

**UNOFFICIAL COPY**

8 7 6 7 3 3 0 0

87673300

---

**TRUST INDENTURE, MORTGAGE AND SECURITY AGREEMENT**

Dated as of September 15, 1987

between

WILMINGTON TRUST COMPANY

and

WILLIAM J. WADE,

not in their respective individual capacities  
except as expressly provided herein, but solely

as owner/trustees under a Trust  
Agreement dated as of September 15, 1987,  
Owner/Trustee

and

THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION,  
Indenture Trustee

---

Emro Marketing Company  
Leveraged Lease of Service/Truck Stations

---

87673300

Caren W. Mack  
180 Madison Lane  
N.Y. N.Y. 10038

# UNOFFICIAL COPY

3 / 3 / 3 3 0

## TABLE OF CONTENTS

	<u>Page</u>
Granting Clause . . . . .	2

### ARTICLE I

#### Definitions

Section 1.1 Definitions. . . . .	4
----------------------------------	---

### ARTICLE II

#### Payments; Substitute Leased Stations; Certain Rights of Owner Trustee

Section 2.1 Payments. . . . .	13
Section 2.2 Filings and Recordings. . . . .	13
Section 2.3 Power of Attorney. . . . .	13
Section 2.4 Substitute Leased Stations. . . . .	14
Section 2.5 Release of Security Interest in Indenture Estate. . . . .	15
Section 2.6 Certain Rights of Owner Trustee and Owner Participant. . . . .	15

### ARTICLE III

#### Issue, Execution and Authentication of Loan Certificates

Section 3.1 Maximum Authorized Issue. . . . .	17
Section 3.2 Parity of Loan Certificates. . . . .	17

# UNOFFICIAL COPY

3 7 3 7 3 3 0 0

## TABLE OF CONTENTS (Continued)

	Page
Section 3.3 Issuance of Loan Certificates. . . . .	17
Section 3.4 Characteristics of Loan Certificates. . . . .	17
Section 3.5 Execution of Loan Certificates. . . . .	18
Section 3.6 Effect of Certificate of Authentication. . . . .	18
Section 3.7 Limitation on Source of Payments. . . . .	18
Section 3.8 Home Office Payment. . . . .	19
Section 3.9 Additional Loan Certificates. . . . .	19

### ARTICLE IV

#### Registration, Transfer, Exchange, Cancellation and Ownership of Loan Certificates

Section 4.1 Register of Loan Certificates. . . . .	20
Section 4.2 Inspection of Register of Loan Certificates. . . . .	20
Section 4.3 Cancellation of Loan Certificates. . . . .	21
Section 4.4 Registration of Transfer or Exchange of Loan Certificates. . . . .	21
Section 4.5 Limitation on Timing of Registration of Transfers of Loan Certificates. . . . .	21
Section 4.6 Securities Act. . . . .	22
Section 4.7 Charges upon Transfer or Exchange of Loan Certificates. . . . .	22
Section 4.8 Mutilated, Destroyed, Lost or Stolen Loan Certificates. . . . .	22

# UNOFFICIAL COPY

3 7 3 7 3 0 0 0

## TABLE OF CONTENTS (Continued)

	<u>Page</u>
Section 4.9 Ownership of Loan Certificates. . . . .	23

### ARTICLE V

#### Prepayment of Loan Certificates

Section 5.2 Limitation on Prepayment. . . . .	24
Section 5.2 Optional Prepayment. . . . .	24
Section 5.3 Mandatory Prepayment. . . . .	24
Section 5.4 Manner of Payment. . . . .	25

### ARTICLE VI

#### Receipt, Distribution and Application of Income and Proceeds From the Indenture Estate

Section 6.1 Basic Rent and Rent on late Installments of Basic Rent. . . . .	25
Section 6.2 Payments Received as Result of Event of Loss, Termination or Adjustment. . . . .	26
Section 6.3 Payments Received After, or Held at Time of, Event of Default under Section 8.1(a) Hereof. . . . .	27
Section 6.4 Payments Received for Which Provision Is Made in Lease. . . . .	28
Section 6.5 Application of Payments to Principal, Interest and Premium. . . . .	28
Section 6.6 Payments Received for Which No Provision is Made. . . . .	29

# UNOFFICIAL COPY

37573300

## TABLE OF CONTENTS (Continued)

	<u>Page</u>
Section 6.7 Certain Payments to be Held in Case of Event of Default or Default. . . . .	29
Section 6.8 Payments Payable to Owner Trustee to be Paid to Owner Participant on Certain Conditions. . . . .	30
Section 6.9 Excepted Payments. . . . .	30

### ARTICLE VII

#### Covenants of Owner Trustee

Section 7.1 Covenants of Owner Trustee. . . . .	30
---	----

### ARTICLE VIII

#### Events of Default, Remedies of Indenture Trustee

Section 8.1 Event of Default. . . . .	33
Section 8.2 Enforcement of Remedies. . . . .	36
Section 8.3 Acceleration of Loan Certificates. . . . .	37
Section 8.4 Specific Remedies; Enforcement of Claims without Possession of Loan Certificates. . . . .	37
Section 8.5 Rights and Remedies Cumulative. . . . .	40
Section 8.6 Restoration of Rights and Remedies. . . . .	41
Section 8.7 Waiver of Past Defaults. . . . .	41
Section 8.8 Rescission and Annulment. . . . .	41

# UNOFFICIAL COPY

3 / 0 7 3 3 0 0

## TABLE OF CONTENTS (Continued)

	<u>Page</u>
<b>ARTICLE IX</b>	
<b>Concerning the Indenture Trustee and the Owner Trustee</b>	
Section 9.1	Acceptance of Trusts; Standard of Care. . . . . 42
Section 9.2	Indenture Trustee to Act Solely as Trustee. . . . . 42
Section 9.3	Duties in Respect of Event of Default. . . . . 42
Section 9.4	Duties in Respect of Matters Specified in Directive. . . . . 43
Section 9.5	Indemnification. . . . . 43
Section 9.6	Limitations on Duties; Discharge of Certain Liens Resulting from Claims Against Indenture Trustee. . 44
Section 9.7	Representations and Warranties of Indenture Trustee. . . . . 44
Section 9.8	Non-Segregation of Monies. . . . . 44
Section 9.9	Restrictions on Dealing with Indenture Estate. . . . . 44
Section 9.10	No Duties of Maintenance, Etc. . . . . 45
Section 9.11	Reliance on Writings, Use of Agents, Etc. . . . . 45
Section 9.12	Limitation on Rights Against Noteholders or Indenture Estate. . 46
Section 9.13	Compensation, Costs and Expenses of Indenture Trustee. . . . . 46

~

87673300

# UNOFFICIAL COPY

37673300

## TABLE OF CONTENTS (Continued)

	Page
Section 9.14 No Assumption of Obligations. . . . .	46

### ARTICLE X

#### Co-Trustees; Separate Trustees; and Successor Trustees

Section 10.1 Appointment of Co-Trustees or Separate Trustees. . . . .	47
Section 10.2 Resignation and Removal of Indenture Trustee; Appointment of Successor. . . . .	48

### ARTICLE XI

#### Amendments to this Indenture and to Other Documents

Section 11.1 Amendments to this Indenture and Other Documents. . . . .	49
Section 11.2 Certain Limitations of Supplements and Amendments. . . . .	50
Section 11.3 Directive Need Not Specify Particular Form of Amendment. . . . .	50
Section 11.4 Indenture Trustee to Furnish Noteholder Copy of Amendment. . . . .	50

### ARTICLE XII

#### Miscellaneous

Section 12.1 Governing Law. . . . .	51
-------------------------------------	----

# UNOFFICIAL COPY

3 7 6 7 3 3 0 0

## TABLE OF CONTENTS (Continued)

	Page
Section 12.2 Notices. . . . .	.51
Section 12.3 Monies for Loan Certificate Payments to be Held in Trust. . . . .	.51
Section 12.4 Transfers Not to Affect Indenture or Trusts. . . . .	.52
Section 12.5 Binding Effect of Sale of Indenture Estate. . . . .	.52
Section 12.6 Limitation as to Enforcement of Rights, Remedies and Claims. . . . .	.52
Section 12.7 Severability of Invalid Provisions. . . . .	.52
Section 12.8 Benefit of Parties, Successors and Assigns; Entire Agreement. . . . .	.52
Section 12.9 Survival of Representations and Warranties. . . . .	.53
Section 12.10 Counterpart Execution. . . . .	.53
Section 12.11 Dating of Indenture. . . . .	.53
Section 12.12 Owner Participant May Own Loan Certificates. . . . .	.53
Section 12.13 Owner Trustee's Liability. . . . .	.53
Section 12.14 Single Trustee. . . . .	.54
Exhibit A - Description of Leased Stations	
Exhibit B - Form of Loan Certificate	

67673300



# UNOFFICIAL COPY

3 7 6 7 3 3 0 0

## TRUST INDENTURE, MORTGAGE AND SECURITY AGREEMENT

TRUST INDENTURE, MORTGAGE AND SECURITY AGREEMENT dated as of September 15, 1987 between WILMINGTON TRUST COMPANY, a Delaware banking corporation, and WILLIAM J. WADE, not in their respective individual capacities except as expressly provided herein, but solely as owner trustees under a Trust Agreement dated as of September 15, 1987, and THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as indenture trustee.

### WITNESSETH:

WHEREAS, the Owner Participant (such term and all other capitalized terms used herein and not otherwise defined herein having the meanings specified in Section 1.1 hereof) and the Owner Trustee have entered into the Trust Agreement, whereby, among other things, (a) the Owner Trustee declares a certain trust for the use and benefit of the Owner Participant, subject, however, to the security interest granted to the Indenture Trustee pursuant to this Indenture, (b) provision is made for the payment by or on behalf of the Owner Trustee to the Owner Participant of amounts distributable thereunder to the Owner Participant and (c) the Owner Trustee is authorized and directed to execute and deliver this Indenture;

WHEREAS, the Owner Trustee intends to purchase the Leased Stations from the Lessee and to lease such Leased Stations back to the Lessee pursuant to the Lease;

WHEREAS, pursuant to the Participation Agreement, the Loan Participants are making Loans to the Owner Trustee in order to finance a portion of the purchase price of the Leased Stations, which Loans will be represented by loan certificates issued, authenticated and delivered pursuant to this Indenture, each substantially in the form of Exhibit A hereto;

WHEREAS, the Owner Trustee desires by this Indenture, among other things, (a) to provide for the issuance by the Owner Trustee of Loan Certificates evidencing the making of the Loans to the Owner Trustee as provided in the Participation Agreement and (b) to provide for the deposit, mortgage and pledge by the Owner Trustee with the Indenture Trustee, of the Indenture Estate, in trust, as security for, among other things, the obligations of the Owner Trustee under the Loan Certificates and this Indenture.

8:073300

# UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the premises, the Owner Trustee agrees with the Indenture Trustee, for the benefit of the holders from time to time of the Loan Certificates, as follows:

TO SECURE the payment when and as due and payable of the principal of and premium, if any, and interest on the Loan Certificates and the payment of all other indebtedness which this Indenture by its terms secures and compliance with all of the terms hereof and of the Loan Certificates, the performance and observance by the Owner Trustee of its agreements and the conditions applicable to it contained herein or in any of the other Operative Documents, the performance and observance by the Lessee and by each Guarantor of its agreements and the conditions applicable to it contained in any of the Operative Documents, and the performance and observance by the Owner Participant of its agreements and the conditions applicable to it contained in any of the other Operative Documents:

## GRANTING CLAUSE

The Owner Trustee does hereby now grant, bargain, sell, mortgage, warrant, pledge, assign, transfer and convey, and grant a security interest in, with power of sale, to the Indenture Trustee and to its successors and assigns, the following properties described in this Granting Clause (the Indenture Estate):

(a) all estate, right, title and interest now held or hereafter acquired by the Owner Trustee in and to the Leased Stations and all replacements thereof and substitutions therefor to which the Owner Trustee shall from time to time acquire title as provided in the Lease;

(b) all estate, right, title and interest now held or hereafter acquired by the Owner Trustee in, to and under the Lease, the Guaranties, the Ground Lease, the Contracts, the Contracts Assignment and the Purchase Documents (collectively, the Indenture Estate Documents), including without limitation (i) all amounts of Rent, insurance proceeds and condemnation, requisition and other awards and payments of any kind for or with respect to the Leased Stations (including, without limitation, proceeds and payments received pursuant to exercise of any of the remedies provided in Section 18 of the Lease) and all payments due or to become due under the Guaranties and (ii) all rights of the Owner Trustee to exercise any election or option or to give or receive any notice, consent, waiver or approval or to take any other action under any

# UNOFFICIAL COPY

37673000

Indenture Estate Document or to accept any surrender or redelivery of any of the Leased Stations or any part thereof, as well as all rights, powers and remedies of the Owner Trustee, whether acting under any Indenture Estate Document or by statute or at law or in equity, or otherwise, arising out of any Event of Default under the Lease;

(c) all moneys and securities now or hereafter required to be paid to, or deposited with, the Indenture Trustee by or for the account of the Owner Trustee pursuant to the terms of any Operative Document and required to be held by the Indenture Trustee hereunder;

(d) all tangible and intangible personal property and fixtures, and all proceeds thereof, owned at the time of the execution and delivery of the Trust Agreement, or at any time thereafter acquired, and constituting a part of the Trust Estate; and

(e) all other property of every kind and description, real, personal and mixed, and interests therein now held or hereafter acquired by the Owner Trustee pursuant to any term of any Indenture Estate Document, wherever located and subjected to the Lien of this Indenture by indenture supplemental hereto, and the Indenture Trustee is hereby authorized to receive any such property subject to and in accordance with the terms of this Indenture as then supplemented;

BUT EXCLUDING, HOWEVER, from the property, rights and privileges subject to the foregoing Granting Clause (a) all Excepted Payments, (b) the rights of the Owner Trustee and the Owner Participant set forth in Section 2.6 hereof and (c) any payments or amounts which have been distributed to the Owner Trustee or the Owner Participant in accordance with the provisions of this Indenture;

TO HAVE AND TO HOLD the same unto the Indenture Trustee, its successors and assigns, forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit and security of the holders from time to time of the Loan Certificates, without preference of any of such Loan Certificates over any others for any reason.

IT IS HEREBY COVENANTED by the parties hereto that the Indenture Estate is to be held and applied subject to the further

# UNOFFICIAL COPY

terms herein set forth; and the Indenture Trustee hereby agrees to accept the trusts and duties herein set forth, and the Owner Trustee, for itself and its successors and assigns, hereby covenants and agrees with the Indenture Trustee for the equal and proportionate benefit and security of the holders from time to time of the Loan Certificates, as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.1. Definitions. In this Indenture, unless the context otherwise requires:

(a) The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance therewith and with the other Operative Documents.

(b) As used herein, the terms Affiliate, Business Day, Basic Rent, Basic Rent Dates, Casualty Value, Closing Date, Event of Loss, Indemnified Person, Late Payment Rate, Lessor's Cost, Lessor's Liens, Liens, Rent, Substitute Leased Stations, Supplemental Rent, Termination Date and Termination Value shall have the respective meanings given or referred to in the Lease.

(c) The following terms shall have the respective meanings set forth below:

Authorized Officer shall mean with respect to Wilmington Trust Company any officer of the Corporate Trust Administration of Wilmington Trust Company authorized by the Board of Trustees and/or Executive Order of Wilmington Trust Company to perform the specific act or duty or to sign the specific document in question.

Co-Owner Trustee shall mean William J. Wade, not in his individual capacity, but solely as co-owner trustee under a Trust Agreement dated as of September 15, 1987, and his permitted successors and assigns as Co-Owner Trustee thereunder.

# UNOFFICIAL COPY

375 / 3000

Contracts shall mean the construction contracts or purchase orders relating to the Leased Stations listed on Schedule 1 to the Contracts Assignment.

Contracts Assignment shall mean the General Assignment of Contracts dated as of September 15, 1987 between the Lessee, as assignor, and the Owner Trustee, as assignee, relating to the Contracts.

