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ALEXANDRIA, VIRGINIA 22309

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RECORDATION NO. 15070 Filed & Recorded (202) 463-6131
(202) 887-0725

OCT 15 1986 11-25 AM

October 15, 1986

INTERSTATE COMMERCE COMMISSION

No. **6-288A015**
Date **OCT 15 1986**
Fee \$ **10.00**

ICC Washington, D. C.

Ms. Mildred Lee
Interstate Commerce Commission
12th at Constitution Avenues, N.W.
Washington, D.C.

Dear Ms. Lee:

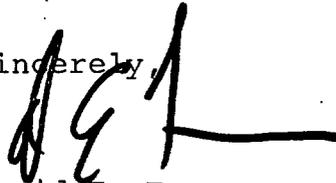
Enclosed for recordation and filing please find two copies of an Inter Creditor Subordination Agreement by and between the New Jersey Economic Development Authority, Home and City Savings Bank and:

- Delaware Otsego Corporation
- Delaware Otsego Equipment Corporation
- Cooperstown and Charlotte Valley Railway Corporation
- Central New York Railroad Corporation
- Lackawaxen & Stourbridge Railroad Corporation
- Fonda, Johnstown & Gloversville Railroad Company
- Fonfulco, Inc.
- The New York, Susquehanna and Western Railway Corporation
- Susquehanna Properties, Inc.

Two original notary certificates and our check for the filing fee are also attached.

If you require anything additional please advise the undersigned.

Sincerely,


David E. Fox

DEF:als
Encls.

100 SHEETS OF
THE STORE
OCT 15 11 21 AM '86
MOTOR OPERATING UNIT

David E. Fox

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

10/15/86

David E. FOX
DRURY & FOX
Suite 1009
1625 Eye St. N.W.
Washington, D.C. 20006

Dear sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/15/86 at 11:25am, and assigned re-
recording number(s). 15070

Sincerely yours,

Noreta R. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

RECORDATION NO. 15070 Filed & Recorded

OCT 15 1986 11-25 AM

INTERSTATE COMMERCE COMMISSION

INTER CREDITOR SUBORDINATION AGREEMENT

Agreement, dated August 22nd, 1986, by and between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (the "Authority"), a public body corporate and politic constituting an instrumentality of the State of New Jersey, and HOME & CITY SAVINGS BANK, a banking corporation organized and existing under the laws of the State of New York (the "Bank").

WITNESS THAT, Bank with its principal office and place of business at 100 State Street, Albany, New York 12201, entered into a loan on July 12, 1984, hereinafter referred to as "W.C. Loan", with:

Delaware Otsego Corporation

Delaware Otsego Equipment Corporation

Cooperstown & Charlotte Valley Railway Corporation

Central New York Railroad Corporation

Lackawaxen & Stourbridge Railroad Corporation

Fonda, Johnstown & Gloversville Railroad Company

Fonfulco, Inc.

The New York, Susquehanna and Western Railway Corporation

Susquehanna Properties, Inc.

hereinafter collectively referred to as "Borrower", whereby the latter borrowed the sum of \$5,000,000 to replenish its working capital; and

WHEREAS, The New York, Susquehanna and Western Railway Corporation, hereinafter referred to as "NYS&W", was one of the said Borrowers; and

WHEREAS, NYS&W has heretofore borrowed under the terms of a Direct Loan Agreement, Promissory Note, Mortgage, and other documents the sum of \$2,500,000 from the Authority on or about August 6, 1982, hereinafter referred to as the "82 Loan"; and

WHEREAS, the other entities constituting Borrower have guaranteed the repayment of the 82 Loan to Authority; and

WHEREAS, the Bank would only enter into the W.C. Loan upon the condition, among others, that no less than \$2,500,000 of the W.C. Loan be secured by a first lien on those assets of NYS&W which are currently securing the 82 Loan ("NYS&W Assets"), plus the entire proceeds of a mortgage made January 5, 1982 by Edgewater Associates ("Edgewater Mortgage") and as assigned by Walter G. Scott as Trustee of New York, Susquehanna and Western Railroad Company to NYS&W on August 6, 1982 and conditionally assigned on August 6, 1982 by NYS&W to the Authority and the entire proceeds from an Option Agreement dated November 18, 1980 between Hackensack Water Company and NYS&W (the "Hackensack Water Co. Option") so that Bank's W.C. Loan would be superior in time and right to the extent of \$2,500,000, plus interest thereon, plus the entire proceeds of the Edgewater Mortgage and the Hackensack Water Co. Option to the lien of the 82 Loan and superior in its right to accept and receive payments from NYS&W and from the NYS&W Assets to the foregoing

extent; and

WHEREAS, the Authority was willing to permit NYS&W to grant Bank a first position security interest in the Edgewater Mortgage and the Hackensack Water Co. Option in addition to a first position security interest of \$2,500,000; and

WHEREAS, the Authority and Bank set forth in writing certain rights and duties of each of them as a consequence of the Authority's willingness to subordinate as afore-described, in a certain Inter Creditor Subordination Agreement dated July 12, 1984, which Agreement is attached as Exhibit "A" hereto; and

