

WITKOWSKI, WEINER, McCAFFREY AND BRODSKY, P. C. 4-251A037

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September 7, 1984

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MORTGAGE UNIT

14423-1
RECORDATION NO. FILE NO.

SEP 7 1984 3 11 PM

The Honorable James H. Bayne
Secretary
Interstate Commerce Commission
12th St. and Constitution Ave., N.W.
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

Re: Chattel Mortgage and Security Agreement made and given by Lake Erie, Franklin & Clarion Railroad Company (Mortgagor and Assignor) to Greycas, Inc. (Mortgagee and Assignee) and Assignment and Agreement entered into between Assignor and Assignee

Dear Mr. Bayne:

Please find enclosed for recordation pursuant to 49 U.S.C. §11303 two counterpart copies of:

A CHATTEL MORTGAGE AND SECURITY AGREEMENT, dated September 4, 1984, made and given by Mortgagor to Mortgagee.

An ASSIGNMENT AND AGREEMENT entered into as of August 29, 1984, between Assignor and Assignee.

The names and addresses of the parties to this transaction are as follows:

Mortgagee and Assignee

Greycas, Inc.
Greyhound Tower
Phoenix, Arizona 85077

Counterpart - Edward Bayne

Hon. James H. Bayne

-2-

September 7, 1984

Mortgagor and Assignor

Lake Erie, Franklin & Clarion Railroad Company
East Wood Street
Clarion, Pennsylvania 16214

The equipment that is the subject to the Chattel Mortgage is described as follows:

Four (4) locomotives manufactured by the Electro-Motive Division of General Motors Corporation, assigned the reporting mark "LEF" and the numbers 23, 24, 25 and 26.

Two (2) cabooses manufactured by the International Car Company and assigned the reporting mark "LEF" and the numbers 11 and 12.

The equipment that is the subject of the Assignment and Agreement is described as follows:

Ninety-four (94) open top hopper cars, Association of American Railroads mechanical designation HT H450, assigned the reporting mark "LEF" and the road numbers 3681-3753 inclusive, 3504, 3527, 3531, 3534, 3562, 3581, 3582, 3584, 3585, 3586, 3587, 3588, 3590, 3591, 3592, 3593, 3594, 3595, 3596, 3598, and 3599.

Pursuant to 49 C.F.R. Part 1116, please stamp the documents described above with the date and hour of recordation, a recordation number and a notation to effect that they have been filed pursuant to the provisions of section 11303 of Title 49, United States Code. After performing these tasks, please retain one copy of these documents in the Commission's files and return the other to the delivering agent of:

Witkowski, Weiner, McCaffrey and Brodsky, P.C.
1575 Eye Street, N.W., Suite 350
Washington, D.C. 20005

WITKOWSKI, WEINER, McCAFFREY AND BRODSKY, P. C.

Hon. James H. Bayne

-3-

September 7, 1984

Enclosed is a check drawn to the order of the Interstate
Commerce Commission for filing fees.

Your cooperation is appreciated.

Respectfully submitted,

GREYCAS, INC.

By its Special Counsel,

Witkowski, Weiner, McCaffrey
and Brodsky, P.C.

A handwritten signature in black ink, appearing to read "Peter A. Gilbertson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Peter A. Gilbertson

3011S-364

C-6

REGISTRATION NO. 14423-A

SEP 7 1984 - 3 30 PM
INTERSTATE COMMERCE COMMISSION

389150:5/cm

ASSIGNMENT AND AGREEMENT

THIS ASSIGNMENT AND AGREEMENT ("**Assignment**") entered into as of August 29, 1984 between LAKE ERIE, FRANKLIN & CLARION RAILROAD COMPANY ("**Assignor**") and GREYCAS, INC. ("**Assignee**").

