

September 15, 1978

209

Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. 9698 <sup>A</sup> Filed & Recorded

SEP 18 1978 4 11 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Enclosed for recordation under the provisions of Section 20c of the Interstate Commerce Act and the regulations promulgated thereunder, as amended, are the original and two certified copies of an Acknowledgment of Assignment and Subordination Agreement dated September 15, 1978.

A general description of the railroad equipment covered by the enclosed document is as follows:

Fifty (50) 50'-6", 70-ton, single sheathed boxcars with outside posts, with 10' sliding doors and rigid underframe, within Plate "C", bearing reporting marks and numbers NHIR 751 through NHIR 800 inclusive, with AAR Mechanical Designation XE.

The names and addresses of the parties to the enclosed document are:

Subordinating Party: New Hope and Ivyland  
Railroad Company  
P. O. Box 196  
Pennel, PA 19047

Secured Party: U. S. Steel Credit Corporation  
Room 5688  
600 Grant Street  
Pittsburgh, PA 15230

Please return the original and one copy of each of the enclosed documents to Charles T. Kappler, Esq., Alvord & Alvord, 200 World Center Building, 918 Sixteenth Street, N.W., Washington, D. C. 20006, with the recording certification data stamped thereon.

Very truly yours,

NEW HOPE AND IVYLAND RAILROAD  
COMPANY

By James M. Hargh  
President

*Handwritten signature: Charles T. Kappler*

RECORDATION NO. 9698-4 Filed & Recorded

SEP 18 1978 4 20 PM

INTERSTATE COMMERCE COMMISSION

ACKNOWLEDGEMENT OF ASSIGNMENT  
AND SUBORDINATION AGREEMENT

This Acknowledgement of Assignment and Subordina-  
tion Agreement (this Agreement),

From

NEW HOPE AND IVYLAND RAILROAD COMPANY, a Pennsylvania  
corporation (NHIRC),

To and in favor of

U. S. STEEL CREDIT CORPORATION, a Delaware corporation  
(Secured Party),

Witnesseth:

Whereas, by that certain Loan and Security  
Agreement (the Loan Agreement) dated as of the date hereof,  
by and between McHugh Brothers, a Pennsylvania general  
partnership (Debtor), as debtor, and the Secured Party, as  
secured party, the Secured Party has agreed to lend to the  
Debtor, in not more than five (5) separate advances, a Loan  
(the Loan) in an amount not in excess of \$1,900,000, and  
the Debtor has granted to the Secured Party first security  
interests in each of the following:

(1) the railroad equipment described in Schedule  
I attached hereto and made a part hereof (collectively, the

CONFORMED COPY

Equipment, and individually, an Item of Equipment), together with all accessories, equipment, parts and appurtenances appertaining or attached to any of said railroad equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of, and additions, improvements, accessions and accumulations to, any and all of said railroad equipment, and together with all the rents, issues, income, profits and avails therefrom;

(2) all right, title, interest, claims and demands of the Debtor in, to and under that certain Lease Agreement and that certain Management Agreement, both dated as of the date hereof (the Lease and Management Agreements), between the Debtor and NHIRC, under which the Equipment has been leased and delivered, including all extensions of the terms of said Agreements, together with all rights, powers, privileges, options and other benefits of the Debtor under the said Agreements; and

(3) all right, title, interest, claims and demands of the Debtor in, to and under each bill of sale from Emons Railcar Corp. to Debtor for any or all of the Equipment (a Bill of Sale), and any and all other contracts and agreements relating to the Equipment or any rights or interests therein to which the Debtor is now or hereafter may be a party, together with all rights, powers, privileges, options, and other benefits of the Debtor under each Bill of Sale and

each and every other such contract and agreement; and

Whereas, it is intended by Debtor, Secured Party and NHIRC that the Loan Agreement shall be filed, recorded and deposited with the Interstate Commerce Commission, pursuant to Section 20c of the Interstate Commerce Act, prior to such filing, recording and deposit of the Lease and Management Agreements, and that the interests of NHIRC in and to the Equipment and under the Lease and Management Agreements shall be subject and subordinate in all respects to the said first security interests of the Secured Party.

