

H. HARRY BRESKY
200 Boylston Street
Chestnut Hill, Massachusetts 02167

10846-A
RECORDATION NO. Filed 1425

SEP 26 1979 - 10 55 AM

INTERSTATE COMMERCE COMMISSION

September 24, 1979

Secretary of Interstate
Commerce Commission
Washington, D.C. 20423

Re: Recordation of Assignment of Lease dated September 24,
1979 between Modrail Corporation and H. Harry Bresky

Dear Sir:

I am delivering to you with this transmittal letter the following materials for recording:

- 1) The original Assignment of Lease dated September 24, 1979;
- 2) Two certified true copies of the original Assignment of Lease with attached Affidavits of a notary public; and
- 3) A check in the amount of \$10.00 to cover recording expenses.

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

- 1) The Assignor: MODRAIL CORPORATION
30 Brookside Road
West Orange, New Jersey
- 2) The Assignee: H. HARRY BRESKY
200 Boylston Street
Chestnut Hill, Massachusetts 02167

A general discription of the equipment covered by the Assignment of Lease is as follows:

Twenty-eight (28) Box Cars numbered 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, and 828.

This Assignment of Lease refers to a lease entitled "Agreement" dated January 19, 1976 between Modrail Corporation and New Hope and

Conley
Donna Kelly

Secretary of Interstate
Commerce Commission
Page Two

Ivyland Railroad Comapny, and was recorded with the Interstate Commerce Commission on September , 1979 at _____(am/pm) bearing Recordation Number _____.

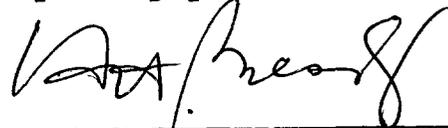
I, H. Harry Bresky, hereby represent and warrant that I am one of the parties having knowldege of the matters set forth in the Assignment of Lease.

Kindly return the original Assignment of lease submitted herewith to:

Marshall L. Tutun, Esq.
Widett, Slater & Goldman, P.C.
Sixty State Street
Boston, Massachusetts 02109

Thank you.

Very truly yours,



H. Harry Bresky

10846-A

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ASSIGNMENT OF LEASE

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT made this ^{24th} day of September, 1979 by MODRAIL CORPORATION, a New Jersey corporation (herein "Assignor") to H. HARRY BRESKY of Waban, Massachusetts, (herein "Assignee").

W I T N E S S E T H :

WHEREAS, concurrently Assignor is making and delivering to Assignee a promissory note in the sum of ^{One Hundred} ~~Fifty~~ Thousand Dollars ^(100,000) ~~(\$50,000)~~ (herein the "Note"); and

WHEREAS, under date of January 19, 1976, Assignor as lessor entered into an Agreement (herein the "Lease") with New Hope and Ivyland Railroad Company, a corporation, as lessee (herein "Lessee"), relating to certain railroad boxcars ~~and railroad equipment~~ as described on Schedule A' annexed hereto (herein the "Equipment"); and

WHEREAS, the repayment of the advance evidenced by and to be made in accordance with the Note and all other obligations of Assignor to Assignee are to be secured, in addition to other security, by an Assignment from Assignor to Assignee of the rights and benefits of Assignor under the Lease.

NOW, THEREFORE, for value received:

1. Assignor hereby grants, sells, assigns, transfers and sets over to Assignee, (a) the Lease and all of Assignor's rights, powers, privileges, options, rights to payment, sums payable and all other benefits under the Lease; and (b) all of Assignor's right, title and interest in and to the Equipment. Neither this Assignment nor any action or inaction on the part of

the Assignee shall constitute an assumption on the part of the Assignee of any obligation of Assignor under the Lease, and Assignor shall continue to be liable for, and promptly perform all obligations of Assignor thereunder.

2. The Assignment hereby made is as collateral security for, and shall secure the payment of principal, interest and other charges as provided in the Note, and the payment and performance of all other debts, liabilities, covenants, duties and obligations of every kind and nature owing by Assignor to the Assignee, direct or indirect, absolute or contingent, due or to become due, joint or several, now or hereafter contracted for, now existing or hereafter arising, including, without limitation, debts, liabilities, covenants, duties and obligations under this Agreement, and under any other promissory notes heretofore or hereafter given, any other assignments or other agreements heretofore or hereafter made or entered.

3. Assignor warrants and represents to Assignee that:

a) The Lease contains or describes the entire agreement between Assignor and Lessee and all instruments made or given in connection with the transaction between Assignor and Lessee.

b) Assignor has good title to the Lease, the Equipment (except for any security interest held by Empire Bank), and good right to grant, sell, assign, transfer and set over the same to Assignee.

c) Assignor's title to the Lease and the Equipment (except for any security interest held by Empire Bank), is and shall remain free and clear of all liens, claims, encumbrances or

security interests of every kind and nature save only for the rights of Lessee under the Lease and for the rights of Assignee.

d) The Lease is a valid and binding obligation arising out of the leasing of the Equipment to Lessee in the ordinary course of Assignor's business, and there are no defenses, offsets or counterclaims, real or claimed, against such obligations.

e) All statements made in the Lease are, and will remain true and correct and the signatures on the Lease, are the genuine signatures of duly authorized persons having capacity to so contract.

f) The obligations of the Lessee under the Lease will be paid and performed according to the terms of the Lease.

g) The Lease is and will be enforceable against all parties thereto according to its terms.

h) Lessee has complied, and the Lease complies with all applicable Federal, State and Municipal laws, rules and regulations.

i) The Equipment has been delivered and accepted and Assignor will fulfill all of its obligations to Lessee with respect thereto. The Equipment will be satisfactorily maintained and protected and will operate to the satisfaction of Lessee.

