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INTERSTATE COMMERCE COMMISSION

TRUST INDENTURE,  
MORTGAGE,  
AND  
SECURITY AGREEMENT

dated as of May 1, 1990

between

CONNELL FINANCE COMPANY, INC. *Leen*

and

THE CONNECTICUT BANK AND TRUST COMPANY,  
NATIONAL ASSOCIATION *H. ...*

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190 110-ton aluminum/steel BethGon coalporter railroad cars  
leased to Coal Supply Corporation  
for service for Consumers Power Company

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TRUST INDENTURE, MORTGAGE, AND SECURITY AGREEMENT dated as of May 1, 1990, between CONNELL FINANCE COMPANY, INC., a New Jersey corporation (hereinafter called the **Owner**), and THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association (hereinafter together with its successors and assigns hereunder being called the **Trustee**).

WHEREAS the Owner will purchase the railroad equipment described in Schedule A hereto (such equipment so described as shall be subject to this agreement from time to time, and such units of railroad equipment as may be substituted therefor as collateral hereunder being hereinafter called the **Equipment**);

WHEREAS the Owner will lease the Equipment to Coal Supply Corporation pursuant to a Lease Agreement dated as of May 1, 1990, and Lease Supplement No. 1 thereto (hereinafter collectively called the **Lease**);

WHEREAS Coal Supply Corporation will supply the Equipment to Consumers Power Company (hereinafter called the **User**) pursuant to a Coal Supply Service Agreement of even date with the Lease and Coal Supply Service Agreement Supplement No. 1 covering the Equipment;

WHEREAS Coal Supply Corporation is assigning certain of its rights under the Lease to the User, and the User is assuming certain obligations of Coal Supply Corporation thereunder, pursuant to the Assignment, Assumption, Acknowledgment, and Agreement dated as of the date hereof (hereinafter called the **Assumption Agreement**, and the term **Lessee**, as used herein, referring to Coal Supply Corporation and the User, or either of them, as their rights and obligations under the Lease are allocated in said Assumption Agreement);

WHEREAS, in order to finance a portion of the purchase price of the Equipment, the Owner will issue promissory notes substantially in the form of Annex A hereto (each hereinafter called a **Note**) pursuant to the terms hereof and of a Participation Agreement dated as of the date hereof (hereinafter called the **Participation Agreement**) among the Loan Participants therein named, the Lessee, the Owner, and the Trustee;

WHEREAS the Owner agrees to pay to the Trustee amounts sufficient to enable the Trustee to pay the principal of and interest on the Notes, the liability of the Owner being limited to the rents due and to become due under the Lease and to the income and proceeds from the Equipment, in each case excluding the Excepted Rights, as defined herein; and

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WHEREAS the interests of the Owner in the Equipment, the Lease and certain obligations of the Lessee thereunder (with the exception of certain Excepted Rights, as defined herein) are to be assigned and granted to and retained by the Trustee in trust for the holders of the Notes as security for the obligations of the Owner hereunder, pursuant hereto and to the Lease Assignment dated as of the date hereof (hereinafter called the **Lease Assignment**) between the Owner and the Trustee.

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

### ARTICLE ONE SECURITY

SECTION 1.1. Grant of Security Interest. As security for the due and punctual payment of the principal of and premium, if any, and interest on the Notes and the performance and observance by the Owner of all of its agreements, obligations, and covenants contained in this agreement and in the Participation Agreement and the Lease Assignment, the Owner hereby

(a) grants to the Trustee a security interest in and mortgage on all of the Owner's right, title and interest in and to the Equipment described in Schedule A hereto, any railroad equipment substituted therefor under the Lease, the bills of sale and manufacturers' warranties in respect thereof, all improvements and additions now or hereafter made or affixed thereto, and all cash or noncash proceeds therefrom, excluding the Excepted Rights; and

(b) assigns to the Trustee all of the Owner's right, title and interest in and to the Lease and the immediate right to receive all payments, including, without limitation, all payments of **Rent** (as defined in the Lease) due or to become due under the Lease, excluding the Excepted Rights;

(all of the foregoing granted hereby being hereby called the **Collateral**). Such security interest shall attach upon the execution by the Trustee of this agreement.

There shall be excluded from the foregoing mortgage, grant of security interest and assignment the following (herein called **Excepted Rights**):

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(i) amounts payable as "Supplemental Rent" under the Lease that consist of indemnities payable to the Owner pursuant to section 12 of the Lease and section 10.2 of the Participation Agreement that by the terms of said sections are payable to the Owner for its own account in respect of its own loss, and all amounts payable under section 10.3 of the Participation Agreement and under the Tax Indemnity Agreement referred to in the Participation Agreement;

(ii) any proceeds of insurance payable to the Owner under insurance maintained by the Owner that shall be in addition to the insurance required to be maintained by the Lessee pursuant to the terms of the Lease, and any proceeds of public liability insurance policies carried for the benefit of the Owner;

(iii) any rights against the Lessee acquired by subrogation to the rights of the Trustee pursuant to section 6.4 hereof, and any other amounts payable by the Lessee to reimburse the Owner for payments made by it in respect of the Lessee's obligations under the Lease;

(iv) the rights of the Owner to pursue legal remedies to compel payment by the Lessee of any of the amounts referred to in the foregoing clauses (i) through (iii), except the right to terminate the Lease and exercise remedies against the Equipment;

(v) any payments, proceeds, amounts, or rights in respect of any unit of the Equipment that shall have been released from the security interest of this agreement; and

(vi) interest payable by the Lessee under the Lease at the rate specified therein for overdue payments in respect of any amount referred to in the foregoing clauses (i) through (v) that shall be or become overdue.

Pursuant to the foregoing assignment and exclusion of certain interests, the Owner shall have the right, together with and not to the exclusion of the Trustee, at any time

(1) to receive from the Lessee and the User duplicate copies of all notices, documents, reports, and other information that the Lessee or the User is required or permitted to give to the Owner under the Lease,

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(2) to inspect the Equipment and the records of the Lessee and the User with respect thereto (to the extent permitted by the terms of the Lease,

(3) to provide or carry insurance in addition to that required to be carried by the Lessee, and

(4) to protect and preserve the Equipment.

So long as an Event of Default hereunder shall not have occurred and be continuing, the Owner shall have the right,

(1) solely to consent or withhold consent to any amendment, modification, or waiver of (a) sections 2(b), 2(e), and 2(f) of the Lease, and (b) any provision of the sections of the Lease specified in clause (4) of this sentence to the extent that the same would not adversely affect any rights or interests of the Trustee or the holders of the Notes,

(2) together with and not to the exclusion of the Trustee, to consent or withhold consent to any amendment, modification, or waiver of any other provision of the Lease,

(3) solely to enforce any manufacturers' warranties in respect of the Equipment and to exercise its rights with respect to any maintenance or inspection contract entered into by the Lessee with respect to the Equipment,

(4) solely to exercise its rights under sections 9(d), 9(e)(i), and 9(f) of the Lease, provided that no adjustment in amounts payable under the Lease shall result in such amounts being less than the amounts necessary to pay the principal of and premium, if any, and interest on the Notes when due, and solely to exercise its rights under sections 11(c) (subject to clause (5) below) and 19 of the Lease and in connection with any Appraisal Procedure (as defined in the Lease), and

(5) solely to exercise the option of the Owner under section 11(c)(iii) of the Lease, if the Owner shall fulfill its obligations for prepayment of the Notes set forth in Article Four hereof, notwithstanding any limitation of liability contained herein.

SECTION 1.2. Filing of Financing Statements. This agreement or a counterpart or copy hereof or other evidence hereof shall be

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filed or recorded in any public office as may be necessary or appropriate to protect the interests of the Trustee and the holders of the Notes in the Collateral. The Owner shall execute and file such statements and instruments and such continuation statements with respect to statements and instruments previously filed relating to the interests created or assigned under this agreement in the Collateral as may be required by applicable law or as reasonably may be requested from time to time by the Trustee.

If the Owner shall move its corporate records concerning the Lease out of the jurisdiction for which the filing of financing statements in respect thereof is effective, or the Owner shall sell, assign, or transfer any of its rights in and to the Collateral (subject to the limitations of this agreement), or the Owner shall change its name or be merged into another entity, the Owner shall prepare, execute, and file new financing statements and other appropriate instruments in the jurisdiction to which such corporate records shall be moved or shall prepare, execute, and file financing statements or other appropriate instruments naming such successor or transferee as debtor in every public office where this agreement or evidence thereof shall have been filed or recorded, as the case may be, including an appropriate amendment recorded with the Interstate Commerce Commission pursuant to section 11303 of the United States Transportation Code, and shall furnish to the Trustee an opinion of counsel in respect of such filing and recording of similar scope and tenor as the opinion furnished pursuant to the Participation Agreement in connection with original filing and recording of this agreement.

If the Lessee shall elect to substitute any railroad equipment for units of Equipment suffering a **Casualty Event** (as defined in the Lease), the Owner shall execute and deliver such amendments hereto and to the Lease and the Lease Assignment, and financing statements with respect thereto, as shall be prepared and presented by the Lessee or on its behalf, so as to include such substituted equipment as Collateral hereunder and show such inclusion for the public record.

**SECTION 1.3. Power of Attorney.** The Owner hereby appoints the Trustee the Owner's attorney, irrevocably, with full power of substitution, to collect all payments due and to become due under or arising out of the Lease (except in respect of Excepted Rights), to enforce compliance by the Lessee with all the terms and provisions of the Lease (except, as aforesaid), and, subject to the Excepted Rights, to take any action or institute any proceedings that the Trustee may deem to be necessary or appropriate to protect and preserve the interest of the Trustee in the Collateral.