WHEREAS, since execution of said Agreement, the Hackensack Water Co. Option has been received and applied by the Bank against the W.C. Loan; and

WHEREAS, Borrower has applied for a \$1,700,000 loan from Bank (the "New Loan") as a portion of the financing necessary to rehabilitate NYS&W's rail line between Warwick, New York and Passaic Junction, New Jersey, in particular that out-of-service portion of railroad between Butler and Sparta Junction, New Jersey; and

WHEREAS, as a condition to providing the New Loan, the Bank requires the reassignment of the Edgewater Mortgage as security for the New Loan and that the 82 Loan remain subject and subordinate to the W.C. Loan in an amount not to exceed \$2,500,000 plus interest thereon;

and

WHEREAS, the Authority is willing to aid and assist NYS&W by consenting to the conditions required by the Bank as afore-mentioned; and

WHEREAS, the Authority and Bank desire to set forth in writing a revised Inter Creditor Subordination Agreement necessary as a consequence of the changes required by the Bank and agreed to by the Authority.

NOW, THEREFORE, intending to be legally bound and in consideration of the foregoing, the parties hereto agree as follows:

1. The lien of the 82 Loan against the NYS&W Assets and all liens that the Authority may in the future obtain against that property, shall be subordinate to the lien of the W.C. Loan to the extent of \$2,500,000 plus interest thereon.

2. Upon institution of a foreclosure action (or other creditor enforcement proceeding) against the NYS&W Assets by the Authority, it shall notify the Bank in writing of the action. In the event applicable law does not so provide any way, it is agreed and understood that if the Bank has joined the action and a final judgment of foreclosure or similar disposition has been obtained, then any proceeds obtained in or through a foreclosure sale or similar creditor sale shall be payable first to the Bank, with any balance to be paid to the Authority. It is further agreed that if, for any reason, the

Authority should receive any of such proceeds prior to the satisfaction of the Bank's final judgment, it shall turn the proceeds over to the Bank. Nothing herein contained shall waive, alter or otherwise diminish the Bank's rights and benefits set forth in Paragraph 1 hereof with respect to rents and other interests in the NYS&W Assets.

3. In addition to the foregoing provisions of Paragraphs 1 and 2 above, Authority agrees that the Bank shall be entitled to receive and apply against the New Loan the entire proceeds of the Edgewater Mortgage, whether or not any event of default has occurred under the 82 Loan and in addition to the subordination of \$2,500,000 plus interest set forth in Paragraph 1.

4. (a) Authority agrees not to assign or transfer to others any claim Authority has or may have against NYS&W while the W.C. Loan remains unpaid, unless such assignment or transfer is made expressly subject to this Agreement.

(b) Authority further agrees to properly execute and deliver to Bank this Subordination Agreement, in proper form for recording and in sufficient numbers to allow Bank to record same in each recording office in the State of New Jersey where the Mortgage granted by NYS&W to Authority pursuant to the 82 Loan is recorded.

(c) It is agreed (1) that the 82 Loan is subordinate to the W.C. Loan, to the extent of \$2,500,000 plus interest thereon, (2) in addition thereto, that Bank shall have priority over the

Authority with respect to and the entire proceeds of the Edgewater Mortgage, and (3) to the extent that the W.C. Loan is greater than \$2,500,000, plus interest thereof, the W.C. Loan is subordinate to the 82 Loan to the extent of the unpaid balance thereof.

(d) The parties shall also execute such documents as may be required by the Uniform Commercial Code and the rules and regulations of the Interstate Commerce Commission for the purpose of subordinating Authority's security interest in NYS&W's personal property, equipment, furniture and fixtures, accounts receivable, contract rights, rolling stock and locomotives to Bank's security interest therein, to the extent of \$2,500,000 plus interest thereon, and subordinating Bank's security interest in all of said property, to the extent said security interest exceeds \$2,500,000 plus interest thereon, to the security interest of Authority to the extent of the unpaid balance of the 82 Loan.

(e) With respect to all of the collateral securing the 82 Loan (the NYS&W Assets), it is intended that Bank shall have a first lien to the extent of \$2,500,000 plus interest thereon and in addition thereto the right to receive the entire proceeds of the Edgewater Mortgage. Authority shall have a second lien to the extent of the unpaid balance of the 82 Loan, and Bank shall have a third lien to the extent that the W.C. Loan exceeds \$2,500,000.

5. Authority agrees that the Bank, at any time and from time to time, may enter into such agreement or agreements with Borrower as the Bank may deem proper extending the time of payment or renewing

or otherwise altering the terms of all or any of the obligations of Borrower to the Bank, or may release any balance of funds of Borrower with the Bank, without in any way impairing or affecting this agreement, provided Authority consents thereto, such consent not to be unreasonably withheld or delayed.

6. No waiver shall be deemed to be made by either party of any of its rights hereunder unless the same shall be in writing signed on behalf of said party, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights or the obligations of either party in any other respect at any other time.

7. This Agreement shall be binding upon, and inure to the benefit of, Authority and the Bank and their respective successors and assigns.

