

RECORDATION NO. 6428-A

A S S I G N M E N T

DEC 16 1971 - 11 35 AM

INTERSTATE COMMERCE COMMISSION

KNOW ALL MEN BY THESE PRESENTS, that in consideration of One and More Dollars (\$1.00 and More), the receipt whereof is hereby acknowledged, the undersigned, DELAWARE FREIGHT CAR CORP., a New York corporation, having its principal office and place of business at 120 Delaware Avenue, Buffalo, New York, agrees to assign and does hereby assign, a certain equipment lease dated October 29, 1971, of One Hundred 100-ton steel rotary dump coal gondola railroad cars by the undersigned to Yankeetown Dock Corporation (hereinafter called the "Lease"), the original of which was filed for recordation with the Interstate Commerce Commission on November 19, 1971, at 2:10 p.m., under Recordation Number 6428, and all sums due or to become due thereunder to MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation, having its principal office and place of business at One M & T Plaza, Buffalo, New York, as security for the payment in full of indebtedness incurred and to be incurred by the undersigned to the assignee, and all applicable interest thereon, which is represented by a note of the undersigned of even date herewith and which shall also be represented by notes bearing dates subsequent to the date of this Assignment, which note has been and which subsequent notes will be given by the undersigned to the assignee for loan advances to the undersigned, made or to be made, in an aggregate principal amount not to exceed \$1,390,000. This Assignment shall also serve as security for any and all renewals, extensions or consolidations of any indebtedness evidenced by any of said notes together with applicable interest thereon.

The assignee is hereby authorized to take such steps from time to time as in its discretion it shall deem advisable

to declare a default on the part of the lessee under the Lease, or in the event of a default, to enforce the covenants and conditions of the Lease and collect the sums payable thereunder. However, the assignee shall be under no obligation to take any steps, and no liability whatever shall arise on the part of the assignee, either to take or to refrain from taking any action under the Lease.

All installments of rent received by the assignee under the Lease shall be applied against first, accrued installments of interest payable by the undersigned under said notes, and second, in reduction of the principal indebtedness of the undersigned under said notes; and any such sum which is received by the assignee in settlement for a lost, stolen, destroyed or irreparably damaged, or requisitioned car shall be applied in reduction of the principal indebtedness of the undersigned under said notes.

The undersigned covenants and agrees that it will pay promptly all taxes and assessments which may be imposed upon the cars or for the use thereof, or upon the earnings arising therefrom or the operation thereof, or upon the assignee by reason of its interest therein, by any jurisdiction in which the cars are operated and will keep all of the cars at all times free and clear clear of all taxes, assessments or other claims which might become a lien or charge upon any of the said cars equal or superior to the interest of the assignee therein; and if any such tax, assessment or claim shall have been charged, levied or enforced against the assignee directly and paid by the assignee, the undersigned shall reimburse the assignee on presentation of invoice therefor.

The undersigned covenants and agrees that it will cause all of the cars to be kept in good repair and proper running order and that it will cause any car which has been damaged by

any cause, except any car which is lost, destroyed or irreparably damaged, to be promptly repaired. Without limiting the generality of the foregoing, the undersigned covenants that it will take or cause to be taken from time to time such steps as may be required to make all the cars conform to United States Safety Appliance Standards.

The undersigned assumes all responsibility for and will indemnify and save harmless the assignee from any and all damages, costs, royalties, claims, suits, actions, judgments and expenses arising in any way out of the charges of infringement of patents which may be alleged to cover the cars or parts thereof, or the construction thereof; and upon receiving notice of any claims of patent infringement presented to the assignee with respect to the cars or parts thereof, or the construction thereof, the undersigned shall promptly undertake and assume the defense thereof. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all advances secured hereby, and the satisfaction and discharge of any of the said notes given by the undersigned.

The undersigned with all convenient speed will cause the Lease, this Assignment and a chattel mortgage of the said cars and any supplement or supplements thereto which may reasonably be required by the assignee to be filed with the Interstate Commerce Commission for recordation in accordance with Section 20c of the Interstate Commerce Act, as amended; and from time to time, in addition to such filing, the undersigned will cause the Lease, this Assignment, and such chattel mortgage of the said cars, and any supplement or supplements thereto, to be filed in such other place or places as may be reasonably requested by the assignee, so that the Lease, this Assignment and the said chattel mortgage,

and any supplement or supplements thereto, shall at all times be duly filed, registered, docketed, or recorded in such manner and in such places as to comply with all applicable laws in order to publish notice of and to protect the assignee's interest in the cars; and from time to time the undersigned will execute any and all further instruments that reasonably shall be requested by the assignee for such publication and protection of its interest; and the undersigned will promptly furnish to the assignee certificates or other evidences satisfactory to the assignee of said filing, registration, docketing and recording. The undersigned will pay all costs, charges and expenses incident to all such filing, registration, docketing and recording.

IN WITNESS WHEREOF, the assignor, DELAWARE FREIGHT CAR CORP., has caused this Assignment to be signed by its proper officer thereunder duly authorized and its corporate seal to be hereunto affixed on the 22nd day of November, 1971.

DELAWARE FREIGHT CAR CORP.

By

Julian L. L. Mamin

President

[SEAL]

STATE OF NEW YORK)
COUNTY OF ERIE : SS.
CITY OF BUFFALO)

On this 22nd day of November, 1971, before me came JULIAN L. S. MORRISON, to me known, who, being by me duly sworn, did depose and say that he resides at 157 Deerhurst Park Boulevard, Town of Tonawanda, New York; that he is the President of DELAWARE FREIGHT CAR CORP., the corporation described in and which executed the foregoing assignment; that he knows the seal of said corporation; and that the seal affixed to said assignment is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Edwin O. Tilton

EDWIN O. TILTON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1972