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SECTION 1.4. Payments under the Lease. The Owner shall direct the Lessee or cause the Lessee to be directed to make all payments to be made by it under the Lease (except in respect of Excepted Rights) directly to the Trustee or in accordance with the Trustee's instructions until such time as the obligations of the Owner hereunder and under the Notes have been discharged. The Owner agrees that should it receive any such payments directed to be made to the Trustee or any proceeds for or with respect to the Collateral or as the result of the sale or other disposition thereof, it shall promptly forward such payments to the Trustee or in accordance with the Trustee's instructions.

The Trustee agrees to apply amounts from time to time received by it

(a) from the Lessee or otherwise in respect of Excepted Rights, promptly to payment to the Owner or in accordance with the instructions of the Owner, whether or not an Event of Default shall have occurred hereunder, and

(b) from the Lessee, the Owner or otherwise with respect to the Lease or the Equipment (and which are not in respect of Excepted Rights) to the payment of the principal of and interest on the Notes then due and to the payment of any other amounts then due and payable under this agreement and, if no Event of Default or event that with the passage of time or the giving of notice would become an Event of Default hereunder shall have occurred and be continuing, any balance promptly to payment to the Owner or in accordance with the instructions of the Owner.

The Owner shall hold harmless the Trustee from and against any responsibility or liability for payments made to parties other than the Owner in accordance with instructions of the Owner. The Trustee hereby reaffirms its obligations regarding payments set forth in section 24(e) of the Participation Agreement.

SECTION 1.5. Release of Security Interests. After all payments due and to become due hereunder shall have been made and the Owner shall have performed all of its obligations hereunder, the security interests, assignments, and all other rights in the Collateral granted by this agreement shall cease and become null and void and all of the property, rights and interests granted as security for the Notes shall revert to and revest in the Owner without further act or formality whatsoever, and the Trustee shall, at the request of the Owner, execute and deliver to the Owner such termination statements, releases or other instruments

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furnished by the Owner as shall be necessary and appropriate to evidence the satisfaction and discharge of this agreement and the security interests hereby created.

SECTION 1.6. Further Assurances. From time to time the Owner shall do all acts and execute all such instruments of further assurance as shall be reasonably requested by the Trustee for the purpose of fully carrying out and effectuating this agreement and the intent hereof.

### ARTICLE TWO ISSUE, EXECUTION, AUTHENTICATION, AND FORM OF NOTES

SECTION 2.1. Maximum Authorized Issue. There are authorized to be issued and outstanding at any time hereunder Notes in an aggregate principal amount not to exceed the maximum authorized issue amount set forth in the form of Note in Annex A hereto.

SECTION 2.2. Issuance of Notes; Proceeds. The Owner shall issue and deliver, from time to time in accordance with the Participation Agreement and subject to the conditions thereof, Notes substantially in the form set forth in Annex A hereto in the aggregate principal amount sold under and pursuant to the terms of the Participation Agreement. The proceeds of such sale shall forthwith be deposited with the Trustee.

In accordance with the terms of the Participation Agreement and subject to the conditions set forth therein, the Trustee, on the date or dates specified in the Participation Agreement, shall pay to the vendor or vendors of the Equipment an amount equal to that portion of the cost of the Equipment as shall be specified in or pursuant to the Participation Agreement to be paid out of the proceeds of the issuance of the Notes on such date.

SECTION 2.3. Characteristics of Notes. Notes shall bear interest at such rate, be payable as to principal, premium, if any, and interest on such date or dates, and shall contain such other terms and provisions as shall be set forth herein and in the form set forth in Annex A hereto. Notes shall not be issued hereunder in denominations of less than \$100,000 (except as permitted by section 3.4 hereof).

The principal of the Notes shall be payable in monthly instalments on the twentieth day of each month, commencing July 20, 1990, and ending July 20, 2007.

If any such date is a Saturday, Sunday, or other day on which banks in the States of Connecticut, Michigan or New York are authorized or obliged to remain closed, then such payment

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shall be made on the next succeeding day on which such banks are open (any such day being hereinafter called a **Business Day**) with the same effect as if made on the nominal payment date and no interest shall be paid in respect of such delay.

The instalments of principal payable on each Note on each payment date shall be the percentage of the original principal amount of such Note set forth for such date in Schedule B hereto; provided, however, that the total of all such payments shall completely amortize the principal amount of such Note.

The unpaid principal amount of each Note shall bear interest at the rate of 10.04% per annum (subject to adjustment as set forth below), and such interest shall be payable on the dates for the payment of instalments of principal. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

Any amounts due under the Notes not paid when due shall bear interest for the period for which the same shall be overdue (from and including the date due and to but excluding the date paid) at the rate of 12.04% per annum.

If at any time on or before December 31, 1991, the senior debt securities of the User shall be rated below investment grade by both Moody's Investors Service, Inc., and Standard & Poor's Corporation (or the successor of either of them), the unpaid principal amount of the Notes shall bear interest from such time at the rate of 10.29%, until such time as both of such entities shall again rate the senior debt securities of the User at not less than investment grade, at which time the unpaid principal amount of the Notes shall again bear interest at the rate of 10.04% per annum.

At the request of any holder of a Note, and upon presentation thereof, the Owner shall execute and the Trustee shall authenticate and issue in exchange therefor a new Note or Notes showing such change in interest rate and the Trustee shall cancel the Note so presented, all in accordance with the provisions of section 3.4 hereof.

The Notes (i) shall be registered, as to both principal and interest, in the names of the holders; (ii) shall be registrable as to transfer in whole or in part upon presentation and surrender thereof for registration of transfer at the office of the Trustee; (iii) shall be dated as of the date of issue, or if issued in exchange for or upon the transfer of another Note or Notes bearing unpaid interest from an earlier date, dated as of such earlier date; (iv) shall entitle the holders to interest and instalments of principal from the date thereof; and (v) shall be

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exchangeable at the office of the Trustee for an equal aggregate principal amount of Notes of like tenor.

All Notes shall rank on a parity with each other Note and shall as to each other be secured equally and ratably by this agreement, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise.

Notes shall be prepaid in the circumstances and in the manner set forth in Articles Four and Six hereof, but the Owner shall not otherwise have the privilege of prepaying the Notes.

SECTION 2.4. Home Office Payment. The principal of, premium, if any, and interest on each Note shall be payable at the office of the Trustee in immediately available funds 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.

Notwithstanding the foregoing or any provision in any Note to the contrary, if so requested by the registered holder of any Note by written notice to the Trustee, all amounts (other than the final payment) payable to such holder may be paid either (i) by crediting the amount to be distributed to such holder to an account maintained by such holder with the Trustee or by transferring such amount by wire to such other bank in the United States, including a Federal Reserve Bank, as shall have been specified in such notice, for credit to the account of such holder maintained at such bank, or (ii) by mailing a check payable in clearing house funds local to the city where the office of the Trustee is situated to such holder at such address as such holder shall have specified in such notice, in either case without any presentment or surrender of such Note. In the case of any such holder that is an original party to the Participation Agreement, the Participation Agreement shall constitute such written notice. Final payment of any such Note shall be made only against surrender of such Note to the Trustee.

SECTION 2.5. Authentication. Only such Notes as shall bear thereon a certificate of authentication manually executed by the Trustee shall be entitled to the benefits of this agreement or be valid or obligatory for any purpose. Such certificate of authentication of the Trustee upon any Note executed by or on behalf of the Owner shall be conclusive evidence that the Note so authenticated was duly issued, authenticated and delivered under this agreement.

SECTION 2.6. Execution of Notes. The Notes shall be executed on behalf of the Owner by one of the officers duly

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authorized by the corporate charter, by-laws, or the board of directors of the Owner to execute such instruments. Such signature may be a manual or facsimile signature and may be printed or otherwise reproduced on the Notes. In case any such officer of the Owner, who shall have executed any of the Notes either manually or by facsimile signature, shall cease to be such an officer before the Notes so executed shall have been authenticated by the Trustee and delivered or disposed of by the Trustee, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who executed such Notes had not ceased to be such an officer of the Owner.

**SECTION 2.7. Limitation on Source of Payments.** All payments to be made by the Trustee under this agreement on the Notes shall be made only out of payments (other than in respect of Excepted Rights) received by the Trustee hereunder and applicable to such payment under the provisions hereof, which shall be limited to income and proceeds from the Collateral, as more fully set forth in section 5.2 hereof. Each holder of a Note, by its acceptance of such Note, agrees that it will look solely to the income and proceeds from the Collateral to the extent available for distribution to such holder as herein provided and that the Trustee shall not be personally liable to such holder of a Note for any amounts payable under this agreement or under such Note or, except as provided in Article Seven hereof, for any liability under this agreement.

### ARTICLE THREE REGISTRATION, TRANSFER, EXCHANGE, CANCELLATION AND OWNERSHIP OF NOTES

**SECTION 3.1. Register of Notes.** The Trustee shall maintain a register for the purpose of registration, and registration of transfer and exchange, of Notes and in which shall be entered the names and addresses of the holders of such Notes and particulars of the Notes owned by them, respectively. For these purposes, the Trustee is hereby appointed by the Owner as its transfer agent and registrar for the Notes, and shall act as agent for the Owner in respect thereof. No transfer of any Note shall be valid unless and until registered on such register.