Default shall mean an event which, after the giving of notice or lapse of time, or both, would become an Event of Default.

Directive shall mean an instrument in writing executed in one or more counterparts by the holders of no less than 66 2/3% of the aggregate unpaid principal balance of the Loan Certificates at the time Outstanding directing the Indenture Trustee to take or refrain from taking the action specified therein or otherwise advising the Indenture Trustee or others.

Event of Default shall have the meaning set forth in Section 8.1 hereof.

Excepted Payments shall mean and include (i) any indemnity or other payment which shall be payable to Wilmington Trust Company or William J. Wade, for their respective individual accounts, or the Owner Participant pursuant to the terms of Section 11 of the Participation Agreement or pursuant to the terms of the Tax Indemnity Agreement (including in each case any corresponding payment which shall be payable pursuant to the terms of the Guaranties), (ii) any payment in respect of Transaction Costs which shall be payable to Wilmington Trust Company or William J. Wade, for their respective individual accounts, or the Owner Participant pursuant to the terms of Section 16 of the Participation Agreement (including any corresponding payment which shall be payable pursuant to the terms of the Guaranties) and (iii) any insurance proceeds payable to Wilmington Trust Company or William J. Wade, for their respective individual accounts, or the Owner Participant under liability policies.

First Interest Payment Date shall mean with respect to the Loan Certificates January 2, 1988.

First Principal Payment Date shall mean with respect to the Loan Certificates July 2, 1988.

# UNOFFICIAL COPY

3 / 6 / 7 3 3 0 0

**Ground Lease** shall mean the Ground Lease dated as of September 15, 1987 between the Lessee, as ground lessor, and the Owner Trustee, as ground lessee, conveying to the Owner Trustee a leasehold interest in the Land underlying the Leased Stations; the term **Ground Lease** shall include each Ground Lease Supplement entered into pursuant to the terms thereof.

**Ground Lease Supplement** shall mean a supplement to the Ground Lease, including, without limitation, the Ground Lease Supplements to be delivered on each Closing Date relating to the Land underlying the Leased Stations to be leased commencing on such Closing Date.

**Guarantors**, and individually each a **Guarantor**, shall mean Marathon Oil Company, an Ohio corporation, and USX Corporation, a Delaware corporation.

**Guaranties**, and individually each a **Guaranty**, shall mean the Guaranties dated as of September 15, 1987 of each of the Guarantors.

**Indenture** shall mean this Trust Indenture, Mortgage and Security Agreement dated as of September 15, 1987 between the Owner Trustee and the Indenture Trustee; the term **Indenture** shall include each Trust Agreement and Trust Indenture Supplement entered into pursuant to the terms hereof.

**Indenture Estate** shall have the meaning set forth in the Granting Clause hereof.

**Indenture Estate Documents** shall have the meaning set forth in the Granting Clause hereof.

**Indenture Trustee** shall mean The Connecticut Bank and Trust Company, National Association, a national banking association, in its capacity as indenture trustee under this Indenture, and its permitted successors and assigns as Indenture Trustee hereunder.

**Indenture Trustee's Expenses** shall mean any and all liabilities, damages, penalties, taxes (other than any income taxes on fees or other compensation received by the Indenture Trustee for serving as trustee), claims (including, without limitation, claims involving strict liability in tort), actions, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any nature whatsoever which may

# UNOFFICIAL COPY

3 7 5 7 3 5 0 0

be imposed on, incurred by or asserted against the Indenture Trustee, whether or not also indemnified against by the Lessee, the Guarantors or any other Person, or any of its successors, assigns, agents, servants or personal representatives, in any way relating to this Indenture or any other Operative Document, the Indenture Estate, the Leased Stations or any part thereof, any of the transactions contemplated herein or in any other Operative Document or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or other disposition of the Indenture Estate or any part thereof or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Indenture Estate or the action or inaction of the Indenture Trustee under this Indenture, except (i) in the case of willful misconduct or gross negligence on the part of the Indenture Trustee in the performance of its duties under this Indenture or (ii) for the inaccuracy of any representation or warranty of the Indenture Trustee in Section 8 of the Participation Agreement or Section 9.7 hereof that shall have been untrue or inaccurate.

**Interest Payment Dates** shall mean with respect to the Loan Certificates January 2 and July 2 of each year.

**Land** shall have the meaning set forth in the Ground Lease.

**Last Principal Payment Date** shall mean with respect to the Loan Certificates January 2, 2005.

**Lease** shall mean the Lease Agreement dated as of September 15, 1987 between the Owner Trustee, as lessor, and the Lessee, as lessee; the term **Lease** shall include each Lease Supplement entered into pursuant to the terms of the Lease.

**Lease Supplement** shall mean a supplement or amendment to the Lease, including, without limitation, the Lease Supplements to be delivered on each Closing

# UNOFFICIAL COPY

87073360

Date relating to the Leased Stations to be leased commencing on such Closing Date.

Leased Station, and collectively the Leased Stations, shall have the meaning set forth in the Lease; which Leased Stations initially shall consist of the property described in the Trust Agreement and Trust Supplement relating thereto.

Lessee shall mean Emro Marketing Company, a Delaware corporation, and its permitted successors and assigns.

Loan shall have the meaning set forth in the Participation Agreement.

Loan Certificates shall mean the 10.70% Secured Installment Loan Certificates, substantially in the form of Exhibit A hereto, including those initially issued and those delivered in substitution or exchange therefor as provided herein; the term Loan Certificates shall include each Additional Loan Certificate issued and delivered pursuant to the terms of Section 3.9 hereof.

Loan Participants, and individually each a Loan Participant, shall mean John Hancock Mutual Life Insurance Company - General Account, John Hancock Mutual Life Insurance Company - Guaranteed Benefit Sub-Account, Mellon Bank N.A. as Trustee for AT&T Master Pension Trust, Mellon Bank N.A. as Trustee for NYNEX Master Pension Trust and Massachusetts Mutual Life Insurance Company, and their respective successors and assigns, including subsequent Noteholders.

Loan Participants' Counsel shall mean Mudge Rose Guthrie Alexander & Ferdon, as special counsel.

Make-Whole Premium shall mean an amount equal to the sum of

(i) the excess, if any, of

(A) the present value, computed in accordance with generally accepted accounting practices on a semiannual basis at an interest rate equal to the sum of the average yield to maturity for the week preceding the week in which such amount is payable of marketable United States Treasury securities having a constant maturity

87073360



# UNOFFICIAL COPY

07073330

closest to the then remaining Weighted Average Life to Maturity of the Loan Certificates (as published in The Wall Street Journal or, if that is not then available, any publicly available source of similar market data) of the installments of principal and interest payable on the Loan Certificates (including the final payment at maturity assuming the Loan Certificates were paid in accordance with the terms thereof) over

(B) the outstanding principal amount of the Loan Certificates, plus

(ii) the amount, as reasonably estimated by the holder of any Loan Certificate, of such holders' reasonable out-of-pocket costs and expenses in reinvesting the outstanding principal amount of such Loan Certificates including, without limitation, transaction and processing fees and costs, legal fees and brokerage expenses.

Maximum Aggregate Principal Amount shall mean with respect to the Loan Certificates \$30,008,000.

Mortgage Documents shall mean each and every mortgage, chattel mortgage, deed of trust, collateral security agreement or other document or recording evidencing the Lien of this Indenture in the Leased Stations and/or any other portion of the Indenture Estate and recorded in the states in which the Leased Stations are located.

Noteholder or holder of a Loan Certificate shall mean the registered owner of such Loan Certificate as shown on the register kept pursuant to Section 4.1 hereof.

Operative Documents shall mean and include this Indenture, the Participation Agreement, the Tax Indemnity Agreement, the Guaranties, the Lease, the Trust Agreement, the Security Documents, the Loan Certificates, the Contracts, the Contracts Assignment, the Ground Lease and the Purchase Documents.

Outstanding when used with respect to the Loan Certificates shall mean, as of the date of determination, all Loan Certificates theretofore issued, authenticated and delivered pursuant to this Indenture, except (i) Loan Certificates theretofore cancelled by the Indenture Trustee or delivered to the Indenture

# UNOFFICIAL COPY

37073300

Trustee for cancellation, (ii) Loan Certificates or portions thereof for the payment of which the Indenture Trustee holds (and has notified the holders thereof that it holds) in trust for that purpose pursuant to Section 2.4 or 12.3 hereof an amount sufficient to make full payment thereof when due and (iii) Loan Certificates in lieu of which other Loan Certificates have been issued, authenticated and delivered pursuant to Section 4.4 or 4.8 hereof; provided, however, that in determining whether the holders of the requisite principal amount of Loan Certificates Outstanding have given any Directive under this Indenture, Loan Certificates owned by the Owner Participant, the Owner Trustee, the Indenture Trustee, the Lessee, the Guarantors or any Affiliate of any thereof shall be disregarded and deemed not to be Outstanding unless all of the Loan Certificates are as of the date of determination owned by any one or more of such Persons, except that, in determining whether the Indenture Trustee shall be protected in relying upon any such Directive, only Loan Certificates which the Indenture Trustee knows to be so owned shall be disregarded.

Overdue Rate shall mean with respect to the Loan Certificates a rate per annum (determined as provided in Section 3.4 hereof) equal to the higher of 2% above the Rate of Interest or 2% above the Prime Rate, but in no event at a rate per annum greater than that permitted by applicable law. As used herein, the term Prime Rate shall mean the per annum rate of interest publicly announced as such (or, if no longer announced, the Indenture Trustee shall have the right, in its reasonable judgment, to substitute a new method for determining such rate) at the applicable time by The Connecticut Bank and Trust Company, National Association or its successor or the survivor in the event of a bank merger, it being understood that such rate shall not necessarily be the best or lowest rate of interest available to such banking institution's best or most preferred large commercial customers.

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

Owner Participant's Investment shall have the meaning set forth in the Participation Agreement.

# UNOFFICIAL COPY

37573500

**Owner Trustee** shall, except as provided below, mean Wilmington Trust Company, not in its individual capacity, but solely as owner trustee under the Trust Agreement, and its permitted successors and assigns as Owner Trustee thereunder; provided, however, that the term Owner Trustee shall mean the Co-Owner Trustee (acting at the direction of the Owner Trustee), to the extent expressly so provided in the Trust Agreement.

**Participation Agreement** shall mean the Participation Agreement dated as of September 15, 1987 among the Owner Participant, the Loan Participants, the Owner Trustee, the Indenture Trustee and the Lessee.

**Principal Office of the Indenture Trustee** shall mean the Corporate Trust Department of the Indenture Trustee at One Constitution Plaza, Hartford, Connecticut 06115, or such other office or agency of the Indenture Trustee as the Indenture Trustee shall have designated by notice to the Owner Trustee, the Owner Participant, the Lessee and the Noteholders pursuant to the provisions of Section 12.2 hereof.

**Principal Payment Dates** shall mean with respect to the Loan Certificates January 2 and July 2 of each year.

**Purchase Documents** shall have the meaning set forth in the Participation Agreement.

**Rate of Interest** shall mean with respect to the Loan Certificates, from and including the date of issuance thereof to but excluding the date payment in full of the respective principal amounts thereof is made, a rate of interest equal to 10.70% per annum (determined as provided in the last sentence of Section 3.4 hereof).

**Securities Act** shall mean the Securities Act of 1933, as amended.

**Security Documents** shall mean this Indenture and the Mortgage Documents, if any.

**Tax Indemnity Agreement** shall mean the Tax Indemnity Agreement dated as of September 15, 1987 between the Owner Participant and the Lessee.

# UNOFFICIAL COPY

37373300

Transaction Costs shall have the meaning set forth in the Participation Agreement.

Trust Agreement shall mean the Trust Agreement dated as of September 15, 1987 between Wilmington Trust Company and William J. Wade, as owner trustees, and the Owner Participant; the term Trust Agreement shall include each Trust Agreement and Trust Indenture Supplement entered into pursuant to the terms of the Trust Agreement.

Trust Agreement and Trust Indenture Supplement shall mean a supplement to the Trust Agreement and this Indenture, including, without limitation, the Trust Agreement and Trust Indenture Supplement, substantially in the form of Exhibit B hereto, supplementing this Indenture and the Trust Agreement for the purpose of subjecting the Leased Stations to the Lien of this Indenture and to the Trust Agreement and which shall particularly describe such Leased Stations (including the major component parts thereof).

Trust Estate shall mean the Trust Estate as such term is defined in the Trust Agreement.

Trust Indenture Act shall mean the Trust Indenture Act of 1939, as amended.

Weighted Average Life to Maturity shall mean, with respect to each Loan Certificate as of any date of determination, the number of years obtained by dividing the then Remaining Dollar-Years of such Loan Certificate by the then outstanding principal amount of such Loan Certificate. As used herein, the term Remaining Dollar-Years shall mean, with respect to any Loan Certificate as of any date of determination, the amount obtained by (i) multiplying the amount of each then remaining required principal repayment of such Loan Certificate, by the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination and the date of that payment and (ii) totalling all of the products obtained in (i).

William J. Wade shall mean William J. Wade in his individual capacity and not in his capacity as Co-Owner Trustee.

Wilmington Trust Company shall mean Wilmington Trust Company, a Delaware banking corporation, in its

# UNOFFICIAL COPY

3 7 3 7 3 3 0 0

individual capacity and not in its capacity as Owner Trustee.

## ARTICLE II

### PAYMENTS; SUBSTITUTE LEASED STATIONS; CERTAIN RIGHTS OF OWNER TRUSTEE

SECTION 2.1. **Payments.** The Owner Trustee agrees to direct the Lessee and the Guarantors to make all payments to be made by any of them under the Lease or the Guaranties or any other Indenture Estate Document (other than Excepted Payments) directly to the Indenture Trustee or in accordance with the Indenture Trustee's instructions until such time as the lien of this Indenture shall have been fully discharged; the Owner Trustee agrees that should it receive any such payments or amounts directed to be made to the Indenture Trustee or any proceeds for or with respect to the Indenture Estate or as the result of the sale or other disposition thereof, it will promptly forward such payments or amounts to the Indenture Trustee or in accordance with the Indenture Trustee's instructions. The Indenture Trustee agrees to apply all payments or amounts from time to time received by it (from the Lessee, the Owner Trustee or otherwise) with respect to the Lease, the Guaranties or any other Indenture Estate Document or with respect to the Leased Stations in the manner provided in Article VI hereof.

SECTION 2.2. **Filings and Recordings.** The Owner Trustee will execute, file and/or record, if not already filed or recorded, such financing statements (and such continuation statements with respect to financing statements previously filed), mortgages, chattel mortgages, deeds of trust, collateral security agreements or other documents relating to the security interests created by this Indenture in the Indenture Estate as may be specified from time to time by the Indenture Trustee (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the form of such financing statement (or such continuation statement), mortgage, chattel mortgage, deed of trust, collateral security agreement or other document so to be filed or recorded).

SECTION 2.3. **Power of Attorney.** The Owner Trustee hereby appoints the Indenture Trustee the Owner Trustee's attorney, irrevocably, with full power of substitution, to collect all payments and amounts (other than Excepted Payments) due and to become due under or arising out of the Lease, the Guaranties or any other Indenture Estate Document, to enforce compliance by the Lessee with all the terms and provisions of the Lease and of any other Indenture Estate

# UNOFFICIAL COPY

37673300

Document to which the Lessee is a party and by the Guarantors with all the terms and provisions of the Guaranties (except any terms and provisions of the Lease, the Guaranties or any other Indenture Estate Document in respect of Excepted Payments), to endorse checks or other instruments or orders in connection therewith and to take any action (including the filing of financing statements, mortgages, chattel mortgages, deeds of trust, collateral security agreements or other documents) or institute any proceedings which the Indenture Trustee may deem to be necessary or appropriate to protect and preserve the interest of the Indenture Trustee in the Indenture Estate.

