee shall cancel all Certificates surrendered for replacement, registration of transfer, exchange, payment or cancellation and shall destroy cancelled Certificates.

Section 2.09. Payment on Certificates; Defaulted Interest. (a) The Equipment Trust Trustee will arrange directly with any Paying Agent for the payment, or the Equipment Trust Trustee will, subject to and upon receipt of the funds necessary therefor, make payment, all pursuant to Section 2.10 hereof, of the principal of and Premium, if any, and interest on the Certificates. Interest payable on the Certificates which is punctually paid or duly provided for shall be paid in U.S. currency on each Interest Payment Date to the Holder thereof at the close of business on the relevant Record Date at the principal corporate trust office of the Equipment Trust Trustee or at the office of the Paying Agent maintained for such purpose pursuant to Section 2.04 hereof; provided that the Equipment Trust Trustee or the Paying Agent may, at its option, pay any such amount by check mailed to such Holder's address as it appears on the Register; provided, however, that payment (including through redemption) in full of the principal (and of any Premium in connection therewith) on a Certificate shall be payable only against presentation and surrender thereof at the principal corporate trust office of the Equipment Trust Trustee or at

the office of the Paying Agent maintained for such purpose pursuant to Section 2.04 hereof.

A Holder shall have no further interest in, or other right with respect to, the Equipment Trust Estate when and if the principal amount of and interest and Premiums, if any, on all Certificates registered in the name of such Holder and all other sums payable to such Holder hereunder, under such Certificates and under the Participation Agreement shall have been paid in full or duly provided for in accordance with Section 9.01 hereof.

(b) Any interest payable on any Certificate which is not punctually paid or duly provided for on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder thereof on the relevant Record Date by virtue of his having been the Holder thereof on such date; and such Defaulted Interest may be paid by the Equipment Trust Trustee, at its election in each case, as provided in clause (1) or (2) below:

(1) The Equipment Trust Trustee may elect to make payment of any Defaulted Interest to the Holders as determined at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner: The Equipment Trust Trustee shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Certificate and the date of the proposed payment, and at the same time the Equipment Trust Trustee shall make arrangement to set aside an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest, prior to the date of the proposed payment, to be held in trust for the benefit of the Holders entitled to such Defaulted Interest as this clause provides and shall fix a special record date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment. The Equipment Trust Trustee shall promptly notify the Owner Trustee and the Registrar (with a copy to Lessee) of such special record date and shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first class postage prepaid, to each Holder at his address as it appears in the Register, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been mailed, as aforesaid, such Defaulted Interest shall be paid to

the Holders on such special record date and shall no longer be payable pursuant to the following clause (2).

(2) In the event that the Equipment Trust Trustee shall not have elected to make payment on Defaulted Interest pursuant to the foregoing clause (1), the Equipment Trust Trustee may make, or cause to be made, payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Certificates may be listed, and upon such notice as may be required by such exchange, if such payment shall be deemed practicable by the Equipment Trust Trustee.

(c) The Equipment Trust Trustee shall require each Paying Agent to agree in writing that such Paying Agent will hold in trust, for the benefit of Holders or the Equipment Trust Trustee all money held by the Paying Agent for the payment of the principal of or Premium, if any, or interest on the Certificates, and shall give to the Equipment Trust Trustee notice of any default in the making of any such payment by the Owner Trustee. The Equipment Trust Trustee at any time may require a Paying Agent to repay all money held by it. Upon so doing the Paying Agent shall have no further liability for the money so paid.

Section 2.10. Payment from Estate Only. All amounts payable by the Equipment Trust Trustee and the Owner Trustee under the Certificates, the Guaranties and this Agreement shall be made only from the income and proceeds of the Equipment Trust Estate. Notwithstanding any provisions of this Agreement to the contrary (but subject to the obligations and duties of the Equipment Trust Trustee under Article 8 hereof), the Equipment Trust Trustee shall not be personally liable for any amounts payable under a Certificate. By its acceptance of a Certificate, each Holder agrees that (a) it will look solely to the income and proceeds of the Equipment Trust Estate for the payment of such amounts, to the extent available for distribution to such Holder as herein provided, and (b) none of the Owner Trustee in its individual capacity, the Owner Participant or the Equipment Trust Trustee is or shall be personally liable to any Holder (1) for any amount payable under a Certificate, the Guaranty endorsed thereon or this Agreement or (2) except as expressly provided in this Agreement in the case of the Owner Trustee in its individual capacity and the Equipment Trust Trustee, for any liability thereunder.

If (i) all or any part of the Equipment Trust Estate becomes the property of, or the Owner Participant becomes, a debtor subject to reorganization provisions of the Bankruptcy Reform Act of 1978 or any successor provision, (ii) pursuant to such reorganization provisions the Owner Trustee (in its individual capacity) or the Owner Participant is required, by reason of the Owner Trustee (in its individual capacity) or the Owner Participant being held to have recourse liability to the Equipment Trust Trustee, directly or indirectly (other than the recourse liability of the Owner Trustee (in its individual capacity) or the Owner Participant referred to in the third sentence of this paragraph), to make payment on account of the principal of, Premium, if any, or interest on the Certificates and (iii) the Equipment Trust Trustee actually receives any Excess Payment (as defined below) which reflects any payment by the Owner Trustee (in its individual capacity) or the Owner Participant on account of (ii) above, then the Equipment Trust Trustee shall promptly refund to the Owner Trustee (in its individual capacity) or the Owner Participant (whichever shall have made such payment) such Excess Payment. Nothing in this Section 2.10 shall be construed as requiring any Holder to refund any amount which has been distributed to such Holder. Nothing contained in this Section 2.10 shall prevent the Equipment Trust Trustee from enforcing any personal recourse obligation (and retaining the proceeds thereof) of the Owner Trustee (in its individual capacity) or the Owner Participant under any Operative Document or of the Owner Trustee (in its individual capacity) under this Agreement (and any exhibits or annexes hereto or thereto). For purposes of this paragraph, the term "Excess Payment" means the amount by which any payment received by the Equipment Trust Trustee pursuant to this paragraph exceeds the amount which would have been received by the Equipment Trust Trustee if the Owner Trustee (in its individual capacity) or the Owner Participant had not become subject to the recourse liability referred to in clause (ii) above of this paragraph.

Meridian Trust Company is entering into this Agreement and executing the Guaranties solely as Owner Trustee under the Trust Agreement and not in its individual capacity except as otherwise expressly provided herein, and in no case whatsoever shall Meridian Trust Company except as otherwise expressly provided herein (or any entity acting as successor trustee under the Trust Agreement) be personally liable for, or for any loss in respect of, any statements, representations, warranties, agreements or obligations hereunder or thereunder not expressly made in its individual capacity; provided that Meridian Trust Company shall be

liable hereunder and under the Guaranties in its individual capacity, (i) for the performance of its agreements under Section 8(f) of the Participation Agreement, and (ii) for its own willful misconduct or gross negligence. If a successor Owner Trustee is appointed in accordance with the terms of the Trust Agreement and the Participation Agreement, such successor Owner Trustee shall, without any further act, succeed to all of the rights, duties, immunities and obligations hereunder, and its predecessor Owner Trustee and Meridian Trust Company shall be released from all further duties and obligations hereunder, without prejudice to any claims against Meridian Trust Company or such predecessor Owner Trustee for any default by Meridian Trust Company or such predecessor Owner Trustee, respectively, in the performance of its obligations hereunder prior to such appointment.

Section 2.11. Guaranties of Owner Trustee. The Owner Trustee, solely in its capacity as trustee, covenants, agrees and guarantees that each Holder shall receive the principal amount of and Premium, if any, on its Certificates in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable (whether as stated or otherwise), in accordance with the provisions thereof or of this Agreement, and shall receive interest thereon in like money at the rate specified therein, at the times and places and otherwise as expressed in the Certificates, together with all other amounts due hereunder. The Owner Trustee further covenants and agrees to endorse upon each of the Certificates, at or before the issuance and delivery thereof by the Equipment Trust Trustee, its Guaranty of the prompt payment of the principal thereof and Premium, if any, and interest thereon, in substantially the form set forth in Exhibit A hereto. Such Guaranty (i) shall be absolute and unconditional and not in any way conditioned or contingent upon the validity or enforceability of the obligations of the Owner Trustee to pay ETA Rent pursuant to Section 5.03 hereof, and shall not be affected by any circumstances, including, without limitation, those specified in Section 5.04 hereof; and (ii) shall be a present and continuing guaranty of payment and not of collectibility and is in no way conditioned or contingent upon any attempt to collect from the Equipment Trust Trustee or to realize upon any security provided therefor, or upon any other condition or contingency; provided that the obligations of the Owner Trustee under such Guaranty shall be discharged to the extent of any ETA Rent paid by the Owner Trustee or any Rent received by the Equipment Trust Trustee

pursuant to the assignment thereof under Section 4.03 hereof. Such Guaranty so endorsed shall be signed in the name and on behalf of the Owner Trustee by the facsimile signature of a Responsible Officer of the Owner Trustee, provided that such Guaranty shall not be effective with respect to any Certificate unless such Certificate shall have been duly executed on behalf of the Equipment Trust Trustee as provided in Section 2.02 hereof. In case any officer of the Owner Trustee whose signature shall appear on such Guaranty shall cease to be such officer before the Certificate shall have been issued and delivered by the Equipment Trust Trustee, or shall not have been acting in such capacity on the date of the Certificates, such Guaranty shall nevertheless be as effective and binding upon the Owner Trustee as though the person who signed such Guaranty had not ceased to be or had then been such officer.

Section 2.12. Execution, Delivery and Dating of Certificates upon Original Issuance. The Equipment Trust Trustee shall issue, execute and deliver the Certificates for original issuance only upon an Owner Trustee Request therefor and upon payment to it of an amount equal to the aggregate original principal amount of the Certificates. Each Certificate shall be dated the date of issuance.

Section 2.13. Withholding. The Equipment Trust Trustee shall make any deduction required by law from any payment to any Holder of a Certificate hereunder for any withholding of taxes imposed by the United States. The Equipment Trust Trustee shall obtain a tax receipt with respect to any such withholding of taxes and shall furnish a report of such withholding by January 31 of each year to such Holder after the Equipment Trust Trustee has received the same.

Section 2.14. ERISA Plan Prohibition. No employee benefit plan subject to Part 4 of Subtitle B of Title I of the Employment Retirement Income Security Act of 1974, as amended ("ERISA"), or individual retirement account or employee benefit plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended (hereinafter collectively referred to as an "ERISA Plan"), may acquire or hold any of the Certificates. The purchase by any person of any Certificate shall be deemed to constitute a representation by such person to Lessee, the Owner Participant, the Owner Trustee and the Equipment Trust Trustee that such person is not purchasing, and has not purchased, such Certificate with assets of an ERISA Plan.

### ARTICLE 3

#### RECEIPT, DISTRIBUTION AND APPLICATION OF FUNDS IN THE EQUIPMENT TRUST ESTATE

Section 3.01. Payment upon Purchase of an Item of Equipment. Promptly upon receipt of the proceeds from the sale of the Certificates, the Equipment Trust Trustee shall deposit such proceeds ("Deposited Cash") in an account to be held as part of the Equipment Trust Estate, and to be invested as provided in Section 8.04 hereof and applied and distributed as provided in this Article 3. On each Funding Date of an Item of Equipment, subject to fulfillment to the satisfaction of or waiver by the Equipment Trust Trustee of all conditions specified for such Funding Date in Section 4 of the Participation Agreement as originally executed, the Equipment Trust Trustee, on behalf of the Owner Trustee, shall apply an amount equal to the Commitment of the Equipment Trust Trustee for such Item of Equipment, together with the Commitment received from the Owner Participant pursuant to Section 2 of the Participation Agreement, to the acquisition of title to such Item of Equipment in accordance with Section 2 of the Participation Agreement.

Section 3.02. Payment in Case of Redemption. In the event the Certificates are to be redeemed in accordance with the provisions of Section 6.02 hereof, the Equipment Trust Trustee will hold any amount received by it in anticipation of a redemption in accordance with Section 8.04 hereof and apply any such amounts, together with any Investment Proceeds, if any, on the Redemption Date in the following order of priority:

first, so much of such aggregate amount as shall be required to pay the Equipment Trust Trustee all amounts then due it pursuant to Section 13, 15 or 16 of the Participation Agreement shall be applied to pay the Equipment Trust Trustee such amounts;

second, subject to Section 3.07 hereof, so much of such aggregate amount remaining as shall be required to pay the principal of and interest and Premium, if any, on the Outstanding Certificates pursuant to Section 6.02 hereof on the Redemption Date shall be applied to the redemption of the Certificates on the Redemption Date; and

third, the balance, if any, of such aggregate amount remaining shall be distributed to the Owner Trustee.

Section 3.03. Application of Rent When No Event of Acceleration Is Continuing. Except as otherwise provided in Section 3.02 or 3.04 hereof, each amount of ETA Rent and Rent received by the Equipment Trust Trustee, together with any amount received by the Equipment Trust Trustee pursuant to Section 7.03(e)(i) hereof and the Investment Proceeds, if any, shall be distributed by the Equipment Trust Trustee in the following order of priority:

first, subject to Section 3.07 hereof, so much of such aggregate amount as shall be required to pay in full the principal of and interest then due on all Outstanding Certificates shall be applied to pay such principal and interest;

second, any amount due the Equipment Trust Trustee pursuant to Section 13, 15 or 16 of the Participation Agreement shall be paid to the Equipment Trust Trustee; and

third, the balance, if any, of such aggregate amount remaining thereafter shall be distributed to the Owner Trustee.

Section 3.04. Payments during Continuance of Event of Acceleration. All payments received and amounts held or realized by the Equipment Trust Trustee after an Event of Acceleration shall have occurred and be continuing (including any amounts realized by the Equipment Trust Trustee from the exercise of any remedies pursuant to Article 7 hereof), as well as all payments or amounts then held or thereafter received by the Equipment Trust Trustee as part of the Equipment Trust Estate while such Event of Acceleration shall be continuing, shall be distributed by the Equipment Trust Trustee in the following order of priority:

first, so much of such payments or amounts as shall be required to pay the Equipment Trust Trustee all amounts then due it pursuant to Section 13, 15 or 16 of the Participation Agreement shall be applied to pay the Equipment Trust Trustee such amounts;

second, so much of such payments or amounts remaining as shall be required to pay the expenses incurred, or in the reasonable judgment of the Equipment Trust Trustee expected to be incurred, in using, operating, storing, leasing, controlling or managing the Equipment Trust Estate, and in all maintenance, insurance, repairs, replacements, alterations, additions

and improvements and in making all payments which the Equipment Trust Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Equipment Trust Estate or any part thereof (including the employment of engineers and accountants to examine and make reports upon the properties, books and records of the Owner Trustee and Lessee), all in accordance with Section 7.03(c) hereof;

third, subject to Section 3.07 hereof, so much of such payments or amounts remaining as shall be required to pay the principal of and accrued interest and Premiums, if any, on all Certificates Outstanding and then due and payable, whether by redemption pursuant to Section 6.02 hereof, by declaration of acceleration pursuant to Section 7.02 hereof or otherwise, shall be applied ratably to the payment of such principal and interest; and in case such payments or amounts shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal and interest, without any preference or priority of one Certificate over another, ratably according to the aggregate amount so due for principal and interest, at the date fixed by the Equipment Trust Trustee for the distribution of such payments or amounts; and

fourth, the balance, if any, of such payments or amounts remaining thereafter shall be held by the Equipment Trust Trustee as collateral security for the obligations secured hereby until such time as no Event of Acceleration shall be continuing hereunder or the Certificates have been accelerated and all amounts due thereon have been paid, at which time such payments or amounts shall be distributed to the Owner Trustee; provided, that if such payments or amounts have been so held by the Equipment Trust Trustee as collateral for more than 180 days and the Equipment Trust Trustee shall not have exercised any remedy available to it under Article 7 hereof in respect thereof, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to the Owner Trustee.

Section 3.05. Payments for which Application Is Provided in Other Documents. Except as otherwise provided in this Agreement, any payments received by the Equipment Trust Trustee for which provision as to the application thereof is made in the Lease, including, without limitation, Section 9, 10 or 11 of the Lease or the Participation Agreement, shall be applied by the Equipment Trust Trustee in accordance with

the provisions of the Lease or Participation Agreement, as applicable, including without limitation, Section 10(c) of the Lease.

Section 3.06. Payments for which No Application Is Otherwise Provided. Except as provided in Section 3.04 hereof:

(a) any payments received by the Equipment Trust Trustee for which no provision as to the application thereof is made elsewhere in this Agreement, and

(b) any payments received and amounts realized by the Equipment Trust Trustee with respect to an Item of Equipment to the extent received or realized at any time after the conditions set forth in Article 9 hereof for the satisfaction and discharge of this Agreement, as well as any other amounts remaining as part of the Equipment Trust Estate after such satisfaction,

shall be distributed by the Equipment Trust Trustee in the following order of priority:

first, so much of such aggregate amount as shall be required to pay the Equipment Trust Trustee all amounts then due it pursuant to Section 13, 15 or 16 of the Participation Agreement shall be applied to pay the Equipment Trust Trustee such amounts; and

second, the balance, if any, of such aggregate amount remaining thereafter shall be distributed to the Owner Trustee.

Section 3.07. Order of Application of Payments. Each payment on any Certificate shall be applied, first, to the payment of accrued interest (including interest on overdue principal and, to the extent permitted by Applicable Law, overdue interest) on such Certificate to the date of such payment and, second, to the payment of the principal of, and the Premium, if any, on such Certificate then due (including any overdue installments of principal) thereunder.

Section 3.08. Subrogation. To the extent that any payments received or amounts realized are applied under this Article III to pay the Equipment Trust Trustee any amounts then due it pursuant to Sections 13, 15 or 16 of the Participation Agreement, the Owner Trustee shall be subrogated to the extent of such payment to the rights and remedies of the Equipment Trust Trustee in respect thereof.

Section 3.09. Excepted Property. The Equipment Trust Trustee shall deliver any Excepted Property received by it to whosoever is lawfully entitled to the same.

#### ARTICLE 4

#### LEASE OF ITEMS OF EQUIPMENT BY OWNER TRUSTEE TO THE COMPANY

Section 4.01. Agreement to Lease. Each of the Equipment Trust Trustee and the Owner Trustee hereby agrees that simultaneously with the purchase and acceptance of each Item of Equipment by the Equipment Trust Trustee and the lease thereof to the Owner Trustee pursuant to Section 5.01 hereof, the Owner Trustee will lease such Item of Equipment to Lessee pursuant to the Lease.

Section 4.02. Disposition and Release of Property Included in the Equipment Trust Estate during Continuation of Lease. So long as the Lease is in effect:

At any time and from time to time, subject to the provisions of Article 12 hereof, part of the Equipment Trust Estate may be sold or disposed of in accordance with the provisions of this Agreement and the Lease. The Equipment Trust Trustee shall (except (i) as permitted by Section 8.04(b) hereof or (ii) as otherwise required hereunder), from time to time, release any part of the Equipment Trust Estate from the Lien of this Agreement, but only upon fulfillment to the satisfaction of or waiver by the Equipment Trust Trustee of all conditions specified under the applicable sections of the Lease permitting such release and upon receipt by, or deposit with, the Equipment Trust Trustee of the following:

(1) An Owner Trustee Request requesting such release, describing the property so to be released;

(2) An Officer's Certificate of Lessee, dated not more than 30 days prior to the date of the application for such release, stating:

(i) That the release will not be inconsistent with any of the provisions of this Agreement, and that such property is required or permitted to be so sold or disposed of pursuant to the Lease or provisions of this Agreement and that all conditions precedent

herein and in the Lease provided for relating to such release have been complied with; and

(ii) That no Event of Default has occurred which has not been cured;

(3) In the case of any release of an Item of Equipment as to which an Event of Loss has occurred, the amount required by Section 11.01(b) hereof;

(4) In the case of any release of an Item of Equipment as a result of the termination of the Lease as applicable thereto pursuant to Section 9 thereof, the amount required by Section 11.01(a) hereof;

(5) In the case of any release of an Item of Equipment as a result of the termination of the Lease as applicable thereto following Lessee's exercise of the purchase option under clause (i) of the first paragraph of Section 20 of the Lease, the amount required by Section 11.01(c) hereof;

(6) In the case of any release of an Item of Equipment as a result of circumstances provided for in Section 7(e) of the Lease, the amount required by Section 11.01(d) hereof; and

(7) An Opinion of Counsel of Lessee stating that the certificates, opinions and other instruments which have been or are therewith delivered to and deposited with the Equipment Trust Trustee pursuant to this Section 4.02 or the Lease conform to the requirements of this Agreement and the Lease, as the case may be, and that, upon the basis of such application, the property so sold or disposed of may be lawfully released from the Lien of this Agreement, and that all conditions precedent herein provided for relating to such release have been complied with.