Now therefore, NHIRC hereby acknowledges its receipt of an executed counterpart of the Loan Agreement and, in consideration of the making of the first advance of the Loan by the Secured Party to the Debtor pursuant to the Loan Agreement, and knowing and intending that the Secured Party shall rely hereon in making said advance, NHIRC hereby further acknowledges, covenants and agrees to and with the Secured Party as follows:

Section 1. Subordination. All rights, leasehold and other interests, claims and demands, whatsoever, which NHIRC has, could have, or may in the future have, in and to the Equipment and each and every part thereof, and all rights, leasehold and other interests, claims and demands, whatsoever, which NHIRC has, could have, or may in the future have, under

or pursuant to either or both of the Lease and Management Agreements, are, and are hereby made and declared to be, subject and subordinate in all respects to all rights, security interests, claims and demands of the Secured Party under or pursuant to the Loan Agreement and to all rights, security interests, claims and demands of the Secured Party under or pursuant to each and every supplement to the Loan Agreement or amendment thereof which may at any time or from time to time be executed and delivered by the Debtor and the Secured Party or their successors or assigns.

Section 2. Termination of Lease and Management Agreements by the Secured Party. If an Event of Default (as defined in the Loan Agreement) shall have occurred and be continuing, then, regardless of whether or not NHIRC shall be in default in the performance of any of its obligations under either or both of the Lease and Management Agreements and regardless of whether or not the Debtor shall have any right to terminate either or both of said Agreements, the Secured Party shall have the right, at its option, by notice to NHIRC, to terminate the Lease and Management Agreements.

Section 3. Certain Rights of the Secured Party under the Loan Agreement. Under and by virtue of the Loan Agreement, the Secured Party has, among other things:

(a) the immediate and continuing right to receive and collect all rentals, insurance proceeds, condem-

nation awards and other payments, tenders and security which would otherwise now or hereafter be payable to or receivable by the Debtor under or pursuant to either or both of the Lease and Management Agreements;

(b) the right to make all waivers and agreements, and to give and receive duplicate copies of all notices and other instruments or communications, which could or would otherwise be made, given or received by the Debtor under or pursuant to either or both of the Lease and Management Agreements;

(c) the right to take such action upon the occurrence of an event of default under either or both of the Lease and Management Agreements or an event which with the lapse of time or giving of notice, or both, would constitute an event of default under either or both of said Agreements, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by said Agreements or by law, and to do any and all other things whatsoever which the Debtor or any lessor is or may be entitled to do under either or both of said Agreements; and

(d) all right, title, interest, claims and demands of the Debtor in, to and under each Bill of Sale and any and all other contracts and agreements relating to the Equipment or any rights or interests therein to which the

Debtor is now or hereafter may be a party, together with all rights, powers, privileges, options and other benefits of the Debtor under each Bill of Sale and each and every other such contract and agreement.

Section 4. Termination or Modification of Lease and Management Agreements. Prior to the release of the Loan Agreement and the security interests granted therein, pursuant to Section 9.8 thereof:

(a) NHIRC may not terminate or surrender the Lease and Management Agreements or either of them, or assign, transfer or encumber any or all of its rights, interests, claims or demands under either or both of said Agreements, without the prior written consent of the Secured Party; and

(b) the respective obligations of NHIRC and the Debtor under the Lease and Management Agreements may not be amended, modified, altered, changed or waived in any manner or to any extent without the prior written consent of the Secured Party.

Section 5. Delivery of Equipment to Secured Party.

