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P. E. MYERS & ASSOCIATES

Practice Before The Interstate Commerce Commission

SUITE 348, PENNSYLVANIA BUILDING

1425 THIRTEENTH STREET, N.W.

WASHINGTON, D. C. 20004

(202) 737-2188

No. DEC 22 1982

13876

RECORDATION NO. 13876
DEC 22 1982-9 11 AM

INTERSTATE COMMERCE COMMISSION

Fee \$ 120.00

DEC 22 1982-9 11 AM

Registered Practitioners

PAULINE E. MYERS
MARK D. RUSSELL

RECORDATION NO. 13876
Filed 1425

ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION

December 22, 1982

Mrs. Agatha L. Mergonovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

DEC 22 1982-9 11 AM
RECORDATION NO. 13876 B
Filed 1425

INTERSTATE COMMERCE COMMISSION
DEC 22 1982-9 11 AM
INTERSTATE COMMERCE COMMISSION

In Re: Documents for Recordation
Dear Mrs. Mergonovich:

I have enclosed an original and one copy/counterpart of the documents described below, to be recorded pursuant to Section 11303 of Title 49 US Code.

1. Mortgage of Railroad Car:
Mortgagor: San Diego Club Associates
157 Milton Road
Rye, NY 10580

Mortgagee: Third National Bank & Trust Company of Scranton
130 Wyoming Avenue
Scranton, PA 18501

Description: 1 - Pullman Standard Business Car No. 3250
manufactured in 1950.
2. Equipment Lease:
Lessor: San Diego Club Associates
(Address as above)
Lessee: Genesee & Wyoming Railroad Company
3846 Retsof Road
Retsof, NY 14539
3. Agreement of Assignment of Lease:
Borrower: San Diego Club Associates
(Address as above)

Bank: Third National Bank & Trust Company of Scranton
(Address as above)

Tenant: Genesee & Wyoming Railroad Company
(Address as above)
4. Assignment Agreement:
Assignor: San Diego Club Associates
(Address as above)

Assignee: Third National Bank & Trust Company of Scranton
(Address as above)

A fee of \$120.00 is enclosed. Please return the original. Your cooperation in this matter is greatly appreciated.

Yours very truly,
Pauline E. Myers
Pauline E. Myers

PEM/s
Enclosures:
4 Documents
Check No. 4231

Agatha L. Mergonovich

ASSIGNMENT AGREEMENT

DEC 22 1982 9 55 AM

INTERSTATE COMMERCE COMMISSION

THIS ASSIGNMENT, made this 8th day of December, 1982, by SAN DIEGO CLUB ASSOCIATES, A General Partnership under laws of New York office at 157 Milton Road, Rye, New York 10580 (hereinafter called "Assignor") to THE THIRD NATIONAL BANK & TRUST COMPANY OF SCRANTON, with an office at 130 Wyoming Avenue, Scranton, Pennsylvania, 18503 (hereinafter called "Assignee").

W I T N E S S E T H:

A. Assignor has executed, acknowledged and delivered to Assignee Assignor's Note bearing even date herewith in the amount of \$80,000.00 (the "Note").

B. As security for performance of Assignor's obligations under the Note (and any extensions and/or modifications thereof), Assignor has agreed to assign to Assignee all of Assignor's rights under lease affecting certain Railroad Car #3250 Business Car Pullman Style 1950 known as San Diego Club, ^{to be based} located in ~~Retsof~~, New York

NOW, THEREFORE, in consideration of the mutual premises and covenants contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, Assignor agrees as follows:

1. Assignment of Lease. Assignor hereby assigns and transfers to Assignee all of Assignor's rights, interest and privileges in the above described lease, together with any extension or renewal of any such lease.

This Assignment includes:

- (a) All rents, income and profits due or to become due under the lease;
- (b) any sums to which Assignor may become entitled in any court proceeding involving the bankruptcy, insolvency or reorganization of any of the tenants; and
- (c) any payments made by the tenants in lieu of rent.

PARTNERSHIP ACKNOWLEDGMENT

Connecticut
STATE OF ~~NEW YORK~~)
)
COUNTY OF Fairfield) SS.

On this, the 8th day of December 1982, before me, the undersigned Partners appeared:
Mortimer B. Fuller, III; James M. Fuller; Philip J. Ringo; Louis S. Fuller; and
William Putney

of San Diego Club Associates, A General Partnership governed under the laws of the
state of New York and that said Partners, being authorized to do so, executed the
forgoing Assignment Agreement for the purposes therein said agreement.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Joan M. Pignataro

JOAN M. PIGNATARO
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1987

2. Limitations on Assignment.

(a) This Assignment is given for the purpose of securing performance by Assignor of all of its obligations under the Note and accordingly, upon payment in full of all indebtedness evidenced by the Note, this Assignment shall automatically become null and void.

(b) So long as Assignor is not in default in any respect under the Note or this Assignment, Assignor shall have the right to collect all rents, issues and profits under said leases and to retain, use and enjoy the same; provided, Assignor agrees that it will not under any circumstances collect or accept any rent more than 30 days prior to accrual.

(3) Assignor's Obligations. Assignor agrees that it will perform all of its obligations as Landlord under the leases and enforce the performance by the tenants of all their respective obligations under the leases. Assignor will not terminate the leases, or any of them, or accept surrender of possession of any premises covered by a lease, or modify any lease, or release any tenant or any guarantor or surety of any tenant's obligations without the prior written consent of Assignee.