Section 4.03. Assignment and Grant of Security Interest. As security for the payment by the Owner Trustee of all amounts of ETA Rent and all amounts payable under the Guaranties, for the payment of all amounts due to the Holders from the Owner Trustee under the other Operative Documents, and for the performance by the Owner Trustee of its obligations hereunder and under the other Operative Documents, the Owner Trustee does hereby grant, bargain,

sell, release, convey, assign, transfer, mortgage, hypothecate, pledge, confirm and create a security interest in, to and for the benefit of the Equipment Trust Trustee, in trust for the equal and proportionate benefit and security of the Holders from time to time of all the Certificates Outstanding without priority of any one Certificate over any other, and upon the trusts and subject to the covenants and conditions herein set forth, the following described property, rights and privileges (which collectively, including all property hereafter specifically subjected to the Lien of this Agreement by any instrument supplemental hereto, are herein called the "Equipment Trust Estate"):

(1) Each Item of Equipment;

(2) All right, title and interest of the Owner Trustee, as lessor, in, to and under the Lease, including without limitation, all amounts of Rent payable thereunder, insurance proceeds and requisition or other payments of any kind for or with respect to each Item of Equipment;

(3) All right, title and interest of the Owner Trustee in and to the Assignment, the Purchase Agreement and the Builder's Title Documents;

(4) All right, title and interest of the Owner Trustee in and to the tolls, rents, issues, profits, products, revenues and other income of the property subjected or required to be subjected to the Lien of this Agreement, and all the estate, right, title and interest of every nature whatsoever of the Owner Trustee in and to the same and every part thereof;

(5) All right, title and interest of the Owner Trustee in and to the Deposited Cash and all investment income thereon; and

(6) All right, title and interest of the Owner Trustee in and to all proceeds of the foregoing.

The Owner Trustee, concurrently with the delivery hereof, has delivered to the Equipment Trust Trustee the original executed Lease, executed counterparts of the Trust Agreement, the Assignment and the Participation Agreement and a conformed copy of the Purchase Agreement, exclusive of specifications and change orders, certified by Lessee as a true copy.

Notwithstanding any provision of this Section 4.03 or any other Section of this Agreement to the contrary:

(a) there shall be excluded from the security interest granted by this Agreement all Excepted Property;

(b) (i) whether or not an Event of Default shall have occurred and be continuing, the Owner Trustee shall at all times retain the right, to the exclusion of the Equipment Trust Trustee, (A) to Excepted Property and to commence an action at law to obtain such Excepted Property, (B) to adjust Basic Rent, Stipulated Loss Values, and Termination Values and the other amounts, all as provided in Section 3(e) of the Lease, and (C) to exercise the right to designate successor Owner Trustees pursuant to Section 21 of the Lease;

(ii) whether or not an Event of Default shall have occurred and be continuing, the Owner Trustee and the Equipment Trust Trustee shall each retain the right to receive from Lessee all notices, copies of all documents and all information which Lessee is permitted or required to give or furnish to the "Lessor" pursuant to the Lease or to the Owner Trustee pursuant to the Participation Agreement, to give any notice of default under Section 14(c) of the Lease, to retain the right to cause Lessee to take any action and execute and deliver such documents and assurances as the "Lessor" may from time to time reasonably request pursuant to Section 16 of the Lease and to inspect any Item of Equipment to the extent provided in Section 12 of the Lease; and

(iii) so long as no Event of Acceleration shall have occurred and be continuing (but subject to the provisions of Section 10.06(b)(1) hereof), the Owner Trustee shall retain the right, to the exclusion of the Equipment Trust Trustee, to exercise all other rights of the "Lessor" under the Lease (other than the right to receive any funds to be delivered to "Lessor" under the Lease, including, without limitation, under Section 3, 9, 10 or 11 of the Lease); and

(c) Nothing in this Agreement shall be deemed to prevent the Owner Trustee as "Lessor" under the Lease from commencing an action to compel specific performance by Lessee of its obligations under the Lease.

The Owner Trustee agrees that in accordance with the last paragraph of Section 5.02 hereof, this Agreement is

intended to and shall create and grant a security interest in each Item of Equipment to the Equipment Trust Trustee, which security interest shall attach, as to each Item of Equipment, on the Delivery Date therefor.

The Owner Trustee and the Equipment Trust Trustee agree that, anything herein contained to the contrary notwithstanding, but subject nevertheless to Section 2.10 hereof, the Owner Trustee shall remain liable under the Lease, the Purchase Agreement and the Assignment to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Equipment Trust Trustee and the Holders shall have no obligation or liability under the Lease by reason of or arising out of the assignment hereunder, nor shall the Equipment Trust Trustee or the Holders be required or obligated in any manner to perform or fulfill any obligations of the Owner Trustee under or pursuant to the Lease, the Trust Agreement, the Purchase Agreement or the Assignment or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Owner Trustee does hereby constitute the Equipment Trust Trustee the true and lawful attorney of the Owner Trustee, irrevocably, with full power (in the name of the Owner Trustee or otherwise) to ask, require, demand, receive, and, subject to Section 10.06 hereof, compound and give acquittance for any and all monies and claims for monies due and to become due under or arising out of the Lease, the Purchase Agreement and the Assignment (other than Excepted Property), to 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 the Equipment Trust Trustee may deem to be necessary or advisable in the premises. The Owner Trustee has directed Lessee to make all payments of Rent (other than Excepted Property) payable to the Owner Trustee by Lessee and all other amounts which are required to be paid to or deposited with the Owner Trustee pursuant to the Lease directly to the Equipment Trust Trustee at such address as the Equipment Trust Trustee shall specify, for application as provided in this Agreement. The Owner Trustee agrees that, promptly on receipt thereof, it will transfer to the Equipment Trust Trustee any and all monies from time to time received by it constituting part of the Equipment Trust Estate, for distribution by the Equipment

Trust Trustee pursuant to this Agreement, except that the Owner Trustee shall accept for distribution pursuant to the Trust Agreement any amounts distributed to it by the Equipment Trust Trustee as expressly provided in this Agreement and any Excepted Property.

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

The Owner Trustee does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that, except as permitted by Section 14 of the Participation Agreement, it will not assign or pledge, so long as the assignment hereunder shall remain in effect, any of its right, title or interest hereby assigned, to anyone other than the Equipment Trust Trustee, and that it will not, except as provided in or permitted by this Agreement, accept any payment from Lessee, enter into an agreement amending or supplementing the Lease, the Participation Agreement or the Trust Agreement, execute any waiver or modification of, or consent under, settle or compromise any claim against Lessee arising under the Lease, the Participation Agreement or the Trust Agreement or submit or consent to the submission of any dispute, difference or other matter arising under or in respect of the Lease, the Participation Agreement or the Trust Agreement to arbitration thereunder.

The Owner Trustee does hereby ratify and confirm the Lease and the Assignment.

## ARTICLE 5

### LEASE OF ITEMS OF EQUIPMENT BY EQUIPMENT TRUST TRUSTEE TO OWNER TRUSTEE

Section 5.01. Agreement to Lease. The Equipment Trust Trustee hereby agrees that it will, simultaneously with the acquisition of each Item of Equipment by the Equipment Trust Trustee on each Delivery Date, lease such Item of Equipment to the Owner Trustee under this Agreement, and the Owner Trustee hereby agrees that it will, simultaneously with

such purchase and acceptance by the Equipment Trust Trustee, lease such Item of Equipment from the Equipment Trust Trustee under this Agreement, such lease to be upon the terms set forth in this Agreement. Such lease shall be a lease in legal form only and shall convey all ownership rights in such Item of Equipment to the Owner Trustee subject only to the rights of the Equipment Trust Trustee as holder of legal title for security purposes only hereunder.

Section 5.02. Term of ETA Lease. The term of the lease of each Item of Equipment hereunder (the "ETA Lease Term") shall commence on the Delivery Date thereof and shall expire on the Basic Lease Termination Date, or such earlier date as this Agreement shall have been satisfied and discharged pursuant to subsection (i) or (ii) of Section 9.01(a) hereof. Upon the expiration of the ETA Lease Term applicable thereto,

(i) subject to the provisions of Article 3 hereof, any monies remaining in the hands of the Equipment Trust Trustee after payment in full of or provision for all ETA Rent payable hereunder shall be paid to the Owner Trustee;

(ii) legal title to such Item of Equipment shall vest in the Owner Trustee or in such designee of the Owner Trustee as the Owner Trustee shall have specified in a notice furnished to the Equipment Trust Trustee not later than ten Business Days prior to such expiration;

(iii) the Equipment Trust Trustee shall execute for recordation in public offices, at the expense of the Owner Trustee or such designee, such instrument or instruments in writing as the Owner Trustee or such designee shall reasonably request and as shall be reasonably acceptable to the Equipment Trust Trustee in order to make clear upon public records the title of the Owner Trustee or such designee to such Item of Equipment under the laws of any jurisdiction; and

(iv) the Equipment Trust Trustee shall execute and deliver to the Owner Trustee an instrument releasing its Lien in and to such Item of Equipment and all other property then remaining in the Equipment Trust Estate, and shall execute for recordation in public offices, at the expense of the Owner Trustee or such designee, such instruments in writing as the Owner Trustee or such designee shall reasonably request and as shall be reasonably acceptable to the Equipment Trust Trustee in order to make clear upon public records that such Lien has been released under the laws of any jurisdiction;

provided that, until expiration of the ETA Lease Term applicable thereto, legal title to such Item of Equipment shall not pass to or vest in the Owner Trustee or in any such designee, but shall be and remain in the Equipment Trust Trustee for security purposes, notwithstanding the delivery of such Item of Equipment to the Owner Trustee pursuant to the lease of such Item of Equipment hereunder or the delivery to and the possession and use thereof by Lessee pursuant to the Lease. The Owner Trustee, for itself and any such designee, hereby waives and releases any and all rights existing or that may be acquired to any penalties, forfeit or damages from or against the Equipment Trust Trustee for failure to execute and deliver any bill or bills of sale or to file any certificate of payments in compliance with any law or statute requiring the filing of the same, except for failure by the Equipment Trust Trustee to execute and deliver any bill or bills of sale or to file any certificate as may be specifically requested in writing by the Owner Trustee or any such designee.

Notwithstanding anything herein to the contrary, the holding by the Equipment Trust Trustee of legal title to such Item of Equipment is for security purposes only, and the parties hereto agree that for all other purposes, including tax purposes, the Owner Trustee shall be the owner of such Item of Equipment.

Section 5.03. ETA Rent. As rental for each Item of Equipment during the ETA Lease Term applicable thereto, the Owner Trustee shall pay or cause to be paid to the Equipment Trust Trustee at its corporate trust office, in funds consisting of lawful currency of the United States of America (or by surrender of Certificates pursuant to Section 5.06 hereof), the following amounts ("ETA Rent"):

(a) on the Funding Date applicable to such Item of Equipment, an amount equal to the Owner Participant's Commitment for such Item of Equipment; and

(b) not later than 11:30 A.M., New York City time, on the date on which any payment of interest (including any interest on overdue principal), Premium, if any, upon redemption pursuant to Section 6.02 hereof, or principal is due under the Certificates (whether upon redemption, final maturity, acceleration or otherwise) or any sinking fund payment is due under Section 13.01 hereof, an amount sufficient to pay the aggregate amount of such interest, Premium, principal or payment in accordance with the terms of the Certificates and of this Agreement.

As additional rental, the Owner Trustee shall pay or cause to be paid to the Equipment Trust Trustee or to the Holder of any Certificate entitled thereto, when due, any other amounts which the Owner Trustee has agreed herein to pay to the Equipment Trust Trustee or to such Holder.

All payments of ETA Rent to be made by the Owner Trustee to the Equipment Trust Trustee shall be made by wire transfer of immediately available funds to the Corporate Trust Administration Department of the Equipment Trust Trustee at Rodney Square North, Wilmington, Delaware 19890, for credit to such account as the Equipment Trust Trustee shall specify. Attention: Conrail 1990 Equipment Trust A.

Notwithstanding any provision hereof to the contrary, all amounts of Rent received by the Equipment Trust Trustee pursuant to the assignment thereof under Section 4.03 hereof shall to the extent thereof release the Owner Trustee from its obligation to pay ETA Rent in the same amount hereunder.

Notwithstanding any provision hereof to the contrary, the parties hereto agree that for income tax purposes (i) all payments of ETA Rent payable pursuant to Section 5.03(b) shall be reported as interest or principal, as the case may be, on a loan from the Holders to the Owner Trustee in accordance (in the case of ETA Rent payable under Section 5.03(b) exclusive of Premium, if any, which amount shall be reported as interest) with Exhibit C hereto and (ii) each Certificate is intended to represent an interest in the ETA Rent, as set forth in Exhibit C hereto.

Section 5.04. No Setoff, Counterclaim, Etc. The lease hereunder of each Item of Equipment is a net lease and the Owner Trustee's obligation to pay all ETA Rent payable hereunder shall, subject only to Section 5.06 hereof (and, so long as the Lease is in effect, the penultimate paragraph of Section 5.03 hereof), be absolute and unconditional and shall not be affected by any circumstances of any character, including, without limitation, (a) any setoff, counterclaim, recoupment, defense or other right which the Owner Trustee or Lessee may have against the Equipment Trust Trustee or anyone else for any reason whatsoever, (b) any defect in the title, condition, design, operation or fitness for use of, or any damage to or loss or destruction of, any Item of Equipment, or any interruption or cessation in or prohibition of the use or possession thereof by the Owner Trustee or Lessee for any reason whatsoever, (c) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Owner Trustee or the Equipment Trust Trustee or (d) any other

circumstance, happening or event whatsoever, whether or not unforeseen or similar to any of the foregoing. If for any reason whatsoever the lease of such Item of Equipment hereunder shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, the Owner Trustee nonetheless agrees to pay to the Equipment Trust Trustee an amount equal to each ETA Rent payment under Section 5.03 hereof at the time such payment would have become due and payable in accordance with the terms hereof had the lease of such Item of Equipment hereunder not been terminated in whole or in part. The Owner Trustee hereby waives, to the extent permitted by Applicable Law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of such Item of Equipment hereunder except in accordance with the express terms hereof. Each payment of ETA Rent made by the Owner Trustee shall be final as to the Equipment Trust Trustee and the Owner Trustee, and the Owner Trustee will not seek to recover all or any part of any such payment of ETA Rent from the Equipment Trust Trustee for any reason whatsoever.

Notwithstanding any other provision in this Section 5.04 to the contrary, the Owner Trustee shall not be impaired in the exercise of any right it may have to assert and sue upon any claim it may have against Lessee or the Equipment Trust Trustee in a separate action.

Section 5.05. Equipment Trust Trustee Representations and Warranties. NEITHER THE EQUIPMENT TRUST TRUSTEE NOR THE EQUIPMENT TRUST TRUSTEE IN ITS INDIVIDUAL CAPACITY MAKES OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, CONDITION, WORKMANSHIP, DESIGN, PATENT INFRINGEMENT, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF ANY ITEM OF EQUIPMENT OR ANY PART THEREOF OR AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ITEM OF EQUIPMENT OR ANY PART THEREOF, except that the Equipment Trust Trustee in its individual capacity warrants that on the Delivery Date of an Item of Equipment (a) the Equipment Trust Trustee shall have received whatever title to such Item of Equipment was conveyed to it on such Delivery Date pursuant to Section 3 of the Participation Agreement, and (b) such Item of Equipment shall be free of Trustee's Liens attributable to it in its individual capacity.

Section 5.06. Credit Against ETA Rent in Respect of Certificates Surrendered for Cancellation. In satisfaction of the Owner Trustee's obligation pursuant to Section 5.03(b) hereof to pay all or any part of ETA Rent (or any amount under the Guaranties in respect thereof) in respect of any sinking fund payment or any other payment of principal (whether upon redemption, final maturity, acceleration or otherwise) on the Certificates, the Owner Trustee (or Lessee, on behalf of the Owner Trustee as provided in Section 3(b) of the Lease) may surrender to the Equipment Trust Trustee, pursuant to the terms of Article 13 hereof in the case of any sinking fund payment and not less than 60 days prior to the date on which such principal shall become due in the case of any other payment of principal, Certificates for cancellation pursuant to Section 2.08 hereof (other than Certificates previously called for redemption). In each such case (a) there shall be credited against the amount of ETA Rent otherwise so payable an amount equal to the unpaid principal amount of such Certificates and (b) the Owner Trustee shall credit an amount equal to the amount of such credit against the Basic Rent payable by Lessee under the Lease on the date on which such payment shall become due.

## ARTICLE 6

### REDEMPTION OF CERTIFICATES

Section 6.01. No Redemption Prior to Maturity. Except as provided in Section 6.02 hereof, the Certificates may not be redeemed prior to maturity.

Section 6.02. Redemption of Certificates. The Certificates shall be redeemed, in whole or in part and subject to Section 6.06 hereof, as follows:

(A) In the event that title to any Auto Rack identified in Schedule II to the Lease as originally executed is not vested in the Equipment Trust Trustee pursuant to Section 3 of the Participation Agreement and such Auto Rack is not subjected to the Lease (as evidenced by a Certificate of Acceptance covering such Auto Rack) on or before December 31, 1990, there shall be redeemed, in whole or in part, as the case may be, Outstanding Certificates at an aggregate redemption price equal to the sum of (1) an amount equal, as to principal

thereof, to the product obtained by multiplying the aggregate unpaid principal amount of the Outstanding Certificates at the Redemption Date therefor by a fraction, the numerator of which shall be the aggregate cost of each such Auto Rack and the denominator of which shall be the aggregate Cost of all the Auto Racks listed on Schedule II to the Lease and (2) the aggregate amount of interest accrued and unpaid to such Redemption Date on the principal amounts to be redeemed of the Outstanding Certificates to be redeemed wholly or partially on such Redemption Date, but without payment of any Premium.

(B) In the event that an Event of Loss occurs to an Item of Equipment, or in the event Lessee is required to comply with clause (ii) of Section 7(e) of the Lease with respect to any Item of Equipment, Outstanding Certificates shall be redeemed in whole or in part for an aggregate redemption price equal to the sum of (1) an amount equal, as to principal thereof, to the product obtained by multiplying the unpaid principal amount of the Outstanding Certificates as at the Redemption Date therefor by a fraction, the numerator of which shall be the Cost of such Item of Equipment and the denominator of which shall be the aggregate Cost of all Items of Equipment included in the Equipment Trust Estate immediately prior to such Event of Loss and (2) the aggregate amount of interest accrued and unpaid to such Redemption Date on the principal amounts to be redeemed of the Outstanding Certificates to be redeemed wholly or partially on such Redemption Date, but without payment of any Premium.

(C) In the event that the Lease as applicable to any Item of Equipment is terminated pursuant to Section 9 thereof, Outstanding Certificates shall be redeemed in whole or in part for an aggregate redemption price equal to the sum of (1) an amount equal, as to principal thereof, to the product obtained by multiplying the aggregate unpaid principal amount of the Outstanding Certificates as at the Redemption Date therefor by a fraction, the numerator of which shall be the Cost of such Item of Equipment and the denominator of which shall be the aggregate Cost of all Items of Equipment included in the Equipment Trust Estate immediately prior to the relevant Redemption Date, (2) the aggregate amount of interest accrued and unpaid to such Redemption Date on the principal amounts to be redeemed of the Outstanding Certificates to be redeemed wholly or partially on such

Redemption Date and (3) the aggregate Premium, if any, applicable in respect of such amounts so to be redeemed as at such Redemption Date.

