

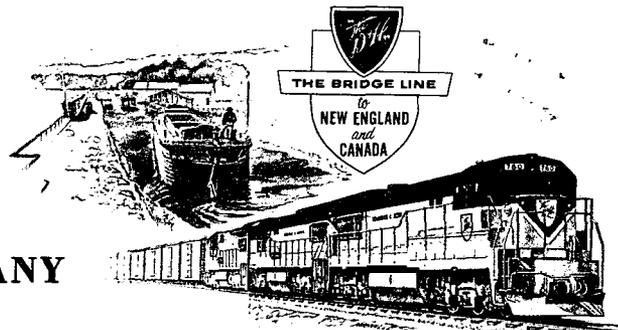
DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207

7 1251042

T. W. EAGAN
VICE PRESIDENT AND COMPTROLLER

NOV 5 1977
Date
Fee \$ 50
ICC Washington, D. C.



Dependable Transportation Since 1823

8810
RECORDATION NO. Filed & Recorded

MAY 5 1977 - 11 55 AM

INTERSTATE COMMERCE COMMISSION

RECEIVED
MAY 5 11 51 AM '77
FEE OPERATION BR.
April 28, 1977

Mr. Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

There are submitted herewith for recording pursuant to Section 20c of the Interstate Commerce Act and to the Commission's General Rules and Regulations, Part 1116 - Recordation of Documents, an original and two certified true copies of the following:

- Lease of Railroad Equipment dated December 29, 1976.
- Lessee: Delaware and Hudson Railway Company, 40 Beaver Street, Albany, New York 12207
- Lessor: RKO General, Inc., 144 Broadway, New York, New York 10018

The equipment covered by the aforesaid lease is eight (8) used Alco 2000 HP Four Motor Locomotives bearing

<u>ALCO SERIAL NUMBER</u>	<u>LOCOMOTIVE ROAD NUMBER</u>
84782	211
84783	212
84785	214
84786	215
84788	217
84789	218
84790	219
84791	220

Mr. Robert L. Oswald
Page 2
April 28, 1977

There is attached to each certified true copy of said Lease of Railroad Equipment a certification of a notary public stating that such officer has compared the copy with the original document and that it is a true and correct copy in all respects.

A check of Delaware and Hudson Railway Company, payable to the order of the Commission, in the amount of \$50.00, is also enclosed to cover the required recordation fee.

The original document should be returned to the undersigned at 40 Beaver Street, Albany, New York 12207

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. W. Eag", followed by a long horizontal line extending to the right.

Encl.

Interstate Commerce Commission

Washington, D.C. 20423

5/5/77

OFFICE OF THE SECRETARY

**T.W. Eagan
Vice President & Controller
Delaware & Hudson RYW. Co.
Albany, New York 12207**

Dear **Sir:**

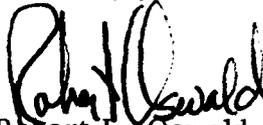
The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on **5/5/77** at **11:55am**

and assigned recordation number(s)

8810

Sincerely yours,



Robert L. Oswald
Secretary

Enclosure(s)

RECORDATION NO. 0010 Filed & Recorded

MAY 5 1977 - 11 55 AM

INTERSTATE COMMERCE COMMISSION

CERTIFICATION OF NOTARY PUBLIC

John A. Denison, a Notary Public in and for the State of New York, County of Rensselaer, hereby certifies that on this 28th day of April, 1977, he has compared the attached copy of the Lease of Railroad Equipment entered into between RKO General, Inc. and Delaware and Hudson Railway Company dated as of December 29, 1976, with an original of the said Lease of Railroad Equipment, and that it is a true and correct copy in all respects, including the dates and signatures.



John A. Denison

John A. Denison
JOHN A. DENISON
Notary Public, State of New York
Qualified in Rensselaer County
Commission Expires March 30, 1979

M. D. 19510

LEASE OF RAILROAD EQUIPMENT, dated as of December 29, 1976, between RKO GENERAL, INC., a Delaware corporation (such company and its successors and assigns being hereinafter called the "Lessor"), and DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation (hereinafter called the "Lessee"), relating to eight of the following listed used Alco 2000 HP, Four Motor Locomotives (hereinafter referred to as the "Locomotives"), the eight specific units delivered to D&H to be designated by letter amendment to this agreement:

<u>ALCO SERIAL NUMBER</u>	<u>LOCOMOTIVE ROAD NUMBER</u>
84781	210
84782	211
84783	212
84784	213
84785	214
84786	215
84787	216
84788	217
84789	218
84790	219
84791	220
3384-1	221

The parties agree that upon the terms and subject to the conditions of this Lease, the Lessor leases the Locomotives to the Lessee.

