

7410
RECORDATION NO. _____

FEB 26 1974 -5 00 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT dated February 19, 1974 between FCB LEASING LTD., a Delaware corporation (hereinafter called Lessor), and DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation (hereinafter called Lessee).

Lessor proposes to enter into a purchase agreement with Pullman Incorporated (hereinafter called Builder) providing for the purchase by Lessor of certain railroad cars. The purchase agreement referred to in the preceding sentence is hereinafter called the Purchase Agreement; and the railroad cars being purchased by Lessor pursuant to the Purchase Agreement (subject to exclusion, as provided in the third paragraph hereof) are described in Schedule A hereto and are hereinafter called the Equipment and each unit of which is hereinafter called a Unit.

The Purchase Agreement will be in substantially the form heretofore approved by Lessee, and therefore each Unit shall be constructed in accordance with specifications heretofore duly approved in writing by Lessee (such specifications are hereinafter, with such modifications in such Unit as may be approved in writing by the Builder, Lessor and Lessee, called the Specifications).

Lessee desires to lease from Lessor all the Units, or such lesser number as are delivered, accepted and finally settled for on or prior to June 30, 1974 for an aggregate Purchase Price (as defined in the Purchase Agreement) not in excess of \$2,850,000, at the rentals, for the terms and upon the conditions hereinafter provided.

Now, THEREFORE, in consideration of the foregoing and of the rentals to be paid and the covenants hereinafter set forth to be kept and performed by Lessee, Lessor hereby

leases the Units to Lessee upon the following terms and conditions:

§ 1. *Delivery and Acceptance of Units.* Lessor will cause each Unit to be tendered to Lessee at the delivery point for such Unit set forth in Schedule A hereto, or at such other point as Lessor, Lessee and the Builder may mutually agree upon. Upon such tender, Lessee will cause its authorized representative to inspect such Unit, and if found to conform to the Specifications, to accept delivery of such Unit and to execute and deliver to Lessor and to the Builder a certificate of acceptance in the form attached hereto as Exhibit 1 (hereinafter called the Certificate of Acceptance). Thereupon such Unit shall be deemed to have been delivered to and accepted by Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rents and Payment Dates.*

§ 2.1. *Periodic Rent.* Lessee agrees to pay to Lessor as Periodic Rental for each Unit subject to this Lease sixty-eight (68) consecutive quarter-annual payments in advance in federal funds or its equivalent, each in an amount equal to 2.5244% of the Purchase Price of such Unit. The term Purchase Price in respect of any Unit shall mean the aggregate amount paid by Lessor to the Builder on the Closing Date (as defined in the Purchase Agreement between Lessor and the Builder) in respect of such Unit pursuant to the Purchase Agreement, which amount shall not, without the prior written consent of Lessee, exceed the amount indicated as the base price, plus freight, of such Unit in Schedule A hereto except by virtue of increases pursuant to the terms of the Purchase Agreement. As additional rental hereunder in respect of each Unit, Lessee shall pay to the Builder for account of Lessor, promptly upon receipt from the Builder of an invoice or invoices therefor, any increase

in the base price (as defined in the purchase Agreement) of such Unit in excess of the Purchase Price thereof. The first quarter-annual payment of Periodic Rent to be made by Lessee pursuant to this § 2.1 shall be made in advance on July 1, 1974 and the second through the sixty-eighth payment of Periodic Rent shall be due and payable quarter annually on the first day of each October, January, April and July thereafter (or if any such day is not a business day, on the immediately preceding business day) to and including April 1, 1991. As promptly as possible after the Closing Date, Lessor will prepare and submit to Lessee a rental payment schedule setting forth the Purchase Price of each Unit and the amount and method of calculation of the rental payments required by this § 2. The term business day as used herein shall mean any day other than a day on which commercial banks in Philadelphia, Pennsylvania, are authorized by law to close.

After the occurrence of an event of default as defined in § 11 hereof and so long as such event of default shall continue and this Lease shall not have been terminated, in addition to the rental for each Unit payable pursuant to the preceding paragraph the Lessee shall pay to the Lessor a further rental per quarter-annual period for such Unit in an amount equal to the excess, if any, of the aggregate of all amounts, including mileage, receivable by the Lessee for such Unit from others in respect of such period over the rental payable for such Unit pursuant to such preceding paragraph for such period, payable on the same dates as the latter.

§ 2.2. *Daily Interim Rent.* Lessee agrees to pay for each Unit of Equipment an amount per day equal to .02341% of the Purchase Price of such Unit for the period, if any, from the Closing Date to and including June 30, 1974, payable on July 1, 1974.

§ 2.3. *Place of Rent Payment.* All payments provided for in this Lease to be made to Lessor shall be made to Lessor care of Girard Trust Bank, One Girard Plaza, Philadelphia, Pennsylvania 19101, attention Corporate Trust Department, or at such other place as Lessor shall specify in writing.

