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INTERSTATE COMMERCE COMMISSION

**ASSIGNMENT OF LEASE AND AGREEMENT**

dated as of February 19, 1974, by and between FCB LEASING LTD. (hereinafter called the Company), and GIRARD TRUST BANK, as Agent (hereinafter called the Agent), pursuant to the Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement), among the Agent, the Company and the Lender party thereto (hereinafter called the Lender).

The Company and Delaware and Hudson Railway Company, a Delaware corporation (hereinafter called the Lessee), have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Company to the Lessee of the railroad cars (hereinafter called the Units) listed in Schedule A to the Lease.

The Company desires to borrow from the Lender pursuant to the Finance Agreement a principal amount equal to 65.5% of the cost to the Company of the Units but not in excess of \$1,866,750. Such borrowings (hereinafter collectively called the Loan) are to be evidenced by nonrecourse promissory notes of the Company (hereinafter called the Notes) payable to the order of the Lender or its nominees in substantially the form of Exhibit F to the Finance Agreement. The obligations of the Company arising under the Notes, this Assignment, the Finance Agreement and the Chattel Mortgage of the Units dated as of the date hereof (hereinafter called the Mortgage), from the Company to the Agent, to secure the obligations of the Company arising under the Notes, and the other obligations described therein, are hereinafter collectively called the Liabilities.

Now, THEREFORE, to induce the Lender to make the Loan and for other good and valuable consideration, the

receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. As security for the payment and performance of the Liabilities, the Company hereby assigns, transfers and sets over unto the Agent all the Company's right, title and interests, as lessor under the Lease, together with all rights, powers and privileges, and other benefits of the Company as lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals and profits and other sums payable to or receivable by the Company under or pursuant to the provisions of the Lease and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default under the Lease, and to do any and all other things whatsoever which the Company, as lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, and subject to the provisions of Section 8 of the Finance Agreement, the Company hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions of the Lease.

2. The assignment made hereby is executed only as security, and, therefore, the execution and delivery of this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify, the liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment, or any subsequent assignment, all obligations of the Company to the Lessee under the Lease shall be and remain enforceable by the

Lessee, its successors and assigns, against, and only against, the Company.

3. The Company covenants and agrees that it will perform all of its obligations to be performed under the terms of the Lease, if any, and hereby irrevocably authorizes and empowers the Agent, in its own name, or in the name of its nominee, or in the name of the Company or as its attorney, on the happening of any failure by the Company, to perform, or cause to be performed, any such obligation, all at the Company's expense.

4. Upon the full discharge and satisfaction of the Liabilities, the assignment made hereby and all rights herein assigned to the Agent shall cease and terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Company.

5. The Company warrants and covenants that (a) the execution and delivery by the Company of the Lease, this Assignment, the Mortgage and the Notes have each been duly authorized, and the Lease, this Assignment, the Mortgage and the Notes are and will remain the valid and binding obligations of the Company; (b) the Company has not executed any other assignment of the Lease and its right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements or encumbrances (except this Assignment) created or suffered by any act or omission on the part of the Company (other than any act or omission in respect of which the Lessee has assumed responsibility under the Lease), and the Company has received no advance rental payments under the Lease except the first such; (c) notwithstanding this assignment the Company will conform and comply with each and all of the covenants and conditions in the Lease set forth to be

complied with by it; and (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease on or prior to the date hereof and there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Lease). Except as expressly set forth in the Finance Agreement, the Mortgage and this Assignment, the Company has not made any representations or warranties to the Agent or the Lender with respect to the transactions contemplated hereby and none shall be implied.

6. The Company covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of such Lease, the Company will save, indemnify and keep the Agent harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee thereunder or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Agent or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

7. The Company will from time to time execute all such financing statements and supplemental instruments as the Agent may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

8. The Agent may assign all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder, subject to the requirements of § 13 of the Finance Agreement. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

9. The Company agrees that it will not, without the prior written consent of the Agent, enter into any agreement amending, modifying or terminating the Lease and that any attempted amendment, modification or termination thereof without such consent shall be void.

10. Notwithstanding anything contained herein to the contrary, this Assignment shall not be construed as enlarging, and this Assignment shall not enlarge, the obligations or liabilities of the Lessor under the Finance Agreement or the Notes.

11. This Assignment shall be governed by the laws of the Commonwealth of Pennsylvania, including the Uniform Commercial Code, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

12. This Assignment shall be binding upon and inure to the benefit of the parties hereto and the holders of the Notes and their respective successors and assigns.

13. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Agent at One Girard Plaza, Philadelphia, Pennsylvania 19101, attention of Corporate Trust Department, or at such other address as the Agent shall designate.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed by its duly authorized officers and its corporate seal affixed hereto as of the date first above written.

FCB LEASING LTD.

By *[Signature]*  
Senior Vice President

[CORPORATE SEAL]

Attest:

*[Signature]*  
Assistant Secretary

ACCEPTED:

GIRARD TRUST BANK, as Agent

By: *[Signature]*  
Vice President

CORPORATE TRUST OFFICER

[CORPORATE SEAL]

Attest:

*[Signature]*  
Assistant Secretary  
Administrative Services  
Corporate Trust

COMMONWEALTH OF *Pennsylvania* }  
COUNTY OF *Philadelphia* } ss.:

On this *26<sup>th</sup>* day of *Feb.*, 1974, before me personally appeared *Paul F. Ochs.*, to me personally known, who being by me duly sworn, says that he is a <sup>1</sup>Vice President of FCB 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 S. Koskalk*  
Notary Public

My Commission Expires

*March 25, 1974*

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF PHILADELPHIA } ss.:

On this 26<sup>th</sup> day of Feb., 1974, before me personally appeared G. H. KELLER, JR., to me personally known, who being by me duly sworn, says that he is one of the Vice Presidents of Girard Trust Bank, that one of the seals 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. Maskalik*  
Notary Public

My Commission Expires

*March 25, 1974*