W I T N E S S E T H:

WHEREAS, Assignor, as Borrower, and Assignee, as Lender, did enter into a certain Loan and Security Agreement ("**Agreement**"), dated as of the date hereof providing for the loan by Lender to Borrower therein set forth secured by a Security Interest in certain collateral;

WHEREAS, Assignor desires to enter into or has entered into a Lease Agreement ("**Lease**") with Chesapeake and Ohio Railway Company ("**Lessee**") for the 300 Cars specified in said Lease; and

WHEREAS, pursuant to the Agreement, Assignor will continue to remain responsible and liable under the Agreement for the full and complete performance of all of Assignor's obligations thereunder as Borrower and (ii) Assignor assigns to Assignee the Lease with respect to 94 of said 300 Cars as described on Exhibit B attached hereto and made a part hereof ("**Equipment**") as herein provided.

NOW, THEREFORE, Assignor and Assignee hereby mutually covenant and agree as follows:

1. GRANT. Assignor does hereby grant, sell, transfer and assign to Assignee all of the right, title and interest of Assignor in and to the Lease with respect to the Equipment and any and all other leases of the Equipment now existing or hereafter arising together with all rentals, payments, income, profits and insurance proceeds ("**Payments**") now due and which may hereafter become due to Assignor by virtue of said Lease and Assignor hereby irrevocably appoints Assignee as Assignor's true and lawful attorney in its name and stead (with or without taking possession of the Equipment), to enforce said Lease and to collect all of said Payments.

2. SECURITY. This Assignment is for the purpose of securing:

(a) Payment in full of all sums together with interest thereon becoming due and payable to Assignee under the provisions of the Agreement and the **Documents** (as defined in the Agreement) or hereof; and

(b) Performance and discharge of each and every obligation, covenant, condition and agreement of Assignor contained herein and in said Agreement and Documents.

3. REPRESENTATIONS AND WARRANTIES. Assignor represents and warrants to Assignee that:

(a) Notwithstanding this Assignment, and the exercise by Assignee of any rights assigned hereunder, Assignor will nevertheless, at all times for the duration of the Lease at its sole cost and expense (i) remain fully obligated and liable under the Agreement and the Documents and faithfully abide by, perform and discharge each and every obligation, covenant, condition and agreement of Assignor and (ii) use reasonable diligence to enforce or secure the

performance of each and every obligation, covenant, condition, and agreement of the Lease to be performed by Assignor as the lessor thereunder to be performed by Lessee.

(b) No Payment under the Lease has been or will be forgiven, released, reduced or discounted, or otherwise discharged or compromised by Assignor.

(c) Assignor is the sole party entitled to receive said Payments, and to enjoy all the other rights and benefits mentioned herein and the same have not been heretofore nor will they be hereinafter granted, sold, transferred or assigned by Assignor and Assignor has the right to grant, sell, transfer and assign the same and to grant and confer upon Assignee the rights, interest, powers and/or authority herein granted and conferred.

(d) Assignor will not modify, alter or amend the Lease without the written consent of Assignee thereto being first obtained.

(e) (i) Assignor has the full power and legal right to make this Assignment and all proceedings necessary to authorize this Assignment have been taken; (ii) the Lease is in full force and effect, all Equipment has been delivered to and accepted by the Lessee pursuant to the Lease and neither Assignor nor Lessee is in default thereunder; (iii) the Agreement is in full force and effect and Assignor is not in default thereunder; (iv) the Lease is and will continue to be valid, binding and enforceable against Assignor and Lessee in accordance with its terms; (v) the Agreement is and will continue to be valid, binding and enforceable against Assignor in accordance with its terms; and (vi) Assignor will use its best efforts to promptly obtain Lessee's consent to this Assignment, by the execution of the Consent, attached hereto as **Exhibit A** and made a part hereof.

(f) Assignor will execute and deliver, immediately upon the request of Assignee, all such further assurances of assignment of the Lease as Assignee shall from time to time require, and will pay all recording and filing fees or other charges that may be incident to or may arise out of the recording of the same or of this Assignment. Assignor will execute upon request any and all instruments requested by Assignee to carry this Assignment into effect or to accomplish any other purposes deemed by Assignee to be necessary or appropriate in connection with this Assignment and for these purposes hereby confers on Assignee the power to execute in Assignor's name and stead all such instruments.

(g) The Lease is a true lease and not an installment sale.