(a) In the event that the Secured Party shall terminate the Lease and Management Agreements pursuant to Section 2 hereof, or in the event that the Secured Party shall terminate either or both of the Lease and Management Agreements pursuant to any provision thereof, then the

Secured Party shall have the right, at its option, to require NHIRC to deliver possession of any or all of the Items of Equipment to the Secured Party. With respect to each Item of Equipment which NHIRC shall be required to deliver to the Secured Party, NHIRC shall, at its own cost, expense and risk, (i) forthwith assemble and place each such Item of Equipment upon such storage tracks within the continental United States as the Secured Party may designate, (ii) provide storage at the risk of NHIRC for each such Item of Equipment on such storage tracks until such Equipment has been sold, leased or otherwise disposed of by the Secured Party, and (iii) transport each such Item of Equipment to any place of interchange on the lines of a railroad within a 50-mile radius of such storage tracks, all as the Secured Party shall direct.

(b) The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises, the Secured Party shall be entitled to a decree against NHIRC requiring specific performance of the covenants of NHIRC so to assemble, deliver, store and transport the Equipment.

(c) Without in any way limiting the obligations of NHIRC under the foregoing provisions of this

Section 5, NHIRC hereby irrevocably appoints the Secured Party as the agent and attorney of NHIRC, with full power and authority, at any time while NHIRC is obligated to deliver possession of any Item of Equipment to the Secured Party pursuant hereto, to demand and take possession of such Item of Equipment in the name and on behalf of NHIRC from whomsoever shall be at the time in possession of such Item of Equipment.

(d) NHIRC hereby expressly waives any and all claims against the Secured Party and its assigns or agents for damages of whatever nature in connection with the taking of possession of any Item of the Equipment pursuant to the exercise of any right given to the Secured Party herein or in the Loan Agreement.

Section 6. Claims by NHIRC Against the Debtor.

The performance by NHIRC of its obligations to the Secured Party hereunder shall be without prejudice to any right of NHIRC to recover from the Debtor the amount of any cost, expense or loss incurred by NHIRC in or about the performance of such obligations. However, all claims and rights of recovery by NHIRC against the Debtor shall be subject and subordinate to the rights of the Secured Party to recover any and all amounts from the Debtor under or pursuant to the Loan Agreement, any Note referred to therein or any other

instrument securing any or all of the indebtedness secured by the Loan Agreement or evidenced by any such Note. NHIRC shall have no right of subrogation and hereby waives any and all rights to enforce any remedy which the Secured Party now has or hereafter may have against the Debtor, and NHIRC waives any benefit of, and any right to participate in, any security now or hereafter held by the Secured Party.

Section 7. Waiver of Notice of Acceptance. This Agreement shall take effect immediately, and NHIRC hereby waives any and all notice of acceptance hereof.

Section 8. Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 9. Notices. All notices and other communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States certified or registered mails, first class, postage prepaid, addressed as follows:

If to NHIRC: New Hope and Ivyland Railroad Company  
Post Office Box 196  
Pennel, PA 19047  
Attn: James C. McHugh,  
President

If to the  
Secured  
Party:

U. S. Steel Credit Corporation  
Room 5688  
600 Grant Street  
Pittsburgh, PA 15230  
Attn: Joseph L. Brady,  
Assistant Treasurer

or to NHIRC or the Secured Party at such other address as NHIRC or the Secured Party may designate by notice duly given to the other in accordance with this Section.

Section 10. Successors and Assigns. This Agreement shall bind NHIRC, its successors and assigns, and shall inure to the benefit of the Secured Party, its successors and assigns. References herein to the Debtor shall be deemed to include its successors and assigns, including, without limitation, its immediate and remote successor partnerships.