§ 2.4. *Net Lease.* This Lease is a net lease, and Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of Lessee against Lessor under or with respect to this Lease or otherwise or against the Builder or against any person or entity having or claiming to have a beneficial interest in any Unit; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect or alleged defect in or damage or alleged damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of, or other restriction against, Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity, illegality or unenforceability or lack of due authorization of this Lease, or lack of right, power or authority of Lessor to enter into and/or perform this Lease, or by reason of any failure by Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 11 hereof, shall terminate on June 30, 1991.

§ 4. *Identification Marks.* Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words: "Property of FCB LEASING LTD., subject to a security interest in favor of GIRARD TRUST BANK, AGENT-MORTGAGEE" or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such Unit and the rights of Lessor under this Lease and the rights of the holders of any security interest in such Unit heretofore or hereafter created by Lessor. Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. Lessee will not change the identifying number of any Unit except with the written consent of Lessor and in accordance with a written statement of new identifying numbers to be substituted therefor, which consent and statement previously shall have been filed with Lessor by Lessee and filed, recorded or deposited in all public offices in which this Lease will have been filed, recorded or deposited; provided, however, that, in addition to such identifying number, Lessee may cause to be placed on each Unit in such position as not to be confused with the identifying number thereon a reporting number identifying such Unit for reporting and operating purposes, which re-

porting number may be changed by Lessee from time to time without the consent of Lessor or the filing, recording or depositing of any instrument.

Except as above provided, Lessee will not allow the name of any person, association, corporation or other entity to be placed on the Units as a designation that might be interpreted as a claim of ownership or right to possession or use thereof; provided, however, that Lessee may cause the Units to be lettered with the names, initials or other insignia customarily used by Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of Lessee to use the Units under this Lease.

§ 5. *Taxes, Etc.* Lessee agrees that, in addition to the other payments provided herein, it will promptly pay, or promptly reimburse Lessor should payment be made by it for, all taxes imposed by any foreign or domestic governmental authority, fees, charges, assessments or licenses (excluding federal income taxes payable by Lessor in consequence of the receipt of payments to Lessor provided herein and excluding also state or local income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state in which Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided, but including, without limitation, sales, use, franchise [except as hereinabove limited], property, gross receipts and occupation taxes) (all the foregoing not so excluded being hereinafter collectively called Impositions), (i) levied or imposed upon, measured by or exacted because of the Purchase Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms thereof, except sales taxes included in the

Purchase Price of the Equipment, (ii) levied or imposed upon the Units or the interest of Lessee or Lessor in the Units or any thereof or exacted because of the ownership, use, operation or leasing thereof or upon the rentals or earnings arising therefrom, or (iii) levied or assessed against Lessor on account of its acquisition or ownership of the Units or any thereof or on account of the use, operation or leasing thereof or on account of the rentals or earnings arising therefrom. Lessee agrees that, during the continuance of this Lease, in addition to the payments herein provided and payment or reimbursement of Impositions as provided in this § 5, it will promptly pay or reimburse Lessor for any interest or penalties resultant from any delay in paying any Imposition which Lessee has herein agreed to pay or reimburse or for its failure to withhold or collect and pay over. Notwithstanding the foregoing, Lessee shall not be required to pay or reimburse any Imposition or any such interest or penalties so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of Lessor, either the rights or interests of Lessor will be materially endangered or as a result thereof an Event of Default shall exist.

In the event any reports with respect to Impositions are required to be made on the basis of identifiable Units, Lessee will either make such reports in such manner as to show the interests of Lessor and in such Units or will notify Lessor of such requirements and will make such reports in such manner as shall be satisfactory to Lessor.

In the event that, during the continuance of this Lease, Lessee becomes liable for the payment or reimbursement of any Impositions, interest or penalties pursuant to this § 5, such liability shall continue, notwithstanding the expiration of the term of this Lease, until all such Impositions, interest and penalties are paid or reimbursed by Lessee plus, if paid

by Lessor, 10% per annum from the date such Impositions, interest and penalties were paid by Lessor to the date of reimbursement by Lessee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become lost, stolen, destroyed, or in the opinion of the Lessee irreparably damaged, or, in the opinion of both the Lessor and the Lessee obsolete or economically unserviceable from any cause whatsoever, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain, or otherwise, which shall effect a transfer of title (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, Lessee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform Lessor in regard thereto. When the aggregate Casualty Value (as hereinafter defined) of Units having suffered a Casualty Occurrence (exclusive of Units having suffered a Casualty Occurrence in respect to which a payment shall have theretofore been made to Lessor pursuant to this § 6) shall exceed \$25,000, Lessee shall, on the next succeeding rental payment date, pay to Lessor, in addition to any accrued and unpaid rental for every such Unit to the date of such payment, the sum of the rental payment for every such Unit due on such rental payment date and the Casualty Value of every such Unit as of the date of such payment, in accordance with the schedule below. On the date of the next quarter-annual period following the last rental payment date during the original term hereof in respect to the Units, Lessee shall pay to Lessor, in addition to the rental accrued thereon (if any), a sum equal to the Casualty Value of every Unit which shall have suffered a Casualty Occurrence and in respect of which a payment shall not have heretofore been made pursuant to this § 6. Upon making such payment in respect of every such Unit, the rental for such Units