Section 1. Application of Lease. Upon the execution of this Lease by an authorized representative of the Lessee, the Locomotives covered hereby shall be subject to all of the terms and conditions of this Lease.

Section 2. Preparation for Service. The Lessee has requested that certain repair and other work be accomplished on the Locomotives prior to the Lessee putting the Locomotives into service. The Lessee agrees to submit to the Lessor a statement of the work to be performed. The Locomotives covered herein will be prepared for service at Morristown & Erie RR Co., Morristown, N.J. It is understood and agreed that in no event will the Lessor be required to pay for such work upon terms less favorable than four equal monthly installments commencing from the completion of the authorized work and that the Lessee will hold harmless the Lessor from the total cost and expense thereof. The Lessee shall be solely responsible for dealing with the repair shop and the quality of the work, and the Lessor makes no warranty or representation with respect thereto. The Lessor reserves the right to replace any Locomotive subject to this Lease with any other locomotive it owns or to otherwise withdraw any Locomotive and reduce the number of Locomotives subject to this Lease. The Lessee agrees to be responsible for all costs and expenses related to the transportation of the Locomotives from Morristown & Erie RR to the Lessee's trackage.

Section 3. Rentals

3.1 Basic Rental. The Lessee agrees to pay to the Lessor as Basic Rental for each Locomotive subject to this

Lease, in New York Clearing House Funds, the sum of \$60 per day. The Basic Rental as to each Locomotive shall commence on the day after the completion of the work agreed to pursuant to Section 2 hereof (the "Commencement Date"). The Basic Rental shall be paid to the Lessor in advance for the first full calendar month of the lease term (plus the Basic Rental for any period prior to the commencement of the first calendar month) and thereafter ^{within} ~~ten~~ *HS* *next* days of each subsequent invoice at the Lessor's office in New York, New York, or to such other person or at such other place as the Lessor shall specify in writing.

3.2 Additional Rental. As Additional Rental the Lessee shall pay the Lessor an amount equal to the total cost and expense of the work performed pursuant to Section 2. Such amount shall be paid to the Lessor at its office in New York, New York, in New York Clearing House Funds, in four equal monthly installments commencing on the date that an invoice is rendered to the Lessor for such work.

Section 4. Wheel Wear Costs. After each Locomotive has been prepared for service, the measurement of the metal of each wheel of the Locomotive shall be gauged and recorded by the repair shop and a copy of its report sent to the Lessor. Upon the termination of the lease term of each Locomotive, each wheel shall again be gauged and recorded on the Certificate of Joint Inspection. In the case of a decrease in the gauge of the metal, the Lessee shall pay to the Lessor, or in the case of an increase the Lessor

shall pay to the Lessee, an amount equal to \$20 per one-thirty-second (1/32) of an inch change in gauge of the metal of each pair of wheels from the first measurement required hereunder. Such amount shall be paid within ten days of the date of execution of the Certificate of Joint Inspection.

There shall be no payment for wheel wear under this section with respect to any Locomotives purchased by Lessee under the provisions of Section 6.

Section 5. Term of Lease. The term of lease of each Locomotive shall begin on the Commencement Date and shall continue thereafter for a term of not less than four months. Thereafter, the term of lease shall continue on a month to month basis unless either party hereto gives the other party not less than fourteen days' prior written notice of its intention to terminate the lease term as to any Locomotive. In no event shall the term of lease as to any Locomotive terminate until a Certificate of Joint Inspection in the form attached hereto as Exhibit A is executed by each of the parties hereto, except that Lessee shall not be required to remit any Basic Rental to Lessor, as to any such Locomotive, after the expiration of ten (10) days from the date that such Locomotive is delivered to Lessor by Lessee, or prepared for such delivery by Lessee, in accordance with the provisions of Section 14 below, provided that basic rental will continue if within such ten day period Lessor inspects such Locomotive and finds it not to be in good operating condition acceptable for movement in interchange.