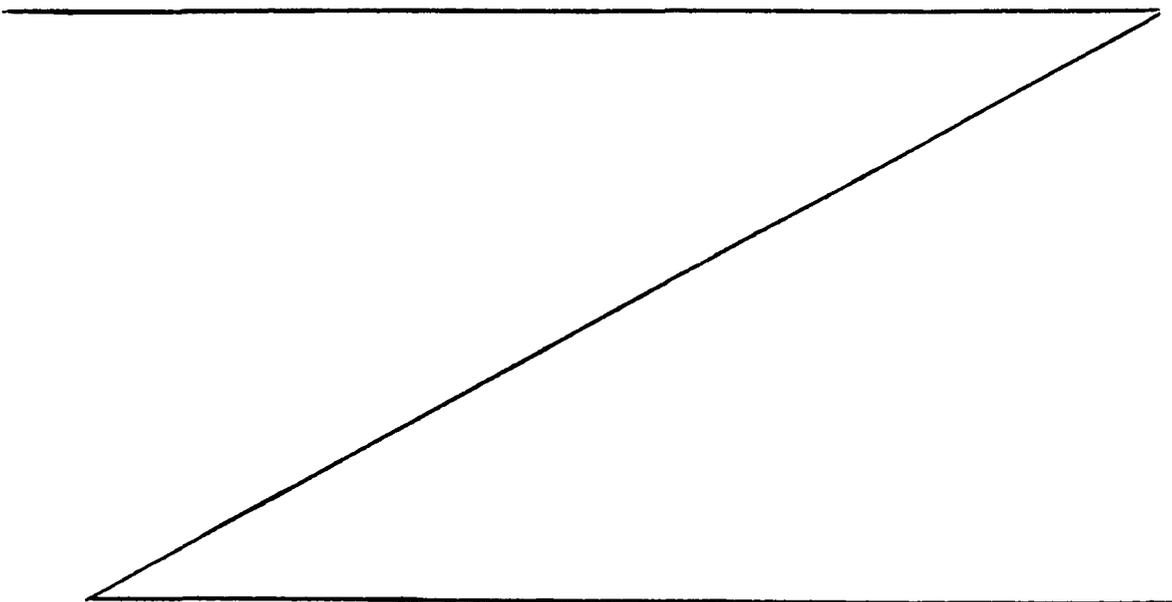
Section 11. Amendments and Waiver. Any term, covenant, agreement or provision of this Agreement may be amended only by an instrument or instruments in writing executed by both NHIRC and the Secured Party; provided, however, that compliance therewith may be waived (either generally or in particular instance and either retroactively or prospectively) by, and only by, an instrument in writing executed by the Secured Party.

Section 12. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the

Secured Party shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

Section 13. Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Agreement.

Section 14. Section Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.



IN WITNESS WHEREOF, NHIRC, intending to be legally bound hereby, has caused this Agreement to be executed and delivered to the Secured Party, at Pittsburgh, Pennsylvania, by the proper officers of NHIRC thereunto duly authorized, and, as evidence of its acceptance hereof, the Secured Party has caused this Agreement to be executed by its proper officers thereunto duly authorized, all as of the 15th day of September, 1978.

[Corporate Seal]

ATTEST:

NEW HOPE AND IVYLAND RAILROAD COMPANY

/s/ S. Curtis Seifert

By /s/ James C. McHugh  
President

[Corporate Seal]

ATTEST:

U. S. STEEL CREDIT CORPORATION

/s/ Joseph L. Brady  
Assistant Secretary

By /s/ R. D. Ryan  
Vice President



STATE OF PENNSYLVANIA :  
 : SS  
COUNTY OF ALLEGHENY :

On this 15th day of September, 1978, before me personally appeared R. D. Ryan to me personally known, who being by me duly sworn, says that he is Vice President of U. S. STEEL CREDIT 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.

/s/ Virginia K. Homich  
Notary Public

(SEAL)

My Commission expires: May 18, 1981

SCHEDULE I

DESCRIPTION OF EQUIPMENT

<u>Type</u>	<u>Builders Specifications</u>	<u>Quantity</u>	<u>Equipment Numbers (Inclusive)</u>	<u>Average Unit Price</u>	<u>Total Price</u>	<u>Delivery Point</u>
AAR Mechanical Designation XF.	50'6", 70-ton single sheathed boxcars with outside posts, 10'0" sliding doors, rigid underframe, within Plate "C"	50	NHIR 751- NHIR 800	\$37,570.58	\$1,878,529	York, Pennsylvania