4. To protect the interest of Assignee in the Lease as created by this Assignment, Assignor (except as Assignee may otherwise by writing permit) shall:

a) abide faithfully by, perform and discharge each and every obligation, covenant and agreement of said Lease by it as lessor therein to be performed;

b) enforce or secure the payment of each and every obligation, covenant, condition and agreement of said Lease by Lessee to be performed;

c) not modify, extend or in any way alter the terms of the Lease;

d) not anticipate the rents thereunder;

e) not waive, excuse, condone or in any manner release or discharge Lessee of or from Lessee's obligations, covenants, conditions and agreements, including, without limitation, the obligation to pay the rental called for in the Lease in the manner and at the place and time specified by Assignor.

5. Assignor does by these presents expressly release, relinquish and surrender unto the Assignee all its right, power and authority to amend, modify, or in any way alter the terms or provisions of the Lease or to exercise any election or option reserved or granted to the Assignor as lessor thereunder, and any attempt on the part of Assignor to exercise any such right, election or option without the written authority and consent of the Assignee thereto being first had and obtained shall constitute a breach of the terms hereof entitling the Assignee to declare all sums secured hereby immediately due and payable.

6. Upon Assignee's request which may be made at any time, Assignor shall cause all rental payments and other payments made and to be made by Lessee under the Lease to be sent to Assignee at 200 Boylston Street, Chestnut Hill, Massachusetts 02167. Thereafter, should Assignor, at any time, receive any rental or other payment made by Lessee under the Lease, Assignor

shall immediately cause such payment, in the very form in which it was received, to be delivered to Assignee at the address set forth at the outset of this Assignment. Assignee may, in Assignor's name endorse any notes given in connection with the Lease and any and all drafts, checks or other remittances received by it. Assignee may notify Lessee at any time that the Lease has been assigned to Assignee or that Assignee has a security interest therein and Assignee may collect all amounts due from such Lessee directly. Assignee may release, by operation of law or otherwise, or may compromise or adjust any and all rights and grant extensions of time of payment to the Lessee or any guarantor or surety of Lessee without notice to Assignor and without limiting, discharging or otherwise affecting any of Assignor's obligations to Assignee. Until such request or notification by Assignee, Assignor may retain and use such rental payments in its business.

7. In addition to all other rights of Assignee hereunder or otherwise, upon or at any time after default in the payment or performance of any of the obligations secured hereby or upon their acceleration, the Assignee may, with or without bringing any action or proceeding do any act which the Assignee deems proper to protect the security hereof, and in its own name sue for, or otherwise collect and receive rents and profits, including those past due and unpaid, endorse in Assignor's name any remittance so collected and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such

order as the Assignee may determine. The collection of such rents and profits and the application thereof as aforesaid, shall not cure or waive default hereunder. Further, at or after any such default the Assignee shall have, in addition to all other rights set forth herein, all the rights and remedies of a secured party under the Uniform Commercial Code. All requirements of reasonable notice shall be met if given five (5) days prior to any sale or other intended disposition and addressed to Assignor at 207 Bellevue Avenue, Montclair, New Jersey 07043. Assignee shall have the right to release, compromise or adjust any and all rights against, and grant extensions of time of payment to Lessee without notice to Assignor and without affecting Assignor's obligations to Assignee.

8. The Assignee shall not be obligated to perform or discharge nor does it hereby undertake to perform or discharge, any obligation, duty or liability of the Assignor under the Lease, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify and to hold the Assignee harmless of and from any and all liability, loss or damage which it may or might incur under said Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Lease, including, without limitation, all liability for personal injury and property damage arising out of the operation, control, use and maintenance of the Equipment. Should the As-

signee incur any such liability, loss or damage under the Lease or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse the Assignee therefor immediately upon demand.

9. Should the Assignor fail to make any payment (not including, however, any payment as evidenced by the Note or on account of the Lease) or to do any act as herein provided, then the Assignee, but without obligation so to do and without notice to or demand on Assignor, and without releasing Assignor from any obligation hereof, may make or do the same in such manner and to such extent as the Assignee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor in the Lease contained; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees and add the amount thereof to the debt hereby secured.

10. Upon the full payment and performance of all obligations hereby secured, this Assignment shall become and be void and of no further effect, but Lessee, its successors and assigns, may make payment in pursuance of this Assignment until it or they shall have received written notice that all such secured in-

debtedness has been paid in full, and notwithstanding any such notice, Lessee, its successors and assigns, with respect to payments under said Lease then due, may, and are hereby authorized to, rely upon affidavits of any officer of the Assignee affirming that any part of said indebtedness remains unpaid.

11. Assignor warrants and represents that as of this day, ^{approximate amount} the aggregate of the ^{monthly} ~~remaining~~ rental payments payable under the Lease ^{is} ~~will be~~ not less than \$5,000 per month *ES*

IN WITNESS WHEREOF, Assignor has caused these presents to be duly executed, the day and year first above written.

Witness:

MODRAIL CORPORATION (Assignor)

Samuel Wilson

By *Edwin Stevens*
Its <President>
duly authorized.

State of <Mass>
County of <Suffolk>

On this <24th> day of <September>, 1979, before me personally appeared Edwin Stevens to me personally known, who being by me duly sworn, says that he is the President of Modrail Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Alan I. Falk
Notary Public

My commission expires:

ALAN I. FALK, Notary Public
My Commission Expires Nov. 29, 1985

EXHIBIT "A"

BOX CAR NUMBERS

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