This Lease Agreement shall in any event continue in all respects as to any leased Locomotive until the termination of the Lease of such Locomotive and the full compliance by the Lessee with all terms and conditions hereof.

Section 6. Purchase Right. The Lessee shall have the right to purchase from the Lessor any Locomotive subject to this Lease Agreement during the lease term of such Locomotive. The purchase price for each Locomotive shall be \$55,000 and there shall be credited against such purchase price the Basic Rental theretofore paid by the Lessee for such Locomotive pursuant to Section 3.1. In the event that such Basic Rental shall equal or exceed the purchase price for the Locomotive, the purchase price for such Locomotive shall be \$1. The Lessee shall give the Lessor not less than ten days' prior written notice of its intention to purchase any Locomotive which notice shall specify which Locomotive is to be purchased and the date and time of a closing therefor. Any closing hereunder shall be held at the offices of the Lessor. At the closing the Lessee shall make payment of the purchase price by bank or certified check, in New York Clearing House Funds, and the Lessor shall deliver a bill of sale to the Lessee. Any Locomotive purchased hereunder shall be on an AS IS, WHERE IS basis. The purchase of any or all of the Locomotives shall not relieve the Lessee from its obligation to pay Additional Rental pursuant to Section 3.2.

Section 7. Identification Marks. If not already in place, Lessee will cause the following words to be plainly, distinctly, permanently and conspicuously marked on each side of such Locomotive in letters not less than one inch in height:

RKO GENERAL, INC.
OWNER AND LESSOR

Any other plates or stencils relative to ownership or mortgagees shall be removed by Lessee. If during the continuance of the Lease the foregoing marking is ~~defaced~~ ^{defaced HS 9/10/11} or destroyed, the Lessee shall immediately cause such markings to be restored. The Lessee shall not allow the name of any person, association or corporation to be placed on any of the Locomotives as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than the Lessor; but the Lessee may letter the Locomotive with the names or initials or other insignia customarily used by the Lessee on its Locomotives for convenience of identification of the right of the Lessee to use and operate the Locomotives under this Lease. In the event of any change of ownership of any Locomotive during the lease period, the Lessee agrees to promptly revise the marking on such Locomotive to correctly reflect such new ownership.

Section 8. Numbering. At all times during the continuance of this Lease, the Lessee will cause each Locomotive subject to this Lease to bear the Lessee's road number assigned to it; provided, however, that the Lessee may change the road number borne by any Locomotive if prior thereto the Lessee shall have filed with the Lessor a statement of the new road number to be substituted therefor and the Lessee shall have filed, deposited, registered and recorded such statement wherever this Lease shall have been filed, deposited, registered or recorded or elsewhere as required by law.

Section 9. Taxes. In addition to the Basic Rental, Additional Rental and wheel wear costs for each leased Locomotive, and the purchase price for each purchased Locomotive, the Lessee shall promptly pay when due (or reimburse Lessor if it shall so pay) all taxes, assessments and other governmental charges, including but not limited to sales, use, value added, excise or similar taxes, penalties and interest, levied or assessed upon such Locomotives or any interest therein or the use or operation thereof.

Section 10. Payment for Worn Out, Lost, Destroyed or Damaged Locomotives. If any Locomotive subject to this Lease shall become worn out, lost, destroyed or, in the reasonable opinion of the Lessor, irreparably damaged, then on the first day thereafter that rental is required to be paid pursuant to Section 3 hereof, the Lessee shall, in lieu of the Basic Rental payable on such day pursuant to Section 3.1, pay to the Lessor as damages in lieu of any further claim of the Lessor for Basic Rental, the purchase price for such Locomotive as determined pursuant to Section 6. It is understood and agreed that, as in Section 6, all previously accumulated \$60.00 daily Basic Rental payments shall be credited against the said purchase price in arriving at the amount of damages hereunder. The Lessee shall bear the risk of and, except as otherwise specifically provided herein, shall not be released from its obligations hereunder in the event of any loss or destruction of or damage to any of the Locomotives for any cause whatsoever.