4. EXERCISE OF RIGHTS. (a) Although it is the intention of the parties that this Assignment shall be a present assignment, it is understood and agreed that Assignee will not exercise any of its rights and powers hereunder until and unless there shall occur an **Event of Default** (as defined in the Agreement) or a default in the performance of any obligation, covenant, condition or agreement hereunder, and so long as none of the same shall occur, Assignor shall have the right to collect, but not in advance of their due date, all Payments due under the Lease and to retain, use and enjoy the same.

(b) If an Event of Default shall occur or there shall occur a default in the performance of any obligation, covenant, condition or agreement hereunder, not cured as provided herein and therein, Assignee may, at its option (i) enforce any and all of Assignee's rights and remedies under the Agreement, and/or (ii) take such action it deems proper or necessary to collect the Payments from Lessee and to retain use and enjoy same. In furtherance thereof, Assignee may make, cancel, enforce or modify the Lease, and do any acts or things which Assignee deems proper to protect the security hereof, and may in its own name or Assignor's name, sue for or otherwise collect and receive the Payments, including those past due and unpaid, and apply the same in accordance with the provisions of this Assignment.

(c) Assignee in the exercise of the rights and powers conferred upon it by this Assignment shall have the full power to hold, use and apply all of the Payments, to the payment of or on account of any sums due under the Agreement and the Note(s) referred to therein and any cost and expense of collection, including reasonable attorneys' fees, all in such order as Assignee in its sole discretion may determine.

5. NO LIABILITY OF ASSIGNEE. This Assignment shall not operate to increase Assignee's obligations or liabilities or decrease Assignee's rights and remedies under the Agreement. In the exercise of the powers herein granted to Assignee, no liabilities shall be asserted or enforced against Assignee, all such liabilities being herein expressly waived and released by Assignor. Assignee shall not be responsible for any loss, liability or damage under the Lease, or under or by reason of this Assignment. Should Assignee incur any such liability, loss or damage or in the defense of any claims or demands whatsoever asserted against Assignee under the Lease or under or by reason of this Assignment, the amount thereof, including costs, expenses and attorneys' fees, shall be additional sums secured hereby, shall bear interest at the **Overdue Rate** specified in the Agreement and Assignor agrees that it shall reimburse Assignee therefor immediately upon demand.

6. AUTHORIZATION TO RECOGNIZE CLAIMS OF ASSIGNEE. Lessee is hereby authorized to recognize the claims of Assignee hereunder when made under the sole signature of Assignee, without investigating the reason for any action taken by Assignee, or the validity of the amounts due and owing to Assignee, or the existence of any default in the Agreement or hereunder, or the application to be made by Assignee of any amount to be paid to Assignee. Checks for all or any part of the payments collected under this Assignment shall be drawn at Assignee's option to the exclusive order of Assignee.

7. NATURE OF REMEDIES. The remedies herein set forth shall be deemed special remedies given to Assignee and shall not be deemed exclusive of any other remedies granted in the Agreement, the Documents or by law, which shall be cumulative with the remedies herein granted. Any right or remedy exercised hereunder by Assignee including, without limitation, the collection of the Payments and the application thereof as aforesaid shall not cure, modify or waive any default or any notice thereof under the Agreement or invalidate any act done pursuant to such notice. No delay or failure of Assignee to exercise any right or remedy hereunder or under the Agreement, or under the Lease, shall be deemed to be a waiver thereof and the single or partial exercise by Assignee of any right or remedy hereunder, under the Agreement, the Documents or the Lease shall not preclude other or further exercise thereof or the exercise of any other right of remedy at any time.

8. CROSS DEFAULT. Any default by Assignor in the performance of any obligation, covenant, condition or agreement herein contained shall at Assignee's option, constitute and be deemed an Event of Default under the terms of the Agreement entitling Assignee to every and all rights and remedies contained therein.

9. BINDING. This Assignment and each and every covenant, agreement and other provision hereof shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee and its successors and assigns.

10. DURATION. This Assignment shall continue in full force and effect until the payment in full of all sums due to Assignee under the Agreement and the Note and the performance and discharge of each and every obligation, covenant, condition and agreement of Assignor thereunder and hereunder.

11. ENFORCEABILITY. The unenforceability, illegality or invalidity of any provision hereof shall not render any other provision of provisions herein contained unenforceable, illegal or invalid and this Assignment shall be construed as if such unenforceable, illegal or invalid provision had never been contained herein.