**SECTION 3.2. Inspection of Register of Notes.** The register referred to in section 3.1 of the holders of the Notes shall at all reasonable times be open for inspection by any registered holder of a Note. Upon request by any registered holder of a Note, the Trustee shall furnish such holder, at the expense of such holder, with a list of the names and addresses of all registered holders of Notes entered on the register kept by the Trustee, indicating the unpaid principal amount and serial number

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of each Note held by such registered holders.

SECTION 3.3. Cancellation of Notes. All Notes surrendered to the Trustee for payment, prepayment, or registration of transfer or exchange shall be cancelled by it; and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this agreement. The Trustee may destroy cancelled Notes held by it and deliver a certificate of destruction to the Owner, or the Trustee may return cancelled Notes to the Owner. If the Owner shall acquire any of the Notes, such acquisition shall not operate as a redemption of or the satisfaction of the indebtedness represented by such Notes unless and until the same shall be delivered to the Trustee for cancellation.

SECTION 3.4. Exchange or Transfer of Notes. A registered holder of a Note intending to transfer any Note registered in its name or to exchange any of such Notes for new Notes may surrender such Notes at the office of the Trustee, together with the written request of such holder, or of its attorney duly authorized in writing, for the issuance of a new Note or Notes, specifying the authorized denomination or denominations of the same (which shall be not less than the minimum denomination set forth in section 2.3 hereof, unless the outstanding principal amount of any Note in exchange for which a new Note is being issued shall be less than such amount) and the name and address of the transferee. Promptly upon receipt by the Trustee of the foregoing and satisfaction of the requirements of this section, the Owner shall execute and the Trustee shall authenticate and deliver such new Note or Notes, in principal amount equal to the unpaid principal amount or amounts of such Note or Notes so surrendered, having the same terms as the Notes so surrendered, in such denomination or denominations and registered in the name or names of the transferee specified in the written request.

The Trustee shall not be required to register transfers or exchanges of Notes on any date fixed for the payment of principal or premium, if any, or interest on the Notes or during the five Business Days (as defined in section 2.3) preceding such date.

The Notes shall be delivered to registered holders without registration of such Notes under the Securities Act of 1933, as amended, and qualification of this agreement under the Trust Indenture Act of 1939, as amended. Prior to any transfer (except any transfer specifically provided in the Participation Agreement) of any Note, in whole or in part, the holder thereof shall, if the Trustee shall so request, furnish to the Trustee and the Owner an opinion of counsel in form satisfactory to the Trustee and the Owner, to the effect that such transfer of the Notes is exempt from the registration requirements of the

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Securities Act of 1933, as amended, and such transfer will not require qualification of this agreement under the Trust Indenture Act of 1939, as amended. Unless the Trustee and the Owner shall have received an opinion of counsel satisfactory to the Trustee and the Owner, to the effect that the same shall not be necessary, each Note shall be endorsed with the legend set forth on the form of Note in Annex A hereto.

As a further condition of transfer or exchange of any Note, the holder thereof shall reimburse the Trustee and the Owner for any stamp taxes, transfer taxes, or governmental charges required to be paid with respect to such transfer or exchange, but the Trustee shall impose no other fee or charge.

SECTION 3.5. Destroyed, Mutilated, Lost or Stolen Notes. If any Note shall be destroyed, mutilated, lost, or stolen, upon the written request of the registered holder of such Note, the Owner shall execute and the Trustee shall authenticate and deliver in replacement thereof, a new Note, payable in the same original principal amount and dated the same date as the Note so destroyed, mutilated, lost, or stolen. The Trustee shall make a notation on each new Note of the amount of all payments of principal and premium, if any, theretofore made, or the date to which such payments have been made, on the Note so destroyed, mutilated, lost or stolen and the date to which interest on such old Note has been paid. If the Note being replaced has been mutilated, such Note shall be delivered to the Trustee and shall be cancelled by it. If the Note being replaced has been destroyed, lost or stolen, the holder of such Note shall furnish to the Trustee the indemnity agreement of such holder and a bond or surety agreement of such holder as shall be satisfactory to the Trustee to save the Trustee harmless from any loss, however remote, including claims for principal of, premium, if any, and interest on the purportedly destroyed, lost or stolen Note, together with evidence satisfactory to the Trustee of the destruction, loss or theft of such Note and of the ownership thereof; provided, however, that if the holder of such Note is an original party to the Participation Agreement, the written statement of such original party shall be sufficient proof of such destruction, loss or theft and an indemnity agreement of such party signed by a duly authorized officer thereof delivered to the Trustee shall be sufficient security and indemnity.

SECTION 3.6. Ownership of Notes. The Trustee may and the Owner shall deem and treat the registered holder of any Note as the absolute owner of such Note for the purpose of receiving payment of all amounts payable with respect to such Note and for all other purposes, and neither the Owner nor the Trustee shall be affected by any notice to the contrary.

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The Trustee and the Owner, in their discretion, may treat the registered holder of any Note as the owner thereof without actual production of such Note for any purpose hereunder.

The Trustee shall not be bound to take notice of or carry out the execution of any trust in respect of any Note, and may transfer the same at the direction of the registered holder thereof, whether named as trustee or otherwise, as though the holder were the beneficial owner thereof.

The receipt by the registered holder of any Note of any payment of principal, premium or interest shall be a good discharge to the Owner and the Trustee for the same and neither the Owner nor the Trustee shall be bound to inquire into the title of any registered holder.

### ARTICLE FOUR PREPAYMENT

SECTION 4.1. Prepayment as Result of Casualty Event or Early Termination. If any unit of the Equipment shall suffer a **Casualty Event** (as such term is defined in the Lease) (and shall not be replaced in accordance with the terms of the Lease) or the Lease shall be terminated by the Lessee pursuant to section 11(c) thereof, the Owner shall immediately notify the Trustee (or cause the Trustee to be notified) of such event or pending termination and shall prepay the Notes in whole or in part as set forth below on the date for payment in respect of such Casualty Event or early termination specified in the Lease.

Any such prepayment shall be in an amount equal to the unpaid principal amount of the Notes multiplied by a fraction, the numerator of which shall be the aggregate amount of the **Lessor's Cost** (as defined in the Lease) of the Equipment as to which the Lease is being terminated or which shall have suffered a Casualty Event, as the case may be, and the denominator of which shall be the aggregate amount of the Lessor's Cost of all Equipment immediately prior to such date, plus interest accrued and unpaid to the date of such prepayment.

If any prepayment of Notes shall be due to the voluntary termination of the Lease pursuant to clause (Y) of the first sentence of section 11(c)(i) thereof by the Lessee, then as a premium for such prepayment the Owner shall pay, on the date such prepayment is due, an amount equal to the excess, if any, of (a) the present value of the remaining unpaid instalments of principal and interest on the Notes, discounted at a rate determined by adding to the then prevailing yield to maturity of obligations of the United States Treasury having a maturity most

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closely approximating the average life of such remaining instalments of principal and interest on the Notes a rate per annum set forth below:

|   |  |
|---|--|
| For prepayment on or before June 30, 1995               | 0.90%  |
| For prepayment from June 30, 1995 through June 30, 2007 | 0.90% less 0.004514% for each month elapsed from June 30, 1995 |
| For prepayment on or after June 30, 2007                | 0.25%  |

over (b) the then remaining unpaid principal balance of the Notes.

Such amounts shall be distributed to the registered holders of such Notes being prepaid on such date ratably, without priority of one over the other.

In the event of any partial prepayment of the principal amount of any Note pursuant to this agreement, the amount of each payment of such Note becoming due after application of such prepayment shall, to the extent appropriate, be adjusted so that the principal paid on each date for an instalment of principal shall bear the same proportion to the original amount payable on such date as the total unpaid balance bears to the original balance that would have been unpaid on such date but for such prepayment and that, upon the due payment of all payments thereafter, the entire unpaid principal amount of and interest on such Note shall have been paid in full.

ARTICLE FIVE  
COVENANTS; LIMITATION OF LIABILITY

SECTION 5.1. Covenants of Owner. The Owner hereby covenants and agrees as follows:

(a) subject to the provisions of section 5.2 hereof, the Owner shall duly and punctually pay to the Trustee such amounts as are necessary to enable the Trustee to pay the principal of, premium, if any, and interest on the Notes in accordance with the terms of such Notes and this agreement when such payments shall become due, including, but not limited to, prepayments required by section 4.1 hereof;

(b) the Collateral shall be and shall remain free and

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clear of "Owner Encumbrances" (as such term is defined in the Participation Agreement) and the Owner shall take such action as may be necessary to discharge any such Owner Encumbrances, as more fully set forth in section 12 of the Participation Agreement;

(c) the Owner shall pay or cause to be paid all taxes and charges, including without limitation all taxes imposed on or measured by its net income but excluding any taxes and charges the Lessee is required to pay under the Lease, the Participation Agreement, or the Tax Indemnity Agreement referred to therein, if such requirement to pay is assigned to the Trustee hereunder, if the failure to pay such taxes could result in any reduction of the amounts payable to the Trustee or the imposition of any lien against the Equipment, the Lease, or any payments made or to be made by the Lessee in respect thereof (in each case other than "Permitted Encumbrances," as such term is defined in the Lease); provided, however, that the Owner shall not be required to pay any such taxes or charges if and so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof in a "Permitted Contest" (as such term is defined in the Lease);