The Owner Trustee agrees that at any time and from time to time, upon the written request of the Indenture Trustee, the Owner Trustee will promptly and duly execute and deliver or cause to be duly executed and delivered any and all such further instruments and documents (which instruments and documents shall be provided to the Owner Trustee by the Indenture Trustee) as the Indenture Trustee may reasonably deem desirable in obtaining the full benefits of the power of attorney appointment hereunder and of the rights and powers herein granted.

SECTION 2.4. **Substitute Leased Stations.** If (a) pursuant to Section 11(a) or Section 14(a) of the Lease the Lessee shall have duly delivered to the Owner Trustee title to a Substitute Leased Station in substitution for any Leased Station and (b) the Owner Trustee shall have taken, or caused to be taken, all action necessary or desirable to subject such Substitute Leased Station to the Lien of this Indenture, and provided that no Event of Default shall have occurred and be continuing, then, the Indenture Trustee shall execute an instrument releasing such Leased Station being replaced from the Lien of this Indenture upon receipt by the Indenture Trustee of a certificate in form and substance satisfactory to the Indenture Trustee, executed by the Owner Trustee and the Lessee, accompanied by an opinion of counsel reasonably satisfactory to the Indenture Trustee, each of which shall be to the effect that all necessary actions have been taken in connection with the proposed action to comply with the terms of this Indenture and the Lease and that all documents necessary to perfect, protect and preserve the Lien created by this Indenture with respect to such Substitute Leased Station have been duly authorized and properly executed and have been delivered to the Indenture Trustee.

In the event of the substitution of a Substitute Leased Station as contemplated by Section 11(a) or Section 14(a) of the Lease and, in each case, this Section, all provisions of this Indenture and the Lease relating to the Leased Station being replaced shall be applicable to such Substitute Lease Station with the same force and effect as if such Substitute Leased Station were the same property as the Leased Station being replaced.

# UNOFFICIAL COPY

3 / 8 / 2 0 0 0

**SECTION 2.5. Release of Security Interest in Indenture Estate.** After final payment of principal, premium, if any, and interest on the Loan Certificates shall have become due and payable in accordance with the terms thereof and upon receipt by the Indenture Trustee of evidence satisfactory to it that all the holders of the Loan Certificates have received full payment of all principal of and premium, if any, and interest on such Loan Certificates and that any other sums payable to such holders or the Indenture Trustee under this Indenture or under such Loan Certificates or under any other Operative Document shall have been paid in full,

(a) the security interests and all other estate and rights granted by this Indenture shall cease and become null and void and all of the property, rights and interests granted as security for the Loan Certificates shall revert to and revest in the Owner Trustee without any other act or formality whatsoever, and

(b) the Indenture Trustee shall, at the request and at the expense of the Owner Trustee, execute and deliver to the Owner Trustee such termination statements or other instruments as shall be requisite to evidence the satisfaction and discharge of this Indenture and the security interest hereby created, to release or reconvey to the Owner Trustee all the Indenture Estate, freed and discharged from the trusts and provisions herein contained, and to release the Owner Trustee from its covenants herein contained.

**SECTION 2.6. Certain Rights of Owner Trustee and Owner Participant.** Notwithstanding any other provision of this Indenture

(a) the Owner Trustee and the Owner Participant shall retain, to the exclusion of the Indenture Trustee, all rights to make demand for or receive payment of, and the right to commence an action at law to obtain payment of, Excepted Payments; provided, however, that neither the Owner Trustee nor the Owner Participant shall have any remedy or right against the Indenture Estate with respect to any Excepted Payment except in respect of any Excepted Payment which is received and held by the Indenture Trustee;

(b) the Owner Trustee and the Owner Participant shall have the right, but not to the exclusion of the Indenture Trustee, (i) to receive from the Lessee and the Guarantors all notices, copies of all documents and all information that the Lessee and the Guarantors are

# UNOFFICIAL COPY

permitted or required to give or furnish to the Owner Trustee or the Owner Participant, pursuant to the Lease, the Guaranties or any other Indenture Estate Document, (ii) to demand further assurances to the extent provided in Section 9(e) of the Lease, (iii) to inspect the Leased Stations to the extent provided in Section 9(f) of the Lease, (iv) to solicit bids to the extent provided in and in furtherance of the provisions of Section 14(a)(i) of the Lease, (v) to perform any obligations of the Lessee to the extent provided in Section 18 of the Lease, and (vi) unless the Indenture Trustee shall have declared (or is deemed to have declared) the Lease to be in default or an Event of Default (other than an Event of Default described in clause (1) or clause (2) of Section 8.1(a) hereof) shall have occurred and be continuing, to commence an action in equity for the specific performance by the Lessee of its obligations under the Lease or by the Guarantors of their respective obligations under the Guaranties;

(c) so long as no Default (other than a Default constituting or directly attributable to a Default under the Lease) or Event of Default shall have occurred and be continuing, the Indenture Trustee shall not, without the consent of the Owner Trustee, enter into or consent to any amendment, modification or supplement to, or exercise any election or option under, or give any consent, waiver or approval under, the Lease or any of the other Indenture Estate Documents, which in any case would adversely affect any right or interest of the Owner Trustee thereunder; provided, however, that nothing contained in this paragraph (c) shall deprive the Indenture Trustee of the right to give any notice or waiver in respect of any Default or Event of Default under the Lease; and

(d) so long as no Event of Default shall have occurred and be continuing, the Owner Trustee shall have the right, to the exclusion of the Indenture Trustee, (i) to exercise the rights of the lessor under Sections 15 and 16 of the Lease with respect to the Lessee's renewal of the Lease or purchase of the Leased Stations and (ii) the right to adjust Basic Rent and the percentages relating to Casualty Value and Termination Value as provided in Section 4 of the Lease.



# UNOFFICIAL COPY

Nothing in paragraphs (a) through (d) above shall deprive the Indenture Trustee of the exclusive right, subject to paragraph (b) of Section 8.1 hereof, so long as this Indenture shall be in effect, to exercise, the remedies provided in the Lease upon the occurrence and during the continuance of an Event of Default thereunder.

## ARTICLE III

### ISSUE, EXECUTION AND AUTHENTICATION OF LOAN CERTIFICATES

SECTION 3.1. **Maximum Authorized Issue.** There is hereby established a series of Loan Certificates to be in substantially the form set forth in Exhibit A hereto. Loan Certificates in an aggregate Outstanding principal amount not exceeding the Maximum Aggregate Principal Amount may be executed, authenticated and delivered in accordance with Section 3.3 hereof.

SECTION 3.2. **Parity of Loan Certificates.** All Loan Certificates issued hereunder shall rank on a parity with each other Loan Certificate and shall as to each other be secured equally and ratably by this Indenture, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise.

SECTION 3.3. **Issuance of Loan Certificates.** Upon satisfaction of and compliance with the requirements and conditions set forth in Section 10 of the Participation Agreement, Loan Certificates in an aggregate principal amount equal to the aggregate amount of the Loans made by the Loan Participants on the applicable Closing Date may be issued and executed by the Owner Trustee and delivered to the Indenture Trustee for authentication, and the Indenture Trustee shall authenticate and deliver such Loan Certificates upon the written order of the Owner Trustee; receipt by the Indenture Trustee of Loan Certificates duly executed by one of the Authorized Officers of the Owner Trustee shall without further act constitute instruction to the Indenture Trustee to authenticate and deliver such Loan Certificates.

SECTION 3.4. **Characteristics of Loan Certificates.** Loan Certificates shall be dated the Closing Date, regardless of when issued. Loan Certificates will bear interest from and including their respective dates on the unpaid principal balance thereof at the Rate of Interest, payable semi-annually, in arrears, on the Interest Payment Dates of each year commencing on the First Interest Payment Date. The principal of Loan Certificates will be payable in

# UNOFFICIAL COPY

3 7 5 7 3 3 0 0

installments on the Principal Payment Dates of each year commencing on the First Principal Payment Date and ending on the Last Principal Payment Date. Except in the case of any payments of overdue interest only, all payments on each Loan Certificate are to be as set forth on the Loan Schedule attached to such Loan Certificate and are to be combined payments of principal and interest, except the first such payment (which is to be of interest only); the last such payment shall be in an amount sufficient to discharge fully all unpaid principal of and premium, if any, and accrued interest on such Loan Certificate.

Loan Certificates will also bear interest at the Overdue Rate on any part of the principal thereof and premium, if any, and, to the extent permitted by law, interest thereon not paid when due for any period during which the same shall be overdue. All interest payable on the Loan Certificates shall be computed on the basis of a year of 360 days and twelve months of 30 days each.

SECTION 3.5. Execution of Loan Certificates. The Loan Certificates shall be executed on behalf of the Owner Trustee by one of its Authorized Officers. In case any Authorized Officer of the Owner Trustee, who shall have executed any of the Loan Certificates shall cease to be such an Authorized Officer before the Loan Certificates so executed shall have been authenticated by the Indenture Trustee and delivered or disposed of by the Owner Trustee, such Loan Certificates nevertheless may be authenticated and delivered or disposed of as though the person who executed such Loan Certificates had not ceased to be such an Authorized Officer of the Owner Trustee; and any Loan Certificate may be executed on behalf of the Owner Trustee by such person as, at the actual time of execution of such Loan Certificate, shall be an Authorized Officer of the Owner Trustee, although at the date of such Loan Certificate any such person was not such an Authorized Officer.

SECTION 3.6. Effect of Certificate of Authentication. Only such Loan Certificates as shall bear thereon a certificate of authentication substantially in the form set forth in Exhibit A hereto manually executed by the Indenture Trustee shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate of authentication of the Indenture Trustee upon any Loan Certificate executed by the Owner Trustee shall be conclusive evidence, and the only evidence, that the Loan Certificate so authenticated was duly issued, authenticated and delivered under this Indenture.

SECTION 3.7. Limitation on Source of Payments. All payments to be made by the Owner Trustee on the Loan Certificates shall be made only from the income or proceeds from the Indenture Estate. Each Noteholder, by its acceptance of such Loan Certificate, agrees

# UNOFFICIAL COPY

87373300

that it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to such Noteholder as herein provided and that neither the Owner Participant, the Owner Trustee nor the Indenture Trustee shall be personally liable to such Noteholder for any amounts payable under such Loan Certificate, provided that the foregoing shall not limit the right of any Noteholder to name the Owner Trustee as a party defendant in any action to enforce its rights hereunder provided no deficiency judgment is obtained against the Owner Trustee.

SECTION 3.8. Home Office Payment. The principal of, premium, if any, and interest on each Loan Certificate shall be payable at the Principal Office of the Indenture 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 Loan Certificate to the contrary, if so requested by the Noteholder of any Loan Certificate by written notice to the Indenture Trustee, all amounts payable to such Noteholder may be paid either (a) by crediting the amount to be distributed to such Noteholder to an account maintained by such Noteholder with the Indenture 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 Noteholder maintained at such bank, any such credit or transfer pursuant to this clause (a) to be in immediately available funds, or (b) by mailing a check payable in clearing house funds local to the city where the Principal Office of the Indenture Trustee is situated to such Noteholder at such address as such Noteholder shall have specified in such notice, in either case without any presentment or surrender of such Loan Certificate. Schedule I to the Participation Agreement shall be deemed to constitute such a notice by each Loan Participant unless and until such Loan Participant shall notify the Indenture Trustee otherwise. If any Interest Payment Date or Principal Payment Date specified in this Indenture shall not be a Business Day, the payment otherwise due thereon shall be due and payable on the next succeeding Business Day. Upon receipt of final payment of any Loan Certificate, the Noteholder or other holder of such Loan Certificate shall promptly surrender such Loan Certificate to the Indenture Trustee at the Principal Office of the Indenture Trustee.

SECTION 3.9. Additional Loan Certificates. So long as no Event of Default has occurred and is continuing and subject to the conditions and restrictions contained in this Indenture (including, without limitation, this Section and Section 11.2 hereof), the Owner Trustee may, within 120 days of the second Closing Date, provide the Indenture Trustee with a certificate of an Authorized Officer of the Owner Trustee setting forth the amount of any adjustment to the

aggregate amount of Lessor's Cost of the Leased Stations to be made pursuant to Section 13(b) of the Participation Agreement. Such certificate shall set forth the aggregate amount of the Owner Participant's Investment to be made in the incremental increase in the aggregate amount of Lessor's Cost of the Leased Stations from the aggregate amount of Lessor's Cost of the Leased Stations on the respective Closing Dates for such Leased Stations and the aggregate amount of the Loans to be made in connection therewith. In addition, the Owner Trustee shall execute and deliver a Trust Agreement and Trust Indenture Supplement in connection with such adjustment and shall execute and deliver, for authentication by the Indenture Trustee, Loan Certificates (Additional Loan Certificates), substantially the form set forth in Exhibit A hereto, in an aggregate principal amount equal to the aggregate amount of the Loans made by the Loan Participants in connection with such adjustment to aggregate Lessor's Cost, provided however, that in no event shall the Loan Certificates issued in connection with any such adjustment, when aggregated with all Loan Certificates then Outstanding, exceed the Maximum Aggregate Principal Amount. All provisions of this Indenture relating to any Loan Certificate shall apply to any Additional Loan Certificate issued pursuant to this Section.

## ARTICLE IV

### REGISTRATION, TRANSFER, EXCHANGE, CANCELLATION AND OWNERSHIP OF LOAN CERTIFICATES

SECTION 4.1. **Register of Loan Certificates.** The Indenture Trustee agrees with the Owner Trustee that the Indenture Trustee shall maintain at the Principal Office of the Indenture Trustee a register for the purpose of registration, and registration of transfer and exchange, of Loan Certificates and in which shall be entered the names and addresses of the owners of such Loan Certificates and particulars of the Loan Certificates owned by them, respectively. For these purposes, the Indenture Trustee is hereby appointed transfer agent and registrar for the Loan Certificates.

SECTION 4.2. **Inspection of Register of Loan Certificates.** The register referred to in Section 4.1 hereof of the owners of the Loan Certificates shall at all reasonable times be open for inspection by any Noteholder. Upon request by any Noteholder, the Indenture Trustee shall furnish such Noteholder, at the expense of such Noteholder, with a list of the names and addresses of all holders of Loan Certificates entered on the register kept by the Indenture Trustee, indicating the unpaid principal amount and serial number of each Loan Certificate held by each such holder.

# UNOFFICIAL COPY

3 7 6 7 3 3 3 0

SECTION 4.3. **Cancellation of Loan Certificates.** All Loan Certificates surrendered to the Indenture Trustee for payment, prepayment, or registration of transfer or exchange shall be cancelled by it; and no Loan Certificates shall be issued in lieu thereof except as expressly permitted by Section 4.4 or 4.8 hereof. The Indenture Trustee may destroy cancelled Loan Certificates held by it and deliver a certificate of destruction to the Owner Trustee, or the Indenture Trustee may return cancelled Loan Certificates to the Owner Trustee. If the Owner Trustee shall acquire any of the Loan Certificates, such acquisition shall not operate as a redemption of or the satisfaction of the indebtedness represented by such Loan Certificates unless and until the same shall be delivered to the Indenture Trustee for cancellation.

SECTION 4.4. **Registration of Transfer or Exchange of Loan Certificates.** A holder of any Loan Certificate Outstanding intending to transfer such Loan Certificate in whole or in part or to exchange such Loan Certificate for a new Loan Certificate or Loan Certificates may surrender such Loan Certificate at the Principal Office of the Indenture Trustee, together with the written request of such Noteholder, or of its attorney duly authorized in writing, for the issuance of a new Loan Certificate or Loan Certificates, specifying the denomination or denominations of the same and the name and address of the Person or Persons in whose name or names the new Loan Certificate or Loan Certificates are to be registered. Promptly upon receipt by the Indenture Trustee of the foregoing, the Owner Trustee shall execute and the Indenture Trustee shall authenticate and deliver such new Loan Certificate or Loan Certificates, in the aggregate principal amount and dated the same date as the Loan Certificates surrendered, in such denomination or denominations and registered in the name or names of the Person or Persons specified in the written request; provided, however, that, if more than one new Loan Certificate is to be issued, the denominations of all but one of such new Loan Certificates registered in the name of the same Noteholder shall not be less than \$100,000. The Indenture Trustee shall make a notation on each new Loan Certificate of the amount of all payments of principal and premium, if any, theretofore made on the old Loan Certificate or Loan Certificates in exchange or transfer for which such new Loan Certificate has been issued (prorating such principal and premium payments among such new Loan Certificates in accordance with their respective unpaid principal amounts, where two or more new Loan Certificates have been delivered in exchange for one old Loan Certificate) and the date to which interest on such old Loan Certificate or Loan Certificates has been paid.