12. CONDITIONS. Concurrently with the execution of this Assignment, Assignor will deliver to Assignee, at its sole cost and expense, the favorable opinion of its independent legal counsel acceptable to Assignee confirming that:

(a) The Lease is in full force and effect and the Assignor and Lessee are not in default thereunder.

(b) The execution and delivery of this Assignment by Assignor have been duly authorized and this Assignment and the Lease each are legal, valid, binding and enforceable against Assignor and Lessee in accordance with the respective terms.

(c) No consents, authorizations or approvals of third parties including, without limitation, governmental authorities are or will be required as a condition to the validity of this Assignment.

(d) The execution, delivery and performance of this Assignment will not contravene any provision of law, statute, rule, regulation or agreement or other instrument or undertaking, order, decree, judgment, finding, franchise or permit applicable to Assignor to which Assignor is a party or by which it is bound.

13. NOTICES. All notices hereunder shall be in writing and shall be deemed to have been duly given if sent as provided in the Agreement.

14. CHOICE OF LAW. This Assignment shall be governed by, construed and enforced in accordance with the Uniform Commercial Code in effect from time to time in the State of Arizona.

15. ASSIGNEE'S ACCEPTANCE AND CONSENT. Assignee hereby accepts this Assignment and consents to the Lease PROVIDED THAT Assignor remains fully responsible and liable for the full, complete and faithful performance of all of the terms, conditions and covenants in the Agreement, as Purchaser, and in the Lease, as Lessor, and on the understanding that no further lease, sublease or assignment of Assignor's interest in and to the Agreement and Equipment may be made without Assignee's further written consent.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed in their names as of the day and year first above written.

LAKE ERIE, FRANKLIN & CLARION
RAILROAD COMPANY, "Assignor"

By Joseph L. Hartle
Name:
Title: President

By Samuel B. Bowman
Name:
Title: Treasurer

GREYCAS, INC., "Assignee"

By [Signature]
Vice President

ATTEST:

By Bary M. L'Amour
Attorney

**EXHIBIT A TO
ASSIGNMENT AND AGREEMENT**

CONSENT

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, CHESAPEAKE AND OHIO RAILWAY COMPANY ("**Lessee**") hereby consents to the Assignment and Agreement ("**Assignment**") dated the date hereof, by and between LAKE ERIE, FRANKLIN & CLARION RAILROAD COMPANY ("**Assignor**") and GREYCAS, INC. ("**Assignee**"), and represents, warrants and agrees as follows:

1. The Lease and any and all Schedules thereto have been duly authorized, executed and delivered by Lessee, are in full force and effect and are legal, valid, binding and enforceable against Lessee and Lessee is not in default thereunder.

2. That Lessee's obligations and liabilities under the Lease to the Assignee are absolute and unconditional, the Lease will not terminate by operation of law or otherwise nor shall Lessee be entitled to any abatement, reduction, recoupment, defense, set-off, deduction or counterclaim available to Lessee for breach of warranty or for any other reason whatsoever, nor shall any obligation of Lessee under the Lease be affected for any reason whatsoever no matter how, when or against whom asserted, arising or claimed; provided, Lessee may institute any independent action or claim against Assignor (but not against Assignee) for any alleged breach of the Lease.

3. That the Equipment (described in **Schedule 1** annexed hereto) has been accepted by Lessee under the Lease and Lessee is in sole and exclusive possession thereof.

4. That all obligations and covenants of Assignor under the lease shall be Assignor's only and Lessee agrees to look solely to Assignor, and not to Assignee, for the performance of thereof.

5. That Assignor is not Assignee's agent for any purpose.

6. Lessee has not dealt with any person, firm or entity other than Assignor and Assignee who have asserted any ownership or security interest or lien in the Equipment.

IN WITNESS WHEREOF, this Consent has been executed by Lessee as of _____.