(D) In the event of a refinancing as contemplated by Section 7(h) of the Participation Agreement, the Outstanding Certificates shall be redeemed in whole for an aggregate redemption price equal to the sum of (1) 100% of the aggregate unpaid principal amount of such Certificates, (2) the aggregate accrued and unpaid interest thereon to the Redemption Date, and (3) the Premium, if any, applicable thereto.

(E) In the event that the Owner Trustee gives notice of redemption to the Equipment Trust Trustee pursuant to Section 7.03(e)(ii) hereof after one or more Events of Default shall have occurred and shall have continued for a period of 180 days or more during which the Certificates shall not have been accelerated, or in the event that the Certificates are accelerated, the Outstanding Certificates shall be redeemed in whole for an aggregate redemption price equal to the sum of (1) 100% of the aggregate unpaid principal amount of such Certificates and (2) the aggregate accrued and unpaid interest thereon to the Redemption Date, but without payment of any Premium.

(F) On each Sinking Fund Payment Date, Outstanding Certificates shall be redeemed in whole or in part by operation of the sinking fund provided in Article 13 hereof for an aggregate redemption price equal to the sum of (1) an amount equal, as to principal thereof, to the Sinking Fund Principal Payment for such Sinking Fund Payment Date and (2) the aggregate amount of interest accrued and unpaid to such Sinking Fund Payment Date on the principal amounts to be redeemed of the Outstanding Certificates to be redeemed wholly or partially on such Sinking Fund Payment Date, but without payment of any Premium.

Section 6.03. Notice of Redemption to Holders.  
Notice of redemption shall be given by the Equipment Trust Trustee by first-class mail, postage prepaid, mailed not less than 15 nor more than 30 days prior to the Redemption Date, to each Holder of Certificates to be redeemed, at such Holder's address appearing in the Register.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the redemption price (other than the amount of Premium, if any),
- (3) whether the Holder is entitled to a Premium and the manner in which such Premium is calculated,
- (4) if less than all Outstanding Certificates are to be redeemed, the identification number (and the respective principal amounts) of the Certificates to be redeemed,
- (5) that on the Redemption Date, such redemption price will become due and payable upon each such Certificate, and that interest thereon shall cease to accrue on and after such Redemption Date, and
- (6) the place or places where such Certificates are to be surrendered for payment.

Section 6.04. Deposit of Redemption Price. On or before the Redemption Date, the Owner Trustee shall, to the extent an amount equal to the applicable redemption price shall not then be held in the Equipment Trust Estate, deposit or cause to be deposited with the Equipment Trust Trustee or the Paying Agent in immediately available funds an amount equal to such redemption price.

Section 6.05. Certificates Payable on Redemption Date. Notice of redemption having been given as aforesaid, the principal amount to be redeemed on a Redemption Date of each Certificate to be redeemed in whole or in part on such Redemption Date shall become due and payable at the principal corporate trust office of the Equipment Trust Trustee or at any office or agency maintained for such purposes pursuant to Section 2.04 hereof, and from and after such Redemption Date (unless there shall be a default in the payment of the applicable redemption price) such principal amount shall cease to bear interest. Upon surrender of any such Certificate for redemption in whole or in part in accordance with said notice, the unpaid principal amount of such Certificate, together with interest accrued thereon and Premium, if any, shall be paid as provided for in this Article 6.

If any Certificate called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, continue to bear interest from the Redemption Date at the interest rate applicable to such Certificate.

Section 6.06. Credit Against Redemption Price, Selection of Certificates to Be Redeemed, Etc.

Notwithstanding any other provision hereof, any aggregate redemption price otherwise payable pursuant to Section 6.02 shall be reduced as to its component in respect of principal (and, correspondingly, as to its components in respect of interest and Premium, if any) by an amount equal to the unpaid principal amount of Certificates delivered for cancellation pursuant to Section 5.06 or 13.02, and the remainder of such aggregate redemption price, if any, after giving effect to any such reduction, if any, shall be applicable for all purposes hereof. If there shall be a redemption of less than 100% of the unpaid principal amount of all the Outstanding Certificates, the particular Certificates to be redeemed shall be selected not more than 45 days prior to the Redemption Date by the Equipment Trust Trustee from the Outstanding Certificates not previously called for redemption by such method as the Equipment Trust Trustee in its discretion shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal of Certificates of a denomination other than an integral multiple of \$1,000, provided, however, that any Holder (other than the Owner Participant or the Lessee or any Affiliate of either thereof or the Owner Trustee) of a minimum of \$100,000 in principal amount of Outstanding Certificates may elect, by written notice to the Equipment Trust Trustee (which notice shall become effective 60 days after delivery to the Equipment Trust Trustee), to have its pro rata share of Outstanding Certificates not previously called for redemption selected for each redemption after such notice becomes effective. The determination of accrued and unpaid interest and Premium, if any, payable in connection with each redemption shall be effected consistently with the selections so made for that redemption.

The Equipment Trust Trustee shall promptly notify the Owner Trustee and Lessee of the Certificates selected for redemption and, in the case of any Certificate selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Equipment Trust Agreement, unless the context otherwise requires, all provisions relating to the redemption of Certificates shall relate, in the case of any Certificate redeemed or to be redeemed only in part, to the portion of the principal of such Certificate which has been or is to be redeemed.

## ARTICLE 7

### REMEDIES OF THE EQUIPMENT TRUST TRUSTEE UPON AN EVENT OF ACCELERATION

Section 7.01. Events of Acceleration. The following events shall constitute "Events of Acceleration" under this Agreement:

(a) any installment of interest upon any Certificate shall not be paid when due and payable, or the principal amount of or Premium on or any sinking fund payment with respect to any Certificate shall not be paid when due and payable (whether upon redemption, final maturity, acceleration or otherwise) and such nonpayment of interest, principal, Premium or sinking fund payment shall continue for more than 10 days after the same shall have become due and payable (subject to the cure rights of the Owner Participant and the Owner Trustee under Section 7.03(e)(i) hereof); or

(b) the Owner Trustee shall default in the payment of any ETA Rent required to be paid by it hereunder or the payment of any amount under any Guaranty and such default shall continue for more than 10 days after the same shall have become due and payable (subject to the cure rights of the Owner Participant and the Owner Trustee under Section 7.03(e)(i) hereof); or

(c) any failure by the Owner Trustee, in its individual capacity or as Owner Trustee, or the Owner Participant to observe or perform any covenant or obligation required of either of them hereunder or pursuant to the Participation Agreement, or, to the extent that the interest of the Equipment Trust Trustee or any Holder of Outstanding Certificates is affected by such failure, in the Trust Agreement if, but only if, such failure is not remedied within a period of 30 days after there has been given to the Owner Trustee (with a copy to the Owner Participant) or the Owner Participant,

as the case may be, by registered or certified mail, a written notice specifying such failure and requiring it to be remedied and stating that such notice is a "Notice of Acceleration" hereunder, by the Equipment Trust Trustee or by the Holders of at least 25% in principal amount of Outstanding Certificates (with a copy to the Equipment Trust Trustee); provided, that no Event of Acceleration shall arise under this Section 7.01(c) solely as a result of a failure by the Owner Trustee or the Owner Participant to observe or perform any covenant contained in Sections 7(c) or 8(f) of the Participation Agreement if Lessee shall have taken all action necessary to discharge all Lessor's Liens referred to in such Sections and shall have held the Equipment Trust Trustee and the Equipment Trust Estate harmless from all claims, losses and expenses arising from the failure of the Owner Trustee and the Owner Participant to observe and perform any such covenant; or

(d) any material representation or warranty made by the Owner Trustee, in its individual capacity or as Owner Trustee, or by the Owner Participant under the Participation Agreement, or by the Owner Trustee hereunder, or by the Owner Trustee, in its individual capacity or as Owner Trustee, or by the Owner Participant in any document or certificate furnished to the Equipment Trust Trustee in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to have been incorrect in any material respect as of the date made and such incorrectness shall continue unremedied for a period of 30 days after there has been given, by registered or certified mail, to the Owner Trustee and the Owner Participant by the Equipment Trust Trustee, or to the Owner Trustee, the Owner Participant and the Equipment Trust Trustee by the Holders of at least 25% in principal amount of Outstanding Certificates, a written notice specifying such incorrectness and requiring it to be remedied and stating that such notice is a "Notice of Acceleration" hereunder; or

(e) subject to the cure rights of the Owner Participant and the Owner Trustee under Section 7.03(e) (i) hereof, an Event of Default.

Section 7.02. Acceleration; Rescission and Annulment. If an Event of Acceleration occurs and is continuing, the Equipment Trust Trustee, by notice to the Owner Trustee and the Owner Participant (with a copy to

Lessee), or the Holders of at least 25% in aggregate principal amount of Outstanding Certificates, by notice to the Equipment Trust Trustee, the Owner Trustee and the Owner Participant (with a copy to Lessee), may declare the principal of all the Certificates to be due and payable. Upon such declaration, such principal shall be due and payable immediately. At any time after such declaration and prior to the sale or disposition of the Equipment Trust Estate, the Holders of a majority in aggregate principal amount of all of the Outstanding Certificates, by notice to the Equipment Trust Trustee, the Owner Trustee and the Owner Participant (with a copy to Lessee), may rescind such a declaration and annul its consequences if (i) an amount sufficient to pay all interest due or past due in respect of the Certificates, the principal of and Premium, if any, on any Certificates which have become due otherwise than by such declaration of acceleration and interest thereon at the Overdue Rate (and to the extent permitted by Applicable Law interest upon overdue installments of interest on all Certificates at the Overdue Rate), and all sums due and payable to the Equipment Trust Trustee have been deposited with the Equipment Trust Trustee, (ii) the rescission would not conflict with any judgment or decree and (iii) all existing ETA Defaults and Events of Acceleration under this Agreement have been cured or waived except nonpayment of principal or interest that has become due solely because of such acceleration. No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 7.03. Other Remedies Available to Equipment Trust Trustee. (a) After an Event of Acceleration shall have occurred and so long as such Event of Acceleration shall be continuing, then and in every such case the Equipment Trust Trustee, as trustee of an express trust and as assignee hereunder of the Lease or as legal title holder hereunder of each Item of Equipment, may, and when required pursuant to the provisions of Article 8 hereof shall, exercise subject to Sections 7.03(e) and 7.03(f) hereof, any or all of the rights and powers and pursue any and all of the remedies accorded to the Owner Trustee pursuant to Section 15 of the Lease and this Article 7, may recover judgment in its own name as Equipment Trust Trustee against the Equipment Trust Estate and may take possession of all or any part of the Equipment Trust Estate and may exclude the Owner Trustee and the Owner Participant and all persons claiming under any of them wholly or partly therefrom.

(b) Subject to Section 7.03(e) and Section 7.03(f) hereof, the Equipment Trust Trustee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession, and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Owner Trustee and the Owner Participant (with a copy to Lessee) once at least 30 days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of the Equipment Trust Estate, or any part thereof, or interest therein, at public auction to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Equipment Trust Trustee may determine, and at any place (whether or not it be the location of the Equipment Trust Estate or any part thereof) designated in the notice above referred to; provided, however, that notwithstanding any provision herein to the contrary, the Equipment Trust Trustee shall not sell any of the Equipment Trust Estate unless a declaration of acceleration has been made pursuant to Section 7.02 hereof. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further notice, and the Equipment Trust Trustee and the Holder or Holders of any Certificates, or any interest therein, may bid and become the purchaser at any such sale. The Equipment Trust Trustee may exercise such right without possession or production of the Certificates or proof of ownership thereof, and as representative of the Holders may exercise such right without notice to the Holders or including the Holders as parties to any suit or proceeding relating to foreclosure of any property in the Equipment Trust Estate. The Owner Trustee hereby irrevocably constitutes the Equipment Trust Trustee the true and lawful attorney-in-fact of the Owner Trustee (in the name of the Owner Trustee or otherwise) for the purpose of effectuating any sale, assignment, transfer or delivery for enforcement of the Lien created under this Agreement, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such bills of sale, assignments and other instruments as the Equipment Trust Trustee may consider necessary or appropriate, with full power of substitution, the Owner Trustee hereby ratifying and confirming all that such attorney or any substitute shall lawfully do by virtue hereof. Nevertheless, if so requested by the Equipment Trust Trustee or any purchaser, the Owner Trustee shall ratify and confirm any such sale, assignment, transfer or delivery, by

executing and delivering to the Equipment Trust Trustee or such purchaser all bills of sale or other title documents, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request. The Equipment Trust Trustee agrees that the Owner Participant and the Owner Trustee shall each have the rights of a "debtor" under Section 9-505(2) of the Uniform Commercial Code and shall be entitled to receive the notice referred to therein.

(c) Subject to Sections 7.03(e) and 7.03(f) hereof, if an Event of Acceleration has occurred and is continuing, the Owner Trustee shall, at the request of the Equipment Trust Trustee, promptly execute and deliver to the Equipment Trust Trustee such instruments of title or other documents as the Equipment Trust Trustee may deem necessary or advisable to enable the Equipment Trust Trustee or an agent or representative designated by the Equipment Trust Trustee, at such time or times and place or places as the Equipment Trust Trustee may specify, to obtain possession of all or any part of the Equipment Trust Estate. If the Owner Trustee shall for any reason fail to execute and deliver such instruments and documents after such request by the Equipment Trust Trustee, the Equipment Trust Trustee shall be entitled, in a proceeding to which the Owner Trustee shall be a necessary party, to a judgment for specific performance of the covenants contained in the foregoing sentence, conferring upon the Equipment Trust Trustee the right to immediate possession and requiring the Owner Trustee to execute and deliver such instruments and documents to the Equipment Trust Trustee. The Equipment Trust Trustee shall also be entitled to pursue all or any part of the Equipment Trust Estate wherever it may be found and may enter any of the premises of the Owner Trustee or any other Person wherever the Equipment Trust Estate may be or be supposed to be and search for the Equipment Trust Estate and take possession of any Item of Equipment pursuant to this Section 7.03(c). The Equipment Trust Trustee may, but shall not be obligated to, from time to time, at the expense of the Equipment Trust Estate, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Equipment Trust Estate, as it may deem proper. In each such case, the Equipment Trust Trustee shall have the right to use, operate, store, lease, control or manage the Equipment Trust Estate, and to exercise all rights and powers of the Owner Trustee relating to the Equipment Trust Estate as the Equipment Trust Trustee shall deem appropriate, including the right to enter into any and all such agreements with respect to the use, operation, storage, leasing, control

or management of the Equipment Trust Estate or any part thereof; and the Equipment Trust Trustee shall be entitled to collect and receive directly all tolls, rents (including Rent), issues, profits, products, revenues and other income of the Equipment Trust Estate and every part thereof, without prejudice, however, to the right of the Equipment Trust Trustee under any provision of this Agreement to collect and receive all cash held by, or required to be deposited with, the Equipment Trust Trustee hereunder. In accordance with the terms of this Section 7.03(c), such tolls, rents (including Rent), issues, profits, products, revenues and other income shall be applied to pay the expenses of using, operating, storing, leasing, controlling or managing the Equipment Trust Estate, and of all maintenance, insurance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Equipment Trust Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Equipment Trust Estate or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Owner Trustee in accordance with this Section 7.03(c)), and all other payments which the Equipment Trust Trustee may be required or authorized to make under any provision of this Agreement, including this Section 7.03(c), as well as just and reasonable compensation for the services of the Equipment Trust Trustee, and of all persons properly engaged and employed by the Equipment Trust Trustee.

If an Event of Acceleration occurs and is continuing and the Equipment Trust Trustee shall have obtained possession of an Item of Equipment, the Equipment Trust Trustee shall not be obligated to use or operate such Item of Equipment or cause such Item of Equipment to be used or operated directly or indirectly by itself or through agents or other representatives or to lease, license or otherwise permit or provide for the use or operation of such Item of Equipment by any other Person unless (i) the Equipment Trust Trustee shall have been able to obtain insurance in kinds, at rates and in amounts satisfactory to it in its discretion to protect the Equipment Trust Estate and the Equipment Trust Trustee, as trustee and individually, against any and all liability for loss or damage to such Item of Equipment and for public liability and property damage resulting from use or operation of such Item of Equipment and (ii) funds are available in the Equipment Trust Estate to pay for all such insurance or, in lieu of such insurance, the Equipment Trust Trustee is furnished with indemnification from the Holders or

any other Person upon terms and in amounts satisfactory to the Equipment Trust Trustee in its discretion to protect the Equipment Trust Estate and the Equipment Trust Trustee, as trustee and individually, against any and all such liabilities.

(d) Subject to Section 7.03(e) and Section 7.03(f) hereof, the Equipment Trust Trustee may proceed to protect and enforce this Agreement and the Certificates by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Equipment Trust Estate or any part thereof, or for the recovery of judgment for the indebtedness secured by the Lien created under this Agreement or for the enforcement of any other legal or equitable remedy available under applicable law.

(e) (i) If Lessee shall fail to make any payment of Basic Rent under the Lease within 15 days after the same shall become due, and if such failure of Lessee to make payment of Basic Rent shall not constitute the fifth or subsequent consecutive such failure or the eighth or subsequent cumulative such failure, then so long as no Event of Acceleration (other than arising from such failure to pay Basic Rent) shall have occurred and be continuing the Owner Participant or the Owner Trustee may (but need not) pay to the Equipment Trust Trustee, at any time prior to the expiration of a period of 15 days (the "15-Day Period") after the Equipment Trust Trustee gives the Owner Trustee and the Owner Participant notice of the expiration of the 15 days first referred to in this Section 7.03(e)(i) (prior to the expiration of which 15-Day Period the Equipment Trust Trustee shall not declare the Lease in default pursuant to Section 14 thereof or exercise any of the rights, powers or remedies pursuant to Section 15 of the Lease or this Article 7), an amount equal to the full amount of such payment of Basic Rent (or, if less, the aggregate of all amounts then due and payable hereunder or to be paid from such payment of Basic Rent to any Person other than the Owner Trustee as certified by the Owner Participant to the Equipment Trust Trustee and agreed by the Equipment Trust Trustee) together with any interest due thereon on account of the delayed payment thereof, and such payment by the Owner Participant or the Owner Trustee shall be deemed to cure any Event of Acceleration which arose from such failure of Lessee (but such cure shall not relieve Lessee of any of its obligations). If Lessee shall fail to perform or observe any

covenant, condition or agreement to be performed or observed by it under the Lease, and if (but only if) the performance or observance thereof can be effected by the payment of money alone (it being understood that actions such as the obtaining of insurance and the procurement of maintenance services can be so effected), then as long as no other Event of Acceleration shall have occurred and be continuing, the Owner Participant or the Owner Trustee may (but need not) pay to the Equipment Trust Trustee (or to such other person as may be entitled to receive the same), at any time prior to (I) the expiration of a period of 15 days after the expiration of the grace period, if any, provided with respect to such failure on the part of Lessee in Section 14 of the Lease or, (II) if a notice of such failure has been given under Section 14(c) or (d) of the Lease by the Equipment Trust Trustee or the Holders of at least 25% in aggregate principal amount of Outstanding Certificates, the expiration of a period of 7 Business Days after the Equipment Trust Trustee or the Holders of at least 25% in aggregate principal amount of Outstanding Certificates notify the Owner Trustee and the Owner Participant of the expiration of the grace period, if any, referred to in clause (I) above (prior to the expiration of which 15-day period or 7-Business Day period, as the case may be, the Equipment Trust Trustee shall not declare the Lease in default pursuant to Section 14 thereof or this Article 7 or exercise any of the rights, powers or remedies pursuant to Section 15 of the Lease), all sums necessary to effect the performance or observance of such covenant or agreement of Lessee, together with any interest due thereon on account of the delayed payment thereof, and such payment by the Owner Participant or the Owner Trustee shall be deemed to cure any Event of Acceleration which arose from such failure of Lessee (but such cure shall not relieve Lessee of any of its obligations). Any notice required to be given to the Owner Participant shall be given at the address specified for the Owner Participant in Section 14.02 hereof. Upon any payment of Basic Rent by the Owner Participant or the Owner Trustee in accordance with the first sentence of this Section 7.03(e)(i), or upon any payment of any other sums by the Owner Participant or the Owner Trustee in accordance with the second sentence of this Section 7.03(e)(i), the Owner Participant or the Owner Trustee shall, to the extent of their respective payments, be subrogated, in the case of any such payment in accordance with such first sentence, to the rights of the Equipment Trust Trustee, as assignee hereunder of the Owner Trustee; or, in the case of any such payment in accordance with such second sentence, to the rights of the Equipment Trust Trustee or such other person, as the case may be, which actually received such

payment, to receive such payment of Basic Rent or such other payment, as the case may be (and any interest due thereon on account of the delayed payment thereof), and shall be entitled to receive such payment upon its receipt by the Equipment Trust Trustee or such other person, as aforesaid (but in each case only if all amounts of principal and Premium, if any, and interest at the time due and payable on the Certificates shall have been paid in full); provided that neither the Owner Participant nor the Owner Trustee shall attempt to recover any such amount paid by it on behalf of Lessee pursuant to this Section 7.03(e) except by demanding payment of such amount of Lessee or by commencing an action against Lessee to require the payment of such amount pursuant to Section 15(e) of the Lease.