(d) the Owner shall faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease and the Participation Agreement provide are to be performed by the Owner; the Owner shall provide the Lessee with any and all consents, assistance, and cooperation necessary for the Lessee to maintain the insurance on the Equipment required by the Lease; the Owner shall upon request of the Trustee enforce any or all of its rights as lessor under the Lease; without the written consent of the Trustee, the Owner shall not enter into any agreement with the Lessee for the adjustment of "Rent" or any "Casualty Value" or "Termination Value" under the Lease (whether or not contemplated thereby) except as permitted by section 1.1 hereof and shall not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee that are intended to satisfy the obligations of the Owner under this agreement or to preserve and protect the interest of the Trustee in the Lease and the Equipment, including, without limitation, the obligation to pay the rents in the manner and at the

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time and place specified therein or enter into any agreement or take any action the result of which would be to amend, modify or terminate the Lease or the obligations of the Lessee thereunder, except as permitted by section 1.1 hereof;

(e) the Owner shall not sell, assign or transfer its rights under this agreement or in or to the Collateral, except in accordance with the provisions of the Participation Agreement and the Stock Option Agreement referred to therein, and unless and until the provisions of section 1.2 shall have been complied with;

(f) unless and until the obligations of the Owner hereunder have been discharged, the Owner, without the consent of the Trustee, shall not seek recovery of any amounts in respect of Excepted Rights except by an action in damages against the Lessee, and shall not terminate the Lease or otherwise exercise the remedies available under the Lease against the Equipment;

(g) the covenants set forth in section 6(a)(vii) of the Stock Option Agreement dated as of the date hereof between the Owner and the User shall be for the benefit of the Trustee and the holders of the Notes and may be enforced by the Trustee on behalf of such holders; and

(h) the Owner shall promptly notify the Trustee of any default hereunder or under the Lease of which the Owner shall have actual knowledge.

SECTION 5.2. Limitation of Liability. The liability of the Owner for all payments to be made on the Notes and under and pursuant to clause (a) of section 5.1 shall not exceed an amount equal to, and shall be payable only out of and to the extent that there are sufficient income and proceeds from the Collateral, and the Owner shall not have any personal liability whatsoever for any amounts payable under the Notes and clause (a) of section 5.1, or for any claim based thereon or otherwise in respect thereof, it being expressly understood that the obligations for payment of the principal of and premium and interest on the Notes and the obligations under said clause (a) are solely nonrecourse obligations of the Owner and that all such obligations of the Owner are and are to be by acceptance of the Notes expressly waived and released as a condition of, and as consideration for, the execution by the Owner of this agreement.

As used herein the term "income and proceeds from the Collateral" shall mean

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(a) if an Event of Default shall have occurred and while it shall be continuing so much of the following amounts as are indefeasibly received by the Owner or the Trustee as assignee of the Owner at any time after such Event of Default and during the continuance thereof, (i) all rent and any other sums due and to become due under the Lease except amounts in respect of Excepted Rights and (ii) any and all other payments or proceeds received pursuant to the Lease or for or with respect to the Collateral as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(b) at any other time only that portion of the amounts referred to in the foregoing clause (a) or otherwise payable to the Owner pursuant to the Lease as are indefeasibly received by the Owner or the Trustee as assignee of the Owner and as shall equal the payments specified in clause (a) of section 5.1 due and payable by the Owner on the date such amounts so received were required to be paid pursuant to the Lease or as shall equal any other payments (including payments in respect of Casualty Events and early termination of the Lease) then due and payable under this agreement.

The Trustee agrees that if it obtains a judgment against the Owner for an amount in excess of the amounts payable by the Owner pursuant to the limitations set forth in this section, it will, accordingly, limit its execution of such judgment to such amount and it will not bring suit against the Owner for any sums in addition to the amounts payable by the Owner pursuant to said limitations (or obtain a judgment, order, or decree against the Owner for any relief other than the payment of money) except as may be required by applicable rules of procedure to enforce against the Collateral and the Lessee (rather than against the Owner personally), by appropriate proceedings against the Owner at law or in equity or otherwise, the obligations to make the payments to be made pursuant to section 5.1 or any other payment or performance obligations due the Trustee under this agreement.

Nothing contained herein limiting the liability of the Owner shall derogate from the right of the Trustee to proceed against the Collateral or the Lessee (to the extent permitted by the Lease and the Assumption Agreement) as provided for herein or in the Lease and the Assumption Agreement for the full unpaid principal amount of the Notes and interest thereon, or to proceed against the Owner for damages and other remedies for the breach of other covenants of this agreement and the Participation

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Agreement, including the provisions of section 1.2, 1.4, 1.5, and clauses (b) through (h) of section 5.1 hereof (subject to the aforesaid limitations, in the case of clause (a) of section 5.1) or the inaccuracy of the representations and warranties of the Owner contained in the Participation Agreement and the instruments delivered to the Trustee or the holders of the Notes in connection therewith.

### ARTICLE SIX EVENTS OF DEFAULT; REMEDIES

**SECTION 6.1. Events of Default.** If any of the following events (each such event being herein sometimes called an **Event of Default**) shall have occurred (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary):

(a) an event defined as an "Event of Default" in the Lease (hereinafter called a **Lease Event of Default**) shall have occurred thereunder (except in respect of Excepted Rights); or

(b) any payment of principal of or interest on the Notes (except prepayments required by Article Four hereof), shall not be paid when due, and such default shall continue for more than five Business Days thereafter, without regard for any limitation of liability contained herein; or

(c) any other payment due or to become due hereunder or on the Notes, including prepayments required by Article Four hereof, shall not be paid when due, and such default shall continue for more than ten Business Days after notice thereof shall have been given to the Owner by the Trustee, without regard for any limitation of liability contained herein; or

(d) the Owner shall breach or fail to observe or perform any covenant, agreement or warranty on its respective part made in this agreement, the Participation Agreement, or the Lease, without regard for any limitation of liability contained herein, and such breach or failure shall continue for a period of 30 days after notice thereof shall have been given to the Owner by the Trustee or by any holder of Notes, or the Owner shall otherwise have knowledge thereof, unless such breach or failure can be cured and the Owner shall be diligently effecting such cure; or

(e) any representation or warranty made or given by the

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Owner herein, in the Participation Agreement, or in any document, certificate or instrument furnished to the Trustee or the holders of Notes in connection therewith (and excluding any tax indemnity agreement, stock option agreement, or other agreement furnished to and for the benefit of the User only) shall prove to be inaccurate in any material respect when made, and, if such representation or warranty is capable of being corrected or remedied, shall not have been corrected or remedied within 30 days after the Owner shall have been given notice with respect thereto; or

(f) the Owner shall dispose of the Collateral or any part thereof contrary to the terms hereof or shall suffer or permit the imposition on the Collateral of any claim, lien, security interest, encumbrance, or charge arising from, through, or under the Owner that is prior to or on a parity with the interest of the Trustee granted or assigned hereunder; or

(g) the Owner shall (1) be generally not paying its debts as they become due (except such debts as shall be non-recourse to the Owner and such failure to pay shall not be due to any act or failure to act on the part of the Owner), (2) file a voluntary petition in bankruptcy or a voluntary petition or answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency law or answer admitting the material allegations filed against the Owner in any such proceeding, (3) by voluntary petition, answer, or consent, seek relief under the provisions of any bankruptcy, insolvency, or other similar law providing for the liquidation, reorganization, or winding-up of corporations or providing for an agreement, composition, extension, or adjustment with its creditors, (4) make an assignment for the benefit of creditors, (5) consent to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other official with similar powers over the Owner or a substantial part of its property, or (6) take corporate action for the purpose of any of the foregoing; or

(h) a court having jurisdiction over the Owner or its property shall enter a decree or order in respect of the Owner or such property in an involuntary case under any bankruptcy or insolvency law, or shall appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator, or official with similar powers over the Owner or a substantial part of such property, or shall

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order the winding up or liquidation of the affairs of the Owner, and such order or decree shall continue in effect for a period of 60 consecutive days; or the Owner shall be adjudicated bankrupt or insolvent or any of its properties shall be sequestered by court order and such order shall remain in effect for more than 60 days; or a petition shall be filed against the Owner under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation law of any jurisdiction, and shall not be dismissed within 60 days of such filing;

then and in every such case the Trustee may, and upon receipt of a request of the registered holders of at least 25% of the principal amount of the then outstanding Notes shall, by notice in writing to the Owner, declare the unpaid principal amount of the Notes with accrued interest thereon to be due and payable. Thereupon the entire amount of such principal and accrued interest, and the entire amount due hereunder shall become due and payable immediately without further demand, together with interest at the rate per annum set forth in section 2.3 hereof for overdue payments, to the extent legally enforceable, on any portion thereof overdue.

The Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the amounts due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Owner and collect in the manner provided by law out of the Collateral, wherever situated, the moneys adjudged or decreed to be payable (subject to the provisions of section 5.2 hereof).

**SECTION 6.2. Specific Remedies.** Upon the occurrence and during the continuance of an Event of Default (but subject to the provisions of section 6.4 hereof) the Trustee may exercise any or all of the following remedies:

(a) If a Lease Event of Default shall have occurred, the Trustee may exercise any of the remedies available to the Owner as lessor thereunder, subject to the provisions of the Assumption Agreement.