SECTION 4.5. **Limitation on Timing of Registration of Transfers of Loan Certificates.** The Indenture Trustee shall not be required to register transfers or exchanges of Loan Certificates on any date fixed for the payment of principal or premium, if any, or

# UNOFFICIAL COPY

87673300

interest on the Loan Certificates or during the five (5) Business Days preceding such date.

**SECTION 4.6. Securities Act.** The Loan Certificates shall be delivered to Noteholders without registration of such Loan Certificates under the Securities Act and qualification of this Indenture under the Trust Indenture Act.

**SECTION 4.7. Charges upon Transfer or Exchange of Loan Certificates.** The holder of any Loan Certificate intending to transfer or exchange such Loan Certificate shall pay to the Indenture Trustee an amount equal to any stamp taxes or governmental charges required to be paid with respect to such transfer or exchange. Such transfer shall be otherwise without cost to such Noteholder.

**SECTION 4.8. Mutilated, Destroyed, Lost or Stolen Loan Certificates.** If any Loan Certificate shall become mutilated or shall be destroyed, lost or stolen, the Owner Trustee shall, upon the written request of the holder of such Loan Certificate, execute, and the Indenture Trustee shall authenticate and deliver in replacement thereof, a new Loan Certificate, payable in the same original principal amount and dated the same date as the Loan Certificate so mutilated, destroyed, lost or stolen. The Indenture Trustee shall make a notation on each new Loan Certificate of the amount of all payments of principal and premium, if any, theretofore made on the Loan Certificate so mutilated, destroyed, lost or stolen and the date to which interest on such old Loan Certificate has been paid. If the Loan Certificate being replaced has been mutilated, such Loan Certificate shall be delivered to the Indenture Trustee and shall be cancelled by it. If the Loan Certificate being replaced has been destroyed, lost or stolen, the holder of such Loan Certificate shall furnish to the Owner Trustee and the Indenture Trustee an indemnity agreement of such Noteholder and a bond or surety agreement of such Noteholder as shall be satisfactory to them to save the Owner Trustee, the Indenture Trustee and the Indenture Estate harmless from any loss, however remote, including claims for principal of, premium, if any, and interest on the purportedly destroyed, lost or stolen Loan Certificate, together with evidence satisfactory to the Owner Trustee and the Indenture Trustee of the destruction, loss or theft of such Loan Certificate and of the ownership thereof; provided, however, that if the holder of such Loan Certificate is a party to the Participation Agreement or is a nominee for such a party or is an Affiliate of such a party or is another institutional investor, in any case with a net worth of \$75,000,000 or more, the written statement of such party or Affiliate or other institutional investor shall be sufficient proof of such destruction, loss or theft and an unsecured indemnity agreement of such party signed by a duly authorized officer thereof delivered to the Owner Trustee and the Indenture Trustee shall be sufficient security and indemnity, it being

# UNOFFICIAL COPY

3 7 3 7 3 3 0 0

understood that neither the Owner Trustee nor the Indenture Trustee shall have any duty to inquire as to the authority of such party to make such an undertaking.

## SECTION 4.9. Ownership of Loan Certificates.

(a) The Owner Trustee and the Indenture Trustee may deem and treat the holder of any Loan Certificate as the absolute owner of such Loan Certificate for the purpose of receiving payment of all amounts payable with respect to such Loan Certificate and for all other purposes, and neither the Owner Trustee nor the Indenture Trustee shall be affected by any notice to the contrary.

(b) The Owner Trustee and the Indenture Trustee may, in their discretion, treat the holder of any Loan Certificate as the owner thereof without actual production of such Loan Certificate for any purpose hereunder.

(c) Neither the Owner Trustee nor the Indenture Trustee shall be bound to take notice of or carry out the execution of any trust in respect of any Loan Certificate, and may transfer the same on the direction of the holder thereof, whether named as trustee or otherwise, as though such holder were the beneficial owner thereof.

(d) The holder of any Loan Certificate shall be entitled to the principal of, premium, if any, and interest on such Loan Certificate free from all equities or rights of set-off or counter-claims of either of the Owner Trustee, the Indenture Trustee or any prior holder of such Loan Certificate and all Persons may act accordingly. The receipt by the holder of any Loan Certificate of any payment of principal, premium or interest shall be a good discharge to the Owner Trustee and the Indenture Trustee for the same and neither the Owner Trustee nor the Indenture Trustee shall be bound to inquire into the title of any Noteholder.

## ARTICLE V

### PREPAYMENT OF LOAN CERTIFICATES

SECTION 5.1. **Limitation on Prepayment.** The Owner Trustee shall have no right to prepay the principal amount of the Loan Certificates, in whole or in part, except as expressly permitted hereby.

SECTION 5.2. **Optional Prepayment.** The Owner Trustee may, at any time on or after January 2, 1993, if requested to do so by the Lessee pursuant to Section 14 of the Participation Agreement and upon provision by the Lessee to the Owner Trustee of sufficient funds therefor, prepay in whole but not in part, the Loan Certificates then Outstanding at the principal amount thereof, together with (a) interest accrued thereon to the date of prepayment and (b) if such prepayment shall be effected on or before January 2, 2000, a premium equal to the Make-Whole Premium.

SECTION 5.3. **Mandatory Prepayment.** The Loan Certificates shall be prepaid, in whole or in part, as applicable, together with (a) interest accrued thereon to the date of prepayment and (b) in the case of an early termination of the Lease by the Lessee pursuant to Section 14 thereof if such prepayment shall be effected on or before January 2, 2000 a premium equal to the Make-Whole Premium:

(i) in whole or in part as and to the extent provided in Section 6.2 hereof, upon the occurrence of an Event of Loss with respect to any Leased Station (unless pursuant to Section 11(a) of the Lease a Substitute Leased Station shall have been substituted for the Leased Station subject to such Event of Loss);

(ii) in whole or in part as and to the extent provided in Section 6.2 hereof, upon the Lessee's election to terminate the Lease with respect to any Leased Station as provided in Section 14(a) of the Lease;

(iii) in part as and to the extent provided in Section 6.2 hereof, upon any downward adjustment to the aggregate amount of Lessor's Cost of the Leased Stations as provided in Section 13(c) of the Participation Agreement.

The Owner Trustee will give notice of prepayment under this Section promptly after receipt of the Lessee's notice of payment or termination, as the case may be, under Section 11 or 14, as the case



# UNOFFICIAL COPY

37573300

may be, of the Lease to the extent the same shall not have been furnished to the Indenture Trustee pursuant to the Lease.

SECTION 5.4. Manner of Payment. Any prepayment of the Loan Certificates under Section 5.2 or 5.3 shall be made by the Owner Trustee only on a date coincident with an Interest Payment Date or a Principal Payment Date and upon at least thirty (30) calendar days' prior written notice to the Indenture Trustee and the holders of Loan Certificates. Notice of prepayment having been given as aforesaid, the principal amount of the Loan Certificates so to be prepaid, plus accrued interest thereon to the date of prepayment, together with the premium, if any, herein provided, shall become due and payable on such prepayment date. On the date of prepayment, immediately available funds shall be deposited by the Owner Trustee in the account of the Indenture Trustee at the place and by the time and otherwise in the manner specified by the Indenture Trustee, in an amount equal to the principal amount of the Loan Certificates to be prepaid together with accrued and unpaid interest thereon to the date fixed for such prepayment, the premium, if any, and all other sums then due and payable hereunder and thereunder.

In the event of any prepayment in part of the principal amount of any Loan Certificate pursuant to Section 5.2 of this Indenture, the amount received by the holder of such Loan Certificate as and for a prepayment of principal of such Loan Certificate shall be applied to the ratable payment of the principal portion of each semi-annual installment payable on such Loan Certificate, it being the intention hereof that the amounts of all such remaining semi-annual installments of principal will be reduced by amounts equal to those so applied.

## ARTICLE VI

### RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME AND PROCEEDS FROM THE INDENTURE ESTATE

SECTION 6.1. Basic Rent and Rent on Late Installments of Basic Rent. Except as otherwise provided in Section 6.3 or 6.7 hereof, each payment of Basic Rent, as well as any payment of Rent at the Late Payment Rate on late installments of Basic Rent, received by the Indenture Trustee at any time under the Lease or otherwise, shall be distributed by the Indenture Trustee on the date such payment is actually received by the Indenture Trustee in the following order of priority: first, so much of such payment as shall be required to pay in full the aggregate amount of the payment or payments of principal and interest (as well as any interest on overdue principal and, to the extent permitted by law, interest) then due on all Loan

Certificates shall be distributed to the holders of the Outstanding Loan Certificates ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due on each such Loan Certificate bears to the aggregate amount of such payment or payments then due on all such Loan Certificates Outstanding on such date; and second, the balance, if any, of such payment remaining thereafter shall be distributed, concurrently with any distribution pursuant to clause first hereof, to the Owner Trustee. Amounts distributed by the Indenture Trustee pursuant to this Section shall be distributed on the date such amounts are actually received by the Indenture Trustee; provided, however, that in the event the Indenture Trustee shall be directed to make payments to the Noteholder of any Loan Certificate by wire transfer in accordance with Section 3.8 hereof, any amounts received by the Indenture Trustee after 1:00 o'clock P.M., New York, New York time, shall be distributed on the following Business Day, together with interest thereon at the Overdue Rate as provided in Section 3.4 hereof.

**SECTION 6.2. Payments Received as Result of Event of Loss, Termination or Adjustment.** Except as otherwise provided in Section 6.3 or 6.7 hereof, any payments received and amounts realized by the Indenture Trustee pursuant to the Lease or otherwise as a result of (a) the occurrence of an Event of Loss with respect to any Leased Station, (b) the exercise by the Lessee of its rights to terminate the Lease pursuant to Section 14 thereof with respect to any Leased Station or (c) any downward adjustment to the aggregate amount of Lessor's Cost of the Leased Stations pursuant to Section 13(c) of the Participation Agreement, shall in each case be distributed forthwith upon receipt by the Indenture Trustee in the following order of priority: first, in the manner provided in clause second of Section 6.3 hereof; second, so much of such payments or amounts as shall be required to pay any accrued but unpaid interest to the date of such distribution on the principal amount of Loan Certificates to be pre-paid by operation of clause third of this Section shall be distributed to the holders thereof; third, so much of such payments or amounts as shall be equal to the product of (x) the aggregate unpaid principal amount of and premium, if any, on Loan Certificates Outstanding on the date of such payment (after giving effect to any reduction of the aggregate principal amount of such Loan Certificates Outstanding on such date resulting from the distribution of any payment of Basic Rent, if any, due on such date), multiplied by (y) a fraction, the numerator of which shall be (i) in the case of any such Event of Loss or early termination of the Lease, the Lessor's Cost of the Leased Station or Leased Stations suffering the Event of Loss or with respect to which the Lease shall have been terminated and (ii) in the case of any such downward adjustment to the aggregate Lessor's Cost, the amount of the decrease in the aggregate amount of Lessor's Cost of the Leased Stations, and in each case the denominator of which shall be the aggregate amount of Lessor's Cost

# UNOFFICIAL COPY

8 7 6 7 3 3 0

of all Leased Stations (including the Leased Station or Leased Stations suffering the Event of Loss or with respect to which the Lease shall have been terminated, as the case may be) then subject to the Lease, shall be distributed on such date to the holders of such Loan Certificates Outstanding on such date ratably, without priority of one over the other, in the proportion that the aggregate unpaid principal amount of and premium, if any, on each such Loan Certificate on such date bears to the aggregate unpaid principal amount of and premium, if any, on each such Loan Certificate Outstanding on such date; fourth, so much of such payments or amounts remaining as shall be required to reimburse the Indenture Trustee for any Indenture Trustee's Expenses (to the extent not previously reimbursed) shall be applied by the Indenture Trustee to such reimbursement, and fifth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed forthwith to the Owner Trustee.

SECTION 6.3. Payments Received After, or Held at Time of, Event of Default under Section 8.1(a) Hereof. All payments received and amounts realized by the Indenture Trustee (and which become part of the Indenture Estate) after an Event of Default referred to in paragraph (a) of Section 8.1 hereof shall have occurred and be continuing and after the Indenture Trustee pursuant to Section 8.3 hereof shall have declared the unpaid principal amount of all Loan Certificates immediately due and payable (including any amounts realized by the Indenture Trustee from the exercise of any remedies pursuant to the Lease or Article VIII hereof), as well as all payments or amounts then held by the Indenture Trustee as part of the Indenture Estate, shall be distributed forthwith by the Indenture Trustee in the following order of priority:

first, so much of such payments or amounts as shall be required to reimburse the Indenture Trustee for any Indenture Trustee's Expenses (to the extent not previously reimbursed) and to pay the reasonable remuneration of the Indenture Trustee (to the extent not previously reimbursed), shall be applied by the Indenture Trustee to such reimbursement and payment;

second, so much of such payments or amounts remaining as shall be required to pay the then existing or prior holders of the Loan Certificates the amounts payable to them as Indemnified Persons under the Lease (to the extent not previously reimbursed) shall be distributed to such then existing and prior Noteholders; and in case the aggregate amount so to be paid to all such Noteholders in accordance with this clause second shall be insufficient to pay all such amounts as aforesaid, then ratably, without priority of one over

# UNOFFICIAL COPY

87673360

the other, in the proportion that the aggregate unpaid claims for such indemnity asserted in verified writings filed with the Indenture Trustee by each such then existing or prior Noteholder, plus the accrued but unpaid interest thereon at the Overdue Rate, bears to the aggregate unpaid amount of all such claims so asserted, plus the accrued but unpaid interest thereon at the Overdue Rate, to the date of distribution;

third, so much of such payments or amounts remaining as shall be required to pay in full the aggregate unpaid principal amount of and premium, if any, on all Loan Certificates, plus the accrued but unpaid interest thereon to the date of distribution, shall be distributed to the holders of such Loan Certificates; and in case the aggregate amount so to be distributed shall be insufficient to pay all such Loan Certificates in full as aforesaid, then ratably, without priority of one over the other, in the proportion that the aggregate unpaid principal amount of and premium, if any, on each such Loan Certificate, plus the accrued but unpaid interest thereon to the date of distribution, bears to the aggregate unpaid principal amount of and premium on all such Loan Certificates, plus the accrued but unpaid interest thereon to the date of distribution; and

fourth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed forthwith to the Owner Trustee.

**SECTION 6.4. Payments Received for Which Provision Is Made in Lease.** Except as otherwise provided in Section 6.2, 6.3 or 6.7 hereof, any payments received or amounts realized by the Indenture Trustee for which provision as to the application thereof is made in the Lease shall be applied forthwith to the purpose for which such payment was made in accordance with the terms of such Lease.

**SECTION 6.5. Application of Payments to Principal, Interest and Premium.** Each payment received on each Loan Certificate shall be applied in the following order of priority: first, to the payment of accrued but unpaid interest on such Loan Certificate due thereunder (as well as any interest on overdue principal and premium, if any, and, to the extent permitted by law, interest) to the date of such payment; second, to the payment of principal amount of such Loan Certificate then due thereunder; and third, to the payment of any premium then due.