The Equipment Trust Trustee shall provide notice to the Owner Participant and the Owner Trustee of any failure of Lessee to make any payment of Basic Rent under the Lease within 15 days after the same shall become due and any failure by Lessee to perform or observe any covenant, condition or agreement to be performed or observed by it under the Lease known by it promptly after such failure; provided that any failure of the Equipment Trust Trustee to furnish such notice shall not impair or affect any of the rights of the Equipment Trust Trustee or the Holders hereunder. For all purposes of the Equipment Trust Agreement, the Equipment Trust Trustee shall not be deemed to have knowledge of any fact unless one of its Responsible Officers shall have actual knowledge.

(ii) In the event that at any time one or more Events of Default shall have occurred and any such Event of Default shall have continued for a period of 180 days or more during which the Certificates shall not have been accelerated pursuant to Section 7.02 hereof, or upon any acceleration of the Certificates pursuant to Section 7.02 hereof, the Owner Trustee may, at its option, give notice to the Equipment Trust Trustee that it will redeem all Certificates then Outstanding pursuant to clause (E) of Section 6.02 hereof, and concurrently with such notice, the Owner Trustee will deposit with the Equipment Trust Trustee, whether or not an Event of Acceleration is then continuing, funds sufficient to redeem all Certificates then Outstanding and to pay the Equipment Trust Trustee all amounts then due it hereunder.

(iii) Notwithstanding any provision in this Article 7 to the contrary, the Equipment Trust Trustee shall not be entitled to exercise any remedy hereunder as a result of an Event of Acceleration occurring solely as a result of one or

more Events of Default unless the Equipment Trust Trustee shall have declared the Lease to be in default in accordance with Section 15 thereof. If the Equipment Trust Trustee exercises the right to repossess an Item of Equipment during the effectiveness of any stay due to the pendency of a bankruptcy case as to the Lessee or operation of law, the Equipment Trust Trustee agrees not to foreclose the Lien of this Equipment Trust Agreement until the earlier of the expiration of the 60-day period following the commencement of such stay or the date of repossession of such Item of Equipment. It is further understood and agreed that, if the Equipment Trust Trustee shall proceed to foreclose the Lien of this Equipment Trust Agreement, it shall, to the extent that it is then entitled to do so hereunder and under the Lease, proceed (to the extent it has not already done so) to exercise one or more of the remedies with respect to the Items of Equipment referred to in Section 15 of the Lease as it shall determine in its sole good faith discretion; provided, however, that, if its proceeding to exercise one or more of such remedies is prohibited by any stay due to the pendency of a bankruptcy case as to Lessee, the Equipment Trust Trustee shall not be required so to proceed after the expiration of the 90-day period commencing upon the date of initiation of such bankruptcy case.

(f) Each and every right, power and remedy herein given to the Equipment Trust Trustee specifically or otherwise in this Agreement 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 in such order as may be deemed expedient by the Equipment Trust Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Equipment Trust Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Owner Trustee or Lessee or to be an acquiescence therein. Notwithstanding any other provision hereof, if any payment of principal of any Certificate shall not be made when the same shall become due and payable, the Equipment Trust Trustee shall be entitled to recover judgment, in its own name and as trustee of an express trust, upon such Certificate for the whole amount of such principal remaining unpaid.

Section 7.04. Waiver of Owner Trustee. To the extent now or at any time hereafter enforceable under Applicable Law, the Owner Trustee covenants that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any benefit or advantage of, any stay or extension of law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Equipment Trust Estate or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives for itself and on behalf of each and every Person, except decree or judgment creditors of the Owner Trustee acquiring any interest in or title to the Equipment Trust Estate or any part thereof subsequent to the date of this Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Equipment Trust Trustee, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

The Equipment Trust Trustee may maintain such a proceeding even if it does not possess any of the Certificates or does not produce any of them in the proceeding. A delay or omission by the Equipment Trust Trustee or any Holder in exercising any right or remedy accruing upon an Event of Acceleration under this Agreement shall not impair the right or remedy or constitute a waiver of or acquiescence in such Event of Acceleration.

Section 7.05. Waiver of Existing Defaults. The Holders of a majority in aggregate principal amount of the Certificates by notice to the Equipment Trust Trustee may waive on behalf of the Holders of the Certificates an existing ETA Default or Event of Acceleration and its consequences except (i) an ETA Default or Event of Acceleration in the payment of the principal of or Premium, if any, or interest on any Certificate or any sinking fund payment with respect to any Certificate or (ii) in respect of a covenant or provision hereof which, pursuant to Section 10.02 hereof, cannot be amended or modified without the consent of the Holder affected.

Section 7.06. Control by Majority. The Holders of a majority in principal amount of the Outstanding Certificates may direct the time, method and place of conducting any proceeding for any remedy available to the Equipment Trust Trustee or exercising any trust or power conferred on it by this Agreement. However, the Equipment Trust Trustee may refuse to follow any direction that conflicts with law or this Agreement, that is unduly prejudicial to the rights of the Holders not joining therein, or that would, in the opinion of counsel to the Equipment Trust Trustee, create a reasonable likelihood of personal liability on the part of the Equipment Trust Trustee.

Section 7.07. Limitation on Suits by Holders. A Holder may pursue a remedy under this Agreement or the Certificates only if:

(1) the Holder gives to the Equipment Trust Trustee written notice of a continuing Event of Acceleration under this Agreement;

(2) the Holders of at least 25% in aggregate principal amount of the Certificates make a written request to the Equipment Trust Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Equipment Trust Trustee indemnity satisfactory to the Equipment Trust Trustee against any loss, liability or expense to be, or which may be, incurred by the Equipment Trust Trustee in pursuing the remedy;

(4) the Equipment Trust Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

(5) during such 60-day period, the Holders of a majority in aggregate principal amount of the Certificates do not give the Equipment Trust Trustee a direction inconsistent with the request.

A Holder may not use this Agreement to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

Section 7.08. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Agreement, the right of any Holder to receive payment of

principal of, and Premium, if any, and interest on his Certificate on or after the respective due dates expressed in the Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 7.09. Equipment Trust Trustee May File Proofs of Claim. The Equipment Trust Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Equipment Trust Trustee and of the Holders allowed in any judicial proceedings relating to Lessee or the Owner Trustee, their respective creditors, or their property.

Section 7.10. Undertaking for Costs. All parties to this Agreement agree, and each Holder of any Certificate by his acceptance thereof shall be deemed to have agreed, that in any suit for the enforcement of any right or remedy under this Agreement or in any suit against the Equipment Trust Trustee for any action taken or omitted by it as Equipment Trust Trustee, a court in its discretion may require the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit instituted by the Equipment Trust Trustee, a suit instituted by a Holder for the enforcement of the payment of principal of or Premium, if any, or interest on any Certificate, on or after the respective due dates expressed in such Certificate, or a suit by a Holder or Holders of more than 10% in aggregate principal amount of Outstanding Certificates.

## ARTICLE 8

### EQUIPMENT TRUST TRUSTEE

Section 8.01. Duties of Equipment Trust Trustee.  
(a) If an Event of Acceleration under this Agreement has occurred and is continuing, the Equipment Trust Trustee shall, upon one of its Responsible Officers obtaining actual knowledge thereof, exercise its rights and powers under this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Acceleration under this Agreement:

(1) The Equipment Trust Trustee need perform only those duties that are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Equipment Trust Trustee.

(2) In the absence of bad faith on its part, the Equipment Trust Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Equipment Trust Trustee and conforming to the requirements of this Agreement. However, the Equipment Trust Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Agreement.

(c) The Equipment Trust Trustee may not be relieved from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(1) This paragraph does not limit the effect of paragraph (b) of this Section.

(2) The Equipment Trust Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers, unless it shall be proved that the Equipment Trust Trustee was grossly negligent in ascertaining the pertinent facts.

(3) The Equipment Trust Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with any direction received by it pursuant to Section 7.06 hereof.

(d) Every provision of this Agreement that in any way relates to the Equipment Trust Trustee is subject to paragraphs (a), (b) and (c) of this Section.

(e) The Equipment Trust Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) The Equipment Trust Trustee shall not be liable for interest on any money received by it except as the Equipment Trust Trustee may agree in writing with the Owner Trustee. Money held in trust by the Equipment Trust Trustee need not be segregated from other funds except to the extent required by law.

Section 8.02. Rights of Equipment Trust Trustee.

(a) The Equipment Trust Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Equipment Trust Trustee need not investigate any fact or matter stated in the document.

(b) Before the Equipment Trust Trustee acts or refrains from acting, it may consult with counsel or require an Officer's Certificate or an Opinion of Counsel from Lessee. The Equipment Trust Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on a resolution of the Board of Directors of Lessee, the written advice of counsel acceptable to Lessee and the Equipment Trust Trustee, Officer's Certificates or Opinions of Counsel provided by Lessee.

(c) The Equipment Trust Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Equipment Trust Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

Section 8.03. Individual Rights of Equipment Trust Trustee. The Equipment Trust Trustee in its individual or any other capacity may become the owner or pledgee of Certificates and may otherwise deal with the Owner Trustee, Lessee or an Affiliate with the same rights it would have if it were not Equipment Trust Trustee. Any Agent may do the same with like rights. However, the Equipment Trust Trustee is subject to Section 8.08 hereof.

Section 8.04. Funds May Be Held by Equipment Trust Trustee or Paying Agent; Investments. (a) Subject to subsection (b) of this Section 8.04, any monies (including Deposited Cash) held by the Equipment Trust Trustee or the Paying Agent hereunder as part of the Equipment Trust Estate may, until paid out by the Equipment Trust Trustee or the Paying Agent as herein provided, be carried by the Equipment Trust Trustee or the Paying Agent on deposit with itself and

neither the Equipment Trust Trustee nor the Paying Agent shall have any liability for interest upon any such monies except as expressly provided herein or in the other Operative Documents or as otherwise agreed in writing with the Owner Trustee.

(b) At any time and from time to time, so long as no Event of Acceleration shall have occurred and be continuing, the Equipment Trust Trustee shall, upon an Owner Trustee Request, invest and reinvest in Permitted Investments as specified in such Owner Trustee Request any monies on deposit with the Equipment Trust Trustee as part of the Equipment Trust Estate, and sell any Permitted Investments, in either case, at such prices, including accrued interest, as are set forth in such Owner Trustee Request, and such Permitted Investments shall be held by the Equipment Trust Trustee until so sold in trust as part of the Equipment Trust Estate.

Section 8.05. Notice of Defaults. (a) If an ETA Default or Event of Acceleration under this Agreement occurs and is continuing and if it is actually known to the Responsible Officers of the Equipment Trust Trustee, the Equipment Trust Trustee shall, within 90 days after it occurs, mail to each Holder notice of all uncured ETA Defaults and Events of Acceleration under this Agreement in the manner and to the extent provided in Section 8.05(b) hereof. Except in the case of an ETA Default in the payment of the principal of, Premium, if any, and interest on any Certificate, the Equipment Trust Trustee shall be protected in withholding the notice if and so long as the executive committee or a trust committee of directors and/or Responsible Officers in good faith determines that withholding such notice is in the interest of Holders.

(b) Notice pursuant to this Section 8.05 shall be transmitted by first-class mail:

(1) to all Holders, as the names and addresses of such Holders appear upon the Register;

(2) to such Holders as have, within the two years preceding such a transmission, filed their names and addressees with the Equipment Trust Trustee for that purpose; and

(3) to all Holders whose names and addresses have been furnished to or received by the Equipment Trust Trustee pursuant to Section 2.06(a) hereof.

Section 8.06. Indemnification by Lessee. (a) So long as the Lease is in effect, the Equipment Trust Trustee shall not make any claim against the Equipment Trust Estate for any matter for which it is indemnified against by Lessee under the Participation Agreement without first making demand on Lessee for payment thereof.

(b) To secure the payment obligations of Lessee pursuant to this Section 8.06, the Equipment Trust Trustee shall have a Lien prior to the Certificates on all money or property held or collected by the Equipment Trust Trustee, except that held in trust to pay principal, Premium, if any, and interest on the Certificates.

Section 8.07. Replacement of Equipment Trust Trustee. (a) The resignation or removal of the Equipment Trust Trustee and the appointment of a successor Equipment Trust Trustee shall become effective only upon the successor Equipment Trust Trustee's acceptance of appointment as provided in this Section.

(b) The Equipment Trust Trustee may resign at any time by giving 30 days' notice to the Owner Trustee (with a copy to Lessee). The Holders of a majority in aggregate principal amount of the Certificates may remove the Equipment Trust Trustee with respect to those Certificates by so notifying the Equipment Trust Trustee and the Owner Trustee (with a copy to Lessee) and will promptly appoint a successor Equipment Trust Trustee for such Certificates with the consent of the Owner Trustee. The Owner Trustee may remove the Equipment Trust Trustee if:

(1) the Equipment Trust Trustee fails to comply with Section 8.09 hereof;

(2) the Equipment Trust Trustee is adjudged a bankrupt or an insolvent; or

(3) a receiver or public officer takes charge of the Equipment Trust Trustee or its property.

(c) If the Equipment Trust Trustee resigns or is removed, or if a vacancy exists in the office of Equipment Trust Trustee for any reason, with respect to Certificates, the Owner Trustee shall promptly appoint a successor Equipment Trust Trustee.

(d) If a successor Equipment Trust Trustee does not take office within 30 days after the retiring Equipment Trust Trustee resigns or is removed, the retiring Equipment Trust Trustee, the Owner Trustee or a Holder who has been a bona fide Holder of a Certificate for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Equipment Trust Trustee.

(e) If the Equipment Trust Trustee fails to comply with Section 8.09 hereof, subject to Section 7.10 hereof, any Holder may petition any court of competent jurisdiction for the removal of such Equipment Trust Trustee and the appointment of a successor Equipment Trust Trustee.

(f) A successor Equipment Trust Trustee shall deliver a written acceptance of its appointment to the retiring Equipment Trust Trustee, and to the Owner Trustee (with a copy to Lessee). Thereupon, the resignation or removal of the retiring Equipment Trust Trustee shall become effective, and the successor Equipment Trust Trustee shall have all the rights, powers and duties of the retiring Equipment Trust Trustee for which the successor Equipment Trust Trustee is to be acting as Equipment Trust Trustee under this Agreement. The retiring Equipment Trust Trustee shall promptly transfer all property held by it as Equipment Trust Trustee to the successor Equipment Trust Trustee. The Owner Trustee shall give notice of each appointment of a successor Equipment Trust Trustee if there are Certificates Outstanding, by mailing written notice of such event by first-class mail to the Holders.

Section 8.08. Successor Equipment Trust Trustee, Agents by Merger, Etc. If the Equipment Trust Trustee or any Agent consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business assets to, another corporation, the successor corporation, without any further act, shall be the successor Equipment Trust Trustee or Agent, as the case may be.

Section 8.09. Eligibility; Disqualification. This Agreement shall at all times have an Equipment Trust Trustee which shall be a corporation organized and doing business under the laws of the United States, any State or Territory thereof or of the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$75,000,000 and subject to supervision or examination by Federal, State, Territorial, or District of Columbia authority. If such corporation

publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 8.09 hereof, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

In case at any time the Equipment Trust Trustee shall cease to be eligible in accordance with the provisions of this Section 8.09, the Equipment Trust Trustee shall resign immediately in the manner and with the effect specified in Section 8.07 hereof.

Section 8.10. Trustee's Liens. The Equipment Trust Trustee in its individual capacity agrees that it will at its own cost and expense promptly take such action as may be necessary to duly discharge and satisfy in full all Trustee's Liens on the Equipment Trust Estate attributable to it in its individual capacity.

Section 8.11. Name of Trust. The trust established hereunder shall be known as the "Conrail 1990 Equipment Trust A".

## ARTICLE 9

### SATISFACTION AND DISCHARGE; TERMINATION OF OBLIGATIONS

Section 9.01. Satisfaction and Discharge of Agreement; Termination of Obligations. Subject to Section 9.02 hereof, this Agreement shall cease to be of further effect, and the Owner Trustee and the Equipment Trust Trustee shall be deemed to have been discharged from their respective obligations with respect to the Certificates (and the Equipment Trust Trustee, on demand and at the expense of the Owner Trustee, shall execute proper instruments acknowledging satisfaction and discharge of this Agreement in respect of the Certificates, together with any other documents required to be executed upon expiration of the ETA Lease Term pursuant to Section 5.02 hereof), when

(a) either (i) all Certificates theretofore executed and delivered (other than (A) Certificates which have been mutilated, destroyed, lost or stolen and which have been replaced or exchanged as provided in Section 2.07 hereof and (B) Certificates for the payment of which

money held in trust hereunder has been paid to the Owner Trustee and discharged from such trust as provided in Section 14.01 hereof) have been delivered to the Equipment Trust Trustee for cancellation; or (ii) all Certificates not theretofore delivered to the Equipment Trust Trustee for cancellation have become due and payable (whether upon stated maturity or as a result of redemption), or will become due and payable at maturity within one year, and there has been deposited with the Equipment Trust Trustee in trust for the purpose of paying and discharging the entire indebtedness on the Certificates not theretofore cancelled by the Equipment Trust Trustee or delivered to the Equipment Trust Trustee for cancellation, an amount sufficient to discharge such indebtedness, including the principal of and interest and Premium, if any, on the Certificates to the date of such deposit (in the case of Certificates which have become due and payable), or to the maturity thereof, as the case may be;

(b) all other amounts then due and payable hereunder have been paid; and

(c) The Owner Trustee has caused Lessee to deliver to the Equipment Trust Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the satisfaction and discharge of the Agreement contemplated by this Section 9.01 have been complied with, as required by Section 11(b) of the Participation Agreement.

Section 9.02. Survival of Certain Obligations. Notwithstanding the provisions of Section 9.01 hereof, the obligations of the Equipment Trust Trustee contained in Sections 2.01 through 2.09 hereof, the rights, duties, immunities and privileges hereunder of the Equipment Trust Trustee, and the obligations of Lessee on behalf of the Owner Trustee contained in Section 14.01 hereof, shall survive.

Section 9.03. Monies to Be Held in Trust. All monies deposited with the Equipment Trust Trustee pursuant to Section 9.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Certificates and this Agreement, to the payment, either directly or through any Paying Agent as the Equipment Trust Trustee may determine, to the Holder, of all sums due and to become due thereon for principal, interest and Premium, if any, but such money need not be segregated from other funds except to the extent required by law.

Section 9.04. Monies to Be Returned to Owner Trustee. The Equipment Trust Trustee and any Paying Agent shall promptly pay or return to the Owner Trustee upon request of the Owner Trustee any monies held by them at any time that are not required for the payment of the principal of and Premium, if any, and interest on the Certificates for which such monies have been deposited pursuant to Section 9.01 hereof.