(b) Subject to the rights of the Lessee under the Lease and the Assumption Agreement, the Trustee may recover possession of the Equipment. If requested by the Trustee, the Owner shall cause the Equipment to be assembled and delivered to the location specified by the Trustee, in the manner specified in the Lease upon

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occurrence of a Lease Event of Default. The Trustee shall be entitled to a judgment conferring upon the Trustee the immediate right to such possession and to a decree of specific performance requiring the delivery of the Equipment as aforesaid.

(c) The Trustee may collect and receive any and all rents, revenues and other cash and non-cash proceeds from the Collateral.

(d) Subject to the rights of the Lessee and the provisions of the Assumption Agreement as aforesaid and the rights of the Owner under section 6.5 hereof, and upon not less than ten days' notice to the Owner, the Lessee, the User, and any other person to whom notice is required by law, the Trustee may with or without retaking possession sell all or any part of the Collateral, free from any and all claims of the Owner, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, in its discretion. Upon any such public sale, the Trustee itself, the Owner, the Lessee, the User, or any holder of Notes may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Equipment or the Collateral to be sold, and in general in such commercially reasonable manner as the Trustee may determine.

If an Event of Default shall have occurred hereunder due solely to a Lease Event of Default, the Trustee shall concurrently proceed to exercise one or more of the remedies provided for in the Lease, in addition to exercising remedies hereunder, unless prevented by law or otherwise from proceeding against the Lessee under the Lease or prevented by law or rules of procedure from proceeding against the Lessee under the Lease without first exercising remedies hereunder.

Upon sale of the Collateral as above provided or the giving of notice by the Trustee of its intention to retain possession thereof, the Owner shall cease to have any rights in respect of the Collateral hereunder, but except as specifically provided herein all such rights shall be deemed thenceforth to have been waived and surrendered by the Owner, and no payments theretofore made by the Owner in respect of the Collateral or any of it shall give to the Owner any legal or equitable interest or title in or to the Collateral or any of it or any cause or right of action at law or in equity in respect of the Collateral against the Trustee

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or the holders of the outstanding Notes.

SECTION 6.3. Application of Proceeds. If an Event of Default shall occur and be continuing and the Trustee shall exercise any of the powers conferred upon it by sections 6.1 and 6.2 hereof, all payments made by the Owner to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected hereunder from the Owner by the Trustee, and the proceeds of every sale by the Trustee of any of the Collateral, together with any other sums which may then be held by the Trustee under any of the provisions hereof, shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in discharge of its duties hereunder, (b) of the interest then due, with interest on overdue interest at the rate per annum set forth in section 2.3 hereof for overdue payments, to the extent legally enforceable, and (c) of the principal of all the outstanding Notes, with interest thereon at such rate for overdue payments to the extent legally enforceable from the last date on which interest was due, whether such Notes shall have then matured by their terms or not. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Owner.

SECTION 6.4. Right to Cure Defaults. If an Event of Default hereunder shall be due solely to a Lease Event of Default other than an event specified in clause (e) or (f) of section 14 of the Lease, the Trustee may not declare the principal amount of the Notes due and payable, as provided in section 6.1 hereof, unless the Trustee shall (i) promptly notify the Owner, the User, and the Lessee of such Lease Event of Default and (ii) notify the Owner not less than five Business Days prior to such declaration in the case of failure to make payment of regular and periodic payment on the Notes when due, ten Business Days prior to such declaration in the case of failure to make any other payment when due, and 30 days prior to such declaration in the case of any other Lease Event of Default, whether or not any passage of time or giving of notice that may be required for a default to become a Lease Event of Default shall have occurred when such notice is given. The Trustee shall also furnish such notice as shall be required by the Assumption Agreement upon the occurrence of a Lease Default or Lease Event of Default, and shall be bound by the provisions thereof in respect of cures of such Lease Defaults and Lease Events of Default and forbearance of the exercise of remedies thereunder.

If a Lease Event of Default shall not constitute the seventh consecutive or the thirteenth cumulative failure to pay rent when due, the Owner may (but need not), within the applicable time

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period specified in clause (ii) of the first sentence of the preceding paragraph in respect of such Lease Event of Default, cure the same. Such cure (including the payment of interest due on any overdue payments) shall be deemed to cure any Event of Default hereunder which arose or would have arisen from such Lease Event of Default.

Upon effecting such cure, the Owner shall be subrogated to the rights of the Trustee, as assignee of the Owner hereunder, to receive such amounts as shall have been expended by the Owner in effecting such cure, and shall be entitled to receive such amounts (and the amount of any interest on account of payment being overdue) upon its or their receipt by the Trustee, but the Owner shall not attempt to recover such amounts except by demand upon the Lessee or by commencing an action against the Lessee for the payment of such amounts.

SECTION 6.5. Right of Redemption. If the Owner shall tender full payment of the total unpaid principal of all the Notes then outstanding, together with interest thereon accrued and unpaid and all other amounts due under this agreement as well as all proper expenses of the Trustee incurred in enforcing this agreement and taking possession of, storing, preparing the Equipment for, and otherwise arranging for, the sale of the Collateral, in the following circumstances:

(a) after the Trustee shall have declared the unpaid balance of the Notes with accrued interest thereon immediately due and payable, and prior to a sale of the Collateral or the making of a contract therefor, or within ten days after the Trustee shall have notified the Owner of its intention to take possession of and retain the Collateral;

(b) if a Lease Event of Default shall have occurred and be continuing for more than 180 days from the receipt of notice thereof by the Trustee and the Trustee shall have not declared the principal amount of the Notes immediately due and payable or given notice of an intention to terminate the Lease or shall have waived such Lease Event of Default; or

(c) if an Event of Default shall have occurred hereunder due solely to a Lease Event of Default, the Owner shall have exhausted its rights to cure under section 6.4 hereof;

then upon receipt of such amounts by the Trustee absolute right to the possession of and ownership of the Collateral shall pass to and vest in the Owner, and the Owner shall acquire by

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subrogation all rights of the Trustee to collect the amounts so paid from the Lessee.

SECTION 6.6. Enforcement of Claims Without Possession of Notes. All rights of action and rights to assert claims under this agreement, or under any of the Notes, may be enforced by the Trustee without the possession of such Notes on any trial or other proceedings instituted by the Trustee, and any such trial or other proceedings shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Notes. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Notes, and it shall not be necessary to make any holders of the Notes parties to such proceedings.

SECTION 6.7. Rights and Remedies Cumulative; No Waiver. Each and every right, power and remedy herein specifically given to the Trustee under 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 and in such order as maybe deemed expedient by the 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 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 or the Lessee or to be an acquiescence therein. No waiver in respect of any Event of Default shall extend to any subsequent or other Event of Default.

SECTION 6.8. Restoration of Rights and Remedies. In case the Trustee shall have proceeded to enforce any right, power or remedy under this agreement by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then and in every such case the Owner, the Trustee, and the Lessee shall be restored to their former positions and rights hereunder with respect to the Collateral, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

SECTION 6.9. Rescission and Annulment. If at any time after the principal of the Notes shall have become so due and payable

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by declaration by the Trustee, and before any judgment or decree for the payment of the money so due, or any thereof, shall be entered, all arrears of interest upon the Notes and all other sums payable under the Notes (except the principal of and premium, if any, on the Notes which by such declaration shall have become payable) shall have been duly paid, and every other default and Event of Default with respect to any covenant or provision of this agreement shall have been made good or cured, then and in every such case the Trustee's declaration and its consequences may, by request of the holders of a majority of the principal amount of the then outstanding Notes filed with the Trustee, be rescinded and annulled; but no such rescission or annulment shall extend to or affect any subsequent default or Event of Default with respect to such series or impair any right consequent thereon.

### ARTICLE SEVEN THE TRUSTEE

SECTION 7.1. Ministry of Trust. The Trustee accepts the trusts hereby created and the duties applicable to it set forth herein and agrees to perform the same, but only upon the terms of this agreement.

Subject to the provisions of this agreement, the Trustee shall:

- (a) authenticate and exchange Notes in accordance with the terms of Articles Two and Three hereof;
- (b) receive, invest, and disburse in accordance with the terms hereof and of the Participation Agreement all proceeds of the sale of Notes and all amounts payable by the Owner or the Lessee or for the account of either of them hereunder and in respect of the Notes;
- (c) distribute to the holders of the Notes copies of all financial statements, reports, and notices received by it as trustee hereunder (except to the extent that the Lessee or the User is required to deliver statements or reports directly to such holders);
- (d) take such action, or refrain from taking such action, with respect to an Event of Default (as defined in section 6.1 hereof ) as the Trustee shall be instructed by the holders of a majority in principal amount of the outstanding Notes; and
- (e) perform all other acts and duties required to be

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performed by the Trustee by the terms of this agreement.

The Trustee acts hereunder solely as trustee herein and not in any individual capacity. All persons having any claim against the Trustee arising from matters relating to the Notes by reason of the transactions contemplated hereby shall, subject to the lien and priorities of payment as herein provided, look only to the Collateral for payment or satisfaction thereof.

**SECTION 7.2. Implied Duties.** No implied duties or obligations shall be read into this agreement against the Trustee, the duties and obligations of the Trustee being determined solely by the express provisions of this agreement.

The Trustee shall not have any duty or obligation to manage, control, use, sell, operate, store, lease, dispose of or otherwise deal with the Equipment or any other part of the Collateral or otherwise to take or refrain from taking any action under, or in connection with, this agreement or any other document or any other action with respect to such Equipment except as expressly provided by the terms of this agreement or as expressly provided in instructions of the holders of a majority in outstanding principal amount of the Notes.