shall cease to accrue as of the date of such payment, the term of this Lease as to such Units shall terminate and Lessor shall be entitled to recover possession of such Unit or its remains unless title has been taken by eminent domain.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

TABLE A.

<i>Payment Number</i>	<i>CLV%</i>	<i>Payment Number</i>	<i>CLV%</i>	<i>Payment Number</i>	<i>CLV%</i>
1	100.475	24	87.925	47	51.045
2	101.413	25	86.880	48	49.455
3	102.219	26	85.751	49	47.823
4	102.926	27	84.539	50	46.143
5	103.524	28	83.353	51	44.421
6	104.003	29	77.264	52	42.788
7	104.365	30	75.989	53	41.110
8	104.658	31	74.672	54	39.383
9	104.852	32	73.399	55	37.610
10	104.937	33	72.082	56	35.936
11	104.917	34	70.716	57	34.216
12	104.843	35	69.305	58	32.443
13	99.817	36	67.944	59	30.622
14	99.552	37	66.536	60	28.911
15	99.190	38	65.078	61	27.152
16	98.788	39	63.572	62	25.336
17	98.301	40	62.121	63	23.470
18	97.721	41	60.622	64	21.727
19	97.050	42	59.068	65	19.931
20	96.352	43	57.466	66	18.078
21	90.713	44	56.397	67	16.171
22	89.846	45	54.658	68	14.349
23	88.893	46	52.873		

Except as hereinabove in this § 6 provided, Lessee shall not be released from its obligation hereunder in the event of any Casualty Occurrence to any Unit after delivery to and acceptance thereof by Lessee hereunder.

§ 7. *Annual and Interim Reports.* The Lessee will cause to be furnished to the Lessor within 30 days of the receipt of the request of the Lessor but no more than once in each 12 month period an accurate statement in writing, as of the preceding January 1, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as Lessor may reasonably request, and (b) stating that, in the case of all Units repainted during the period covered by such statement, the markings required by § 4 hereof shall have been preserved or replaced.

Lessor shall have the right, at its sole cost and expense, by its authorized representatives, to inspect the Units and Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to Lessor the existence and proper maintenance thereof during the continuance of this Lease.

If so requested by Lessor, Lessee will furnish Lessor unaudited quarterly financial statements of Lessee within sixty (60) days after the end of each quarter, certified to be true and correct by its chief financial officer, and will also furnish Lessor, within one hundred twenty (120) days after the close of each fiscal year of Lessee, a consolidated Balance Sheet and Profit and Loss Statement as of the end of such year, certified by the independent public accountants of Lessee.

§ 8. *Compliance With Laws and Rules; Maintenance; Indemnification.* Lessor makes no warranty or representation, either express or implied, as to the design or condition of, as to the quality of the material, equipment or work-

manship in, the Units delivered to Lessee hereunder, and LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE or as to its title to the Units or any component thereof (except that Lessor warrants that the Units are, and during the term of this Lease will be, free and clear of all claims, liens and encumbrances by or in favor of any person claiming by, through or under Lessor, except claims, liens and encumbrances by or in favor of Lessee pursuant to this Lease or which result from Lessee's failure to satisfy any undertaking or obligation under this Lease and of Girard Trust Bank, as Agent, and its successors, pursuant to the Chattel Mortgage dated as of the date hereof from Lessor to said Agent), it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee. Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney-in-fact during the continuance of this Lease to assert and enforce from time to time, in the name of and for account of Lessor and/or Lessee, as their interests may appear, whatever claims and rights Lessor may have, as vendee, under the provisions of §§ 5 and 6 of the Purchase Agreement.

Lessee agrees, for the benefit of Lessor, to comply with all governmental laws, regulations, requirements and rules (including the rules of the Interstate Commerce Commission and the Interchange Rules of the Mechanical Division, Association of American Railroads) with respect to the possession, use, maintenance and operation of each Unit subject to this Lease. In case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit, in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such changes, replacements and additions

at its own expense, and Lessee agrees, at its own expense, to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease.

Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair, ordinary wear and tear excepted.