## ARTICLE 10

### AMENDMENTS AND WAIVERS

Section 10.01. Amendments to this Agreement without Consent of Holders. The Owner Trustee and the Equipment Trust Trustee may enter into one or more agreements supplemental hereto without the consent of any Holder for any of the following purposes:

(1) to cure any ambiguity, defect or inconsistency herein or in the Certificates or to make any change not inconsistent with the provisions hereof; provided that such action does not adversely affect the interests of any Holder;

(2) to evidence the succession of another party as the Owner Trustee in accordance with the terms of the Trust Agreement, to evidence the succession of another corporation to Lessee, or to evidence (in accordance with Article 8 hereof) the succession of a new Equipment Trust Trustee hereunder, the removal of the Equipment Trust Trustee hereunder or the appointment of any co-trustee or co-trustees or any separate or additional trustee or trustees to the Equipment Trust Trustee or the Owner Trustee;

(3) to convey, transfer, assign, mortgage or pledge any property to or with the Equipment Trust Trustee or to make any other provisions with respect to matters or questions arising hereunder so long as such action shall not adversely affect the interests of the Holders;

(4) to correct or amplify the description of any property at any time subject to the Lien of this Agreement or better to assure, convey and confirm unto the Equipment Trust Trustee any property subject or required to be subject to the Lien of this Agreement, in accordance herewith or with the Lease;

(5) to add to the covenants of the Owner Trustee, for the benefit of the Holders, or to surrender any rights or power herein conferred upon the Owner Trustee or the Owner Participant;

(6) to add to the rights of the Holders;

(7) to supplement this Agreement to provide for the issuance of the Certificates in the aggregate principal amount, and having the maturity and interest rate, specified in the Offering Circular and the Underwriting Agreement referred to therein, and so as to provide for any changes in the Certificates and this Agreement as may be required in order for the Certificates and this Agreement to be consistent with the description thereof contained in the Offering Circular and such Underwriting Agreement; and

(8) to supplement this Agreement to provide for an increase in the Commitment of the Owner Participant to participate in the financing of any of the Items of Equipment arising out of an increase in the Cost of such Item of Equipment as contemplated by Section 10.06(b)(4) hereof.

Section 10.02. Amendments to this Agreement with Consent of Holders. (a) With the written consent of the Holders of a majority of the aggregate principal amount of the outstanding Certificates, the Owner Trustee and the Equipment Trust Trustee may enter into such supplemental agreement to add any provisions to or to change or eliminate any provisions of this Agreement or of any such supplemental agreements or to modify the rights of the Holders; provided, however, without the consent of each Holder affected thereby, an amendment under this Section 10.02 hereof may not:

(1) change the final maturity of the principal of, or the date of payment of any installment of interest on or any sinking fund payment or other payment of redemption price (including Premium) with respect to, any Certificate, or change the dates upon which ETA Rent with respect to any such payment is payable, or reduce the amount of any thereof, or change to a location outside the United States the place of payment where, or the coin or currency in which, any payment hereunder is payable, or impair the right to institute suit for the enforcement of any such payment on or after the fixed maturity or date of payment thereof (or, in the case of redemption, on or after the date fixed for redemption); or

(2) create any Lien on the Equipment Trust Estate prior to or pari passu with the Lien thereon under this Agreement except such as are permitted by this Agreement, or deprive any Holder of the benefit of the Lien on the Equipment Trust Estate created by this Agreement; or

(3) reduce the percentage in principal amount of the Outstanding Certificates, the consent of whose Holders is required for any such supplemental agreement, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Agreement or of certain defaults hereunder or their consequences) provided for in this Agreement; or

(4) modify any provisions of the Guaranties; or

(5) make any change in Section 7.05 or 7.08 hereof or this Section 10.02(a).

(b) It is not necessary under this Section 10.02 for the Holders to consent to the particular form of any proposed supplemental agreement, but it is sufficient if they consent to the substance thereof.

(c) Promptly after the execution by the Owner Trustee and the Equipment Trust Trustee of any supplemental agreement pursuant to the provisions of this Section 10.02, the Equipment Trust Trustee shall transmit by first-class mail a notice, setting forth in general terms the substance of such supplemental agreement, to all Holders, as the names and addresses of such Holders appear on the Register. Any failure of the Equipment Trust Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental agreement.

Section 10.03. Revocation and Effect of Consents. Until an amendment or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder, even if notation of the consent is not made on any Certificate. However, any such Holder or subsequent Holder may revoke the consent as to his Certificate if the Equipment Trust Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Holder affected by such amendment or waiver.

Section 10.04. Notation on or Exchange of Certificates. The Equipment Trust Trustee may place an

appropriate notation about an amendment or waiver on any Certificate thereafter executed. The Equipment Trust Trustee in exchange for such Certificates may execute new Certificates that reflect the amendment or waiver.

Section 10.05. Equipment Trust Trustee and Owner Trustee Protected. The Equipment Trust Trustee and the Owner Trustee need not sign any supplemental agreement that adversely affects their respective rights.

Section 10.06. Amendments, Waivers, Etc. of Other Operative Documents. (a) Without the consent of the Holders of a majority in principal amount of Outstanding Certificates, the respective parties to the Participation Agreement, the Lease and the Trust Agreement may not modify, amend or supplement any of said agreements, or give any consent, waiver, authorization or approval thereunder, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions thereof or of modifying in any manner the rights of the respective parties thereunder; provided, however, that the actions specified in subsection (b) of this Section 10.06 may be taken without the consent of any Holder.

(b) Subject to the provisions of subsection (c) of this Section 10.06, the respective parties to the Participation Agreement, the Lease and the Trust Agreement, at any time and from time to time without the consent of the Equipment Trust Trustee or of any Holder may:

(1) so long as no Event of Acceleration shall have occurred and be continuing, modify, amend or supplement the Lease, or give any consent, waiver, authorization or approval with respect thereto, except that without compliance with subsection (a) of this Section 10.06, the parties to the Lease shall not modify, amend or supplement, or give any consent, waiver, authorization or approval for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions thereof or of modifying in any manner the rights of the respective parties thereunder, with respect to the following provisions of the Lease as originally executed: the first sentence of Section 2, Section 3(a), the second paragraph of Section 3(b), Section 3(c), Section 3(d) (except insofar as it relates to address or account information), the first two paragraphs of Section 3(e) (other than the definition of Net Economic Return or matters relating to tax law), Sections 4, 6, 7(e), 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 22, 24 and 26 (except the second sentence thereof and except the portion of the third sentence thereof which does not include the proviso

thereto) and the fourth and last sentences of Section 27 (except that additional requirements may be imposed on Lessee's ability to terminate the Lease under Section 9 or to replace an Item of Equipment under Section 10 and additional insurance requirements may be imposed on Lessee under Section 11) and any definition of terms used in the Lease, to the extent that any modification of such definition would result in a modification of the Lease not permitted pursuant to this subsection (b); provided that in the event an Event of Acceleration shall have occurred and be continuing, the Equipment Trust Trustee shall have all rights of the Owner Trustee as "Lessor" under the Lease to modify, amend or supplement the Lease or give any consent, waiver, authorization or approval thereunder, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions thereof or of modifying in any manner the rights of the "Lessor" thereunder; provided, further, that without the prior consent of the Owner Trustee, and whether or not an Event of Acceleration shall have occurred and be continuing, no such action shall be taken with respect to any of the provisions of Sections 3, 5, 6, 7, 8, 9, 10, 11, 12, 18, 19, 20, 24, 25 and 26 of the Lease or to the extent such action shall affect the amount or timing of any amounts payable by Lessee under the Lease as originally executed (or as subsequently modified with the consent of the Owner Trustee) which absent the occurrence and continuance of an Event of Acceleration will be distributable to the Owner Trustee under Article 3 or any other section of the Lease;

(2) modify, amend or supplement the Trust Agreement, or give any consent, waiver, authorization or approval with respect thereto, except that without compliance with subsection (a) of this Section 10.06 the parties to the Trust Agreement shall not modify, amend or supplement, or give any consent, waiver, authorization or approval for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions thereof or of modifying in any manner the rights of the respective parties thereunder, with respect to the following provisions of the Trust Agreement as originally executed: Sections 2(b), 8, 9, 10 and 11(a) and any definition of terms used in the Trust Agreement, to the extent that any modification of such definition would result in a modification of the Trust Agreement not permitted pursuant to this subsection (b), and in each case only to the extent any such action shall adversely impact the interests of the Holders;

(3) modify, amend or supplement the Participation Agreement, or give any consent, waiver, authorization or approval with respect thereto, except that without compliance with subsection (a) of this Section 10.06 the parties to the Participation Agreement shall not modify, amend or supplement, or give any consent, waiver, authorization or approval for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions thereof or of modifying in any manner the rights of the respective parties thereunder, with respect to the following provisions of the Participation Agreement as originally executed: Sections 2, 3, 6, 7, 8, 9, 11, 13, 14, 15, 16 and 19 (insofar as such Sections 6, 7, 8, 9, 13, 15, 16 and 19 relate to the Equipment Trust Trustee and the Holders) and any definition of terms used in the Participation Agreement, to the extent that any modification of such definition would result in a modification of the Participation Agreement not permitted pursuant to this subsection (b) in each case only to the extent any such action shall adversely impact on the interests of the Holders;

(4) modify, amend or supplement any of said agreements at the request of Lessee in order to provide for an increase in the Commitment of the Owner Participant to participate in the financing of any of the Items of Equipment arising out of an increase in the Cost of such Items of Equipment resulting from an increase in the invoice price therefor charged by the Builder thereof; provided that the Holders shall not be materially adversely affected thereby; and

(5) modify, amend or supplement any of said agreements in order to cure any ambiguity, to correct or supplement any provisions thereof which may be defective or inconsistent with any other provision thereof or of any provision of this Agreement, or to make any other provision with respect to matters or questions arising under this Agreement which shall not be inconsistent with the provisions of this Agreement, provided such action shall not adversely affect the interests of the Holders.

(c) Anything in this Agreement to the contrary notwithstanding, no modification, amendment, supplement, consent, waiver, authorization or approval with respect to the Lease or the Participation Agreement, whether effected pursuant to Section 10.06(a) or Section 10.06(b) hereof shall, without the consent of the Holder of each Outstanding Certificate affected thereby,

(1) modify, amend or supplement the Lease in such a way as to extend the time of payment of Basic Rent, amounts payable pursuant to Section 26 of the Lease, amounts payable pursuant to the second sentence of Section 3(c) of the Lease, Stipulated Loss Value or Termination Value payable under, or as provided in, the Lease as originally executed, or reduce the aggregate amount of Stipulated Loss Value or Termination Value so that the same is less than the accrued interest on and principal of the Certificates at the time Outstanding, or

(2) modify, amend or supplement the Lease in such a way as to, or consent to any assignment of the Lease or give any consent, waiver, authorization or approval which would, release Lessee from its obligation in respect of payment of Basic Rent, amounts payable pursuant to Section 26 of the Lease, amounts payable pursuant to the second sentence of Section 3(c) of the Lease, Stipulated Loss Value or Termination Value payable under, or as provided in, the Lease as originally executed, except for any such assignment pursuant to Section 11(d) of the Participation Agreement, and except as provided in the Lease as originally executed.

Section 10.07. Execution of Supplemental Agreements. Upon receipt of an Officer's Certificate and an Opinion of Counsel of the party hereto requesting such amendment or supplement, in the form and of the substance required by Sections 14.04 and 14.05 hereof, the Equipment Trust Trustee shall consent thereto and evidence its consent to any action permitted by this Article 10 and the Equipment Trust Trustee shall be fully protected in relying on such Officer's Certificate and Opinion of Counsel.

## ARTICLE 11

### ACTIONS TO BE TAKEN UPON TERMINATION OF LEASE

Section 11.01. Actions to Be Taken upon Termination of Lease as Applicable to an Item of Equipment. Subject to satisfaction of the conditions precedent set forth in Section 4.02 hereof, upon:

(a) termination of the Lease with respect to any Item of Equipment by Lessee pursuant to Section 9 thereof on the Termination Date and upon payment to the Equipment Trust Trustee of an amount equal to the redemption price specified in Section 6.02(C) hereof,

(b) termination of the Lease with respect to any Item of Equipment pursuant to Section 10 thereof on the Loss Payment Date, following an Event of Loss suffered by such Item of Equipment, and upon payment to the Equipment Trust Trustee of an amount equal to the redemption price specified in Section 6.02(B) hereof, or

(c) termination of the Lease with respect to any Item of Equipment pursuant to Section 7(e) thereof, and upon payment to the Equipment Trust Trustee of an amount equal to the redemption price specified in Section 6.02(B) hereof,

the Equipment Trust Trustee shall, without recourse or warranty (except as to the absence of Trustee's Liens), transfer all of the Equipment Trust Trustee's right, title and interest in and to such Item of Equipment to the Person contemplated by the relevant provisions of the Lease, and shall execute such instruments as may be reasonably requested by the Owner Trustee to release the Lien of this Agreement on such Item of Equipment, the Lease, the Purchase Agreement and the Assignment.

## ARTICLE 12

### LESSEE'S RIGHT OF QUIET ENJOYMENT

Each Holder, by its acceptance of a Certificate, acknowledges notice of, and consents in all respects to, the term of the Lease, and expressly, severally and as to its own actions only, agrees that, notwithstanding any other provision of any of the Operative Documents, so long as no Event of Default has occurred and is continuing unremedied, it shall not take or cause to be taken any action contrary to Lessee's rights under the Lease, including, without limitation, the right to possession and use of each Item of Equipment.

ARTICLE 13

SINKING FUND

Section 13.01. Mandatory Sinking Fund Payments. As a mandatory sinking fund for the retirement of the Certificates, the Owner Trustee will, until all Certificates shall have been paid or payment thereof duly provided for under the terms hereof, pay or cause to be paid to the Equipment Trust Trustee on each Sinking Fund Payment Date an amount in same day funds equal to the Sinking Fund Principal Payment for such Sinking Fund Payment Date, which payment shall be made in accordance with Section 5.03 hereof; provided, however, that the amount of any such payment is subject to reduction as provided in Section 13.02.

Section 13.02. Satisfaction of Sinking Fund Payments with Certificates. The Owner Trustee (or Lessee, on behalf of the Owner Trustee as provided in Section 3(b) of the Lease) may in respect of any Sinking Fund Payment Date deliver to the Equipment Trust Trustee for cancellation pursuant to Section 2.08 hereof Outstanding Certificates (other than any previously called for redemption), and the Sinking Fund Principal Payment due on such Sinking Fund Payment Date shall be reduced to the extent of the aggregate unpaid principal amount of any such Certificates so delivered in accordance with Section 13.03.

Section 13.03. Redemption of Certificates for Sinking Fund. On or before the 60th day before each Sinking Fund Payment Date (or such later date as is acceptable to the Equipment Trust Trustee), the Owner Trustee (or Lessee, on behalf of the Owner Trustee) will deliver to the Equipment Trust Trustee an Officer's Certificate specifying the sinking fund payment to be made on such Sinking Fund Payment Date, giving effect to any delivering or crediting of Certificates pursuant to Section 13.02 hereof, if any, and will also deliver, if not previously delivered, to the Equipment Trust Trustee any Certificates to be so delivered. If no such Officer's Certificate is so delivered, the sinking fund payment due on the next succeeding Sinking Fund Payment Date shall be paid entirely in cash and shall be in the amount of the Sinking Fund Principal Payment for such Sinking Fund Payment Date.

ARTICLE 14

MISCELLANEOUS

Section 14.01. Repayment of Monies for Certificate Payments Held by Equipment Trust Trustee. Any money deposited with the Equipment Trust Trustee or any Paying Agent in trust for the payment of the principal or Premium, if any, or interest on any Certificate, including without limitation any money deposited pursuant to Article 9 hereof, and remaining unclaimed for two years and eleven months (or such lesser time as the Equipment Trust Trustee shall be satisfied, after sixty days' written notice from the Owner Trustee or Lessee, is one month prior to the escheat period provided under Applicable Law) shall be paid to the Owner Trustee; and the Holders of any Certificates Outstanding shall thereafter, as unsecured general creditors, look only to Lessee (and Lessee shall be liable) for payment thereof, and all liability of the Owner Trustee, the Equipment Trust Trustee or any such Paying Agent with respect to such trust money shall thereupon cease; provided, that the Equipment Trust Trustee or such Paying Agent, before being required to make any such repayment, shall upon written direction of the Owner Trustee or Lessee, cause to be mailed to each such Holder notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of mailing, any unclaimed balance of such money then remaining will be repaid to the Owner Trustee as provided herein.

Section 14.02. Notices. (a) Any notice or communication by the Owner Trustee or the Equipment Trust Trustee to the other party is duly given if in writing and delivered in person or mailed by first-class mail:

if to Lessee, to:

Consolidated Rail Corporation  
Six Penn Center Plaza  
Philadelphia, Pennsylvania 19103

Attention: Law Department

if to the Equipment Trust Trustee, to:

Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890

Attention: Corporate Trust Administration

if to the Owner Trustee, to:

Meridian Trust Company  
35 North Sixth Street  
Reading, Pennsylvania 19603

Attention: Corporate Trust Administration

with a copy to the Owner Participant at:

Sequa Capital Corporation  
420 Lexington Avenue  
Suite 2910  
New York, New York 10170

(b) The Owner Trustee or the Equipment Trust Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

(c) Any notice or communication to Holders shall be mailed by first-class mail to the addresses for Holders shown on the Register and to addresses filed with the Equipment Trust Trustee for other Holders. Failure to so mail a notice or communication or any defect in such notice or communication shall not affect its sufficiency with respect to other Holders of that or any other Series entitled to receive notice.

(d) A notice or communication referred to in clause (a) above shall be deemed given when delivered.

Section 14.03. Communication by Holders with Other Holders. (a) Within fifteen business days after the receipt by the Equipment Trust Trustee of a written application by any three or more Holders (referred to herein as the "applicants") stating that the applicants desire to communicate with other Holders with respect to their rights under this Agreement or under the Certificates, and accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, and by reasonable proof that each such applicant has owned a Certificate for a period of at least six months preceding the date of such application, the Equipment Trust Trustee shall, at its election, either:

(1) afford to such applicants access to all information furnished to or received by the Equipment Trust Trustee pursuant to Section 2.06(a) hereof; or

(2) inform such applicants as to the approximate number of Holders according to the most recent information furnished to or received by the Equipment Trust Trustee pursuant to Section 2.06(a) hereof, and as to the approximate cost of mailing to such Holders the form of proxy or other communication, if any, specified in such application.

If the Equipment Trust Trustee shall elect not to afford to such applicants access to such information, the Equipment Trust Trustee shall, upon the written request of such applicants, mail to all Holders copies of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Equipment Trust Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of such mailing, unless within five days after such tender, the Equipment Trust Trustee shall mail to such applicants a written statement to the effect that, in the opinion of the Equipment Trust Trustee, such mailing would be contrary to the best interests of the Holders or would be in violation of Applicable Law.

(b) Every Holder of Certificates, by receiving and holding the same, agrees with the Owner Trustee and the Equipment Trust Trustee that none of the Owner Trustee or the Equipment Trust Trustee nor any agent thereof shall be deemed to be in violation of any existing law, or of any law hereafter enacted, by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 14.03(a) hereof, regardless of the source from which such information was derived, and that the Equipment Trust Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 14.03(a) hereof.

Section 14.04. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Owner Trustee to the Equipment Trust Trustee to take any action that such party has the right to request or apply for under this Agreement, the Owner Trustee shall furnish to the Equipment Trust Trustee:

(1) an Officer's Certificate stating that, in the opinion of the signer, all conditions precedent, if any, provided for in this Agreement relating to the proposed action have been complied with and that the action to be taken by the Owner Trustee is in conformity with the requirements of this Agreement; and

(2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 14.05. Rules by Equipment Trust Trustee and Agents. The Equipment Trust Trustee may make reasonable rules for action by or a meeting of Holders. The Paying Agent or Registrar may make reasonable rules and set reasonable requirements for its functions.