**SECTION 7.3. Care.** The Trustee shall exercise such of the rights and powers vested in it by this agreement, and use the same degree of care and skill in such exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

**SECTION 7.4. Holder of Notes.** In determining whether the registered holders of the requisite principal amount of Notes outstanding have given any request or notice under this agreement, Notes owned by the Owner, the Lessee, the User, the Trustee, or any entity owning or controlling directly or indirectly, 50% of the voting shares of any thereof or controlled by or under common control with any thereof shall be disregarded and deemed not to be outstanding unless all of the Notes are as of the date of determination owned by any one or more of such entities. In determining whether the Trustee shall be protected in relying upon any such request or notice, only Notes that the Trustee knows to be so owned shall be disregarded.

**SECTION 7.5. Attribution of Knowledge; Notice.** In the absence of actual knowledge on the part of an officer of the corporate trust department of the Trustee, the Trustee shall not be deemed to have knowledge of an Event of Default (as defined in section 6.1 hereof) or event that, with the passage of time or the giving of notice would become an Event of Default, except the

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failure of the Lessee to make any payment of regular and periodic payments under the Lease when the same shall become due.

If the Trustee shall have actual knowledge of an Event of Default or an event that, after the giving of notice or lapse of time would become an Event of Default, the Trustee shall give prompt written notice thereof to the Owner, the Lessee, the User, and each registered holder of a Note unless such Event of Default or event shall have been remedied before the giving of such notice.

**SECTION 7.6. Errors; Reliance.** The Trustee shall not be liable for any error of judgment made in good faith, unless the Trustee shall be negligent in ascertaining the pertinent facts or such action or inaction shall be contrary to the express provisions of this agreement.

The Trustee may rely with full protection on any resolution, certificate, statement, opinion, report, notice, request, certificate or other instrument or document reasonably believed by the Trustee to be genuine.

The Trustee may consult with counsel reasonably believed by the Trustee to be competent in the matters in question, and may rely on any opinion of such counsel in taking any action in good faith not contrary to the express provisions of this agreement.

The Trustee shall not be liable to any holder of Notes for any action taken or omitted to be taken in good faith in accordance with the direction of the holders of the requisite percentage of principal amount of Notes specified for such action in this agreement.

**SECTION 7.7. Limitations on Duties.** The Trustee shall not manage, control, use, sell, operate, store, lease, dispose of or otherwise deal with the Equipment or any other part of the Collateral except in accordance with the powers granted to, or the authority conferred upon, the Trustee pursuant to this agreement, or in accordance with the instructions of the holders of a majority in principal amount of the outstanding Notes.

In case of an Event of Default, if the Trustee shall not have received instructions from the requisite number of holders of Notes as provided herein within 20 days after furnishing notice of such Event of Default to the holders of the Notes, the Trustee may, subject to instructions thereafter received pursuant to the preceding sentence, take such action, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Event of Default or event as it shall deem advisable in the best interests of the

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holders of the Notes.

The Trustee shall not be required to take any action pursuant to instructions of the holders of Notes nor shall any other provision of this agreement be deemed to impose a duty on the Trustee to take any action, if the Trustee shall have been advised by counsel that such action is contrary to the terms hereof or is otherwise contrary to law.

The Trustee shall not be required to take or refrain from taking for the benefit of the holders of the Notes any action under Article Six hereof (except the giving of notice required thereunder ) or any other action pursuant to instructions received from the holders of the Notes, unless the Trustee shall have been indemnified by such holders, in manner and form satisfactory to the Trustee, against any liability, cost or expense (including counsel fees) that may be incurred in connection therewith.

SECTION 7.8. Disclaimer. The Trustee makes no representation or warranty as to the accuracy of any recital set forth herein or the value, condition, merchantability or fitness for use of the Equipment or any other part of the Collateral or as to the title thereto, or any other representation or warranty with respect to the Equipment or any other part of the Collateral whatsoever.

SECTION 7.9. Resignation and Removal of Trustee; Appointment of Successor; Co-Trustees. The Trustee or any successor thereto may resign at any time without cause by giving at least 30 days' prior written notice to the Owner, the Lessee, the User, and each registered holder of a Note. Such resignation shall be effective on the date of appointment of a successor trustee as hereinafter provided. In addition, the Trustee may be removed at any time without cause by notice of holders of a majority in outstanding principal amount of the Notes delivered to the Trustee, and the Trustee shall promptly give notice thereof to each registered holder of a Note.

In the case of the resignation or removal of the Trustee, a successor trustee may be appointed by the holders of a majority in outstanding principal amount of the Notes. If a successor trustee shall not have been appointed within 30 days after such notice of resignation or removal, the Trustee or any registered holder of a Note may apply to any court of competent jurisdiction to appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided. Any successor so appointed by such court shall immediately and without further act be superseded by any successor thereafter appointed within one year from the date of the appointment by

Trust Indenture

such court.

Any successor trustee, however appointed, shall execute and deliver to its predecessor and to the Owner an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the estate, properties, right, powers, duties, and trusts of its predecessor hereunder in the trusts under this agreement applicable to it with like effect as if originally named as the Trustee herein; but nevertheless upon the written request of such successor trustee its predecessor shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed applicable to it, all the estates, properties, rights, powers, and trusts of such predecessor under this agreement, and such predecessor shall duly assign, transfer, deliver and pay over to such successor trustee any property or amounts then held by such predecessor under this agreement.

Any successor trustee, however appointed, shall be a bank or trust company organized under the laws of the United States or any jurisdiction thereof having a combined capital and surplus of at least \$50,000,000, if there be such an institution willing, able, and legally qualified to perform the duties of the Trustee hereunder upon reasonable or customary terms.

Any corporation or national banking association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or national banking association resulting from or surviving any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Trustee may be transferred, shall, subject to the terms of the next preceding paragraph, be the Trustee under this agreement without further act.

At any time or times, for the purpose of meeting the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Trustee shall have power to appoint one or more individuals, corporations, associations or trusts to act as co-trustee of all or any part of such Collateral or to act as separate trustee of any property constituting part thereof, in either case with such powers as may be provided in the instrument of appointment, and to vest in such co-trustee or separate trustee any property, title, right or power deemed necessary or desirable in the circumstances.

SECTION 7.10. Intermingling of Funds. All amounts received by the Trustee under or pursuant to any of the provisions of this agreement need not be segregated in any manner from any other amounts except to the extent required by law and may be deposited

## Trust Indenture

under such conditions as may be prescribed or permitted by law, so long as such amounts shall be properly accounted for by the Trustee and indentified as to the source thereof.

SECTION 7.11. Compensation. The Trustee shall be entitled to reasonable compensation for its services hereunder and for expenses, including counsel fees, incurred in connection therewith, all of which shall be paid in accordance with the provisions of the Participation Agreement.

SECTION 7.12. Expiry of Trust. The trust created by this agreement shall terminate and the duties of the Trustee hereunder shall cease upon the payment of all the principal and interest on the Notes, the discharge by the Owner of all of its obligations hereunder to the Trustee and the holders of the Notes, and the delivery by the Trustee of documents evidencing the same contemplated by section 1.5 hereof. Any amounts held by the Trustee at such termination shall be paid over to the Owner.

SECTION 7.13. Taxes; Withholding. The Indenture Trustee agrees with the Owner, to the extent required by applicable law, to withhold from each payment hereunder or under any Note, United States withholding taxes at the appropriate rate, and, on a timely basis, to deposit such amounts with an authorized depository and make such reports, filings and other reports in connection therewith, and in the manner, required under applicable law. Each Holder shall indemnify and hold harmless the Indenture Trustee and the Owner (on an after-tax basis) against any United States withholding tax which the Indenture Trustee improperly fails to withhold on payment to such Holder as a direct result of the failure by such Holder duly and properly to provide the required certificate or form entitling such Holder to full exemption from withholding tax or the invalidity of any certificate or form provided by such Holder pursuant to applicable law.

Trust Indenture

ARTICLE EIGHT  
MISCELLANEOUS

SECTION 8.1. Method of Notice. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing and shall become effective when delivered:

(i) if to the Owner, the Trustee, the Lessee, the User, or any holder of Notes that is a party to the Participation Agreement, at its address set forth therein;

(ii) if to any other registered holder of a Note, at the address of such registered holder set forth in the register kept pursuant to section 3.1;

or to such other address as any party may from time to time designate by notice duly given in accordance with this section to each other party.

SECTION 8.2. Indenture Modification. If it shall become necessary or appropriate to amend or modify this agreement to comply with the provisions of any law in respect of trust indentures or otherwise, or to facilitate the exercise of the duties of the trustee hereunder and to effectuate the purposes hereof, then the Owner shall enter into such an amendment and shall consent thereto, if the rights and obligations of the Owner are not otherwise affected thereby.

SECTION 8.3. Currency. All amounts referred to herein shall be payable in lawful currency of the United States of America.

SECTION 8.4. Holder of Notes. All representations, warranties, covenants, and agreements contained herein shall be binding on, and shall inure to the benefit of, the holders of the Notes. Any request, notice, direction, consent, waiver, or other instrument or action by any holder of a Note shall bind the successors and assigns of such holder.