Any parts installed or replacements made by Lessee upon any Unit shall be considered accessions to such Unit (except such as are not required pursuant to the second paragraph of this § 8 and may be removed without in any way affecting or impairing either the originally intended function or the use of such Unit), and, without cost or expense to Lessor, there shall be immediately vested in Lessor the same interest in and title to such parts as the interest of Lessor in, and title of Lessor to, such Unit.

Lessee agrees to indemnify and save harmless Lessor against any *charge or claim made against Lessor*, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which Lessor may incur in any manner, by reason of its entering into or the performance of the Purchase Agreement, or the Assignment or the Chattel Mortgage referred to in said Purchase Agreement or this Lease or its ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of, any Unit prior to the delivery thereof under, or while it is subject to, this Lease (whether during the term hereof or thereafter), and to indemnify and save harmless Lessor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition or possession of such Unit resulting in damage to property or injury to or loss of life of any person or entity. The indemnities contained in this para-

graph shall survive payment of all other obligations under this Lease or the termination of this Lease.

Lessee agrees to prepare and deliver to Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of Lessor) any and all reports to be filed by Lessor, with any federal, state or other regulatory authority by reason of the ownership by Lessor of the Units or the leasing of the Units to Lessee.

§9. *Renewal and Purchase Options.* Not earlier than six months prior to the expiration of the original term of this Lease (and, if the original term is extended as hereinafter provided, not more than six months prior to the end of such extended term) Lessee may cause the Appraiser (as hereinafter defined) to make, at the expense of Lessee, an appraisal of (a) the fair market value, or (b) both the fair market value and the fair rental value for one or more alternative extended terms of this Lease specified by Lessee, not however exceeding two (2) three (3) year extensions, of all Units then subject to this Lease (hereinafter called the Lot), and the report of the Appraiser setting forth its determination of such value or values shall be delivered to Lessor and Lessee not later than four months prior to the expiration of the original or extended term, as the case may be. Any such determination of fair rental value shall be based upon the rental of Units comprising the Lot pursuant to all of the terms and provisions of this Lease, with rentals payable in equal instalments quarter-annually in advance (provided, however, that the parties hereto agree that the fair rental value shall be the higher of the appraisal or 5%, 5%, 4½%, 4½%, 4% and 4%, of the Purchase Price on an annual basis of each Unit, related respectively in that order to the extended terms up to and including 6 years), and shall include a schedule of Casualty Values for such extended term (which Value shall not initially be less than

the fair market value of such Unit at the time of such appraisal and which shall decline over the extended term not more rapidly than the relevant Casualty Values specified in § 6 hereof as modified by § 17 hereof, if applicable). Such fair market value as so determined in respect of any Unit is hereinafter called the Market Value of such Unit and the fair rental value or specified percentage, whichever is higher, as so determined for each quarter-annual period in respect of any Unit for any term is hereinafter called the Rental Value for such term.

If Lessee shall cause such appraisal to be made, Lessee may by written notice delivered to Lessor not later than three months prior to the expiration of the original or extended term of this Lease, as the case may be, elect, unless an Event of Default as defined in § 11 hereof shall have occurred and be continuing,

A. to purchase all, but not fewer than all, the Units comprising the Lot, for an aggregate purchase price equal to the Market Value of such Units, payable by Lessee to Lessor in four consecutive equal quarterly instalments; or

B. to extend the term of this Lease in respect of all, but not fewer than all, the Units comprising the Lot for any term the Rental Value of which shall have been so determined at a rental equal to the Rental Value for such Units and with a Casualty Value as determined by the Appraiser.

In the case of any purchase pursuant to the foregoing subparagraph A, the following provisions shall be applicable: The first instalment of the purchase price in respect of such purchase of any Unit shall be payable on the date on which the term of this Lease with respect to such Unit would otherwise, but for the next succeeding sentence,

expire. This Lease with respect to Units which Lessee shall have so elected to purchase shall continue until the purchase price and interest shall have been paid in full, but for an aggregate rental of \$1 per year, such continuation being intended to protect Lessor's title to, and to continue all obligations of Lessee hereunder with respect to, such Units while the purchase price in respect thereof remains unpaid, but such continuation shall not relieve Lessee of its obligation to pay such purchase price in full. In the event of a Casualty Occurrence with respect to any such Units, the then remaining unpaid instalments of such purchase price and interest shall become immediately due and payable. Unpaid instalments of such purchase price shall bear interest payable on the annual and quarter-annual anniversary dates of the payment of the first instalment of such purchase price, at a rate per annum equal to the rate of Girard Trust Bank, or its successors, from time to time in effect for prime commercial loans of 90-day maturities. Any change in such rate of interest due to a change in such prime rate shall take place effective on the day following the effective date of a change in such prime rate. Upon payment in full of such purchase price, together with all interest thereon, Lessor shall upon request of Lessee execute and deliver to Lessee, or to Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens and encumbrances by or in favor of any person claiming by, through or under Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to Lessee or such assignee or nominee, in such form as may be reasonably requested by Lessee, all at Lessee's expense.