Section 14.06. Non-Business Days. If a payment date is not a Business Day, payment may be made on the next succeeding day that is a Business Day, and no interest shall accrue on the amount of such payment for the intervening period.

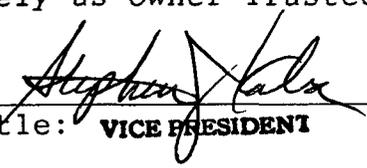
Section 14.07. Governing Law. This Agreement, the Certificates and the Guaranties shall be governed by and construed in accordance with the laws of the State of New York.

Section 14.08. Execution in Counterparts. This Agreement may be executed in separate counterparts, each of which shall be an original, but such counterparts shall together constitute but one instrument.

IN WITNESS WHEREOF, the Owner Trustee and the Equipment Trust Trustee have caused this Agreement to be duly executed by their officers thereunto duly authorized, as of the date and year first above written.

MERIDIAN TRUST COMPANY  
not in its individual  
capacity, except as  
otherwise expressly provided  
in this Agreement, but  
solely as Owner Trustee,

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

  
Title: **VICE PRESIDENT**

WILMINGTON TRUST COMPANY

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

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

(2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 14.05. Rules by Equipment Trust Trustee and Agents. The Equipment Trust Trustee may make reasonable rules for action by or a meeting of Holders. The Paying Agent or Registrar may make reasonable rules and set reasonable requirements for its functions.

Section 14.06. Non-Business Days. If a payment date is not a Business Day, payment may be made on the next succeeding day that is a Business Day, and no interest shall accrue on the amount of such payment for the intervening period.

Section 14.07. Governing Law. This Agreement, the Certificates and the Guaranties shall be governed by and construed in accordance with the laws of the State of New York.

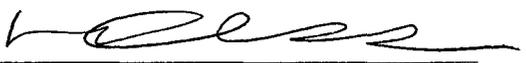
Section 14.08. Execution in Counterparts. This Agreement may be executed in separate counterparts, each of which shall be an original, but such counterparts shall together constitute but one instrument.

IN WITNESS WHEREOF, the Owner Trustee and the Equipment Trust Trustee have caused this Agreement to be duly executed by their officers thereunto duly authorized, as of the date and year first above written.

MERIDIAN TRUST COMPANY  
not in its individual  
capacity, except as  
otherwise expressly provided  
in this Agreement, but  
solely as Owner Trustee,

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

WILMINGTON TRUST COMPANY

By:   
Title: Vice President

Form of Face of Certificate

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

No. \_\_\_\_\_

9.82% 1990 EQUIPMENT TRUST CERTIFICATE, SERIES A  
Conrail 1990 Equipment Trust A

WILMINGTON TRUST COMPANY,  
Not in its Individual Capacity  
but Solely as Equipment Trust Trustee Under  
an Equipment Trust Agreement Dated as of  
April 1, 1990 with  
MERIDIAN TRUST COMPANY,  
Not in its Individual Capacity  
but Solely as Owner Trustee

WILMINGTON TRUST COMPANY, not in its individual capacity but solely as Equipment Trust Trustee (the "Equipment Trust Trustee") under the Equipment Trust Agreement dated as of April 1, 1990 (the "Equipment Trust Agreement") between MERIDIAN TRUST COMPANY, not in its individual capacity, but solely as Owner Trustee (the "Owner Trustee") under the Trust Agreement dated as of April 1, 1990 (the "Trust Agreement") with the owner participant named therein (the "Owner Participant"), and the Equipment Trust Trustee, establishing the Conrail 1990 Equipment Trust A, for value received, hereby promises to pay to \_\_\_\_\_ or registered assigns, the principal sum of \_\_\_\_\_ Dollars on April 1, 2005 and to pay interest thereon at the rate of 9.82% per annum from the date hereof or from the most recent date to which interest has been paid or duly provided for, semiannually, on April 1 and October 1 in each year, commencing October 1, 1990, until the principal hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for, on any such Interest Payment Date (all terms used herein which are defined in the Equipment Trust Agreement are used herein as so defined) will, as provided in the Equipment Trust Agreement, be paid to the Person in whose name this Certificate (or one or more predecessor Certificates) is registered at the close of business on the Record Date for payment of such interest, which shall be the March 15 or September 15 (or the next succeeding Business Day if such day is not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not

so punctually paid or duly provided for shall forthwith cease to be payable to the registered Holder hereof on such Record Date (or to the Person in whose name this Certificate is registered upon issuance) and may be paid to the Person in whose name this Certificate (or one or more predecessor Certificates) is registered at the close of business on a special record date for the payment of such Defaulted Interest to be fixed by the Equipment Trust Trustee, notice whereof shall be given to Holders of Certificates not less than 10 days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Certificates may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Equipment Trust Agreement.

Payment of the principal of, Premium, if any, and interest on, this Certificate will be made at the principal corporate trust office of the Equipment Trust Trustee, or the office or agency maintained by the Equipment Trust Trustee for such purpose ("Paying Agent") in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Paying Agent by check mailed to the address of the Holder entitled thereto as such address shall appear on the Register.

No employee benefit plan subject to Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or individual retirement account or employee benefit plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended (hereinafter collectively referred to as an "ERISA Plan"), may acquire or hold any of the Certificates. Certain employee benefit plans which are governmental plans (as defined in Section 3(32) of ERISA) and certain church plans (as defined in Section 3(33) of ERISA), however, are not subject to Part 4 of Subtitle B of Title I of ERISA and, therefore, may acquire or hold the Certificates. Any fiduciary of a governmental or church plan should consult with his legal counsel as to the propriety of an investment in any Certificate. The purchase by any person of any Certificate shall be deemed to constitute a representation by such person to Consolidated Rail Corporation as the Lessee, Sequa Capital Corporation as the Owner Participant, the Owner Trustee and the Equipment Trust Trustee that such person is not purchasing, and has not purchased, such Certificate with assets of an ERISA Plan.

Wilmington Trust Company is not acting individually hereunder, but solely as Equipment Trust Trustee under the Equipment Trust Agreement.

Reference is hereby made to the further provisions of this Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Neither this Certificate nor the Guaranty endorsed hereon shall be entitled to any benefit under the Equipment Trust Agreement or be valid or obligatory for any purpose unless this Certificate has been executed on behalf of the Equipment Trust Trustee by the manual or facsimile signature of one of the officers of the Equipment Trust Trustee specified in Section 2.02 of the Equipment Trust Agreement.

This Certificate is one of the 1990 Equipment Trust Certificates, Series A, issued pursuant to the Equipment Trust Agreement.

IN WITNESS WHEREOF, the Equipment Trust Trustee has caused this instrument to be duly executed under its corporate seal.

Dated: \_\_\_\_\_

[Corporate Seal]

WILMINGTON TRUST COMPANY,  
not in its individual  
capacity but solely as  
Equipment Trust Trustee

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

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

## Form of Reverse of Equipment Certificate

This Certificate is one of a duly authorized issue of Certificates issued and to be issued under the Equipment Trust Agreement, designated as 1990 Equipment Trust Certificates, Series A, limited in aggregate principal amount to \$22,107,000. The Certificates are subject to a mandatory redemption by operation of a sinking fund as described below and in the Equipment Trust Agreement, subject as therein provided to the reduction of amounts payable pursuant to such sinking fund by the unpaid principal amount of Certificates delivered by the Owner Trustee to the Equipment Trust Trustee for cancellation.

Under the Equipment Trust Agreement, legal title to each Item of Equipment leased from the Equipment Trust Trustee (and cash or certain securities or investments permitted by the Equipment Trust Agreement) shall be held by the Equipment Trust Trustee in trust for the equal and ratable benefit of the Holders of the Certificates. For a more complete statement of the terms and provisions thereof, including a statement of the properties thereby conveyed, pledged and assigned, the nature and extent of the security, the respective rights thereunder of the Owner Trustee, the Equipment Trust Trustee and the Holders of the Certificates, and the terms upon which the Certificates are, and are to be, executed and delivered, as well as for a statement of the terms and conditions of the trust created by the Equipment Trust Agreement reference is made to the Equipment Trust Agreement and all supplements and amendments thereto (a copy of which is on file with the Equipment Trust Trustee at its principal corporate trust office). Each Holder hereof agrees by its acceptance of this Certificate to all terms and conditions in the Equipment Trust Agreement.

Notwithstanding anything herein to the contrary, the holding by the Equipment Trust Trustee of legal title to each Item of Equipment is for security purposes only. For all other purposes, the Owner Trustee shall be the owner of each Item of Equipment.

Except as otherwise expressly provided in the Equipment Trust Agreement, all amounts payable by the Equipment Trust Trustee and the Owner Trustee hereunder, under the Guaranty endorsed hereon and under the Equipment Trust Agreement shall be made only from the income and proceeds of the Equipment Trust Estate. Each Holder hereof, by its acceptance of this Certificate, agrees that (a) it

will look solely to the income and proceeds of the Equipment Trust Estate for payment of such amounts, to the extent available for distribution to the Holder hereof as provided in the Equipment Trust Agreement, and (b) none of the Owner Participant, the Owner Trustee in its individual capacity or the Equipment Trust Trustee is or shall be personally liable to the Holder hereof for any amount payable hereunder, under the Guaranty endorsed hereon or under the Equipment Trust Agreement or, except as expressly provided in the Equipment Trust Agreement in the case of the Equipment Trust Trustee and the Owner Trustee in its individual capacity, for any liability under the Equipment Trust Agreement.

The Certificates are subject to a mandatory redemption by operation of a sinking fund as described in clause (G) below and are also subject to redemption, in the other circumstances listed below, in each case on not less than 15 days' nor more than 30 days' notice and subject, as provided for in the Equipment Trust Agreement, to the reduction of amounts otherwise applicable to the redemption of the principal thereof by the unpaid principal amount of Certificates delivered by the Owner Trustee to the Equipment Trust Trustee for cancellation:

(A) In the event that title to any Auto Rack identified in Schedule II of the Lease as originally executed is not vested in the Equipment Trust Trustee pursuant to Section 3 of the Participation Agreement and such Auto Rack is not subjected to the Lease (as evidenced by a Certificate of Acceptance covering such Auto Rack) on or before December 31, 1990, there shall be redeemed, in whole or in part, as the case may be, Outstanding Certificates at an aggregate redemption price equal to the sum of (1) an amount equal, as to principal thereof, to the product obtained by multiplying the aggregate unpaid principal amount of the Outstanding Certificates at the Redemption Date therefor by a fraction, the numerator of which shall be the aggregate Cost of each such Auto Rack and the denominator of which shall be the aggregate Cost of all the Auto Racks listed on Schedule II to the Lease and (2) the aggregate amount of interest accrued and unpaid to such Redemption Date on the principal amounts to be redeemed of the Outstanding Certificates to be redeemed wholly or partially on such Redemption Date, but without payment of any Premium.

(B) In the event that an Event of Loss occurs to an Item of Equipment, or in the event Lessee is required to

comply with clause (ii) of Section 7(e) of the Lease with respect to any Item of Equipment, Outstanding Certificates shall be redeemed in whole or in part for an aggregate redemption price equal to the sum of (1) an amount equal, as to principal thereof, to the product obtained by multiplying the unpaid principal amount of the Outstanding Certificates as at the Redemption Date therefor by a fraction, the numerator of which shall be the Cost of such Item of Equipment and the denominator of which shall be the aggregate Cost of all Items of Equipment included in the Equipment Trust Estate immediately prior to such Event of Loss and (2) the aggregate amount of interest accrued and unpaid to such Redemption Date on the principal amounts to be redeemed of the Outstanding Certificates to be redeemed wholly or partially on such Redemption Date, but without payment of any Premium.

(C) In the event that the Lease as applicable to any Item of Equipment is terminated pursuant to Section 9 thereof, Outstanding Certificates shall be redeemed in whole or in part for an aggregate redemption price equal to the sum of (1) an amount equal, as to principal thereof, to the product obtained by multiplying the aggregate unpaid principal amount of the Outstanding Certificates as at the Redemption Date therefor by a fraction, the numerator of which shall be the Cost of such Item of Equipment and the denominator of which shall be the aggregate Cost of all Items of Equipment included in the Equipment Trust Estate immediately prior to the relevant Redemption Date, (2) the aggregate amount of interest accrued and unpaid to such Redemption Date on the principal amounts to be redeemed of the Outstanding Certificates to be redeemed wholly or partially on such Redemption Date and (3) the aggregate Premium, if any, applicable in respect of such amounts so to be redeemed as at such Redemption Date.

(D) In the event of a refinancing as contemplated by Section 7(h) of the Participation Agreement, the Outstanding Certificates shall be redeemed in whole for an aggregate redemption price equal to the sum of (1) 100% of the aggregate unpaid principal amount of such Certificates, (2) the aggregate accrued and unpaid interest thereon to the Redemption Date, and (3) the Premium, if any, applicable thereto.

(E) In the event that the Owner Trustee gives notice of redemption to the Equipment Trust Trustee

pursuant to Section 7.03(e)(ii) of the Equipment Trust Agreement after one or more Events of Default shall have occurred and shall have continued for a period of 180 days or more during which the Certificates shall not have been accelerated, or in the event that the Certificates are accelerated, the Outstanding Certificates shall be redeemed in whole for an aggregate redemption price equal to the sum of (1) 100% of the aggregate unpaid principal amount of each Certificate and (2) the aggregate accrued and unpaid interest thereon to the Redemption Date, but without payment of any Premium.

(F) On each Sinking Fund Payment Date, Outstanding Certificates shall be redeemed in whole or in part by operation of the sinking fund provided in Article 13 of the Equipment Trust Agreement for an aggregate redemption price equal to the sum of (1) an amount equal, as to principal thereof, to the Sinking Fund Principal Payment for such Sinking Fund Payment Date and (2) the aggregate amount of interest accrued and unpaid to such Sinking Fund Payment Date on the principal amounts to be redeemed of the Outstanding Certificates to be redeemed wholly or partially on such Sinking Fund Payment Date, but without payment of any Premium.

For purposes hereof:

"Average Life Date" means, with respect to the redemption of any Certificate, the date subsequent to the applicable Redemption Date which is the last day of the period commencing on such Redemption Date equal to the Remaining Weighted Average Life of such Certificate.

"Independent Investment Banker" means an independent investment banking institution of national standing appointed by Lessee on behalf of the Owner Trustee; provided that if the Equipment Trust Trustee shall not have received written notice of such an appointment at least 10 days prior to the applicable Redemption Date or if an Event of Default shall have occurred and be continuing, "Independent Investment Banker" shall mean such an institution appointed by the Equipment Trust Trustee.

"Premium" shall mean, as to the principal amount or portion thereof of any Certificate to be redeemed on a particular Redemption Date, the amount, if any, by which the sum of such principal amount or portion thereof together with accrued but unpaid interest payable by virtue of such redemption thereon to such Redemption Date is exceeded by the sum of the present values of all the remaining scheduled payments of principal and interest (excluding interest accrued from the immediately preceding Interest Payment Date and payable by virtue of such redemption) (assuming the redemption on a pro rata basis of Certificates from time to time pursuant to Clause (F) above on the basis of the entire amount of the applicable Sinking Fund Principal Payments) to the stated maturity of such Certificate computed on a semiannual basis by discounting such payments in accordance with generally accepted financial practices assuming a 360-day year consisting of twelve 30-day months at a discount rate equal to the Treasury Yield, all as determined by the Independent Investment Banker.

"Redemption Date" means (a) in the case of a redemption of Certificates pursuant to Clause (A) above, any Business Day after December 31, 1990 and on or before April 1, 1991 which Lessee shall specify by not less than 30 days' notice to the Equipment Trust Trustee and the Owner Participant or, absent such notice, on April 1, 1991; (b) in the case of a redemption of Certificates pursuant to Clause (B) above upon an Event of Loss, the Loss Payment Date; (c) in the case of a redemption of Certificates pursuant to Clause (B) above in the event Lessee is required to comply with clause (ii) of Section 7(e) of the Lease, the Section 7(e) Date; (d) in the case of a redemption of Certificates pursuant to Clause (C) above upon termination of the Lease as applicable to any Item of Equipment pursuant to Section 9 thereof, the Termination Date; (e) in the case of a redemption of Certificates pursuant to Clause (D) above, any Rent Payment Date on or after April 1, 1995 which Lessee shall specify by not less than 30 days' notice to the Equipment Trust Trustee and the Owner Participant; (f) in the case of a redemption of Certificates pursuant to Clause (E) above, the 30th day after the Equipment Trust Trustee shall have received from or on behalf of

the Owner Trustee the redemption price therefor; and (g) in the case of a redemption of Certificates pursuant to Clause (F) above, the Sinking Fund Payment Date on which such redemption is to occur.

"Remaining Weighted Average Life" means, with respect to the redemption of any Certificate, the remaining weighted average life of such Certificate as at the applicable Redemption Date as determined by the Independent Investment Banker assuming that all Certificates are consistently redeemed on a pro rata basis on each Sinking Fund Payment Date subsequent to such Redemption Date at a redemption price which includes the full amount of the Sinking Fund Principal Payment for such Sinking Fund Payment Date.

"Sinking Fund Principal Payment" means, for any Sinking Fund Payment Date, the amount set forth in Exhibit B of the Equipment Trust Agreement under the caption "Sinking Fund Principal Payment" opposite such Sinking Fund Payment Date.

"Sinking Fund Payment Date" means a date set forth in Exhibit B to the Equipment Trust Agreement under the caption "Sinking Fund Payment Date".

"Treasury Yield", with respect to any Certificate to be redeemed pursuant to Section 6.02 of the Equipment Trust Agreement, means a per annum rate (expressed as a semiannual equivalent and as a decimal and, in the case of United States Treasury bills, converted to a bond equivalent yield) determined to be the per annum rate equal to the yield to maturity of the most comparable United States Treasury security as identified by the Independent Investment Banker corresponding in maturity to the Average Life Date of such Certificate or, if there is no such corresponding maturity, an interpolation of maturities, in each case as determined by the Independent Investment Banker based upon the average of the yields to maturity determined from the bid prices as of 10:00 A.M. and 2:00 P.M., New York City time, on the second Business Day preceding such Redemption Date.

If an Event of Acceleration under the Equipment Trust Agreement shall occur and be continuing, the principal of the Certificates may be declared due and payable in the manner and with the effect provided in the Equipment Trust Agreement. If, and only if, such an Event of Acceleration results from an Event of Default by Lessee under the Lease, the Equipment Trust Trustee may declare the Lease to be in default, and may, to the exclusion of the Owner Trustee, exercise one or more of the remedies of the Owner Trustee provided in the Lease.

The Owner Trustee, with funds supplied to it by the Owner Participant, may cure any default by Lessee under the Lease arising from the failure of Lessee to make payments of Basic Rent under the Lease, provided that such failure of Lessee is not the fifth consecutive or subsequent such failure, or the eighth or subsequent cumulative such failure. The Owner Trustee may cure any other default by Lessee in the performance of its obligations under the Lease which can be cured by the payment of money alone by making such payment on behalf of Lessee.

The right of the Holder of this Certificate to institute action for any remedy under the Equipment Trust Agreement, including the enforcement of payment of any amount due hereunder, is subject to certain restrictions specified in the Equipment Trust Agreement.

As provided in the Equipment Trust Agreement and subject to certain limitations therein set forth, this Certificate is transferable, and upon surrender of this Certificate for registration of transfer at the principal corporate trust office of the Registrar, or at the office or agency maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, one or more new Certificates of the same maturity and interest rate and of any authorized denomination and for the same aggregate principal amount will be executed and delivered in the name of the designated transferee or transferees.

The Certificates are issuable only as registered Certificates without coupons in denominations of \$1,000 and any integral multiple thereof. As provided in the Equipment Trust Agreement and subject to certain limitations therein

set forth, Certificates are exchangeable for a like aggregate principal amount of Certificates of the same maturity and interest rate and of any authorized denomination, as requested by the Holder surrendering the same, upon surrender thereof for such purpose at the principal corporate trust office of the Equipment Trust Trustee, or at any office or agency maintained for such purpose.