**SECTION 6.6. Payments Received for Which No Provision is Made.**

(a) Any payments received and any amounts realized by the Indenture Trustee for which no provision as to the application thereof is made in the Lease or elsewhere in this Article, and

(b) all payments received and amounts realized by the Indenture Trustee under the Lease or otherwise with respect to the Leased Stations to the extent received or realized at any time after payment in full of the principal of and premium, if any, and interest on all the Loan Certificates and all other sums that would, if Section 6.3 hereof were applicable, be required to be paid prior thereto or on a parity therewith as well as any other amounts remaining as part of the Indenture Estate after payment in full of the principal of and premium, if any, and interest on all such Loan Certificates,

shall be distributed forthwith by the Indenture Trustee in the following order of priority: first, in the manner provided in clause second of Section 6.3 hereof; second, in the manner provided in clause first of Section 6.3 hereof; and third, in the manner provided in clause fourth of Section 6.3 hereof.

**SECTION 6.7. Certain Payments to be Held in Case of Event of Default or Default.** Anything in this Article to the contrary notwithstanding, after the Indenture Trustee shall have knowledge of a Default or an Event of Default, all payments and amounts which, but for the provisions of this Section, would otherwise be distributable to the Owner Participant, the Owner Trustee or the Lessee shall be held by the Indenture Trustee as part of the Indenture Estate and may be distributed in accordance with Section 6.3 hereof upon satisfaction of the conditions stated therein; provided however, that (a) if such Default or Event of Default shall cease to be continuing prior to the time such payments or amounts may become distributable pursuant to Section 6.3 hereof or (b) except in the case of a Default or an Event of Default caused by an act, omission, failure to act or condition of the Owner Trustee, other than a Default or an Event of Default which the Owner Participant cannot cure, correct or remedy within fifteen (15) months after the date of occurrence thereof by diligently proceeding in good faith to do so, if such payments or amounts shall have been retained by the Indenture Trustee for more than fifteen (15) months and the Indenture Trustee shall neither (i) have declared the unpaid principal amount of all Loan Certificates to be immediately due and payable pursuant to Section 8.3 hereof nor (ii) in the case of an Event of Default under clause (1) or clause (2) of Section 8.1(a) hereof, have commenced the exercise of remedies under the Lease or have attempted in good faith to do so, such payments or amounts shall be distributable to the Owner Participant, the Owner Trustee or the Lessee as if such Default

# UNOFFICIAL COPY

3 7 3 7 3 3 0 0

or Event of Default had not occurred as elsewhere in this Article provided.

SECTION 6.8. **Payments Payable to Owner Trustee to be Paid to Owner Participant on Certain Conditions.** All amounts from time to time distributable under this Indenture by the Indenture Trustee to the Owner Trustee, other than Excepted Payments as provided in Section 6.9 hereof, shall, until receipt of written instructions of the Owner Trustee to the contrary, be paid by the Indenture Trustee directly to the Owner Participant at its payment address set forth in the Participation Agreement or to such other place and in such other manner of payment as the Owner Participant shall have notified the Indenture Trustee in writing.

SECTION 6.9. **Excepted Payments.** Anything in this Article to the contrary notwithstanding, whether or not a Default or an Event of Default shall have occurred and be continuing hereunder, any Excepted Payment received by the Indenture Trustee shall be distributed forthwith by the Indenture Trustee to the Owner Trustee.

## ARTICLE VII

### COVENANTS OF OWNER TRUSTEE

SECTION 7.1. **Covenants of Owner Trustee.** The Owner Trustee, and, as indicated in paragraph (c) of this Section, Wilmington Trust Company, hereby covenants and agrees as follows:

(a) The Owner Trustee will duly and punctually pay the principal of, premium, if any, and interest on the Loan Certificates in accordance with the terms of such Loan Certificates and this Indenture (notwithstanding the foregoing, it is understood and agreed that neither the Owner Trustee nor the Owner Participant shall be personally liable to the holder of any Loan Certificate for the payment of such amounts).

(b) The Owner Trustee will fulfill all its obligations under this Indenture and the Lease and the other Indenture Estate Documents in accordance with their terms and, after the Indenture Trustee pursuant to Section 8.3 hereof shall have declared the unpaid principal amount of all Loan Certificates immediately due and payable, will, upon the request of the Indenture Trustee, cooperate with the Indenture Trustee in connection with the enforcement of any or all its

# UNOFFICIAL COPY

87673300

rights as lessor under the Lease and under the other Indenture Estate Documents.

(c) The Owner Trustee will not directly or indirectly create, incur, assume or suffer to exist any Lessor's Liens attributable to it on or with respect to any of the properties or assets of the Indenture Estate. Wilmington Trust Company will not directly or indirectly create, incur, assume or suffer to exist any Lessor's Liens attributable to it or William J. Wade on or with respect to any of the properties or assets of the Indenture Estate.

(d) The Owner Trustee will not, except with the prior written consent of the Indenture Trustee or as expressly provided in or permitted by Section 2.6 hereof, (i) exercise any election or option, or give any notice, consent, waiver or approval, or take any other action, under any Indenture Estate Document or (ii) submit or consent to the submission to arbitration of any dispute, difference or other matter arising under any Indenture Estate Document.

(e) The Owner Trustee shall give the Indenture Trustee at least thirty (30) days prior written notice of any relocation of (i) its chief executive office or chief place of business (as either of such terms may be used in Article 9 of the Uniform Commercial Code of any applicable jurisdiction) and (ii) the office where the Trust Estate is administered.

(f) If the Owner Trustee shall have actual knowledge of any Default or Event of Default hereunder or any Default or Event of Default under the Lease, it shall promptly upon its acquiring such knowledge give notice thereof to the Indenture Trustee and each holder of any Loan Certificate unless such Default or Event of Default shall have been remedied before the giving of such notice. Actual knowledge in the case of the Owner Trustee shall mean actual knowledge of any officer in the Corporate Trust Administration of the Owner Trustee.

(g) From time to time the Owner Trustee will do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Indenture Trustee (which request shall be accompanied by the form of any such instrument so to be executed) to do or execute for the purpose of fully

# UNOFFICIAL COPY

3 7 6 7 3 3 3 0

carrying out and effectuating this Indenture and the intent hereof.

(h) The Owner Trustee will not, except in the case of the resignation or removal of the Owner Trustee as owner trustee as provided in the Trust Agreement, assign or otherwise transfer its interests in this Indenture or the Lease or any other Indenture Estate Document without the prior consent of the Indenture Trustee.

(i) The Owner Trustee will not without the prior consent of the Indenture Trustee permit the Trust Agreement to be amended or supplemented in any manner which would adversely affect the right of any Noteholder or the Indenture Trustee or would in any way affect the Indenture Estate.

(j) Promptly on receipt thereof the Owner Trustee will transfer to the Indenture Trustee any and all monies from time to time received by it constituting part of the Indenture Estate, for distribution or retention by the Indenture Trustee pursuant to this Indenture.

(k) The Owner Trustee will not directly or indirectly (i) engage in any business or activity other than the carrying out of the transactions contemplated by the Operative Documents, (ii) by affirmative act, create, incur, assume, guaranty, agree to purchase or repurchase or provide funds in respect of any indebtedness, liability or obligations other than (1) indebtedness evidenced by the Loan Certificates, and (2) all other indebtedness at any time secured by this Indenture or (iii) purchase or agree to purchase any property or asset (other than its interest in the Trust Estate).

3:673300



ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES OF INDENTURE  
TRUSTEE

SECTION 8.1. Event of Default. (a) The term Event of Default, wherever used herein, shall mean any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) Any Event of Default as defined in the Lease.

(2) The Owner Trustee shall fail to make any payment of principal of or premium, if any, or interest on any Loan Certificate then Outstanding within two (2) Business Days after the Lessee and the Owner Trustee shall have received written notice (by tested telex or otherwise) from the Indenture Trustee.

(3) The Owner Trustee shall fail to observe or perform any covenant of the Owner Trustee in this Indenture, the Loan Certificates, the Participation Agreement or in any other Operative Document and continuance of such failure for a period of thirty (30) days after notice thereof shall have been given to the Owner Participant, the Lessee and the Owner Trustee by the Indenture Trustee, or to the Owner Participant, the Lessee, the Owner Trustee and the Indenture Trustee by a Directive, specifying such failure and requiring it to be remedied.

(4) Any representation or warranty made by the Owner Trustee in or pursuant to this Indenture, the Participation Agreement or any other Operative Document proves to have been incorrect in any material respect adverse to the interests of the Indenture Trustee or the Loan Participants or to the Indenture Estate when such representation or warranty was made or given and at the time of such default.

(5) The Owner Participant shall fail to observe or perform any covenant of the Owner Participant in the

# UNOFFICIAL COPY

87373300

Participation Agreement or in any other Operative Document and continuance of such a failure for a period of thirty (30) days after notice thereof shall have been given to the Owner Participant, the Lessee and the Owner Trustee by the Indenture Trustee, or to the Owner Participant, the Lessee, the Owner Trustee and the Indenture Trustee by a Directive, specifying such failure and requiring it to be remedied.

(6) Any representation or warranty made by the Owner Participant in the Participation Agreement or any other Operative Document proves to have been incorrect in any material respect adverse to the interests of the Indenture Trustee or the Loan Participants or to the Indenture Estate when such representation or warranty was made or given and at the time of such default.

(7) The Owner Trustee or the Owner Participant shall consent to the appointment of a receiver, trustee, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of itself or for any substantial part of its property, or shall not pay or generally be unable to pay, or admit in writing its inability to pay, its debts generally as they come due, or shall make a general assignment for the benefit of creditors.

(8) The Owner Trustee or the Owner Participant shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law (as now or hereafter in effect), or the Owner Trustee or the Owner Participant shall consent to the entry of an order for relief in an involuntary case under any such law.

(9) An order, judgment or decree shall be entered by any court having jurisdiction in the premises for relief in respect of the Owner Trustee or the Owner Participant in an involuntary case under any applicable bankruptcy, insolvency or other similar law (as now or hereafter in effect), or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Owner Trustee or the Owner Participant or for any substantial part of its property, or sequestering any substantial part of the property of the Owner Trustee or the Owner Participant, or ordering the winding up or liquidating of the affairs of the Owner Trustee or the Owner Participant, and any such order, judgment or decree shall remain in force

# UNOFFICIAL COPY

3 7 5 7 5 5 0 0

undismissed, unstayed or unvacated for a period of sixty (60) days after the date of entry thereof.

(10) A petition against the Owner Trustee or the Owner Participant in a proceeding under applicable bankruptcy laws or other insolvency laws (other than any law which does not provide for or permit any readjustment or alteration of the obligations of such Person), as now or hereafter in effect, shall be filed and shall not be withdrawn or dismissed within ninety (90) days thereafter, or if, under the provisions of any law (other than any law which does not provide for or permit any readjustment or alteration of the obligations of such Person) providing for reorganization or liquidation of corporations which may apply to the Owner Trustee, or the Owner Participant, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Owner Trustee or the Owner Participant or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of sixty (60) days.

(b) Notwithstanding the foregoing, an Event of Default as defined in the Lease referred to in clause (1) of paragraph (a) of this Section or an Event of Default referred to in clause (2) of paragraph (a) of this Section shall not be a Default or an Event of Default hereunder

(1) if such Event of Default results from non-payment of Basic Rent under the Lease due on a Basic Rent Date, if the Owner Trustee (notwithstanding the limitation of the Owner Trustee's obligation set forth in Section 3.7 hereof) shall have paid the full amount of such defaulted Basic Rent within five (5) Business Days after the receipt of notice of such non-payment of Basic Rent, or

(2) if such Event of Default results from non-payment of a specific item of Supplemental Rent (other than payments of items of Supplemental Rent due with respect to an Event of Loss affecting any Leased Station, the termination of the Lease or the indemnification of the Indenture Trustee or any holder of Outstanding Loan Certificates) under the Lease due on demand or on the date or dates specified in the Lease, and the Owner Trustee (notwithstanding (i) the limitation of the Owner Trustee's obligation set forth in Section 3.7 hereof, or (ii) with respect to interest

# UNOFFICIAL COPY

at the Overdue Rate on all overdue payments of principal of the Loan Certificates, the limitation set forth in Section 4.9(d) hereof) shall have paid the full amount of such defaulted Supplemental Rent within ten (10) Business Days after the receipt of notice of such non-payment, or

(3) if such Event of Default results from a failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by the Lessee under the Lease or any other Operative Document other than the covenants or agreements to pay Rent, and the Owner Trustee (notwithstanding the provisions of the Lease) shall have performed or observed any such covenant, condition or agreement on behalf of the Lessee within thirty (30) days after the receipt of notice of the occurrence of such Event of Default,

unless, in the case of (1) above, the Lessee shall fail to make all payments of Basic Rent due and payable and unpaid by the Lessee on four (4) consecutive Basic Rent Dates or six (6) overall Basic Rent Dates, or in the case of (2) above, the aggregate amount of such payments shall exceed \$1,000,000, or in the case of (3) above, the aggregate amount of payments necessary to cure such defaults shall exceed \$1,500,000. Upon the making of any such payment or the performance or observance of any such obligation by the Owner Trustee as provided in this paragraph (b), the Owner Trustee shall have the right to make demand of, and to commence an action at law against, the Lessee in respect of the payment or the obligation giving rise to such payment, performance or observance by the Owner Trustee and any right to any interest in respect thereof, and shall be entitled to any payment or other performance in respect thereof upon receipt by the Indenture Trustee; provided, however, that the Owner Trustee shall not assert any claim against the Lessee or the Guarantors if a Default or an Event of Default shall have occurred and be continuing; and provided further, however, that nothing contained in this paragraph (b) shall be deemed to entitle the Owner Trustee to declare the Lease to be in default or to exercise any of the rights and powers or pursue any of the remedies provided in the Lease.

SECTION 8.2. **Enforcement of Remedies.** After an Event of Default shall have occurred and so long as the same shall be continuing, then and in every such case the Indenture Trustee may, and when required pursuant to the provisions of Section 9.3 hereof shall, exercise any or all of the rights and powers and pursue (a) subject to the rights of the Lessee under the Lease, any and all of the remedies pursuant to this Article, and, (b) in the event such Event of Default is an Event of Default referred to in clause (1) of Section 8.1(a) hereof, any and all of the remedies pursuant to the Lease and,

to the extent permitted by applicable law, may, after the Indenture Trustee pursuant to Section 8.3 hereof shall have declared the unpaid principal amount of all Loan Certificates immediately due and payable, take constructive possession of all or any part of the Leased Stations constituting a part of the Indenture Estate and may exclude the Owner Participant, the Owner Trustee and the Lessee and all Persons claiming under any of them wholly or partly therefrom.

It is understood and agreed that if the Indenture Trustee shall proceed to foreclose the Lien of this Indenture as a result of any event or condition which is an Event of Default under the Lease, it shall, to the extent that it is not then stayed or otherwise prevented from doing so by operation of law, proceed (to the extent it has not already done so) to exercise one or more of the remedies referred to in Section 18 of the Lease (as it shall determine in its sole good faith discretion).

**SECTION 8.3. Acceleration of Loan Certificates.** In the event an Event of Default shall have occurred and be continuing (a) in the case of an Event of Default set forth in clause (7), (8), (9) or (10) of Section 8.1(a) hereof or if Event of Default set forth in clause (1) of Section 8.1(a) hereof resulting from an Event of Default as defined in paragraphs (e), (f), (g) or (h) of Section 17 of the Lease, the unpaid principal amount and premium, if any, and accrued interest thereon shall immediately become due and payable without further act or notice of any kind, all of which are hereby waived and (b) in the case of any other Event of Default, subject to the last paragraph of 8.2 hereof the Indenture Trustee in its discretion may, or upon receipt of a Directive shall, declare the unpaid principal amount of all Loan Certificates with the premium, if any, and accrued interest thereon to be immediately due and payable, upon which declaration such principal amount and such premium and such accrued interest shall immediately become due and payable without further act or notice of any kind.