In the case of any extension of the term of this Lease in respect of any Unit pursuant to the foregoing subpara-

graph B, the following provisions shall be applicable: The extended term of this Lease in respect of each such Unit shall commence upon the date the term of this Lease in respect of such Unit would otherwise expire and such extended term shall continue until the date specified in such written notice delivered by Lessee to Lessor. During any extended term, Lessee shall pay to Lessor rentals quarterly in advance in amounts equal to the Rental Value of such Units for such term, and the Casualty Value of any Unit at any time during such extended term shall be as specified in the report of the Appraiser.

The term Appraiser shall mean The American Appraisal Company, a Wisconsin corporation, or the successor at the time of its appraisal business of the character conducted on the date hereof, or, if such business shall no longer be continued, such independent appraisal firm as Lessor and Lessee may mutually agree upon, or, failing such agreement, as may be selected by any Judge of the United States District Court for the Eastern District of Pennsylvania, upon application made by either Lessor or Lessee, with notice to the other.

§ 10. *Return of the Units Upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease or any renewal thereof with respect to any Unit (other than a Unit which shall have been taken as to title by eminent domain or lost or stolen or completely destroyed by a Casualty Occurrence), Lessee will, at its own cost and expense, at the request of Lessor, deliver possession of such Unit (in good order and repair, ordinary wear and tear excepted, and in compliance with all governmental laws, regulations, requirements and rules including the rules of the Interstate Commerce Commission and the Interchange Rules of the Mechanical Division, Association

of American Railroads, except that this clause shall not apply as to any Unit which shall have been destroyed or irreparably damaged) to Lessor upon such storage tracks of Lessee as Lessor may designate, or, in the absence of such designation, as Lessee may select, and permit Lessor to store such Unit on such tracks for a period not exceeding 100 days and transport the same at Lessee's cost and expense, at any time within such period, to any reasonable place on the lines of railroad operated by Lessee or to any connecting carrier for shipment, all as directed by Lessor; the storage of such Units to be at the expense of Lessee and at the risk of Lessor. During any such storage period Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. The assembling, delivery, storage and transporting of Units as provided in this § 10 and § 12 are of the essence of this Lease, and upon application to any court having jurisdiction, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so as to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit, it may deliver written notice to such effect to Lessee and Lessee shall thereupon assume all, and hold Lessor harmless from all liability arising in respect of any, responsibilities of ownership thereof from and after receipt of such notice.

§ 11. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 or § 9 hereof and such default shall continue for five days;

B. Lessee shall make or permit any unauthorized assignment or transfer of its leasehold interest under this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for 30 days after written notice from Lessor to Lessee specifying the default and demanding the same to be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against Lessee, and all the obligations of Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given a status comparable to the obligations incurred by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of Lessee hereunder), and all the obligations of Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for Lessee or for the property of Lessee in connection with any such proceedings or otherwise

given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, Lessor, at its option may:

(a) proceed, by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to Lessee terminate this Lease, whereupon all right of Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Units may be and take possession of all or any such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purposes whatever; but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (and the rental for any number of days less than a full rental period shall be determined by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which

represents the excess of the present worth, at the time of such termination, of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present worth of the then fair rental value of such Unit for such period computed by discounting to the date of such termination rentals which Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present worth to be computed in each case on a basis of $10\frac{1}{4}\%$ per annum discount, compounded quarter-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, without limitation, any amount payable under Section 17 of this Lease.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by Lessee or on its behalf.

The failure of Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such

right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 12. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 11 hereof, Lessee shall forthwith deliver possession of the Units to Lessor. For the purpose of delivering possession of any Unit or Units to Lessor as above required, Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of Lessee as Lessor may designate or, in the absence of such designation, as Lessee may select,

B. permit Lessor to store such Units on such tracks for a period not exceeding six months at the risk of Lessee, and

C. transport the same, at any time within such six months' period, to any place on the lines of railroad operated by it or to any connecting carrier for shipment, all as directed by Lessor.

Without in any way limiting the obligation of Lessee under the foregoing provisions of this § 12, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Lessor, to demand and take possession of such Unit in the name and on behalf of Lessee from whosoever shall be at the time in possession of such Unit.

§ 13. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee, but Lessee shall be under no obliga-

tion to any assignee of Lessor unless it shall have received written notice of such assignment.

So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of Lessor, Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any existing mortgage on any of the lines of railroad of Lessee may subject such leasehold interest to the lien thereof). In addition, Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (other than an encumbrance resulting from claims against Lessor not related to the ownership of the Units or from any security interest created by Lessor) which may at any time be imposed on or with respect to any Unit or the interest of Lessor or Lessee therein. Lessee shall not, without the prior written consent of Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

Lessee, so long as it shall not be in default under this Lease, shall be entitled to the possession of the Units and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, and upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, Lessee, or over which Lessee has trackage rights, and the Units may be used also upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease.