8. Notice of acceptance by the Bank of this Agreement is hereby waived by Authority, and this Agreement and all of the terms and provisions hereof shall be immediately binding upon Authority from the date of execution hereof.

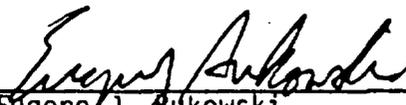
9. This Agreement supersedes and replaces Inter Creditor Subordination Agreement dated July 12, 1984 (Exhibit A) between the same parties.

10. This Agreement shall be construed according to the laws of the State of New Jersey.

IN WITNESS WHEREOF, New Jersey Economic Development Authority and Home & City Savings Bank by their proper officers thereunto duly authorized, hereunto set their signature and caused their corporate seal to be affixed this day of August, 1986.

(SEAL)

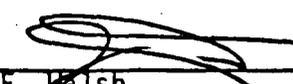
ATTEST:



Eugene J. Bukowski
Director of Finance

NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY

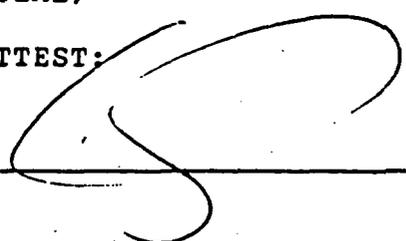
By:



John F. Walsh
Deputy Director

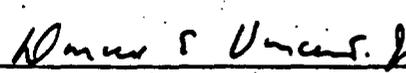
(SEAL)

ATTEST:



HOME & CITY SAVINGS BANK

By:



STATE OF NEW JERSEY)
) ss.:
COUNTY OF Mercer)

BE IT REMEMBERED, that on this 22nd day of August, 1986, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared John F. Walsh, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Deputy Director of the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, the Authority named in the within Instrument; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Members of said Authority, that deponent well knows the seal of said Authority; and that the seal affixed to said Instrument is the proper seal and was thereto affixed by John F. Walsh

and said Instrument was signed and delivered by said John F. Walsh as and for the voluntary act and deed of said Authority.

Anne Monk

ANNE MONK
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 23, 1987

STATE OF NEW YORK)
) ss.:
COUNTY OF Albany)

On this 24th day of September, 1986, before me, the subscriber, personally appeared Donald F. Vincent, to me known, who being by me duly sworn, did depose and say that he resides at Clinton Park, NY, and that he is the Vice President of HOME & CITY SAVINGS BANK, the corporation described in and which executed the foregoing Instrument; that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and he signed his name thereto by like order.

HARRY V.B. MILLER

HARRY V.B. MILLER
NOTARY PUBLIC, State of New York
Qualified in Albany County
#400525
Commission Expires January 31, 1989

STATE OF NEW JERSEY)
COUNTY OF MERCER) ss.:

Anne Monk, being duly sworn deposes and says:

1. That I am a Notary Public duly licensed in the State of New Jersey.
2. That on the 22nd day of August, John F. Walsh, the Deputy Director of the New Jersey Economic Development Authority, personally appeared before me to execute the attached Inter Creditor Subordination Agreement, and I personally witnessed and acknowledged said signature.

Anne Monk

Anne Monk

Sworn to before me this 25th
day of September, 1986

Barbara R. Kianka

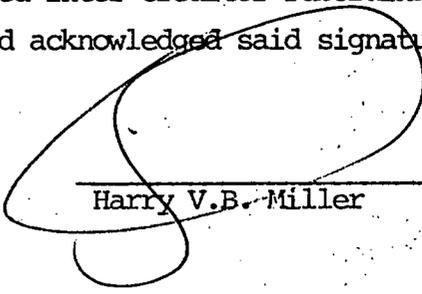
Notary Public

BARBARA R. KIANKA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 6, 1990

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

Harry V.B. Miller, being duly sworn deposes and says:

1. That I am a Notary Public duly licensed in the State of New York.
2. That on the 8th day of September, 1986, Donald E. Vincent, Jr., Vice President of Home & City Savings Bank of Albany, New York, personally appeared before me to execute the attached Inter Creditor Subordination Agreement, and I personally witnessed and acknowledged said signature.



Harry V.B. Miller

Sworn to before me this 16th
day of September, 1986

Mary C. Mazzotta
Notary Public

MARY C. MAZZOTTA
NOTARY PUBLIC, State of New York
No. 4842068
Qualified in Albany County
Commission Expires March 30, 1987

STATE OF NEW JERSEY)

COUNTY OF MERCER) ss.:

Anne Monk, being duly sworn deposes and says:

1. That I am a Notary Public duly licensed in the State of New Jersey.
2. That on the 22nd day of August, John F. Walsh, the Deputy Director of the New Jersey Economic Development Authority, personally appeared before me to execute the attached Inter Creditor Subordination Agreement, and I personally witnessed and acknowledged said signature.

Anne Monk

Anne Monk

Sworn to before me this 25th
day of September, 1986

Barbara R. Kianka

Notary Public

BARBARA R. KIANKA

NOTARY PUBLIC OF NEW JERSEY

My Commission Expires Nov. 6, 1990