**SECTION 8.4. Specific Remedies; Enforcement of Claims without Possession of Loan Certificates.** Upon the occurrence and during the continuance of an Event of Default and provided that the Indenture Trustee pursuant to Section 8.3 hereof shall have declared the unpaid principal amount of all Loan Certificates immediately due and payable:

(a) At the request of the Indenture Trustee, the Owner Trustee shall promptly execute and deliver to the Indenture Trustee such instruments and other documents as the Indenture Trustee may deem necessary or advisable (which request shall be accompanied by the form of any such instrument or other document so to be executed and delivered) to enable the Indenture Trustee or an

# UNOFFICIAL COPY

3 / 3 / 3 5 0 0

agent or representative designated by the Indenture Trustee, at such time or times and place or places as the Indenture Trustee may specify, to obtain possession of all or any part of the Leased Stations to which possession the Indenture Trustee shall at the time be entitled hereunder. If the Owner Trustee shall for any reason fail to execute and deliver such instruments and documents after such request by the Indenture Trustee, the Indenture Trustee may obtain a judgment conferring on the Indenture Trustee the right to such possession immediately and requiring the Owner Trustee to deliver such instruments and documents to the Indenture Trustee, to the entry of which judgment the Owner Trustee hereby specifically consents, and upon every such taking of possession, the Indenture Trustee may, from time to time, at the expense of such Leased Stations, make all such expenditures for maintenance, insurance and repairs to and of such Leased Stations, as it may deem necessary and proper. In each such case, the Indenture Trustee shall have the right, to the extent permitted by applicable law, to maintain, use, operate, store, lease, control or manage such Leased Stations and to carry on the business and to exercise all rights and powers of the Owner Trustee relating to such Leased Stations, as the Indenture Trustee shall deem necessary, including the right to enter into any and all such agreements with respect to the maintenance, use, operation, storage, leasing, control or management of such Leased Stations or any part thereof as the Indenture Trustee may determine; and the Indenture Trustee shall be entitled to collect and receive all tolls, rents, revenues, issues, income, products and profits of such Leased Stations and every part thereof, without prejudice, however, to the right of the Indenture Trustee under any provision of this Indenture to collect and receive all cash held by, or required to be deposited with, the Indenture Trustee hereunder. Such tolls, rents, revenues, issues, income, products and profits shall be applied to pay the expense of holding and operating such Leased Stations and of conducting the business thereof, and of all maintenance and repairs, and to make all payments which the Indenture Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon such Leased Stations or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Owner Trustee as such), and all other payments

# UNOFFICIAL COPY

3 7 3 7 3 3 0 0

which the Indenture Trustee may be required or authorized to make under any provision of this Indenture, as well as just and reasonable compensation for the services of the Indenture Trustee and of all persons properly engaged and employed by the Indenture Trustee.

(b) The Indenture Trustee may proceed to enforce the rights of the Indenture Trustee and of the holders of the Loan Certificates by directing payment to it of all monies payable under any agreement or undertaking constituting a part of the Indenture Estate, by proceedings in any court of competent jurisdiction for the appointment of a receiver or for sale of all or any part of the Leased Stations possession to which the Indenture Trustee shall at the time be entitled hereunder or for foreclosure of the lien of this Indenture on such Leased Stations, and by any other action, suit, remedy or proceeding authorized or permitted by this Indenture or by law or by equity, and the Indenture Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustee and of the holders of the Loan Certificates asserted or upheld in any bankruptcy, receivership or other judicial proceedings.

(c) Without limiting the foregoing, the Indenture Trustee, its assigns and its legal representatives shall have as to such of the Indenture Estate as is subject to the Uniform Commercial Code or similar law in each relevant jurisdiction all the remedies of a secured party under the Uniform Commercial Code or similar law in such jurisdiction and such further remedies as from time to time may hereafter be provided in such jurisdiction for a secured party. In exercising its power of sale, the Indenture Trustee shall be entitled to add to the indebtedness evidenced by the Loan Certificates any and all Indenture Trustee's Expenses. In exercising its power of sale under this Indenture the Indenture Trustee may sell such portion of or any part thereof, either as one unit or in separate units, all as the Indenture Trustee may in its discretion elect; and the Indenture Trustee may so sell the aforesaid properties, rights and interests or any part thereof either separately from or together with the whole or any part of other property which may constitute security for any obligation with respect to

# UNOFFICIAL COPY

87573300

the Loan Certificates, also as the Indenture Trustee may in its discretion elect.

(d) All rights of action and rights to assert claims under this Indenture, or under any of the Loan Certificates, may be enforced by the Indenture Trustee without the possession of such Loan Certificates on any trial or other proceedings instituted by the Indenture 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 Loan Certificates. In any proceedings brought by the Indenture Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Indenture Trustee shall be a party) the Indenture Trustee shall be held to represent all the holders of the Loan Certificates, and it shall not be necessary to make any holders of the Loan Certificates parties to such proceedings.

(e) Notwithstanding the foregoing, so long as no Event of Default under clause (1) or clause (2) of Section 8.1(a) hereof shall have occurred and be continuing, the rights of the Indenture Trustee in and to the Leased Stations shall be subject and subordinate to the rights of the Lessee under the Lease insofar as the remedies provided in this Section conflict with such rights of the Lessee.

**SECTION 8.5. Rights and Remedies Cumulative.** Each and every right, power and remedy herein specifically given to the Indenture Trustee under this Indenture shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Indenture Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Owner Participant, the Owner Trustee, the Lessee or any other Person or to be an acquiescence therein.



# UNOFFICIAL COPY

3 7 5 7 5 5 0 0

SECTION 8.6. **Restoration of Rights and Remedies.** In case the Indenture Trustee shall have proceeded to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee, then and in every such case the Owner Participant, the Owner Trustee, the Indenture Trustee and the Lessee shall be restored to their former positions and rights hereunder with respect to the Indenture Estate, and all rights, remedies and powers of the Indenture Trustee shall continue as if no such proceedings had been taken.

SECTION 8.7. **Waiver of Past Defaults.** Any past Default hereunder with respect to the Loan Certificates and its consequences may be waived by a Directive of the holders of Loan Certificates, except a Default (a) in the payment of the principal of, premium, if any, or interest on any Loan Certificate, subject to the provisions of Section 8.8 hereof, or (b) in respect of a covenant or provision hereof which, under Section 11.1 hereof, cannot be modified or amended without the consent of each holder of a Loan Certificate then Outstanding. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 8.8. **Rescission and Annulment.** If at any time after the principal of the Loan Certificates shall have become due and payable by declaration by the Indenture 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 Loan Certificates and all other sums payable under the Loan Certificates (except the principal of and premium, if any, on the Loan Certificates 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 Indenture shall have been made good or cured, then and in every such case the Indenture Trustee's declaration and its consequences may, by Directive of the holders of the Loan Certificates filed with the Indenture Trustee, be rescinded and annulled; but no such rescission or annulment shall extend to or affect any subsequent Default or Event of Default or impair any right consequent thereon.

## ARTICLE IX

### CONCERNING THE INDENTURE TRUSTEE AND THE OWNER TRUSTEE

**SECTION 9.1. Acceptance of Trusts; Standard of Care.** The Indenture Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture and agrees to receive and disburse in accordance with Article VI hereof all monies constituting part of the Indenture Estate. The Indenture Trustee shall not be answerable or accountable under any circumstances under this Indenture, except for its own willful misconduct or gross negligence.

**SECTION 9.2. Indenture Trustee to Act Solely as Trustee.** The Connecticut Bank and Trust Company, National Association acts hereunder solely as indenture trustee as herein provided and not (except as expressly provided herein) in any individual capacity; and, except as provided in Section 9.1 hereof, all Persons having any claim against the Indenture Trustee arising from matters relating to any Loan Certificates by reason of the transactions contemplated hereby shall, subject to the security interest and priorities of payment as herein provided and to the last sentences of Sections 9.6 and 9.7 hereof, look only to the Indenture Estate for payment or satisfaction thereof.

**SECTION 9.3. Duties in Respect of Event of Default.** In the event the Indenture Trustee shall have actual knowledge of a Default or of an Event of Default the Indenture Trustee shall give prompt written notice thereof to the Lessee, the Owner Participant, the Owner Trustee and each holder of a Loan Certificate unless such Default or Event of Default shall have been remedied before the giving of such notice; provided, however, that, the failure of the Indenture Trustee to give any such notice to the Lessee, the Owner Participant or the Owner Trustee shall not in any way affect the validity of any action taken by the Indenture Trustee or any holder of a Loan Certificate pursuant to the exercise of any of the remedies provided in Article VIII hereof. Subject to the terms of Section 9.5 hereof, the Indenture Trustee shall take such action, or refrain from taking such action, with respect to such Default or Event of Default as the Indenture Trustee shall be instructed by a Directive. If the Indenture Trustee shall not have received instructions as above provided within twenty (20) days after mailing of notice of such Default or Event of Default to the holders of the Loan Certificates, the Indenture Trustee may, subject to instructions thereafter received

pursuant to the preceding sentence, take such action not inconsistent with the provisions of this Indenture, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Noteholders of the Loan Certificates. For all purposes of this Indenture, in the absence of actual knowledge of an officer or employee in the Corporate Trust Department of the Indenture Trustee, the Indenture Trustee shall not be deemed to have knowledge of a Default or Event of Default except the failure of the Lessee to pay any installment of Basic Rent when due.

**SECTION 9.4. Duties in Respect of Matters Specified in Directive.** Subject to the terms of Sections 9.3 and 9.5 hereof, upon receipt of a Directive, the Indenture Trustee shall take such of the following action as may be specified in such Directive: (a) subject to the terms of Section 2.6(c) hereof, give such notice or direction or exercise such right, remedy or power hereunder or under the Lease or in respect of any part or all of the Indenture Estate as shall be specified in such Directive; and (b) after the occurrence and during the continuance of an Event of Default under the Lease, approve as satisfactory to it all matters required by the terms of the Lease to be satisfactory to the Owner Trustee, it being agreed that without such a Directive, the Indenture Trustee shall not approve any such matter as satisfactory to it.

**SECTION 9.5. Indemnification.** The Indenture Trustee shall not be required to take or refrain from taking for the benefit of the holders of the Loan Certificates any action under Section 9.3 or 9.4 hereof or under Article VIII hereof unless the Indenture Trustee shall have been indemnified by such Noteholders, in manner and form satisfactory to the Indenture Trustee, against any liability, cost or expense (including counsel fees) which may be incurred in connection therewith and shall be assured by such Noteholders of reasonable compensation for taking such action during an Event of Default; provided, however, that an unsecured agreement of a Loan Participant to indemnify shall be a sufficient indemnity with respect to an original holder of a Loan Certificate. To the extent that the Indenture Trustee is reimbursed by the Noteholders of the Loan Certificates for such compensation, such Noteholders shall be subrogated to the rights of the Indenture Trustee. The Indenture Trustee shall not be required to take or refrain from taking any action under Section 9.3 or 9.4 hereof or under Article VIII hereof nor shall any other provision of this Indenture be deemed to impose a duty on the Indenture Trustee to take any action, if the Indenture Trustee shall have been advised by counsel that such action is contrary to the terms hereof or of the Lease or is otherwise contrary to law.

**SECTION 9.6. Limitations on Duties; Discharge of Certain Liens Resulting from Claims Against Indenture Trustee.** The Indenture Trustee shall not have any duty or obligation to manage, control, use, sell, operate, store, lease, dispose of or otherwise deal with the Leased Stations or any other part of the Indenture Estate or otherwise to take or refrain from taking any action under, or in connection with, this Indenture or the Lease or any other document or any other action with respect to the Leased Stations except as expressly provided by the terms of this Indenture or as expressly provided in a Directive; and no implied duties or obligations shall be read into this Indenture against the Indenture Trustee. The Connecticut Bank and Trust Company, National Association nevertheless separately agrees in its own capacity and not in its capacity as trustee, and at its own cost and expense, promptly to take such action as may be necessary to discharge any Lien on any part of such Indenture Estate resulting from claims against it not related to the administration of the Indenture Estate.

**SECTION 9.7. Representations and Warranties of Indenture Trustee.** The Indenture Trustee makes no representation or warranty, express or implied, as to the value, condition, merchantability or fitness for use of the Leased Stations or any other part of the Indenture Estate or as to its title thereto, or any other representation or warranty with respect to the Leased Stations or any other part of the Indenture Estate whatsoever. The Connecticut Bank and Trust Company, National Association represents and warrants in its individual capacity that this Indenture and each and every document and instrument referred to herein which is required to be executed by it has been, or will be, executed and delivered by, or on behalf of, the Indenture Trustee by one of its officers who is, or at the time of execution and delivery was or will be, duly authorized to execute and deliver such documents on its behalf.

**SECTION 9.8. Non-Segregation of Monies.** All monies received by the Indenture Trustee under or pursuant to any of the provisions of this Indenture need not be segregated in any manner from any other monies except to the extent required by law and may be deposited under such conditions as may be prescribed or permitted by law, and the Indenture Trustee shall not be liable for any interest thereon, provided, however, that any payments received or applied hereunder by the Indenture Trustee shall be accounted for by the Indenture Trustee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof.

**SECTION 9.9. Restrictions on Dealing with Indenture Estate.** The Owner Trustee and the Indenture Trustee agree not to manage, control, use, sell, operate, store, lease, dispose of or otherwise deal with the Leased Stations or any other part of the Indenture Estate except (a) as required by the terms of the Lease or the other

Operative Documents, (b) in accordance with the powers granted to, or the authority conferred upon, the Owner Trustee and the Indenture Trustee pursuant to the Trust Agreement or this Indenture, as applicable, (c) in accordance with the express terms hereof or, in the case of the Indenture Trustee, a Directive pursuant to Section 9.3 or 9.4 hereof or (d) as provided in the last sentence of Section 9.6 hereof.

**SECTION 9.10. No Duties of Maintenance, Etc.** Except as specifically provided in this Indenture, the Owner Trustee and the Indenture Trustee shall have no duty (a) to see to any recording or filing of the Trust Agreement, the Lease, this Indenture, any instrument or document described in this Indenture or any Lien or to see to the maintenance of any such documentation, recording or filing, (b) to see to any insurance on the Leased Stations or any other part of the Indenture Estate or to effect or maintain any such insurance, whether or not the Lessee shall be in default with respect to the Lease, other than to receive and hold any policies, cover notes or binders furnished by the Lessee pursuant to the Lease, (c) except as provided in Section 9.6 or 7.1(c) hereof or in the Participation Agreement, to see to the payment or discharge of any tax, assessment or other governmental charge or any Lien of any kind owing with respect to, assessed or levied against, any part of the Indenture Estate or to make or file any reports or returns related thereto, (d) to confirm, verify or inquire into the failure of the Lessee to send any reports or financial statements of the Lessee or (e) to inspect the Leased Stations or any other part of the Indenture Estate at any time or ascertain or inquire as to the performance or observance of any of the Lessee's covenants under the Lease.

**SECTION 9.11. Reliance on Writings. Use of Agents, Etc.** The Owner Trustee and the Indenture Trustee shall not incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, telegram, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed or sent by the proper party or parties. In the case the Lessee, the Guarantors or the Owner Participant, the Owner Trustee and the Indenture Trustee may accept a copy of a resolution of the Board of Directors or the Executive Committee, if any, of the Lessee, the Guarantors or the Owner Participant, certified by the Secretary or an Assistant Secretary of the Lessee or the Owner Participant, as the case may be, as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by such Board of Directors or Executive Committee and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Owner Trustee and the Indenture Trustee may for all purposes hereof rely on a certificate, signed by the Chairman of the Board, or by the President, or by any Vice

President, or by the Treasurer, or by the Secretary of the Lessee, the Guarantors or of the Owner Participant, as the case may be, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee and the Indenture Trustee for any action taken or omitted to be taken by them in good faith in reliance thereon. As to the aggregate unpaid principal amount of Loan Certificates Outstanding as of any date, the Owner Trustee may for all purposes hereof rely on a certificate signed by any authorized officer of the Indenture Trustee. The Indenture Trustee shall furnish to the Owner Trustee upon request such information and copies of such documents as the Indenture Trustee may have and as are necessary for the Owner Trustee to perform its duties under Article III hereof. The Indenture Trustee shall assume, and shall be fully protected in assuming, that the Owner Trustee is authorized to enter into this Indenture and to take all action to be taken by it pursuant to the provisions hereof, and shall not inquire into the authorization of the Owner Trustee with respect thereto. In the administration of the trusts hereunder, the Indenture Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and, with respect to matters relating to any of the Loan Certificates, may, at the expense of the Indenture Estate, consult with counsel, accountants and other skilled persons to be selected and employed by it, and the Indenture Trustee shall not be liable for anything done, suffered or omitted by it in good faith in accordance with the advice or opinion of any such counsel, accountants or other skilled persons unless such action, sufferance or omission constituted gross negligence or willful misconduct on the part of the Indenture Trustee.