Lessee will not assign any Unit to service involving the regular operation and maintenance thereof in Canada or

Mexico or otherwise outside United States and any use of any Unit in Canada or Mexico or otherwise outside United States will occur only in the ordinary interchange of traffic.

Nothing in this § 13 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety and the obligations hereunder of Lessee shall be binding upon any such corporation whether or not it shall expressly assume such obligations.

§ 14. *Opinion of Counsel.* Concurrently with the execution and delivery of this Lease, Lessee has delivered to Lessor the written opinion of counsel for Lessee, in scope and substance satisfactory to Lessor and its counsel, to the effect that:

A. Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by Lessee and constitutes the valid, legal and binding obligation of Lessee, enforceable in accordance with its terms;

C. this Lease, when filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, will protect Lessor's title and interest in and to the Units in the United States of America and no filing, recording or deposit (or giving of notice) with any other federal,

state or local government is necessary in the United States of America to protect the title and interest of Lessor in and to the Units in the United States of America;

D. Lessee has complied with all applicable regulations under Section 10 of the Clayton Act and when Lessee shall have filed the required statement of transaction with the Interstate Commerce Commission no further action will be required thereunder, nor is approval required from any other public regulatory body with respect to the entering into or performance of this Lease;

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon Lessee's leasehold interest under this Lease in the Units (except to the extent that the provisions of any existing mortgage of Lessee may require the subjection of the leasehold interest to the lien thereof) pursuant to, any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it may be bound; and

F. The execution of this Lease does not conflict with any provision of Lessee's Articles of Incorporation or Bylaws.

In addition, Lessee will furnish the opinions of its counsel and other documents to be furnished by it pursuant to the Finance Agreement referred to in the Purchase Agreement, at the time so required to be furnished.

§ 15. *Recording.* Prior to the delivery and acceptance of any of the Units, Lessee will cause this Lease to be filed

and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of proper protection, to the satisfaction of Lessor, of its title to the Units, or for the purpose of carrying out the intention of this Lease.

§ 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder shall result in the obligation on the part of Lessee to pay also an amount equal to 12% (or the lawful rate, whichever is less) of the overdue rentals for the period of time during which they are overdue.

§ 17. *Federal Income Taxes, Investment Credit and Depreciation.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of the property, including (without limitation) an allowance for the Investment Credit and the Depreciation Deduction (each as herewith defined) with respect to the Units to the extent permissible under the Code.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make

available for inspection and copying by Lessor such records as are reasonably retained in the normal course of business sufficient to enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the Depreciation Deduction with respect to the Units.

The Lessee represents and warrants that (i) none of the Units constitute property the construction, reconstruction or erection of which was begun after April 1, 1971, (ii) at the time the Lessor becomes the owner of these Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude the original use of such property within the meaning of Section 48(b) of the Code and 167(c)(2) of the Code from commencing with the Lessor and (iii) the Lessee will not at any time during the terms of this Lease, use, or fail to use any Unit in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48(a) of the Code.

In the event that the Investment Credit or any part thereof, allowed by Section 38 and related Sections of the Internal Revenue Code of 1954, as now in effect, is lost to the Lessor with respect to any Unit either (a) because of the manner in which any Unit shall be used or operated during the term or prior to the term of this Lease by the Lessee, any sublessee from the Lessee, any agency of the United States Government, or any person, corporation, association or other entity, including any action or omission by the Lessee, any sublessee from the Lessee, any agency of the United States Government, or any person, corporation, association or other entity or (b) because the right to use any Unit shall have been or shall be transferred, then the Lessee shall pay to the Lessor as "Liquidated Damages" (for the loss of a bargain and not as a penalty), an amount equal to the sum of .

(1) the quotient of (i) the difference between (a) 7% of the Lessor's qualified investment in the Unit, or the total Investment Credit previously allowed to the Lessor (before taking into account any limitation on the amount of such credit based upon the Lessor's Federal Income Tax liability), (b) the Investment Credit with respect to the Unit which is allowed, plus, the amount of any federal tax penalties attributable to any act or omission of the Lessee required to be paid by the Lessor and (ii) that percentage which is the difference between (a) 100% and (b) the sum of (x) the highest effective federal income tax and/or excess profits tax rate generally applicable to domestic corporations (including therein the effect of any applicable surtax, surcharge and/or any other federal tax or charges related to net income or excess profits, or related to any tax on net income or excess profits) for the taxable year of the Lessor in which the payment of liquidated damages are herein required (hereinafter referred to as the "federal tax rate") plus (y) the highest effective generally applicable rate of tax imposed by the State of Massachusetts on corporate net income and/or excess profits for the taxable year of the Lessor in which the payment of Liquidated Damages are herein required, multiplied by that percentage which is the difference between 100% and the federal tax rate for such year, plus

(2) the amount of any tax deficiency interest which is required to be paid by the Lessor and is attributable to the period prior to the Lessee's payment to the Lessor of the Liquidated Damages.