4. Cross Default. Any default by Assignor under the Note, or any of the leases shall be considered a default under this Assignment, and any default under this Assignment shall be considered a default under the Note, and in any such event, Assignee shall be entitled to exercise all or some or any of its remedies under the Note or under this Assignment, or as may otherwise be available to Assignee at law or in equity, in such order as Assignee may elect.

5. Assignee Not Bound to Perform Under Leases. Notwithstanding any legal presumption to the contrary, Assignee shall not be obligated by reason of acceptance of this Assignment to perform any obligation of Assignor as landlord under the leases, or any of them, and Assignor hereby agrees to indemnify Assignee and save it harmless from and against any loss, liability or damage arising from any claim by any tenant or any other party arising under or in connection with the leases, or any of them, or this Assignment. However, Assignee may, at its option, and without releasing Assignor from any obligation hereunder, discharge any obligation which Assignor fails to discharge including without limitation, defending any legal action, and Assignor agrees to pay immediately upon demand all sums expended by Assignee in connection

therewith, including counsel fees, together with interest thereon at the rate provided for in the Note and the same shall be added to the indebtedness evidenced by the Note and this Assignment.

6. Warranties of Assignor. Assignor hereby represents and warrants to Assignee, as a material inducement to Assignee to accept this Assignment, that:

(a) Assignor has not executed any prior assignment of any of its rights under the leases, or any of them;

(b) Assignor has not done anything which might prevent Assignee from or limit Assignee in operating under any of the provisions hereof;

(c) Assignor has not accepted rent under any lease more than 30 days in advance of accrual;

(d) So far as Assignor knows, there is no present default by any tenant under any lease.

7. Possession.

(a) Effective immediately upon Assignor's default under the Note, this Assignment or any leases, Assignor authorizes Assignee, at its option, to enter and take possession of the leases premises, or any part thereof, to manage and operate the same, to collect rents, to let or re-let the leased premises, or any part thereof, to cancel and modify leases, to evict tenants, to bring or defend any suits in connection with possession of any of the leased premises in its own name or Assignor's name, to make such repairs, alterations and improvements as Assignee deems appropriate, and to perform any other acts in connection with management and operation of any of the leased premises as Assignee, in its discretion, may deem appropriate.

(b) Any income derived from the leased premises pursuant to subparagraph (a) above shall be applied, in such order and amounts as Assignee may elect, to the following: costs of operation and maintenance of the Property, including without limitation, management fees and professional fees, taxes, water and sewer charges, insurance, maintenance, repairs and the like; interest due on the indebtedness secured hereby, any other amounts necessary to meet the obligations of Assignor under the Note and leases (other than payment of the principal indebtedness) and the principal indebtedness.

(c) Notwithstanding the foregoing, this Assignment shall not place responsibility on Assignee for the control, care, management or repair

of any of the leased premises or make Assignee responsible or liable for any injury or death to any person or property arising from any negligence in the management, operation, upkeep, repair or control of any of the leased premises.

(d) Exercise by Assignee of its rights under subparagraph (a) above shall not waive or cure any default under the Note nor affect any proceedings pursuant thereto.

8. Notice to Tenants. Assignor hereby authorizes Assignee to give written notice of this Assignment at any time to the tenants under the leases, or some or any of them. All tenants are authorized and directed to pay rent directly to Assignee upon receipt from Assignee of a statement that Assignor is in default hereunder or under the Note, accompanied by a demand for such payment, without any further proof of Assignor's default.

9. Benefits and Burdens. This Assignment shall be binding upon Assignor and its successors and assigns, including any subsequent owner of the leased premises, and shall inure to the benefit of Assignee and its successors and assigns, including any assignee of the Note.

10. Definition of Terms. The word "lease" as used herein means the lease referred to below as well as any and all leases subsequently entered into by Assignor covering the leased premises or any part thereof:

SEE ATTACHED EXHIBIT A

11. Notices. All notices or demands hereunder must be served by personal service, or by certified or registered mail, addressed to Assignor or Assignee, as the case may be, at the addresses set forth at the beginning of this Assignment.

IN WITNESS WHEREOF, the Assignor has duly executed this Assignment the day and year first above written.

BY: SAN DIEGO CLUB ASSOCIATES

Gerald E. Johnson
Attest

M. B. Fuller
Partner

Gerald E. Johnson
Attest

Jim Kelly
Partner

Gerald E. Johnson
Attest

Louis S. Fuller
Partner

Gerald E. Johnson
Attest

William B. Patton
Partner

Gerald E. Johnson
Attest

R. J. R.
Partner

EXHIBIT A

Assignment of all rights, title and interest to compensation now or hereafter receivable under Lease between San Diego Club Associates, A General Partnership, under the laws of the state of New York, (Lessor), located at 157 Milton Road, Rye, New York, 10580 and Genesee & Wyoming Railroad Co. a New York Corporation located at 3846 Retsof Road, Retsof, New York, 14539, (Lessee), dated November 22, 1982, covering one business car manufactured by Pullman Standard in 1950 and presently known as the "San Diego Club" car number 3250 to be based on the Genesee & Wyoming Railroad Co. in the Hamlet of Retsof, Livingston County, New York.