CHESAPEAKE AND
OHIO RAILWAY COMPANY
"Lessee"

By: _____
Its:

By: _____
Its:

Address:
100 North Charles Street
Baltimore, Maryland 21201

EXHIBIT B

| <u>Type of Car</u> | <u>Car No.s</u> | <u>Number of Cars</u> | <u>AAR Year Car Type</u> | <u>Built</u> |
|--------------------|-----------------|-----------------------|--------------------------|--------------|
| Hopper | 3681-3753 | 73 | HT H450 | 1978 |
| " | 3504 | 1 | HT H450 | 1977 |
| " | 3527 | 1 | " | " |
| " | 3531 | 1 | " | " |
| " | 3534 | 1 | " | " |
| " | 3562 | 1 | " | " |
| " | 3581 | 1 | " | " |
| " | 3582 | 1 | " | " |
| " | 3584 | 1 | " | " |
| " | 3585 | 1 | " | " |
| " | 3586 | 1 | " | " |
| " | 3587 | 1 | " | " |
| " | 3588 | 1 | " | " |
| " | 3590 | 1 | " | " |
| " | 3591 | 1 | " | " |
| " | 3592 | 1 | " | " |
| " | 3593 | 1 | " | " |
| " | 3594 | 1 | " | " |
| " | 3595 | 1 | " | " |
| " | 3596 | 1 | " | " |
| " | 3598 | 1 | " | " |
| " | 3599 | 1 | " | " |

Schedule A to Notice of Renumbering

**Rolling Stock Type: Diesel electric locomotives manufactured by the
Electomotive Division of General Motors Corporation.**

| # | Original Lease * | | Changed Lease | | Current Lease | |
|----|------------------|--------|---------------|--------|---------------|--------|
| | Mark | Number | Mark | Number | Mark | Number |
| 1 | GTW | 4432 | - | - | GTW | 4432 |
| 2 | GTW | 4433 | - | - | GTW | 4433 |
| 3 | GTW | 4434 | - | - | GTW | 4434 |
| 4 | GTW | 4438 | - | - | GTW | 4438 |
| 5 | GTW | 5905 | DWP | 5905 | DWP | 5905 |
| 6 | GTW | 5906 | DWP | 5906 | DWP | 5906 |
| 7 | GTW | 5908 | DWP | 5908 | DWP | 5908 |
| 8 | GTW | 5909 | DWP | 5909 | DWP | 5909 |
| 9 | GTW | 5910 | DWP | 5910 | DWP | 5910 |
| 10 | GTW | 5911 | DWP | 5911 | DWP | 5911 |
| 11 | GTW | 5915 | - | - | GTW | 5915 |
| 12 | GTW | 5919 | - | - | GTW | 5919 |
| 13 | GTW | 5925 | - | - | GTW | 5925 |
| 14 | GTW | 6205 | - | - | GTW | 6205 |
| 15 | GTW | 6208 | - | - | GTW | 6208 |
| 16 | GTW | 6209 | - | - | GTW | 6209 |
| 17 | GTW | 6210 | - | - | GTW | 6210 |
| 18 | GTW | 6212 | - | - | GTW | 6212 |
| 19 | GTW | 6250 | - | - | GTW | 6250 |
| 20 | GTW | 6251 | - | - | GTW | 6251 |

* 'Original Lease' means the lease as amended by amendments # 1, 2, 3 & 4.

**SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20425-0001**

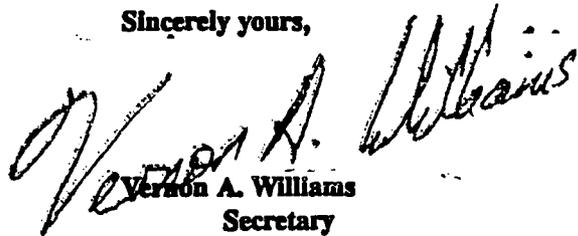
8/19/96

Mary P. Sclawy
Hopkins & Sutter
1333 Brewery Park Boulevard
Ste. 101
Detroit, Michigan 48207-2699

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/19/96 at 1:55PM, and assigned recordation number(s). 5565-F, 6062-E, 8490-D, 9860-P, 14421-I, 15268-E, 15700-D, 16401-D and 16904-D.

Sincerely yours,


Vernon A. Williams
Secretary

Enclosure(s)

\$ 189.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