In the event that the Depreciation or any part thereof, allowed by Section 167 and related Sections of the Internal

Revenue Code of 1954, as now in effect, is lost to the Lessor with respect to any Unit either (a) because of the manner in which any Unit thereof shall be used or operated during the term or prior to the term of this Lease by the Lessee, any sublessee from the Lessee, any agency of the United States Government, or any person, corporation, association or other entity, including any action or omission by the Lessee, any sublessee from the Lessee, any agency of the United States Government, or any person, corporation, association or other entity, or (b) because the right to use the Unit or any item thereof shall have been or shall be transferred, then the rental rate applicable to such Unit set forth in Section 2 of this Lease shall, on and after the next succeeding rental date after written notice to the Lessee by the Lessor of the occurrence of any such event, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net rate of return over the term of the Lease in respect of such Unit to equal the net rate of return that would have been available if such event had not occurred and the Lessee shall forthwith pay to the Lessor the amount of any interest and a sum which after deduction required to be paid by Lessor in respect to the receipt thereof under the laws of the United States equal to any penalty which may be assessed by the United States against the Lessor attributable to the occurrence of such event and which has been paid by the Lessor.

In the event a claim shall be made by the Internal Revenue Service with respect to the disallowance of the Lessor's Investment Credit or Depreciation Deduction in respect of any Unit, the Lessor agrees to take such action in connection with contesting such claim as the Lessee shall reasonably request from time to time, provided that: (1) within 30 days after notice by the Lessor to the Lessee of

such claim, the Lessee shall make request that such claim be contested; (ii) the Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as the Lessor shall elect, or contest such claim in the Tax Court of the United States, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Lessor with an opinion of independent tax counsel satisfactory to the Lessor to the effect that a meritorious defense exists to such claim; and (iv) the Lessee shall have indemnified the Lessor in a manner satisfactory to it for any liability or loss which the Lessor may incur as the result of contesting such claim and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such claim, including, without limitation (a) reasonable attorneys' and accountants' fees and disbursements and (b) the amount of any interest or penalty which may ultimately be payable to the United States Government as the result of contesting such claim, and the Lessee shall have furnished reasonable security for such indemnification as may be required. In the case of any such claim by the Internal Revenue Service referred to above, the Lessor agrees promptly to notify the Lessee in writing of such claim and agrees not to make payment of the tax claimed for at least thirty days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Lessor, and shall otherwise cooperate with the Lessee in good faith in order

to effectively contest any such claim. The Lessor will not agree to the release, compromise or settlement of any action or proceeding taken in accordance with this Section 17 by the Lessor without the prior written consent of the Lessee.

If the Lessor's right to claim such portion of the Investment Credit with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Lessor shall release, waive, compromise or settle any claim without the written consent of the Lessee (either event hereinafter called a "final settlement"), then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the Lessor shall reimburse Lessee in an amount equal to :

(1) the Liquidated Damages, as above defined, (other than the amount representing the interest assessed against and paid by the Lessor, which has not been reimbursed to Lessor by Lessee) paid by the Lessee which are attributable to the Investment Credit allowed as a result of such final settlement; plus

(2) interest from the date the liquidated damages are paid to the Lessor at the rate of six percent (6%) per annum on the Investment Credit allowed as a result of such final settlement.

If the Lessor's right to claim all or any part of the full Depreciation Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Lessor shall

release, waive, compromise or settle any claim without the written consent of the Lessee (both events hereinafter called a "Final Settlement"), then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Unit shall be adjusted by such an amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net rate of return over the remaining term of the lease in respect of such Unit to equal the net rate of return that would have been available if such final settlement had not occurred and the Lessor shall forthwith upon demand of the Lessee reimburse Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the fifth paragraph of this Section 17 and the rental rate applicable to such Unit pursuant to this Paragraph and (B) any interest paid by the Lessee to the Lessor pursuant to the fifth paragraph of this Section 17 over (ii) the difference between (a) an amount equal to interest at the rate of $8\frac{1}{2}\%$ per annum on the amount on any federal income tax paid by the Lessor on account of the disallowance or inability to claim the Depreciation Deduction on such Unit and (b) the amount of any interest to which the Lessor would be entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; provided, however, that if the amount calculated in accordance with clause (ii) exceed the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Lessor promptly on demand.

The Lessee's and the Lessor's agreement to pay any sums which may become payable pursuant to this Section 17 shall survive the expiration or other termination of this Lease.