SECTION 8.5. Amendments and Waivers. The terms of this agreement shall not be waived, altered, modified, amended, supplemented, or terminated in any manner whatsoever except by written instrument signed by the Owner and the Trustee and consented to by the holders of the Notes as follows:

(a) any amendment or waiver that shall reduce the amount of principal, premium, or interest (except in accordance with section 2.3 hereof) due on, or change the amount or date of payment of, any Note shall

## Trust Indenture

require the consent of the holder thereof;

(b) any amendment or waiver of this section 8.5 and any amendment or waiver that shall reduce the amount payable by the Owner hereunder or extend the time of such payment or release any Collateral (otherwise than as specifically provided in this agreement), shall require the consent of all holders of outstanding Notes; and

(c) any other amendment or waiver shall require the consent of the holders of a majority in outstanding principal amount of the Notes.

SECTION 8.6. Entire Agreement. This agreement and the other agreements and documents referred to herein constitute the final and entire expression of the agreement of the parties with respect to the matters contemplated hereby.

SECTION 8.7. Law Governing. This agreement has been delivered in and shall be governed by, and construed in accordance with, the law of the State of New York, but the Trustee shall have the rights and benefits available to it under section 11303 of the United States Transportation Code.

SECTION 8.8. Recourse. This agreement is solely a corporate obligation and no recourse shall be had in respect of any obligation, covenant, or agreement of this agreement, or referred to herein, against any stockholder, incorporator, director, or officer, as such, past, present, and future, of the parties hereto by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of statute or otherwise.

SECTION 8.9. Invalidity of Provisions. Any provision of this agreement which may be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

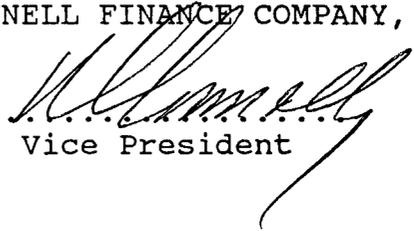
SECTION 8.10. Counterparts. This agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which together shall constitute a single agreement.

Trust Indenture

SECTION 8.11. Effectiveness. Although this agreement is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth in the notaries' acknowledgments in respect thereof, and this agreement shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the parties hereto have each caused this agreement to be duly executed by their respective officers thereunto duly authorized:

CONNELL FINANCE COMPANY, INC.

by  Vice President

THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION

by ..... Vice President

Trust Indenture

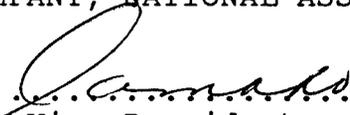
SECTION 8.11. Effectiveness. Although this agreement is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth in the notaries' acknowledgments in respect thereof, and this agreement shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the parties hereto have each caused this agreement to be duly executed by their respective officers thereunto duly authorized:

CONNELL FINANCE COMPANY, INC.

by .....  
Vice President

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION

by   
Vice President

Trust Indenture

STATE OF NEW JERSEY )  
 )  
COUNTY OF UNION ) SS.:

On this 19<sup>th</sup> day of June, 1990, before me personally appeared R.C. Connolly, to me personally known, who, by me being duly sworn, says that he is a Vice President of CONNELL FINANCE COMPANY, INC., and that foregoing instrument was signed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

*Rosalie M. Fleming*  
Notary Public  
**ROSALIE M. FLEMING**  
**NOTARY PUBLIC OF NEW JERSEY**  
My Commission Expires March 13, 1995

My commission expires

STATE OF CONNECTICUT )  
 )  
COUNTY OF HARTFORD ) SS.:

On this day of June, 1990, before me personally appeared , to me personally known, who, by me being duly sworn, says that he is a Vice President of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, and that the foregoing instrument was signed on behalf of said association by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

.....  
Notary Public

My commission expires

Trust Indenture

STATE OF NEW JERSEY )  
 )  
COUNTY OF UNION ) SS.:

On this day of June, 1990, before me personally appeared , to me personally known, who, by me being duly sworn, says that he is a Vice President of CONNELL FINANCE COMPANY, INC., and that foregoing instrument was signed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

.....  
Notary Public

My commission expires

STATE OF CONNECTICUT )  
 )  
COUNTY OF HARTFORD ) SS.:

On this <sup>18th</sup> day of June, 1990, before me personally appeared **Lese Amato** , to me personally known, who, by me being duly sworn, says that he is a Vice President of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, and that the foregoing instrument was signed on behalf of said association by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

*Nancy C. Hoskins*  
.....  
Notary Public

My commission expires

**NANCY C. HOSKINS**  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1992

**Trust Indenture**

**SCHEDULE A  
EQUIPMENT**

190 110-ton, aluminum/ steel BethGon coalporter gondola rail cars, bearing the road numbers of Coal Supply Corporation CSCX 3001 through CSCX 3190.

SCHEDULE B  
PRINCIPAL AMORTIZATION

| <u>Payment Date</u> | <u>Percent of Original Principal Amount</u> | <u>Payment Date</u> | <u>Percent of Original Principal Amount</u> |
|---------------------|---|---------------------|---|
| 6/20/1990           | 0.00000000                                  | 11/20/1993          | 0.32546567                                  |
| 7/20/1990           | 0.00000000                                  | 12/20/1993          | 0.32818874                                  |
| 8/20/1990           | 0.00000000                                  | 1/20/1994           | 0.33093458                                  |
| 9/20/1990           | 0.00000000                                  | 2/20/1994           | 0.33370340                                  |
| 10/20/1990          | 0.00000000                                  | 3/20/1994           | 0.33649539                                  |
| 11/20/1990          | 0.00000000                                  | 4/20/1994           | 0.33931073                                  |
| 12/20/1990          | 0.00000000                                  | 5/20/1994           | 0.34214963                                  |
| 1/20/1991           | 0.00000000                                  | 6/20/1994           | 0.34501228                                  |
| 2/20/1991           | 0.00000000                                  | 7/20/1994           | 0.34789889                                  |
| 3/20/1991           | 0.00000000                                  | 8/20/1994           | 0.35080964                                  |
| 4/20/1991           | 0.22716040                                  | 9/20/1994           | 0.35374475                                  |
| 5/20/1991           | 0.25348413                                  | 10/20/1994          | 0.35670441                                  |
| 6/20/1991           | 0.25560494                                  | 11/20/1994          | 0.35968884                                  |
| 7/20/1991           | 0.25774350                                  | 12/20/1994          | 0.36269824                                  |
| 8/20/1991           | 0.25989996                                  | 1/20/1995           | 0.36573281                                  |
| 9/20/1991           | 0.26207445                                  | 2/20/1995           | 0.36879278                                  |
| 10/20/1991          | 0.26426714                                  | 3/20/1995           | 0.37187834                                  |
| 11/20/1991          | 0.26647818                                  | 4/20/1995           | 0.37498972                                  |
| 12/20/1991          | 0.26870771                                  | 5/20/1995           | 0.37812714                                  |
| 1/20/1992           | 0.27095590                                  | 6/20/1995           | 0.38129080                                  |
| 2/20/1992           | 0.27322290                                  | 7/20/1995           | 0.38448094                                  |
| 3/20/1992           | 0.27550886                                  | 8/20/1995           | 0.38769776                                  |
| 4/20/1992           | 0.27781395                                  | 9/20/1995           | 0.39094150                                  |
| 5/20/1992           | 0.28013833                                  | 10/20/1995          | 0.39421237                                  |
| 6/20/1992           | 0.28248216                                  | 11/20/1995          | 0.39751062                                  |
| 7/20/1992           | 0.28484559                                  | 12/20/1995          | 0.40083646                                  |
| 8/20/1992           | 0.28722880                                  | 1/20/1996           | 0.40419012                                  |
| 9/20/1992           | 0.28963194                                  | 2/20/1996           | 0.40757185                                  |
| 10/20/1992          | 0.29205520                                  | 3/20/1996           | 0.41098186                                  |
| 11/20/1992          | 0.29449873                                  | 4/20/1996           | 0.41442041                                  |
| 12/20/1992          | 0.29696270                                  | 5/20/1996           | 0.41788773                                  |
| 1/20/1993           | 0.29944729                                  | 6/20/1996           | 0.42138406                                  |
| 2/20/1993           | 0.30195266                                  | 7/20/1996           | 0.42490964                                  |
| 3/20/1993           | 0.30447900                                  | 8/20/1996           | 0.42846471                                  |
| 4/20/1993           | 0.30702648                                  | 9/20/1996           | 0.43204954                                  |
| 5/20/1993           | 0.30959526                                  | 10/20/1996          | 0.43566435                                  |
| 6/20/1993           | 0.31218554                                  | 11/20/1996          | 0.43930941                                  |
| 7/20/1993           | 0.31479750                                  | 12/20/1996          | 0.44298496                                  |
| 8/20/1993           | 0.31743130                                  | 1/20/1997           | 0.44669127                                  |
| 9/20/1993           | 0.32008714                                  | 2/20/1997           | 0.45042859                                  |
| 10/20/1993          | 0.32276521                                  | 3/20/1997           | 0.45419717                                  |