**SECTION 9.12. Limitation on Rights Against Noteholders or Indenture Estate.** Except as otherwise provided in Article VI hereof or in Section 8.4 or 9.5 hereof, the Indenture Trustee agrees that it shall have no right against the holders of the Loan Certificates or any part of the Indenture Estate for any fee as compensation for its services hereunder.

**SECTION 9.13. Compensation, Costs and Expenses of Indenture Trustee.** As provided in Section 16 of the Participation Agreement, the Indenture Trustee shall receive from the Owner Participant such initial trustee fees as may be agreed upon between the Indenture Trustee and the Owner Participant. The Indenture Trustee shall receive from the Lessee as compensation for its services hereunder such costs, expenses and trustee fees, other than initial trustee fees, as may heretofore and from time to time hereafter be agreed upon between the Indenture Trustee and the Lessee.

**SECTION 9.14. No Assumption of Obligations.** Neither this Indenture nor any action or inaction on the part of the Indenture Trustee or any holder of a Loan Certificate shall constitute an

assumption on the part of the Indenture Trustee or such holder of any obligation under the Lease or any other Indenture Estate Document. No action or inaction on the part of the Owner Trustee shall adversely affect or limit in any way the rights of the Indenture Trustee or any holder of a Loan Certificate under this Indenture or under any Indenture Estate Document.

ARTICLE X

CO-TRUSTEES; SEPARATE TRUSTEES; AND SUCCESSOR TRUSTEES

SECTION 10.1. Appointment of Co-Trustees or Separate Trustees.

(a) At any time or times, for the purpose of meeting the legal requirements of any jurisdiction in which any part of the Indenture Estate may at the time be located the Indenture Trustee shall have power to appoint one or more Persons to act as co-trustee of all or any part of such Indenture Estate 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 Person or Persons any property, title, right or power deemed necessary or desirable, subject to the remaining provisions of this Section.

(b) Every separate trustee or co-trustee shall to the extent permitted by law be appointed subject to the following terms:

(1) The rights, powers, duties and obligations conferred or imposed upon any such separate trustee or co-trustee shall not be greater than those conferred or imposed upon the Indenture Trustee, and such rights and powers shall be exercisable only jointly with the Indenture Trustee, except to the extent that, under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be unqualified to perform such act or acts, in which event such rights and powers shall be exercised by such separate trustee or co-trustee subject to the provisions of subsection (b)(4) of this Section.

(2) The Indenture Trustee may at any time, by an instrument in writing executed by it, accept the resignation of or remove any separate trustee or co-trustee appointed under this Section.

# UNOFFICIAL COPY

8 7 6 7 3 5 0 0

(3) No trustee or co-trustee under this Indenture shall be liable by reason of any act or omission of any other trustee or co-trustee under this Indenture.

(4) No power given to such separate trustee or co-trustee shall be separately exercised hereunder by such separate trustee or co-trustee except with the consent in writing of the Indenture Trustee, anything herein contained to the contrary notwithstanding.

(c) Upon the acceptance in writing of such appointment by any such separate trustee or co-trustee, it shall be vested with the estates or property specified in the instrument of appointment, subject to all the terms of this Indenture.

## SECTION 10.2. Resignation and Removal of Indenture Trustee; Appointment of Successor.

(a) The Indenture Trustee or any successor thereto may resign at any time without cause by giving at least thirty (30) days' prior written notice to the Owner Trustee and to each holder of a Loan Certificate, such resignation to be effective on the date of appointment of a successor trustee as hereinafter provided. In addition, the Indenture Trustee may be removed at any time without cause by a Directive delivered to the Owner Trustee and the Indenture Trustee, and the Indenture Trustee shall promptly give notice thereof in writing to each holder of a Loan Certificate. In the case of the resignation or removal of the Indenture Trustee, a successor trustee may be appointed by a Directive. If a successor trustee shall not have been appointed within thirty (30) days after such notice of resignation or removal, the Indenture Trustee, the Owner Trustee or any holder of a Loan Certificate 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 as above provided within one year from the date of the appointment by such court.

(b) Any successor trustee, however appointed, shall execute and deliver to its predecessor and to the Owner Trustee an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of its predecessor hereunder in the trusts under this Indenture applicable to it with like effect as if originally named as the Indenture 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 Indenture, and such predecessor shall duly assign, transfer, deliver and pay over to such successor trustee any property or monies then held by such predecessor under this Indenture.

(c) Any successor trustee, however appointed, shall be a bank or trust company organized under the laws of the United States or the State of New York, having its principal office in the Borough of Manhattan, City and State of New York, and having a combined capital and surplus of at least \$100,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Indenture Trustee hereunder upon reasonable or customary terms.

(d) Any corporation or national banking association into which the Indenture 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 Indenture Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of paragraph (c) of this Section (except as to incorporation and location of its principal office being in New York), be the Indenture Trustee under this Indenture without further act.

## ARTICLE XI

### AMENDMENTS TO THIS INDENTURE AND TO OTHER DOCUMENTS

SECTION 11.1. Amendments to this Indenture and Other Documents. At any time and from time to time, but only upon receipt of a Directive: (a) the Indenture Trustee shall, and the Owner Trustee may, execute an amendment to this Indenture for the purpose of adding provisions to, or changing or eliminating provisions of, this Indenture as specified in such Directive and (b) the Owner Trustee may, with the consent of the Indenture Trustee, and if an Event of Default shall have occurred and be continuing, the Owner Trustee shall, (i) enter into such written amendment to the Lease or any other Indenture Estate Document to which the Lessee or the Guarantors, as the case may be, may agree and as may be specified in such Directive, or (ii) execute and deliver such written waiver or modification of the terms of the Lease or any other Indenture Estate Documents, as may be specified in such Directive; provided, however, that, without the consent of the holders of all Loan Certificates then Outstanding, no such amendment to this Indenture, the Lease, or

# UNOFFICIAL COPY

3 7 5 7 3 3 0 0

any other Indenture Estate Document, or waiver or modification of the terms of any thereof, shall (1) modify any of the provisions of this Section or of Sections 8.8, 9.3 or 9.4 hereof, or of the definition of Directive contained in Section 1.1 hereof; (2) reduce the amount or extend the time of payment of any amount owing or payable under any Loan Certificate, reduce the rate of interest payable on any Loan Certificate, alter or modify the provisions of Article VI hereof with respect to the order of priorities in which distributions thereunder shall be made as between the holders of Loan Certificates and the Owner Trustee; (3) reduce, modify or amend any indemnities in favor of the holders of Loan Certificates; (4) except as expressly provided in Section 4 of the Lease (as originally executed and delivered), reduce the amount or extend the time of payment of Basic Rent, Casualty Value or Termination Value or any other Supplemental Rent under the Lease as set forth in the Lease; (5) modify, amend or supplement the Lease or consent to the termination or any assignment of the Lease, in any case releasing the Lessee from its obligations in respect of the payment of Basic Rent, Casualty Value or Termination Value or any other Supplemental Rent under the Lease; or (6) deprive the holders of any Loan Certificate then Outstanding of the security interest of this Indenture on the Indenture Estate or adversely affect the rights and remedies for the benefit of such holders provided in Article VIII hereof and the sections of the Lease regarding events of default and remedies thereunder.

**SECTION 11.2. Certain Limitations of Supplements and Amendments.** If in the opinion of the Indenture Trustee any document required to be executed by it pursuant to the terms of Section 11.1 hereof affects any right, duty, immunity or indemnity in favor of the Indenture Trustee under this Indenture or the Lease, the Indenture Trustee may in its discretion decline to execute such documents.

**SECTION 11.3. Directive Need Not Specify Particular Form of Amendment.** It shall not be necessary for any Directive furnished pursuant to Section 11.1 hereof to specify the particular form of the proposed documents to be executed pursuant to such Section, but it shall be sufficient if such request shall indicate the substance thereof.

**SECTION 11.4. Indenture Trustee to Furnish Noteholder Copy of Amendment.** Promptly after the execution by the Owner Trustee and the Indenture Trustee of any document entered into pursuant to Section 11.1 hereof, the Indenture Trustee shall mail, by first-class mail, postage prepaid, a conformed copy thereof to each holder of an Outstanding Loan Certificate at the address of such Noteholder last known to the Indenture Trustee, but the failure of the Indenture Trustee to mail such conformed copies shall not impair or affect the validity of such document.

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

## ARTICLE XII

### MISCELLANEOUS

SECTION 12.1. **Governing Law.** This Indenture shall be governed by, and be construed in accordance with, the laws of the State of New York.

SECTION 12.2. **Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all communications, notices and consents provided for herein shall be in writing, by telephone promptly confirmed in writing, by telefax (receipt confirmed), by tested telex or by personal delivery and shall become effective if given by telephone, telefax, telex or personal delivery, when given, and if given by mail five (5) days after deposit in the United States mail, with proper postage for first-class mail prepaid, addressed: (i) if to the Owner Trustee, to Wilmington Trust Company at Rodney Square North, Wilmington, Delaware 19890, Attention: Corporate Trust Administration and to William J. Wade at One Rodney Square, P.O. Box 551, Wilmington, Delaware 19899 (with a copy to the Owner Participant); (ii) if to the Indenture Trustee, at One Constitution Plaza, Hartford, Connecticut 06115, Attention: Corporate Trust Department (with a copy to each of the Loan Participants); (iii) if to the Lessee, at its address set forth in the Lease; (iv) if to the Owner Participant, at its address set forth in the Participation Agreement; and (v) if to any holder of a Loan Certificate, at the address of such Noteholder set forth in the register kept pursuant to Section 4.1 hereof and for purposes of such register the Loan Participants' addresses shall initially be as set forth in the Participation Agreement; or to such other address as the Owner Trustee, the Owner Participant, the Indenture Trustee, any Noteholder or the Lessee may from time to time designate by notice duly given in accordance with this Section to each other party.

SECTION 12.3. **Monies for Loan Certificate Payments to be Held in Trust.** Subject to the provisions of Section 3.8 hereof, in case the holder of any Loan Certificate shall fail to present the same for payment on any date on which the principal thereof or premium, if any, or interest thereon becomes payable, the Indenture Trustee may set aside in trust the monies then due thereon and shall pay such monies to the holder of such Loan Certificate upon due presentation or surrender thereof in accordance with the provisions of this Indenture.

**SECTION 12.4. Transfers Not to Affect Indenture or Trusts.** No holder of a Loan Certificate shall have legal title to any part of the Indenture Estate. No transfer, by operation of law or otherwise, of any Loan Certificate or other right, title and interest of any holder of a Loan Certificate in and to the Indenture Estate or hereunder shall operate to terminate this Indenture or the trusts hereunder with respect to such Loan Certificate or entitle any successor or transferee of such Noteholder to an accounting or to the transfer to it of legal title to any part of the Indenture Estate.

**SECTION 12.5. Binding Effect of Sale of Indenture Estate.** Any sale or other conveyance of the Indenture Estate or any part thereof by the Indenture Trustee made pursuant to the terms of this Indenture or of the Lease shall bind the holders of the Loan Certificates and shall be effective to transfer or convey all right, title and interest of the Indenture Trustee, the Owner Trustee and such holders in and to the same. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Indenture Trustee.

**SECTION 12.6. Limitation as to Enforcement of Rights, Remedies and Claims.** Nothing in this Indenture, whether express or implied, shall be construed to give to any Person other than the Indenture Trustee and the holders of the Loan Certificates any legal or equitable right, remedy or claim under or in respect of this Indenture or any Loan Certificate.

**SECTION 12.7. Severability of Invalid Provisions.** Any provision of this Indenture which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**SECTION 12.8. Benefit of Parties, Successors and Assigns; Entire Agreement.** All representations, warranties, covenants and agreements contained herein or delivered in connection herewith shall be binding upon, and inure to the benefit of, the Owner Trustee, the Owner Participant, the Indenture Trustee, The Connecticut Bank and Trust Company, National Association and their respective successors and assigns and each holder of a Loan Certificate, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by any holder of a Loan Certificate shall bind the successors and assigns of such Noteholder. This Indenture constitutes the entire agreement of the parties hereto with respect

# UNOFFICIAL COPY

37673000

to the subject matter hereof and supersedes all prior understandings and agreements of such parties.

**SECTION 12.9. Survival of Representations and Warranties.** All representations and warranties made with respect hereto shall survive the execution and delivery of this Indenture and the issue, sale and delivery of the Loan Certificates.

**SECTION 12.10. Counterpart Execution.** This Indenture and any supplement or amendment to this Indenture may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Fully executed sets of counterparts shall be delivered to, and retained by, the Owner Trustee and the Indenture Trustee.

**SECTION 12.11. Dating of Indenture.** Although this Indenture is dated for convenience and for the purpose of reference as of the date mentioned, the actual date or dates of execution by the parties hereto are the respective dates set forth under their signatures, and this Indenture shall be effective on the later of such dates.

**SECTION 12.12. Owner Participant May Own Loan Certificates.** Nothing in this Indenture shall be construed as prohibiting the Owner Participant from being the holder of any Loan Certificate; provided, however, that neither the Owner Trustee nor the Owner Participant shall purchase or otherwise acquire any Loan Certificate except pursuant to an offer made concurrently, on the same terms, and ratably to all holders of Loan Certificates then Outstanding.

**SECTION 12.13. Owner Trustee's Liability.** Wilmington Trust Company and William J. Wade are entering into this Indenture solely as owner trustees under the Trust Agreement and not in their respective individual capacities (except as expressly provided herein) and in no case whatsoever shall Wilmington Trust Company or William J. Wade (or any person or entity acting as an owner trustee under the Trust Agreement) be personally liable for, or for any loss in respect of, any of the statements, warranties, representations, agreements or obligations of the Owner Trustee hereunder, as to which the Indenture Trustee and the holders of the Loan Certificates agree to look solely to the Trust Indenture Estate, except, in the case of Wilmington Trust Company, for (a) the willful misconduct or gross negligence of Wilmington Trust Company or William J. Wade and (b) for statements, warranties, representations, agreements or obligations expressly made by Wilmington Trust Company or William J. Wade in their respective individual capacities. If a successor owner trustee is appointed in accordance with the terms of the Trust Agreement, such successor owner trustee shall, without any further act, succeed to all the

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

rights, duties, immunities and obligations of the Owner Trustee hereunder, and the predecessor owner trustee shall be released from all further duties, obligations or liabilities hereunder in respect of matters arising hereunder after such person ceases to be such owner trustee.

SECTION 12.14. Single Trustee. It is understood and agreed by the parties hereto that, in those jurisdictions where only the Co-Owner Trustee shall hold title to the Leased Stations, the Co-Owner Trustee shall have full power and authority to act as sole Owner Trustee for all purposes hereof and of any Trust Agreement and Trust Indenture Supplements relating to such Leased Stations.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 7 6 7 3 0

IN WITNESS WHEREOF, the parties hereto have each caused this indenture to be duly executed by their respective officers thereunto duly authorized as of the respective dates set forth below.