Section 11. Reports and Inspection. The Lessee will furnish to the Lessor such reports as may be reasonably requested by the Lessor. The Lessor shall have the right, by its authorized representatives, to inspect the Locomotives to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

Section 12. Warranties; Maintenance; Compliance with Laws and Rules; and Indemnification. The Lessor warrants that at the time of the execution of this Lease Agreement it has good and marketable title thereto free and clear of any lien, claim or encumbrance of any nature whatsoever, except the rights of the Lessee hereunder. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE FITNESS, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE LOCOMOTIVES, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Locomotive which is subject to this Lease in good order and repair, ordinary wear and tear excepted. The Lessee agrees to deliver back to the Lessor, upon the termination of the lease period, each Locomotive complete in all respects theretofore delivered to the Lessee, and in good operating condition acceptable for movement through interchange. During the term of this Lease the Lessee agrees to comply with

all Federal, State and Municipal Governmental laws, regulations, requirements and rules with respect to the use, maintenance and operation of each Locomotive subject to this Lease. ~~and to insure each leased Locomotive for \$55,000 naming the Lessor as the beneficiary thereof.~~ *HS* In case any equipment or appliance on any such Locomotive 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 Locomotive in order to comply with such laws, regulations, requirements and rules, the Lessee, at its own cost and expense, agrees to make such changes, additions and replacements and agrees to maintain such Locomotive in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease. The Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor, and against *HS* any expense or liability which the Lessor may incur, in any manner arising out of or as a result of the use or operation or purchase of the Locomotives.

In the event any Locomotive becomes inoperative and requires more than normal running repairs, the Lessee may, upon five days' prior written notice to the Lessor, terminate rental payments for such Locomotive until the earlier of (1) the completion of the required repairs on such Locomotive or (2) sixty-five days from the date of such notice. Thereafter, rental payments shall recommence and shall continue as required by the terms and provisions of this Lease.

Section 13. Default. If, during the continuance of this Lease, one or more of the following events (herein sometimes called Events of Default) shall occur:

A. Default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for ten days;

B. The Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of any Locomotive and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Locomotives within ten days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

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

D. A decree or order by a court having jurisdiction in the premises shall have been entered,

(1) Adjudging the Lessee a bankrupt or insolvent,

(2) Approving as properly filed a petition seeking reorganization of the Lessee under the Federal

Bankruptcy Act or any other State or Federal law relating to bankruptcy or insolvency, except a petition filed under Section 20b of the Interstate Commerce Act or any similar law enacted hereafter, which petition does not seek any adjustment or impairment of any obligation of the Lease contained herein, or

(3) For the appointment of a receiver or liquidator or trustee in bankruptcy, reorganization or insolvency of the Lessee or of its property or any substantial portion of its property, and within thirty days thereafter (or in case, prior to the end of such thirty day period, a temporary or permanent receiver or trustee shall have been appointed in such proceedings, then within thirty days after the first such appointment) the obligations of the Lessee under the Lease shall neither have been assumed pursuant to order or decree of such court by the receiver or trustee in such proceedings nor otherwise have been given, pursuant to an order or decree of such court, a status comparable to that of obligations incurred by a receiver or trustee in bankruptcy, reorganization or insolvency proceedings; then, in any such case, the Lessor at its option, may

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

(b) By notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee

to the use of the Locomotives shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Locomotives may be and take possession of all or any of such Locomotives and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Locomotives for any purpose whatever; but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due to which may have accrued to the date of such termination, together with all costs, damages and expenses, including reasonable attorneys' fees, in addition thereto which the lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease.

The remedies in this Lease provided in favor of the 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. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to

make the rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with the lease of the Locomotives.

The failure of the 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.

Section 14. Return of Locomotives. Upon the termination of the term of this Lease with respect to any Locomotive (whether by reason of an Event of Default or otherwise), the Lessee shall forthwith deliver possession of such Locomotive to the Lessor in good operating condition, acceptable for movement through interchange. For the purpose of delivering possession of any Locomotive to the Lessor as above required, the Lessee shall, at its own cost and expense:

A. Forthwith prepare for safe storage and place such Locomotives upon such storage tracks of the Lessee as the Lessor may reasonably designate or, in the absence of such designation, as the Lessee may select.