No service charge shall be made for any registration of transfer or exchange, but the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment for registration of transfer of this Certificate, the Owner Trustee, the Equipment Trust Trustee, the Paying Agent, the Registrar, Lessee and the Owner Participant may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of the principal of, Premium, if any, and interest on, this Certificate and for all other purposes whatsoever whether or not this Certificate shall be overdue, and none of the Owner Trustee, the Equipment Trust Trustee, the Paying Agent, the Registrar, nor the Owner Participant shall be affected by notice to the contrary.

As provided in the Equipment Trust Agreement, the Equipment Trust Agreement, the Certificates and the Guaranties shall be construed in accordance with and governed by the laws of the State of New York.

Form of Guaranty of Owner Trustee

GUARANTY

MERIDIAN TRUST COMPANY,  
Not in its Individual Capacity but  
Solely as Owner Trustee

The undersigned, MERIDIAN TRUST COMPANY, not in its individual capacity but solely as Owner Trustee (the "Owner Trustee"), pursuant to the Equipment Trust Agreement dated as of April 1, 1990 (the "Equipment Trust Agreement") between the Owner Trustee and WILMINGTON TRUST COMPANY, Equipment Trust Trustee, establishing the Conrail 1990 Equipment Trust A (all terms used herein which are defined in the Equipment Trust Agreement being used herein as therein defined), hereby absolutely and unconditionally guarantees that the Holder of the Certificate upon which this Guaranty is endorsed shall receive the due and punctual payment of the principal of, premium, if any, and interest on, such Certificate, when and as the same shall become due and payable (whether as stated or otherwise) and the due and punctual payment of all other amounts payable to the Holder of such Certificate pursuant to the terms of such Certificate and the Equipment Trust Agreement. This Guaranty is a present and continuing guaranty of payment and not of collectibility. If the Owner Trustee shall at any time become the Holder of such Certificate, then, upon delivery of such Certificate by the Owner Trustee to any transferee thereof, the Guaranty of the Owner Trustee hereinabove set forth shall be deemed to have been reaffirmed and restated as of the date of, and by the act of, such delivery.

Meridian Trust Company is not acting individually hereunder, but solely as Owner Trustee under the Trust Agreement. Each Holder hereof, by its acceptance of this Certificate, agrees that it will look solely to the income and proceeds of the Equipment Trust Estate, to the extent available for distribution to such Holder as provided in the Equipment Trust Agreement, and that the Owner Trustee in its individual capacity shall not be personally liable for any amount payable hereunder.

Unless the Certificate upon which this Guaranty is endorsed has been duly executed on behalf of the Equipment Trust Trustee as specified in the Equipment Trust Agreement,

this Guaranty shall not be effective for any purpose.

IN WITNESS WHEREOF, the Owner Trustee has caused this Guaranty to be duly executed under its corporate seal.

MERIDIAN TRUST COMPANY,  
not in its individual  
capacity but solely as  
Owner Trustee

[CORPORATE SEAL]

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

Exhibit B to  
Equipment  
Trust Agreement

SINKING FUND PAYMENTS

<u>Sinking Fund Payment Date</u>	<u>Sinking Fund Principal Payment</u>
October 1, 1991	\$ 534,000
October 1, 1992	586,000
October 1, 1993	644,000
October 1, 1994	707,000
October 1, 1995	777,000
October 1, 1996	853,000
October 1, 1997	937,000
October 1, 1998	871,000
April 1, 1999	1,214,000
April 1, 2000	1,912,000
April 1, 2001	2,127,000
April 1, 2002	2,347,000
April 1, 2003	2,589,000
April 1, 2004	2,857,000
April 1, 2005	3,152,000
	<u>\$22,107,000</u>

Exhibit C to  
Equipment  
Trust Agreement

ETA RENT

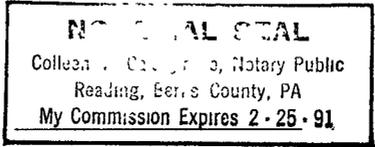
<u>Payment Date</u>	<u>Interest Component of ETA Rent Due on Payment Date</u>	<u>Principal Component of ETA Rent Due on Payment Date</u>
1 Oct 90	777,139.52	0.00
1 Apr 91	1,085,453.70	0.00
1 Oct 91	1,085,453.70	534,000.00
1 Apr 92	1,059,234.30	0.00
1 Oct 92	1,059,234.30	586,000.00
1 Apr 93	1,030,461.70	0.00
1 Oct 93	1,030,461.70	644,000.00
1 Apr 94	998,841.30	0.00
1 Oct 94	998,841.30	707,000.00
1 Apr 95	964,127.60	0.00
1 Oct 95	964,127.60	777,000.00
1 Apr 96	925,976.90	0.00
1 Oct 96	925,976.90	853,000.00
1 Apr 97	884,094.60	0.00
1 Oct 97	884,094.60	937,000.00
1 Apr 98	838,087.90	0.00
1 Oct 98	838,087.90	871,000.00
1 Apr 99	795,321.80	1,214,000.00
1 Oct 99	735,714.40	0.00
1 Apr 00	735,714.40	1,912,000.00
1 Oct 00	641,835.20	0.00
1 Apr 01	641,835.20	2,127,000.00
1 Oct 01	537,399.50	0.00
1 Apr 02	537,399.50	2,347,000.00
1 Oct 02	422,161.80	0.00
1 Apr 03	422,161.80	2,589,000.00
1 Oct 03	295,041.90	0.00
1 Apr 04	295,041.90	2,857,000.00
1 Oct 04	154,763.20	0.00
1 Apr 05	154,763.20	3,152,000.00
<b>Total</b>	<b>22,718,849.32</b>	<b>22,107,000.00</b>

STATE OF PENNSYLVANIA )  
COUNTY OF BERKS ) SS:

On this 23rd day of April, 1990 before me personally appeared, **STEPHEN J. KABA**, to me personally known, who being by me duly sworn, says that (s)he is the **VICE PRESIDENT** of MERIDIAN TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on April 23, 1990 on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Allen M. Coltrone  
Notary Public

[Notarial Seal]



My commission expires \_\_\_\_\_

STATE OF )  
COUNTY OF ) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 1990 before me personally appeared, \_\_\_\_\_, to me personally known, who being by me duly sworn, says that (s)he is the \_\_\_\_\_ of WILMINGTON TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on \_\_\_\_\_, 1990 on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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

[Notarial Seal]

My commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1990 before me personally appeared, \_\_\_\_\_, to me personally known, who being by me duly sworn, says that (s)he is the \_\_\_\_\_ of MERIDIAN TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on \_\_\_\_\_, 1990 on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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

[Notarial Seal]

My commission expires \_\_\_\_\_

STATE OF *Delaware* )  
 ) ss:  
COUNTY OF *New Castle* )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1990 before me personally appeared, *Norma P. Closs*, to me personally known, who being by me duly sworn, says that (s)he is the *Vice President* of WILMINGTON TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on \_\_\_\_\_, 1990 on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Sharon M. Scudder*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires       *8-10-93*

Consolidated Rail Corporation  
Conrail 1990 Equipment Trust A

Appendix A to  
Participation Agreement, Lease Agreement,  
Equipment Trust Agreement and Trust Agreement

"Adopted Proposal" means any Proposal, or a similar or related or substitute proposal having a substantially similar effect, which is enacted into law or promulgated prior to the last day of the first Session of the 102nd Congress of the United States.

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" means any Paying Agent or Registrar.

"Applicable Law" means all applicable laws (foreign or domestic), treaties, judgments, decrees, injunctions, writs and orders of any court, governmental agency or authority and rules, regulations, orders, directives, licenses and permits of any governmental body, instrumentality, agency or authority, including, without limitation, all rules and regulations of the United States Department of Transportation and the ICC.

"Assignment" means the Purchase Agreement Assignment, dated as of April 1, 1990, between Lessee and the Owner Trustee.

"Auto Rack" means each auto rack manufactured by the Builder under the Purchase Agreement, excluding those 108 auto racks bearing Conrail car identification numbers 8565 through 8672, inclusive.

"Average Life Date" means, with respect to the redemption of any Certificate, the date subsequent to the applicable Redemption Date which is the last day of the period commencing on such Redemption Date equal to the Remaining Weighted Average Life of such Certificate.

"Babcock and Brown" means Babcock and Brown Financial Corporation or any successor thereto.

"Basic Lease Commencement Date", with respect to any Item of Equipment, means the later of October 1, 1990, and the Delivery Date for such Item of Equipment.

"Basic Lease Term", with respect to any Item of Equipment, means the period from the Basic Lease Commencement Date of such Item of Equipment to the Basic Lease Termination Date.

"Basic Lease Termination Date" means April 1, 2008.

"Basic Rent" for any Item of Equipment means the rent payable for such Item of Equipment pursuant to the second sentence of Section 3(b) of the Lease, as the same may be adjusted pursuant to Section 3(e) of the Lease, or, during any Renewal Term, the rent payable for such Item of Equipment pursuant to Section 19 of the Lease.

"Basic Rent Payment Date" for any Item of Equipment means each April 1 and October 1 during the Term applicable to such Item of Equipment commencing April 1, 1991.

"Bill of Sale" means a warranty bill of sale for any Item of Equipment in the case of the Builder thereof or a quitclaim bill of sale for any Item of Equipment in the case of the Owner Trustee.

"Builder" means Thrall Car Manufacturing Company or any successor thereto.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banking institutions in New York City or Wilmington, Delaware, or Philadelphia or Reading, Pennsylvania, are authorized or required by law, regulation or executive order to be closed.

"Car Contract" has the meaning set forth in Section 7(e) of the Lease.

"Casualty Loss Determination Date" means each of the dates listed in Exhibit B to the Lease.

"Certificate" means each 1990 Equipment Trust Certificate, Series A issued under the Equipment Trust Agreement.

"Certificate of Acceptance" means a Certificate of Acceptance, substantially in the form of Exhibit A to the Lease, to be entered into between Lessor and Lessee for the purpose of evidencing the lease of an Item of Equipment under and pursuant to the terms of the Lease and to be dated the Delivery Date of such Item of Equipment.

"Certificate Rate" means the interest rate applicable to the Certificates at the time Outstanding.

"Certificates relating to" an Item of Equipment means, as of any date, Certificates Outstanding on such date having an aggregate principal amount determined by multiplying (a) the principal amount of such Certificates by (b) a fraction, the numerator of which is the Cost of such Item of Equipment and the denominator of which is the Cost of all Items of Equipment.

"Change", with respect to any Funding Date, means:

(i) any Federal income tax statute or any Regulation (including, but not limited to, any amendment, addition, deletion, change or modification in or to the provisions of the Code or Regulations as in effect on the date of this Agreement) which has been enacted into law or promulgated subsequent to the date of this Agreement but prior to such Funding Date, or

(ii) any decision by a court of competent jurisdiction with respect to the Federal tax treatment of the transactions contemplated by the Operative Documents, which decision has been rendered subsequent to the date of this Agreement but prior to such Funding Date,

which statute, Regulation or decision will cause an adjustment to be made pursuant to Section 3(e) of the Lease.

"Claims" means any and all costs, liabilities (including strict or absolute liability without fault in tort or otherwise), obligations, losses, damages, penalties, actions or suits or claims which may be imposed on, incurred by, suffered by, or asserted against a Person and shall include all reasonable out-of-pocket costs, disbursements and expenses (including legal fees and expenses) paid or incurred by such Person in connection therewith.

"Closing Date" means the date of the original issuance and sale of the Certificates.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commitment", with respect to any Item of Equipment, means (a) 78.54632% of the Cost of such Item of Equipment, in the case of the Owner Participant, and (b) 21.45368% of the Cost of such Item of Equipment, in the case of the Equipment Trust Trustee.

"Company" means Lessee.

"Consent" means the Consent and Agreement, dated as of April 1, 1990, executed by the Builder.

"Co-Registrar" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Cost", with respect to an Auto Rack, means the total price of such Auto Rack as set forth in the applicable invoice delivered by the Builder for such Auto Rack.

"Defaulted Interest" has the meaning set forth in Section 2.09(b) of the Equipment Trust Agreement.

"Deficiency Amount" has the meaning set forth in Section 26 of the Lease.

"Delivery Date" for any Item of Equipment means the date on which such Item of Equipment is delivered to the Lessor and leased to Lessee under the Lease, all as evidenced by the execution and delivery of a Certificate of Acceptance.

"Deposited Cash" means the aggregate of (i) cash deposited with the Equipment Trust Trustee as provided by Section 3.01 of the Equipment Trust Agreement and (ii) when required or indicated by the context, any Permitted Investment purchased by the use of such cash pursuant to Section 8.04(b) of the Equipment Trust Agreement.

"Equipment Trust Agreement" means the Equipment Trust Agreement, dated as of April 1, 1990, between the Owner Trustee and the Equipment Trust Trustee, as the same may be supplemented, amended or modified from time to time pursuant to the applicable provisions thereof and of the Participation Agreement.

"Equipment Trust Estate" has the meaning set forth in Section 4.03 of the Equipment Trust Agreement.

"Equipment Trust Trustee" means Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity but solely as trustee under the Equipment Trust Agreement, and each other Person which may from time to time be acting as Equipment Trust Trustee in accordance with the provisions of the Equipment Trust Agreement.

"ETA Default" means any event which is or after notice or passage of time, or both, would be an Event of Acceleration.

"ETA Lease Term" has the meaning set forth in Section 5.02 of the Equipment Trust Agreement.

"ETA Rent" has the meaning set forth in Section 5.03 of the Equipment Trust Agreement.

"Event of Acceleration" has the meaning set forth in Section 7.01 of the Equipment Trust Agreement.

"Event of Default" has the meaning set forth in Section 14 of the Lease.

"Event of Loss", with respect to any Item of Equipment, means any of the following events with respect to such Item of Equipment: such Item of Equipment shall be or become lost, stolen, destroyed or irreparably damaged, or in the opinion of Lessee worn out from any cause whatsoever, permanently returned to the Builder thereof pursuant to any patent indemnity provision of the Purchase Agreement, or taken or requisitioned by condemnation or otherwise by the United States Government or by any other government or governmental entity resulting in loss of possession by Lessee, provided that, in the case of any such requisition only for use by the United States Government, such requisition shall have continued for at least 90 days or until the Business Day immediately preceding the last day of the Term for such Item of Equipment, if less.

"Excepted Property" means (a) all public liability insurance and any proceeds thereof payable as a result of claims paid for the benefit of or losses suffered by the Owner Participant or the Owner Trustee in its individual or trust capacity, (b) proceeds of permitted insurance separately maintained by and for the benefit of the Owner Participant (whether directly or through the Owner Trustee), (c) any indemnity or other amount payable in favor of the Owner Participant or the Owner Trustee in its individual or trust capacity including, without limitation, any payments

pursuant to the Tax Indemnity Agreement or Section 13, 15 or 16 of the Participation Agreement, (d) the rights of the Owner Participant or the Owner Trustee in its individual or trust capacity to enforce payment of any of the foregoing amounts, (e) the rights of the Owner Participant or the Owner Trustee in its individual or trust capacity to compromise or waive any such right or to modify, amend or waive any provision conferring any such rights, (f) all proceeds of the foregoing, and (g) any overdue interest paid in respect of amounts described in clause (c) above.

The "fair market rental value" of an Item of Equipment means an amount determined on the basis of, and shall be equal in amount to, the rental for such Item of Equipment, which would be obtained in an arm's length transaction between an informed and willing lessee and an informed and willing lessor, neither being under any compulsion to lease, as the case may be, which determination shall be made (i) without deduction for any costs of removal of such Item of Equipment from the location of then-current use and (ii) on the assumption that such Item of Equipment is free and clear of all Liens and is in the condition and repair in which it is required to be returned pursuant to Section 5 of the Lease; provided, however, that the determination of fair market rental value for the purposes of Section 15 of the Lease shall be based on the actual condition of such Item of Equipment at the time of such determination, shall take into account all Liens on such Item of Equipment (other than Lessor's Liens), notwithstanding the provisions of clause (ii) of this sentence, and if Lessor, after demand in writing of Lessee, cannot obtain possession of such Item of Equipment pursuant to Section 15 of the Lease, fair market rental value for purposes of Section 15 of the Lease shall be deemed zero.

The "fair market sales value" of an Item of Equipment means an amount determined on the basis of, and shall be equal in amount to, the value which would be obtained in an arm's length transaction between an informed and willing purchaser under no compulsion to buy and an informed and willing seller under no compulsion to sell such Item of Equipment, which determination shall be made (i) without deduction for any costs of removal of such Item of Equipment from the location of then-current use and (ii) on the assumption that such Item of Equipment is free and clear of all Liens and is in the condition and repair in which it is required to be returned pursuant to Section 5 of the Lease; provided, however, that the determination of fair market sales value for the purpose of Section 15 of the Lease

shall be based on the actual condition of such Item of Equipment at the time of such determination, shall take into account all Liens on such Item of Equipment (other than Lessor's Liens), notwithstanding the provisions of clause (ii) of this sentence, and if Lessor, after demand in writing of Lessee, cannot obtain possession of such Item of Equipment pursuant to Section 15 of the Lease, fair market sales value shall be deemed zero.

"Funding Date" for any Item of Equipment means the Business Day on or subsequent to the Delivery Date for such Item of Equipment as specified by Lessee in writing pursuant to Section 2(b) of the Participation Agreement.

"Guaranty" means the guaranty of the Owner Trustee endorsed on each Certificate, contained in the form of Exhibit A to the Equipment Trust Agreement.

"Holder" means a Person in whose name a Certificate is registered on the Register.

"ICC" means the Interstate Commerce Commission and any agency or instrumentality of the United States government succeeding to its functions.

"Indemnified Person" has the meaning set forth in Section 16(a) of the Participation Agreement.

"Independent Appraisal" means an appraisal mutually agreed to by two nationally recognized independent appraisers, one of which appraisers shall be chosen by Lessor and one by Lessee, or, if such appraisers cannot agree on the amount of such appraisal, an appraisal arrived at by a third nationally recognized independent appraiser chosen by the mutual consent of such two appraisers; provided that, if either party shall fail to appoint an appraiser within 15 days after a written request to do so by the other party, or if such two appraisers cannot agree on the amount of such appraisal and fail to appoint a third appraiser within 20 days after the date of the appointment of the second of such appraisers, then either party may apply to the American Arbitration Association to make such appointment. In the event such third independent appraiser shall be chosen to provide such appraisal, unless the parties agree otherwise, such appraisal shall be required to be made within 20 days of such appointment. Fees and expenses relating to an Independent Appraisal shall be payable as follows:

(i) if the Independent Appraisal is used in connection with the exercise of remedies upon the occurrence of an Event of Default under the Lease, all such fees and expenses shall be borne by Lessee;

(ii) if the Independent Appraisal is used in connection with the possible exercise of a renewal option or purchase option pursuant to Section 7(e)(ii), 19 or 20 of the Lease, then each party shall bear its respective fees and expenses; provided (A) if an appraisal under the Independent Appraisal shall be conducted by one appraiser only, Lessee shall bear the fees and expenses of such appraiser, or (B) if an appraisal under the Independent Appraisal shall be conducted by more than one appraiser, Lessee shall bear the fees and expenses of the appraiser appointed by Lessee and of the appraiser appointed jointly by the appraiser of Lessee and the appraiser of Lessor; and provided, further, that if after the utilization of such Independent Appraisal Lessee does not exercise any such renewal option or purchase option, then Lessee shall reimburse Lessor for all fees and expenses paid by Lessor in respect of such Independent Appraisal; and

(iii) in all other instances, each party shall bear (A) its respective fees and expenses with respect to any Independent Appraisal and (B) one-half of the fees and expenses of the appraisers participating in any Independent Appraisal.

"Independent Investment Banker" means an independent investment banking institution of national standing appointed by Lessee on behalf of the Owner Trustee; provided, that if the Equipment Trust Trustee shall not have received written notice of such an appointment at least 10 days prior to the applicable Redemption Date or if an Event of Default shall have occurred and be continuing, "Independent Investment Banker" shall mean such an institution appointed by the Equipment Trust Trustee.