As used herein, the term "Investment Credit" shall mean the credit allowable pursuant to Section 38 and related sections of the Internal Revenue Code of 1954, as amended, and the term "Depreciation Deduction" shall mean the maximum depreciation allowable with respect to a Unit pursuant to Section 167(c)(2) of the Internal Revenue Code of 1954, as amended, and the applicable United States Treasury Regulations thereunder, utilizing a life of twelve (12) years for each Unit based upon one hundred percent (100%) of the cost of each Unit and no salvage value and any method or combination of methods permitted for computing depreciation under said Internal Revenue Code or Regulations which consistently applied for Federal income tax purposes will result in the maximum depreciation deduction in any one year over such useful life of each Unit.

§ 18. *Notices.* Any notice required or permitted to be given by either party to the other shall be deemed to have been given when deposited in a United States postal service box, certified mail, first-class postage prepaid, addressed as follows:

If to Lessor:

FCB Leasing Ltd.
504 Totten Pond Road
Waltham, Massachusetts 02154

Copy to:

First Commercial Banks, Inc.
60 State Street
Albany, New York 12207

If to Lessee:

Delaware and Hudson Railway Company
The Plaza
Albany, New York 12207
Attention of the Treasurer

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability.* Any provision of this Lease 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.

§ 20. *Execution in Counterparts.* This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

§ 21. *Law Governing.* This Lease shall be construed in accordance with the laws of the Commonwealth of Massachusetts, including the Uniform Commercial Code; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, Lessor and Lessee, pursuant to due corporate authority, have caused this instrument to be signed in their corporate names by duly authorized officers

and their corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

FCB LEASING LTD.

By

Paul O'Brien
Senior Vice President

[CORPORATE SEAL]

Attest:

Robert E. Rydick
Assistant Secretary

DELAWARE AND HUDSON RAILWAY
COMPANY,

By

J. E. O'Brien
Vice President

[CORPORATE SEAL]

Attest:

R. T. Murray
Secretary

SCHEDULE A

<u>Type</u>	<u>Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identifying Numbers</u>	<u>Unit Base Price *</u>	<u>Total Base Price</u>	<u>Delivery</u>
50'7 ⁵ / ₁₆ " 70-ton Capacity Standard Box Car with cushioned end of car devices, 10' wide door openings, internal belt rails and Damage Free Classification	Builder's Lot and Specification No. 9702 dated October 3, 1973	Bessemer, Alabama	150	24001 Through 24150 inclusive.	\$19,000	\$2,850,000	Not later than June 30, 1974

* F.O.B. Bessemer, Alabama.

EXHIBIT I.**CERTIFICATE OF DELIVERY
AND ACCEPTANCE**

UNDER EQUIPMENT LEASE DATED FEBRUARY 19, 1974 AND
PURCHASE AGREEMENT DATED AS OF FEBRUARY 19, 1974

The undersigned, being the duly authorized representative of FCB LEASING LTD. (the "Owner") and of Delaware and Hudson Railway Company (the "Lessee"), hereby certifies that the following units of railroad equipment, referred to in the Purchase Agreement (the "Purchase Agreement") between the Owner and Pullman Incorporated and in the Equipment Lease (the "Lease") between the Owner and the Lessee, each dated _____, 1974:

Description:

<i>Total No. of Items</i>	<i>Lessee's Identifying Nos.</i>	<i>Date</i>
-------------------------------	--------------------------------------	-------------

have been duly delivered in good order by the Builder and duly inspected and accepted by the Undersigned on the respective dates shown above on behalf of the Owner and in turn have been duly delivered by the Owner to the Lessee and have been duly inspected and accepted by the undersigned on said dates on behalf of the Lessee as conforming in all respects to the requirements and provisions of the Purchase Agreement and the Lease.

The undersigned further certifies that at the time of its delivery to the Owner and the Lessee each unit of railroad equipment covered by this Certificate was properly marked

on each side thereof with the legend provided in Section 4 of the Lease.

Dated: 1974.

.....
Duly authorized representative of
FCB LEASING LTD. and Dela-
ware and Hudson Railway Com-
pany

COMMONWEALTH OF *Penna.* }
COUNTY OF *Allegheny* } ss.:

On this *26th* day of *Feb.*, 1974, before me personally appeared *Paul J. Ochs, Jr.*, to me personally known, who being by me duly sworn, says that he is a Vice President of *ALB Leasing Ltd.*

, 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.

Mary J. Koskaluk
Notary Public

My Commission Expires *3/25/74* .

Penna.

STATE OF ~~NEW YORK~~ }
COUNTY OF *Phila* } ss.:

On this *26th* day of *Feb.*, 1974, before me personally appeared *F. C. O'Brien*, to me personally known, who being by me duly sworn, says that he is the Vice President of DELAWARE AND HUDSON RAILWAY COMPANY, 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.

Mary J. Koskalik
Notary Public

My Commission Expires *3/25/74* .