SCHEDULE B  
PRINCIPAL AMORTIZATION

| <u>Payment Date</u> | <u>Percent of Original Principal Amount</u> | <u>Payment Date</u> | <u>Percent of Original Principal Amount</u> |
|---------------------|---|---------------------|---|
| 4/20/1997           | 0.45799729                                  | 9/20/2000           | 0.05436815                                  |
| 5/20/1997           | 0.46182920                                  | 10/20/2000          | 0.59967642                                  |
| 6/20/1997           | 0.46569317                                  | 11/20/2000          | 0.60469372                                  |
| 7/20/1997           | 0.46958947                                  | 12/20/2000          | 0.60489960                                  |
| 8/20/1997           | 0.47331837                                  | 1/20/2001           | 0.61029598                                  |
| 9/20/1997           | 0.47748014                                  | 2/20/2001           | 0.61540212                                  |
| 10/20/1997          | 0.48147506                                  | 3/20/2001           | 0.37839393                                  |
| 11/20/1997          | 0.48550340                                  | 4/20/2001           | 0.01438553                                  |
| 12/20/1997          | 0.48956544                                  | 5/20/2001           | 0.62383724                                  |
| 1/20/1998           | 0.49366147                                  | 6/20/2001           | 0.01972533                                  |
| 2/20/1998           | 0.49779178                                  | 7/20/2001           | 0.62922172                                  |
| 3/20/1998           | 0.50195663                                  | 8/20/2001           | 0.63448620                                  |
| 4/20/1998           | 0.50611037                                  | 9/20/2001           | 0.03046338                                  |
| 5/20/1998           | 0.50911037                                  | 10/20/2001          | 0.64004962                                  |
| 6/20/1998           | 0.09347728                                  | 11/20/2001          | 0.64540470                                  |
| 7/20/1998           | 0.51415202                                  | 12/20/2001          | 0.04147323                                  |
| 8/20/1998           | 0.51845376                                  | 1/20/2002           | 0.65115158                                  |
| 9/20/1998           | 0.10289884                                  | 2/20/2002           | 0.65659954                                  |
| 10/20/1998          | 0.52365241                                  | 3/20/2002           | 0.39127916                                  |
| 11/20/1998          | 0.52803363                                  | 4/20/2002           | 0.00000000                                  |
| 12/20/1998          | 0.11255867                                  | 5/20/2002           | 0.65501833                                  |
| 1/20/1999           | 0.53339326                                  | 6/20/2002           | 0.00000000                                  |
| 2/20/1999           | 0.53785598                                  | 7/20/2002           | 0.66601660                                  |
| 3/20/1999           | 0.53573709                                  | 8/20/2002           | 0.67641945                                  |
| 4/20/1999           | 0.06324077                                  | 9/20/2002           | 0.00643415                                  |
| 5/20/1999           | 0.54586149                                  | 10/20/2002          | 0.68213266                                  |
| 6/20/1999           | 0.06833692                                  | 11/20/2002          | 0.68783984                                  |
| 7/20/1999           | 0.55100028                                  | 12/20/2002          | 0.01795068                                  |
| 8/20/1999           | 0.55561032                                  | 1/20/2003           | 0.69374495                                  |
| 9/20/1999           | 0.07816732                                  | 2/20/2003           | 0.69954928                                  |
| 10/20/1999          | 0.56091293                                  | 3/20/2003           | 0.70120690                                  |
| 11/20/1999          | 0.56560590                                  | 4/20/2003           | 0.71126894                                  |
| 12/20/1999          | 0.08824452                                  | 5/20/2003           | 0.71721989                                  |
| 1/20/2000           | 0.57107646                                  | 6/20/2003           | 0.72322063                                  |
| 2/20/2000           | 0.57585447                                  | 7/20/2003           | 0.72927158                                  |
| 3/20/2000           | 0.36640951                                  | 8/20/2003           | 0.73537315                                  |
| 4/20/2000           | 0.03888469                                  | 9/20/2003           | 0.74152577                                  |
| 5/20/2000           | 0.58406341                                  | 10/20/2003          | 0.74772987                                  |
| 6/20/2000           | 0.04409669                                  | 11/20/2003          | 0.75398588                                  |
| 7/20/2000           | 0.58931902                                  | 12/20/2003          | 0.76029423                                  |
| 8/20/2000           | 0.59424963                                  | 1/20/2004           | 0.76665535                                  |

SCHEDULE B  
PRINCIPAL AMORTIZATION

| <u>Payment Date</u> | <u>Percent of Original Principal Amount</u> |
|---------------------|---|
| 2/20/2004           | 0.77306970                                  |
| 3/20/2004           | 0.77953772                                  |
| 4/20/2004           | 0.78605985                                  |
| 5/20/2004           | 0.79263655                                  |
| 6/20/2004           | 0.79926828                                  |
| 7/20/2004           | 0.80595549                                  |
| 8/20/2004           | 0.81269865                                  |
| 9/20/2004           | 0.81949823                                  |
| 10/20/2004          | 0.82635470                                  |
| 11/20/2004          | 0.83326853                                  |
| 12/20/2004          | 0.84024021                                  |
| 1/20/2005           | 0.84727022                                  |
| 2/20/2005           | 0.85435905                                  |
| 3/20/2005           | 0.86150719                                  |
| 4/20/2005           | 0.86871513                                  |
| 5/20/2005           | 0.87598338                                  |
| 6/20/2005           | 0.88331244                                  |
| 7/20/2005           | 0.89070282                                  |
| 8/20/2005           | 0.89815504                                  |
| 9/20/2005           | 0.90566960                                  |
| 10/20/2005          | 0.91324704                                  |
| 11/20/2005          | 0.92088787                                  |
| 12/20/2005          | 0.92859263                                  |
| 1/20/2006           | 0.93636186                                  |
| 2/20/2006           | 0.94419608                                  |
| 3/20/2006           | 0.95209586                                  |
| 4/20/2006           | 0.96006173                                  |
| 5/20/2006           | 0.96809424                                  |
| 6/20/2006           | 0.97619397                                  |
| 7/20/2006           | 0.98436145                                  |
| 8/20/2006           | 0.99259728                                  |
| 9/20/2006           | 1.00090201                                  |
| 10/20/2006          | 1.00927622                                  |
| 11/20/2006          | 1.01772050                                  |
| 12/20/2006          | 1.02623543                                  |
| 1/20/2007           | 1.03482160                                  |
| 2/20/2007           | 1.04347961                                  |
| 3/20/2007           | 1.05221005                                  |
| 4/20/2007           | 1.06101354                                  |
| 5/20/2007           | 1.06989069                                  |
| 6/20/2007           | 1.07884211                                  |
| 7/20/2007           | 0.04563308                                  |

ANNEX A  
FORM OF PROMISSORY NOTE

THIS NOTE HAS NOT BEEN REGISTERED  
UNDER THE SECURITIES ACT OF 1933

No.

\$

CONNELL FINANCE COMPANY, INC.  
NON-RECOURSE PROMISSORY NOTE DUE 2007  
SECURED BY AN ASSIGNMENT OF LEASE OBLIGATIONS  
OF CONSUMERS POWER COMPANY

Maximum Authorized Issue \$7,534,673.50

CONNELL FINANCE COMPANY, INC., a New Jersey corporation  
(hereinafter called the Owner) hereby promises to pay to  
or its registered assigns the  
principal amount of

in instalments as hereinafter provided, and interest on the  
unpaid principal balance thereof at a rate per annum equal to  
% from the date of this note to the date payment in full of  
the principal amount of this note is made. Instalments of  
principal and payments of interest shall be made on the twentieth  
day of each month, commencing July 20, 1990, and ending July 20,  
2007. The amount of each such instalment of principal and payment  
of interest shall be as set forth in the schedule attached  
hereto. The total of all such instalments of principal shall  
completely amortize the indebtedness hereunder.

Interest payable on this note shall be calculated on the  
basis of a 360-day year of twelve 30-day months. This note shall  
bear interest, payable only from the funds designated below, on  
any amount not paid when due for any period during which the same  
shall be overdue, at the rate of 12.04% per annum.

The rate of interest on this promissory note is subject to  
adjustment pursuant to section 2.3 of the Trust Indenture,  
Mortgage, and Security Agreement dated as of May 1, 1990  
(hereinafter called the Indenture), between the Owner and The  
Connecticut Bank and Trust Company, National Association, as  
trustee thereunder (hereinafter called the Trustee).

Principal, premium, if any, and interest shall be payable in  
immediately available funds at the office of the Trustee in  
Hartford, Connecticut.

This note has been issued under and pursuant to the  
Indenture. Reference is hereby made to the Indenture for a  
statement of the rights of the holders of, and the nature and  
extent of the security for, this note.

This note is a non-recourse obligation of the Owner, and all

payments of principal, premium, if any, and interest to be made by the Owner on this note shall be made only from the "income and proceeds from the Collateral" (as defined in section 5.2 of the Indenture). The registered holder hereof, by its acceptance of this note, agrees that it will look solely to the income and proceeds from the Collateral to the extent available for distribution to the registered holder hereof and that the Owner shall not be personally liable to the holder hereof for any amounts payable under this note or, except as provided in section 5.2 of the Indenture, for any liability under the Indenture.

This note is not subject to prepayment except upon the occurrence of certain events as provided in Article Four of the Indenture.

In case an Event of Default under the Indenture (as defined in the Indenture) shall occur and be continuing, the unpaid principal of this note together with accrued interest hereon and the costs of collection, including reasonable attorney's fees, may become or be declared due and payable in the manner, with the effect and subject to the conditions, provided in the Indenture.

This note is transferable by the registered holder thereof, or by its attorney duly authorized in writing, only on the register maintained at the office of the Trustee and only upon surrender and cancellation of this certificate and compliance with the conditions of the Indenture.

This note shall not be valid for any purpose until the certificate of authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, the Owner has caused this note to be duly executed by one of its officers thereunto duly authorized, as of the date hereof.

Dated:

CONNELL FINANCE COMPANY, INC.

by \_\_\_\_\_  
Vice President

This is one of the promissory notes of the series created by the within mentioned Indenture.

The Connecticut Bank and Trust Company, National Association

by .....  
Vice President