WILMINGTON TRUST COMPANY, not in its individual capacity except as expressly provided herein, but solely as owner trustee under a Trust Agreement dated as of September 15, 1987,  
Owner Trustee

Witness [Signature]  
Name: [Name]

BY [Signature]  
Name: Thomas P. Laskaris  
Title: Vice President  
Date: September 30, 1987

Witness [Signature]  
Name: [Name]

WILLIAM J. WADE, not in his individual capacity, but solely as owner trustee under a Trust Agreement dated as of September 15, 1987,  
Owner Trustee

Witness [Signature]  
Name: Deborah Ferlet

[Signature]  
William J. Wade  
Date: September 30, 1987

Witness [Signature]  
Name: Annette L. Bosco

# UNOFFICIAL COPY

8 7 9 7 3 3 0 0

**THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL  
ASSOCIATION,  
Indenture Trustee**

Witness *D. W. Fearn*  
Name: **D. W. FEARN**

By *Milton M. Lement*  
Name: Milton M. Lement  
Title: vice President

Witness *Stevl. Cottran*  
Name: **STEVL. COTTRAN**

Date: September 30, 1987

Property of Cook County Clerk's Office

87673300



# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

STATE OF DELAWARE     )  
                                  ) ss.  
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this December 3, 1987 by Thomas P. Laskaris, the Vice President of Wilmington Trust Company, a Delaware banking corporation, on behalf of said corporation.

  
Name: Marlene L. Lynch

Sworn to before me this  
3rd day of December, 1987.

(SEAL)

Notary Public for Delaware

My Commission Expires: 6/15/89

Property of Cook County Clerk's Office


87673300

UNOFFICIAL COPY

8 7 0 7 3 3 0 0

STATE OF DELAWARE )  
 ) ss:  
COUNTY OF NEW CASTLE )

The foregoing instrument was acknowledged before me this  
Dec. 4, 1987 by William J. Wade.

  
Name: Jo Ann E. John

Sworn to before me this  
~~4th~~ day of Dec., 1987

(SEAL)

Notary Public for Delaware

My Commission Expires: 4-2-88

Property of Cook County Clerk's Office

87673300

UNOFFICIAL COPY

8 7 6 7 3 3 0 0

STATE OF CONNECTICUT )  
 ) SS:  
COUNTY OF HARTFORD )

The foregoing instrument was acknowledged before me this  
DECEMBER 31ST, 1987 by Mason M. Lemont, the VICE PRESIDENT of The  
Connecticut Bank and Trust Company, National Association, a national  
banking association, on behalf of said corporation.

*Mason M. Lemont*  
Name:

Sworn to before me this  
31ST day of DECEMBER, 1987

(SEAL)

Notary Public for Connecticut

My Commission Expires: \_\_\_\_\_

DAWN PICCOLI HEINTZ  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1990

Property of Cook County Clerk's Office

87673300

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

EXHIBIT A  
to  
Trust Indenture

Form of Loan Certificate

No.  
\$

New York, New York  
\_\_\_\_\_, 19\_\_

## 10.70% SECURED INSTALLMENT LOAN CERTIFICATE

Emro Marketing Company  
Leverage Lease of Service/Truck Stations

WILMINGTON TRUST COMPANY, a Delaware banking corporation, and WILLIAM J. WADE, not in their respective individual capacities, but solely as owner trustees under a Trust Agreement dated as of September 15, 1987 (collectively, the Owner Trustee), for value received, hereby promises to pay to

\_\_\_\_\_, or registered assigns, but only from the funds designated below, 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, the principal sum of (\$ \_\_\_\_\_) and to pay interest on the unpaid principal balance hereof from and including the date hereof to but excluding the date payment in full of the principal amount of this Loan Certificate is made, at a rate of 10.70% per annum (computed on the basis of a 360-day year of twelve months of 30 days each). Interest only shall be payable on January 2, 1988. Principal and interest payments shall thereafter be made in installments on January 2 and July 2 in each year commencing July 2, 1988 and ending January 2, 2005. The amount of each such installment shall be as set forth on the Loan Schedule attached hereto; provided that the last such payment shall be in an amount sufficient to discharge all unpaid principal or premium, if any, and accrued interest on this Loan Certificate in full.

This Loan Certificate shall bear interest, payable only from the funds designated below, at a rate per annum equal to the higher of 2% above the Interest Rate or 2% above the Prime Rate, but in no event at a rate per annum greater than that permitted by applicable law (the Overdue Rate), on any part of the principal hereof not paid when due for any period during which the same shall be overdue; as used herein, the term Prime Rate shall mean the per annum rate of interest publicly announced as such (or, if no longer announced, the Indenture Trustee under the Trust Indenture, Mortgage and Security Agreement dated as of September 15, 1987 (the Indenture) between the Owner Trustee and The Connecticut Bank and Trust Company, National Association, as trustee (the Indenture Trustee), shall have the right, in its reasonable judgment, to substitute a new method for determining such rate) at the applicable time by The Connecticut Bank

67673300

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

and Trust Company, National Association or its successor or the survivor in the event of a bank merger, it being understood that such rate shall not necessarily be the best or lowest rate of interest available to such banking institution's best or most preferred large commercial customers.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee on the Loan Certificates of which this Loan Certificate is one shall be made only from the income or proceeds from the Indenture Estate (as defined in the Indenture), and the holder hereof, by its acceptance of this Loan Certificate, agrees that it will look solely to the income and proceeds from such Indenture Estate to the extent available for distribution to the holder hereof as above provided and that neither the Owner Participant (as defined in the Indenture), the Owner Trustee nor the Indenture Trustee shall be personally liable to the holder hereof for any amounts payable under this Loan Certificate.

Unless other arrangements for payment are made in accordance with Section 3.8 of the Indenture, principal, premium, if any, and interest shall be payable in immediately available funds at the Principal Office of the Indenture Trustee (as defined in the Indenture).

This Loan Certificate is transferable by the holder hereof, or by its attorney duly authorized in writing, on the register maintained at the Principal Office of the Indenture Trustee (as defined in the Indenture); and upon such transfer, a new registered Loan Certificate or Loan Certificates for the same aggregate principal amount will be issued in exchange hereof in accordance with the terms and provisions of the Indenture. Any transferee or assignee of this Loan Certificate agrees to, and shall be deemed by accepting delivery hereof to be bound by, the terms and conditions of the Indenture and the Participation Agreement (as defined in the Indenture).

This Loan Certificate is one of the Loan Certificates which have been or are to be issued by the Owner Trustee pursuant to the terms of the Indenture. The Indenture Estate is held by the Indenture Trustee as security for the payment of such Loan Certificates and certain other obligations to the holders of such Loan Certificates. 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 Loan Certificate and the other Loan Certificates issued under the Indenture as well as for a statement of the terms and conditions of the trusts created by the Indenture, to all of which terms and conditions each holder hereof agrees by its acceptance of this Loan Certificate.

# UNOFFICIAL COPY

3 7 5 7 5 3 0 0

As provided in Section 5.1 of the Indenture, this Loan Certificate is not subject to prepayment except upon the occurrence of certain events as and to the extent and with or without premium as provided in Article V of the Indenture.

In case an Event of Default under the Indenture shall occur and be continuing, the unpaid principal of this Loan Certificate together with the premium, if any, and all accrued interest hereon, may become or be declared due and payable in the manner, with the effect and subject to the conditions, provided in the Indenture.

Each payment on this Loan Certificate shall be applied in the manner set forth in Article VI of the Indenture.

The Indenture permits amendment thereof and modification of the rights and obligations of the Owner Trustee and the rights of the Noteholder of this Loan Certificate and the other Loan Certificates in certain respects with the consent of less than all such Noteholders under certain circumstances.

This Loan Certificate shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been duly executed by the Indenture Trustee.

PROPERTY OF Cook County Clerk's Office

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

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

WILMINGTON TRUST COMPANY, not in its individual capacity, but solely as owner trustee under a Trust Agreement dated as of September 15, 1987

Owner Trustee

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

WILLIAM J. WADE, not in his individual capacity, but solely as owner trustee under a Trust Agreement dated as of September 15, 1987

Owner Trustee

\_\_\_\_\_  
William J. Wade

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

[FORM OF INDENTURE TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This is one of the Loan Certificates created by the within-mentioned Trust Indenture.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
Indenture Trustee

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

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

[FORM OF LOAN SCHEDULE REFERRED TO IN FORM OF LOAN CERTIFICATE]

For each \$1,000,000\* of principal amount of the Loan Certificate, payments of principal and interest shall be as follows:

<u>Payment Date</u>	<u>Amount of Payment</u>
1/2/88	
7/2/88	
1/2/89	
7/2/89	
1/2/90	
7/2/90	
1/2/91	
7/2/91	
1/2/92	
7/2/92	
1/2/93	
7/2/93	
1/2/94	
7/2/94	
1/2/95	
7/2/95	
1/2/96	
7/2/96	
1/2/97	
7/2/97	
1/2/98	
7/2/98	
1/2/99	
7/2/99	
1/2/2000	
7/2/2000	
1/2/2001	
7/2/2001	
1/2/2002	
7/2/2002	
1/2/2003	
7/2/2003	
1/2/2004	
7/2/2004	
1/2/2005	

\*For any portion of such principal amount less than \$1,000,000, the payment in respect of such principal and interest shall bear the

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

same relation to the applicable payment set forth above as such portion of principal amount less than \$1,000,000 bears to \$1,000,000.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

3 7 6 7 3 3 0 0

EXHIBIT B  
to  
Trust Indenture

Form of Trust Agreement and  
Trust Indenture Supplement

TRUST AGREEMENT AND TRUST INDENTURE  
SUPPLEMENT NO. \_\_\_

TRUST AGREEMENT AND TRUST INDENTURE SUPPLEMENT NO. \_\_\_ dated  
\_\_\_\_\_, 198\_, (this Supplement) between Wilmington Trust Company  
and WILLIAM J. WADE, not in their respective individual capacities,  
but solely as owner trustees (collectively, the Owner Trustee) under  
the Trust Agreement dated as of September 15, 1987 (the Trust  
Agreement), and The Connecticut Bank and Trust Company, National  
Association, as indenture trustee (the Indenture Trustee) under the  
Trust Indenture, Mortgage and Security Agreement dated as of  
September 15, 1987 (the Indenture) between the Owner Trustee and the  
Indenture Trustee. All capitalized terms used herein and not other-  
wise defined herein shall have the meanings specified in the  
Indenture.

W I T N E S S E T H:

WHEREAS, the Trust Agreement provides for the execution and  
delivery of supplements thereto substantially in the form hereof,  
each such supplement to particularly describe each Leased Station  
included in the property covered by the Trust Agreement by having  
attached thereto a copy of the Lease Supplement covering such Leased  
Station; and

WHEREAS, the Indenture provides for the execution and delivery  
of supplements thereto substantially in the form hereof, each such  
supplement to particularly describe each Leased Station included in  
the Indenture Estate by having attached thereto a copy of the Lease  
Supplement covering such Lease Station, and which shall specifically  
grant a security interest in such Leased Station to the Indenture  
Trustee.

NOW, THEREFORE, to secure the due and punctual payment of the  
principal of and premium, if any, and interest on the Loan  
Certificates according to their terms and effect and to secure, among  
other things, the performance and observance by the Owner Trustee of  
all other obligations secured under the Indenture, the Owner Trustee  
hereby transfers, assigns, bargains, sells, conveys, mortgages,

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

hypothecates and pledges to the Indenture Trustee, and grants the Indenture Trustee, a security interest in, and the immediate and continuing right to receive payments (other than Excepted Payments) in respect of, all the Owner Trustee's right, title and interest in and to the following:

A. The Leased Station described on Schedule 1 hereto, expressly excluding the property described on Schedule 2 hereto, located on the Land described on Schedule 3 hereto:

B. The Lease Supplement of even date herewith describing such Leased Station.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Indenture Trustee, its successors and assigns forever, but in trust for the holders, from time to time, of the Loan Certificates, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions set forth in the Indenture.

AND, FURTHER, the Owner Trustee hereby acknowledges that the Leased Station referred to in the aforesaid Lease Supplement attached hereto and made a part hereof have been delivered to the Lessee (or a nominee thereof) and are included in the Trust Estate of the Owner Trustee covered by all the terms and conditions of the Trust Agreement, subject to the lien thereof under the Indenture.

Attached hereto on Schedule 4 is the schedule of principal and interest on the Notes delivered on the date hereof.

This Supplement shall be construed as supplemental to the Indenture and to the Trust Agreement and shall form a part of each, and the Trust Agreement and the Indenture are each hereby incorporated by reference herein and each is hereby ratified, approved and confirmed.

This Supplement may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Fully executed sets of counterparts shall be delivered to, and retained by, the Owner Trustee and the Indenture Trustee.

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

IN WITNESS WHEREOF, the parties hereto have each caused this Indenture to be duly executed by their respective officers thereunto duly authorized as of the respective dates set forth below.

WILMINGTON TRUST COMPANY, not  
in its individual capacity  
except as expressly provided  
herein, but solely as owner  
trustee under a Trust  
Agreement dated as of  
September 15, 1987,  
Owner Trustee

Witness \_\_\_\_\_  
Name:

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

Witness \_\_\_\_\_  
Name:

Date: September 30, 1987

WILLIAM J. WADE, not in his  
individual capacity, but  
solely as owner trustee under  
a Trust Agreement dated as of  
September 15, 1987,  
Owner Trustee

Witness \_\_\_\_\_  
Name:

William J. Wade

Witness \_\_\_\_\_  
Name:

Date: September 30, 1987

87673300

# UNOFFICIAL COPY

3 7 6 7 3 3 0 0  
THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL  
ASSOCIATION,  
Indenture Trustee

Witness \_\_\_\_\_  
Name:

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

Witness \_\_\_\_\_  
Name:

Date: September 30, 1987

Property of Cook County Clerk's Office

87673300

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

STATE OF DELAWARE     )  
                                  )ss:  
COUNTY OF NEW CASTLE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 1987 by \_\_\_\_\_, the \_\_\_\_\_ of Wilmington Trust Company, a Delaware banking corporation, on behalf of said corporation.

\_\_\_\_\_  
Name:

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1987

(SEAL)

Notary Public for Delaware

My Commission Expires: \_\_\_\_\_

Property of Cook County Clerk's Office

87673300

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

STATE OF DELAWARE     )  
                                  ) ss:  
COUNTY OF NEW CASTLE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 1987 by William J. Wade.

\_\_\_\_\_  
William J. Wade

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1987

(SEAL)

Notary Public for Delaware

My Commission Expires: \_\_\_\_\_

Property of Cook County Clerk's Office

87673300





# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

Schedule 1

to Trust Agreement  
and Trust Indenture Supplement

Description of Leased Stations

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

Schedule 2

to Trust Agreement  
and Trust Indenture Supplement

Description of Excluded Property

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

Schedule 3

to Trust Agreement  
and Trust Indenture Supplement

Description of Land

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

8 7 6 7 3 3 0 0

## Schedule 4

to Trust Agreement  
and Trust Indenture Supplement

### Schedule of Principal and Interest

For each \$1,000,000\* of principal amount of the applicable Loan Certificate, payments of principal and interest shall be as follows:

<u>Payment Date</u>	<u>Amount of Payment</u>
1/2/88	
7/2/88	
1/2/89	
7/2/89	
1/2/90	
7/2/90	
1/2/91	
7/2/91	
1/2/92	
7/2/92	
1/2/93	
7/2/93	
1/2/94	
7/2/94	
1/2/95	
7/2/95	
1/2/96	
7/2/96	
1/2/97	
7/2/97	
1/2/98	
7/2/98	
1/2/99	
7/2/99	
1/2/2000	
7/2/2000	
1/2/2001	
7/2/2001	
1/2/2002	
7/2/2002	
1/2/2003	
7/2/2003	
1/2/2004	
7/2/2004	
1/2/2005	

Property of Cook County Clerk's Office

87673300

# UNOFFICIAL COPY

\*For any portion of such principal amount less than \$1,000,000, the payment in respect of such principal and interest shall bear the same relation to the applicable payment set forth above as such portion of principal amount less than \$1,000,000 bears to \$1,000,000.

Property of Cook County Clerk's Office

00002522

*Handwritten signature: R. Noel*

COOK COUNTY CLERK'S OFFICE  
JAN 10 2006

00002522