"Interest Payment Date" means each April 1 and October 1, commencing October 1, 1990, so long as any Certificate remains Outstanding.

"Interim Lease Term", with respect to any Item of Equipment, means the period from the Delivery Date of such Item of Equipment to the Basic Lease Commencement Date.

"Investment Proceeds" means the net profit, income, interest, dividend or gain actually realized from the making of Permitted Investments of any Deposited Cash.

"Item of Equipment" means each Auto Rack the title to which is transferred by the Owner Trustee to the Equipment Trust Trustee, and which is leased to Lessee under the Lease (as evidenced by a Certificate of Acceptance), in accordance with Section 3 of the Participation Agreement.

"Lease" means the Lease Agreement, dated as of April 1, 1990, between Lessor and Lessee, as the same may be amended, modified or supplemented from time to time pursuant to the applicable provisions thereof and in accordance with the Trust Agreement and the Equipment Trust Agreement.

"Lease Intermediary Firm" means a firm nationally recognized as having expertise in the structuring and analysis of the leveraged lease financing of transportation equipment.

"Lessee" means Consolidated Rail Corporation, a Pennsylvania corporation, and its permitted successors and assigns.

"Lessor" means the Owner Trustee and its permitted successors and assigns.

"Lessor's Lien" means any Lien arising as a result of (a) claims against or affecting Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, in either case not related to the transactions contemplated by the Lease or the Participation Agreement, or (b) acts or omissions of Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, in either case not related to the transactions contemplated by the Lease or the Participation Agreement or not permitted under the Lease or the Participation Agreement.

"Lien" means any mortgage, pledge, lien, charge, encumbrance, lease, exercise of rights, security interest or claim.

"Loss Payment Date" has the meaning set forth in Section 10(a) of the Lease.

"Minimum Number" means, with respect to the Items of Equipment, not less than 150 Items of Equipment selected by

the Equipment Trust Trustee from all Items of Equipment then leased under the Lease or, if fewer than 150 Items of Equipment then under the Lease are remaining, all of the Items of Equipment.

"Net Economic Return" means the Owner Participant's anticipated nominal after-tax yield utilizing the multiple investment sinking fund method of analysis and aggregate (and, within any five-year time span, periodic) after-tax cash flow, computed on the basis of the same methodology and assumptions utilized by the Owner Participant in determining the amounts payable as Basic Rent, Stipulated Loss Value and Termination Value pursuant to the Lease as originally executed.

"Offering Circular" means the final Offering Circular pursuant to which the Certificates are to be offered to the public.

"Officer's Certificate", with respect to any company, means a certificate signed by the Chairman, the Vice Chairman, the President, any Vice President, any Assistant Vice President, the Treasurer or any Assistant Treasurer, the Secretary, or any Assistant Secretary of such company.

"Operative Document" means each of the Lease, any Certificate of Acceptance, the Participation Agreement, the Trust Agreement, the Equipment Trust Agreement, the Purchase Agreement, the Assignment, the Consent, the Certificates, the Tax Indemnity Agreement and the Title Documents.

"Opinion of Counsel" means a written opinion of legal counsel, who in the case of counsel for the Company may be the senior attorney employed by the Company, or other legal counsel designated by the Company and who shall be satisfactory to the Equipment Trust Trustee and the Owner Participant or, in the case of legal counsel for the Owner Trustee, may be Morgan, Lewis & Bockius or other legal counsel designated by the Owner Trustee and satisfactory to the Equipment Trust Trustee and the Owner Participant.

"Outstanding" when used with respect to Certificates, means, as of the date of determination, all Certificates theretofore authenticated and delivered under the Equipment Trust Agreement, other than:

- (a) Certificates theretofore cancelled by the Equipment Trust Trustee or delivered to the Equipment Trust Trustee for cancellation pursuant to Section 2.08 of the Equipment Trust Agreement or otherwise;

(b) Certificates for the payment or redemption of which money in the necessary amount has been theretofore deposited with the Equipment Trust Trustee in trust for the Holders of such Certificates; provided that, if such Certificates are to be redeemed, notice of such redemption has been duly given pursuant to the Equipment Trust Agreement or provision therefor satisfactory to the Equipment Trust Trustee has been made; and

(c) Certificates in exchange for or in lieu of which other Certificates have been authenticated and delivered pursuant to the Equipment Trust Agreement;

provided, however, that in determining whether the holders of the requisite principal amount of Certificates Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Certificates owned by Lessee or any Affiliate of Lessee shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Equipment Trust Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Certificates which the Equipment Trust Trustee knows to be so owned shall be disregarded. Certificates so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Equipment Trust Trustee that the pledgee has the right so to act with respect to such Certificates and that the pledgee is not Lessee or any obligor upon the Certificates or any Affiliate of Lessee or such obligor.

"Overdue Rate" means (a) with respect to any amount which is or will be distributable to the Holders pursuant to the terms of the Equipment Trust Agreement, the rate per annum borne by the Certificates held by such Holders, and (b) with respect to any other amount, the Certificate Rate plus 1%.

"Owner Participant" means Sequa Capital Corporation, a New York corporation, and its permitted successors and assigns.

"Owner Trust Estate" means all estate, right, title and interest of the Owner Trustee in and to the Items of Equipment, the Lease, including, without limitation, all amounts of Basic Rent, Supplemental Rent, insurance proceeds (other than any insurance proceeds payable under liability policies to or for the benefit of the Owner Trustee, for its own account or in its individual capacity, the Owner

Participant, or the Equipment Trust Trustee) and requisition, indemnity or the payments of any kind for or with respect to the Items of Equipment, including without limitation, any and all payments and proceeds received by the Owner Trustee after the termination of the Lease with respect to any Item of Equipment resulting from the sale, lease or other disposition thereof, subject, however, to the provisions of and the lien created under the Equipment Trust Agreement. Notwithstanding the foregoing, "Owner Trust Estate" shall not include any Excepted Property.

"Owner Trustee" means Meridian Trust Company, a Pennsylvania trust company, not in its individual capacity, but solely as trustee under the Trust Agreement, and each other Person which may from time to time be acting as Owner Trustee in accordance with the provisions of the Trust Agreement.

"Owner Trustee Request" means a request by the Owner Trustee setting forth the subject matter of the request.

"Participation Agreement" means the Participation Agreement, dated as of April 1, 1990, among Lessee, the Equipment Trust Trustee, the Owner Participant and the Owner Trustee (in its individual capacity as expressly provided therein and as trustee), as such Participation Agreement may from time to time be supplemented, amended or modified in accordance with the terms thereof and of the Equipment Trust Agreement.

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

"Paying Agent" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Permitted Investment" means (a) direct obligations of the United States of America and agencies thereof, (b) obligations fully guaranteed by the United States of America, (c) 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 \$100,000,000 (including Lessor in its individual capacity or the Equipment Trust

Trustee in its individual capacity if such conditions are met), (d) commercial paper of any holding company of a bank, trust company or national banking association described in clause (c) above, (e) commercial paper of companies having a rating assigned to such commercial paper by Standard & Poor's Corporation ("S&P") or Moody's Investors Service, Inc. ("Moody's") (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 either of the two highest ratings (disregarding gradations of "+" or "-" by S&P or "1", "2" or "3" by Moody's or any equivalent gradation by any other nationally recognized rating organization) assigned by such organization, and (f) repurchase agreements with any financial institutions having combined capital and surplus and retained earnings of at least \$50,000,000 which specify any of the obligations described in clauses (a) through (e) above as collateral acceptable thereunder (including Lessor in its individual capacity and the Equipment Trust Trustee in its individual capacity if such conditions are met); provided that no investment shall be eligible as and included within the definition of the term "Permitted Investment" unless the final maturity or date of return of such investment is equal to or less than one year from the date of purchase thereof.

"Permitted Liens" means Liens referred to in clauses (i) through (vi) of Section 6 of the Lease.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Potential Default" means an event which but for the giving of notice or the lapse of time or both would constitute an Event of Default.

"Premium" means, as to the principal amount or portion thereof of any Certificate to be redeemed on a particular Redemption Date, the amount, if any, by which the sum of such principal amount or portion thereof together with accrued but unpaid interest thereon payable by virtue of such redemption to such Redemption Date is exceeded by the sum of the present values of all the remaining scheduled payments of principal and interest (excluding interest accrued from the immediately preceding Interest Payment Date and payable by virtue of such redemption) (assuming the redemption on a pro rata basis of Certificates from time to time pursuant to Section 6.02(F) of the Equipment Trust Agreement on the basis

of the entire amount of the applicable Sinking Fund Principal Payments) to the stated maturity of such Certificate computed on a semiannual basis by discounting such payments in accordance with generally accepted financial practices assuming a 360-day year consisting of twelve 30-day months at a discount rate equal to Treasury Yield, all as determined by the Independent Investment Banker.

"Proposal", with respect to any Funding Date, means:

(i) any bill which is introduced into the House of Representatives or the Senate of the United States by the Committee on Ways and Means of the House of Representatives, the Finance Committee of the Senate, or any member of either such Committee, subsequent to the date of this Agreement but prior to such Funding Date, to amend, add to, delete, change or modify the provisions of the Code as in effect on the date of this Agreement, or

(ii) any proposed or temporary Regulation issued subsequent to the date of this Agreement but prior to such Funding Date,

which bill or Regulation, if enacted or promulgated, would cause an adjustment to be made pursuant to Section 3(e) of the Lease.

"Proposed Equipment Cost" means \$28,145,175 being the aggregate of the Cost of the 892 Auto Racks proposed to be leased by Lessee pursuant to the Lease as provided for in the Participation Agreement.

"Purchase Agreement" means the Purchase Agreement dated as of December 7, 1989 between Lessee and the Builder relating to 1,000 Auto Racks, as amended, supplemented or otherwise modified from time to time.

"Record Date" for the interest payable on any Interest Payment Date, means (a) in the case of an Interest Payment Date which is April 1, the preceding March 15, and (ii) in the case of an Interest Payment Date which is October 1, the preceding September 15.

"Redemption Date" means (a) in the case of a redemption of Certificates pursuant to Section 6.02(A) of the Equipment Trust Agreement, any Business Day after December 31, 1990 and on or before April 1, 1991 which Lessee shall specify by not less than 30 days' notice to the Equipment Trust Trustee and the Owner Participant or, absent

such notice, on April 1, 1991; (b) in the case of a redemption of Certificates pursuant to Section 6.02(B) of the Equipment Trust Agreement upon an Event of Loss, the Loss Payment Date; (c) in the case of a redemption of Certificates pursuant to Section 6.02(B) of the Equipment Trust Agreement in the event Lessee is required to comply with clause (ii) of Section 7(e) of the Lease, the Section 7(e) Date; (d) in the case of a redemption of Certificates pursuant to Section 6.02(C) of the Equipment Trust Agreement upon termination of the Lease as applicable to any Item of Equipment pursuant to Section 9 thereof, the Termination Date; (e) in the case of a redemption of Certificates pursuant to Section 6.02(D) of the Equipment Trust Agreement, any Rent Payment Date on or after April 1, 1995 which Lessee shall specify by not less than 30 days' notice to the Equipment Trust Trustee and the Owner Participant; (f) in the case of a redemption of Certificates pursuant to Section 6.02(E) of the Equipment Trust Agreement, the 30th day after the Equipment Trust Trustee shall have received from or on behalf of the Owner Trustee the redemption price therefor; and (g) in the case of a redemption of Certificates pursuant to Section 6.02(F) of the Equipment Trust Agreement, the Sinking Fund Payment Date on which such redemption is to occur.

"Register" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Registrar" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Regulations" means the Treasury Regulations, as amended from time to time, promulgated under the Code by the United States Treasury Department.

"Reimbursement Amount" has the meaning set forth in Section 26 of the Lease.

"Remaining Weighted Average Life" means, with respect to the redemption of any Certificate, the remaining weighted average life of such Certificate as at the applicable Redemption Date as determined by the Independent Investment Banker assuming that all Certificates are consistently redeemed on a pro rata basis on each Sinking Fund Payment Date subsequent to such Redemption Date at a redemption price which includes the full amount of the Sinking Fund Principal Payment for such Sinking Fund Payment Date.

"Renewal Term", with respect to any Item of Equipment, means any period for which the lease of such Item of Equipment is extended pursuant to Section 19(a) or 19(b) of the Lease.

"Rent" means Interim Rent, Basic Rent and Supplemental Rent.

"Rent Payment Date" for any Item of Equipment means any Basic Rent Payment Date on which Basic Rent for such Item of Equipment is payable.

"Responsible Officer" means (a) with respect to the Owner Trustee, any officer in the Corporate Trust Administration Department of the Owner Trustee, (b) with respect to the Equipment Trust Trustee, any officer in the Corporate Trust Administration Department of the Equipment Trust Trustee, and (c) with respect to Lessee, the Chief Financial Officer or Treasurer of Lessee or any other corporate officer of Lessee working under the direct supervision of such Chief Financial Officer or Treasurer whose responsibilities include the administration of the transactions and agreements contemplated by the Participation Agreement.

"Section 7(e) Date" has the meaning set forth in Section 7(e) of the Lease.

"Sinking Fund Principal Payment" means, for any Sinking Fund Payment Date, the amount set forth in Exhibit B of the Equipment Trust Agreement under the caption "Sinking Fund Principal Payment" opposite such Sinking Fund Payment Date.

"Sinking Fund Payment Date" means a date set forth in Exhibit B to the Equipment Trust Agreement under the caption "Sinking Fund Payment Date".

"Stipulated Loss Value", with respect to any Item of Equipment, means the amount determined by multiplying the Cost of such Item of Equipment by the percentage set forth in Part I of Exhibit B to the Lease opposite the Casualty Loss Determination Date on which Stipulated Loss Value for such Item of Equipment is to be paid; provided that during any Renewal Term applicable to such Item of Equipment, "Stipulated Loss Value" shall be determined as provided in Section 19 of the Lease. Anything contained in the Lease, the Participation Agreement or the Tax Indemnity Agreement to the contrary notwithstanding, Stipulated Loss Value for any Item of Equipment (both before and after any adjustment

pursuant to Section 3(e) of the Lease) will, under any circumstances and in any event, be an amount which, together with all other amounts required to be paid by Lessee under the Lease, will be at least sufficient to pay in full the aggregate unpaid principal of the Outstanding Certificates relating to such Item of Equipment and all unpaid interest thereon accrued to the date of payment thereof.

"Supplemental Rent" means all amounts, liabilities and obligations (other than Basic Rent) which Lessee assumes or agrees to pay under the Lease, the Participation Agreement or the Tax Indemnity Agreement to Lessor or others, including, without limitation, payments of Stipulated Loss Value, Termination Value and amounts calculated with reference thereto and indemnity payments pursuant to Sections 15 and 16 of the Participation Agreement.

"Tax Change", with respect to any Funding Date, means any Proposal or Change, written notice of which shall have been delivered to Lessee and Babcock & Brown by the Owner Participant, which notice shall include a copy of such Tax Change and an estimate of the adjustments that would be made pursuant to Section 3(e) of the Lease with respect to such Tax Change.

"Tax Indemnity Agreement" means the Tax Indemnity Agreement, dated as of April 1, 1990, between Lessee and the Owner Participant, as the same may be modified or supplemented from time to time.

"Taxes" means any and all license, registration and documentation fees and all taxes, assessments, levies, imposts, duties, charges, fees or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon or other additions thereto imposed by any Federal, state or local government, political subdivision, or taxing authority in the United States, by any government or taxing authority of or in a foreign country or of or in a territory or possession of the United States, or by any international authority.

"Temporary Certificates" means Certificates issued to Holders pursuant to Section 2.03 of the Equipment Trust Agreement.

"Term", with respect to any Item of Equipment, means the period comprised by (a) the Interim Lease Term, (b) the Basic Lease Term and (c) if applicable, any Renewal Term of such Item of Equipment.

"Termination Date" has the meaning set forth in Section 9(i) of the Lease.

"Termination Value", with respect to any Item of Equipment, means the sum of (a) the amount determined by multiplying the Cost of such Item of Equipment by the percentage set forth in Part II of Exhibit B to the Lease opposite the Rent Payment Date on which Termination Value is to be paid, plus (b) the amount of Premium, if any, payable on such Rent Payment Date in respect of the redemption of the Certificates relating to such Items of Equipment pursuant to Section 6.02(C) of the Equipment Trust Agreement. Anything contained in the Lease, the Participation Agreement or the Tax Indemnity Agreement to the contrary notwithstanding, Termination Value for any Item of Equipment (both before and after any adjustment pursuant to Section 3(e) of the Lease) will, under any circumstances and in any event, be an amount which, together with all other amounts required to be paid by Lessee under the Lease, will be at least sufficient to pay in full the aggregate unpaid principal of the Outstanding Certificates relating to such Item of Equipment, together with the aforementioned Premium, if any, and all unpaid interest thereon accrued to the date of payment thereof.

"Title Documents", with respect to any Item of Equipment, means the Bill of Sale covering such Item of Equipment and, in the case of Title Documents furnished by the Builder, an opinion of counsel of the Builder in the form customarily furnished by such counsel.

"Trailer Train" has the meaning set forth in Section 7(e) of the Lease.

"Transaction Costs" means the following out-of-pocket costs, fees and expenses incurred by the Owner Participant, the Owner Trustee and the Equipment Trust Trustee in connection with the negotiation, preparation, execution, delivery, filing and recording of the Operative Documents and the transactions contemplated thereby:

(i) the reasonable fees, expenses and disbursements of (A) Davis Polk & Wardwell, special counsel for the Owner Participant, (B) Potter Anderson & Corroon, special counsel for the Equipment Trust Trustee, (C) Morgan, Lewis & Bockius, special New York counsel for the Owner Trustee, and Stevens & Lee, special counsel to the Owner Trustee, (D) McCarthy Tetrault, special Canadian counsel, and (E) Shearman & Sterling, special counsel for the underwriter of the Certificates;

(ii) the cost of filing and recording documents with the ICC and the Registrar General of Canada and filing financing statements;

(iii) the initial fees and expenses of the Equipment Trust Trustee;

(iv) the initial fees and expenses of the Owner Trustee;

(v) the cost of the appraisal of the Items of Equipment performed by B. Royce Greene & Associates;

(vi) the underwriting fees, commission or discounts of the underwriters of the Certificates;

(vii) other expenses of the public offering of Certificates to the extent not paid by such underwriters;

(viii) the fees of Babcock & Brown Financial Corporation; and

(ix) the fees of G.B.J. Corporation.

"Treasury Yield", with respect to any Certificate to be redeemed pursuant to Section 6.02 of the Equipment Trust Agreement, means a per annum rate (expressed as a semiannual equivalent and as a decimal and, in the case of United States Treasury bills, converted to a bond equivalent yield) determined to be the per annum rate equal to the yield to maturity of the most comparable United States Treasury security as identified by the Independent Investment Banker corresponding in maturity to the Average Life Date of such Certificate or, if there is no such corresponding maturity, an interpolation of maturities, in each case as determined by the Independent Investment Banker based upon the average of the yields to maturity determined from the bid prices as of 10:00 A.M. and 2:00 P.M., New York City time, on the second Business Day preceding such Redemption Date.

"Trust Agreement" means the Trust Agreement, dated as of April 1, 1990, between the Owner Participant and the Owner Trustee in its individual capacity, as such Trust Agreement may from time to time be supplemented, amended or modified in accordance with the terms thereof and of the Equipment Trust Agreement.

"Trustee's Lien" means any Lien arising as a result of (i) claims against or affecting the Equipment Trust Trustee not related to the transactions contemplated by the

Equipment Trust Agreement, the Lease or the Participation Agreement, or (ii) acts or omissions of the Equipment Trust Trustee not related to the transactions contemplated by the Equipment Trust Agreement, the Lease or the Participation Agreement or not permitted under the Lease, the Participation Agreement or the Equipment Trust Agreement.

"U.S. Government Obligations" means securities that are direct obligations of the United States of America for the payment of which its full faith and credit is pledged which are not callable or redeemable, and shall also include a depository receipt issued by a bank or a trust company as custodian with respect to any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt so long as such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.