B. Permit the Lessor to store such Locomotives on such tracks for a period not exceeding six months at the risk of the Lessor.

C. Prepare for dead movement and transport the same, at any time within such six-month period to any place

on the lines of railroad operated by it or to any connecting carrier for shipment, all as directed by and without cost to the Lessor.

The assembling, delivery, storage and transporting of the Locomotives as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Locomotives.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 14, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Locomotive to the Lessor, to demand and take possession of such Locomotive in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Locomotive.

Section 15. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Locomotives in accordance with the terms of this Lease but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any Locomotive. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Locomotives.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Locomotives and to the use thereof only upon the lines owned and operated by the Lessee and on lines of other carriers where "run through" or "power pool" agreements are in force. For the purpose of such agreements only, the Lessor consents to the possession and control of the Locomotives by another carrier during the limited period required therefor. Any other use of any Locomotive shall require the prior written approval of the Lessor.

Section 16. Recording Expenses. The Lessee will, without expense to the Lessor, cause this Lease to be filed and recorded with all appropriate Federal, State and Municipal governmental authorities. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister, or rerecord

whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of proper protection, to the satisfaction of counsel for the Lessor of its title to the Locomotives, or for the purpose of carrying out the intention of this Lease. The Lessee will pay all costs, charges and expenses incident to the filing, refiling, registering, reregistering, recording and rerecording of any such further instrument or incident to the taking of any such other action.

Section 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

If to the Lessor:

RKO General, Inc.
1440 Broadway
New York, New York 10018

Attention: Henry P. Sabatell

If to the Lessee:

Delaware & Hudson Railway Company
40 Beaver Street
Albany, New York 12207

Attention: Vice President-Operations

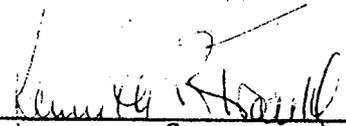
or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

Section 18. 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.

Section 19. Law Governing. This Agreement shall be construed in accordance with the laws of the State of New York.

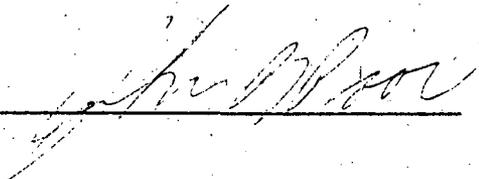
IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due corporate authority, have caused this Lease to be executed in their respective corporate names by their respective duly authorized representatives as of the date first above written.

ATTEST:


Secretary

RKO GENERAL, INC.

By



ATTEST:


Secretary

DELAWARE & HUDSON RAILWAY COMPANY

By

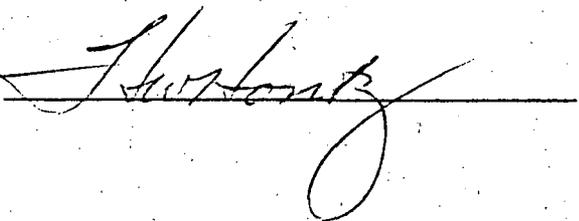


EXHIBIT A

CERTIFICATE OF JOINT INSPECTION

The undersigned, each for himself, hereby certifies that he is a duly authorized representative of RKO General, Inc. ("RKO") or Delaware & Hudson Railway Company ("D&H"), respectively, and that he has been duly authorized to execute this Certificate on behalf of RKO or D&H, as the case may be, pursuant to Section 4 of the lease, dated as of December 29, , 1976, (the "Lease"), between RKO and D&H. *[Handwritten signature]*

The undersigned, each for himself, RKO and D&H, further certifies as follows:

1. The below described Alco 2000 HP, Four Motor Locomotives manufactured by Alco Products, Inc., owned by RKO and under lease to D&H, have on this date been inspected prior to the expiration of the Lease and found to be in good operating condition acceptable for movement through interchange.

Alco Serial
Number

Locomotive
Road Number

Measurement of Gauge
of Metal Wheels

2. The Locomotives set forth above have been delivered to RKO pursuant to Section 14 of the Lease.

DELAWARE & HUDSON RAILWAY COMPANY

By _____

RKO GENERAL, INC.

By _____

Dated: