

LAW OFFICES OF
DAVID E. FOX
SUITE 103
1325 18TH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 887-0725

RECORDATION NO. 17053-N FILED 1025

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INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
12th and Constitution, N.W.
Washington, D.C. 20423

Dear Secretary:

Enclosed please find one original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document, as listed below, is dated September 27, 1990:

1. The New Jersey Economic Development Authority to Chemical Bank - Subordination Agreement.

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

The New York Susquehanna and Western Railway Corporation
1 Railroad Avenue
Cooperstown, NY 13326

New Jersey Economic Development Authority
200 South Warren Street
Trenton, NJ 08675

Chemical Bank
90 Presidential Plaza
Syracuse, NY 13202

A fee of \$15.00 is enclosed.

Please return the original and any extra copies not needed by the Commission for recordation to David E. Fox, 1325 18th Street, N.W., Suite 103, Washington, D.C. 20036.

Sincerely,


David E. Fox

DEF/lak

11-14-90

RECEIVED
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(1) David E. Fox

Interstate Commerce Commission
Washington, D.C. 20423

11/14/90

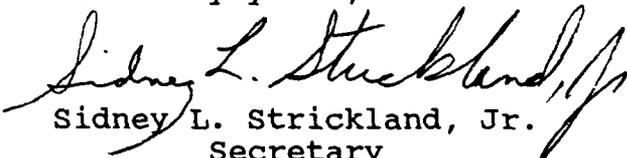
OFFICE OF THE SECRETARY

David E. Fox
1325 18th St N.W. Suite 103
Washington, D.C. 20036

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 11/14/90 at 10:45am, and assigned recordation number(s). 17053-N

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

2173X

17053-14
RECORDATION NO. FILED 1425

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INTERSTATE COMMERCIAL BANK

THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

TO

CHEMICAL BANK

SUBORDINATION AGREEMENT

Dated: As of September 27, 1990

RECORD AND RETURN TO:

Lacy, Katzen, Ryen & Mittleman
The Granite Building
130 East Main Street
Rochester, New York 14604
Attention: Ronald A. Mittleman, Esq.

SUBORDINATION AGREEMENT

THIS AGREEMENT, made as of the 27th day of September, 1990 among THE NEW YORK SUSQUEHANNA AND WESTERN RAILWAY CORPORATION, a New Jersey corporation having its principal place of business at 1 Railroad Avenue, Cooperstown, New York 13326 (the "Corporation") and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, a public body corporation and politic constituting an instrumentality of the State of New Jersey, having its principal place of business at 200 South Warren Street, Trenton, New Jersey 08675 (the "NJEDA") and CHEMICAL BANK, having its principal place of business at 90 Presidential Plaza, Syracuse, New York 13202 (the "Bank").

W I T N E S S E T H:

WHEREAS, Delaware Otsego Corporation (hereinafter "DOC") has applied to the Bank for (i) a three (3) year revolving credit loan up to an aggregate principal amount not to exceed Two Million Dollars (\$2,000,000), convertible to a four (4) year term loan, (ii) an eight (8) year term loan in the principal amount of Six Million Dollars (\$6,000,000) and (iii) an eight (8) year term loan in the principal amount of Three Million Dollars (\$3,000,000) (the "Loans"), plus any other debt, liabilities and obligations, as well as other loans, advances, debt balance at any time owed by the DOC or the Corporation to the Bank, whether direct or indirect, absolute or contingent, secured or unsecured, due or to become due, now existing or hereafter arising, and whether created directly or indirectly, together with all interest, fees, charges, expenses and fees for which the DOC or the Corporation is now or hereafter becomes liable to pay the Bank under any agreement or by operation of law may be hereinafter referred to as the "Bank Debt"; and

WHEREAS, the Corporation has guaranteed the repayment of the Bank Debt and the performance of other obligations of the DOC pursuant to the Guaranty (as hereinafter defined); and

WHEREAS, the NJEDA has loaned the Corporation the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000) (upon which there is an outstanding principal balance as of July 31, 1990 of One Million Nine Hundred Twenty-Eight Thousand Five Hundred Dollars (\$1,928,500) (the "NJEDA Loan") under the terms of a Direct Loan Agreement and has secured its interest by a Promissory Note, Mortgage, and other documents, all dated on or about August 6, 1982 between NJEDA and the Corporation (the "NJEDA Documents"), the NJEDA Loan plus any other debt, liabilities and obligations, as well as other loans, advances, debt balance at any time owed by the Corporation to the NJEDA, whether direct or indirect, absolute or contingent, secured or unsecured, due or to become due, now existing or hereafter arising, and whether created directly or indirectly, together with all interest, fees, charges, expenses and fees for

which the Corporation is now or hereafter becomes liable to pay the NJEDA under any agreement or by operation of law may be hereinafter referred to as the "NJEDA Debt"; and

WHEREAS, the Bank has agreed to provide DOC the Loans so long as the Corporation grants the Bank a first priority security interest in accordance with a loan agreement (the "Loan Agreement"), a pledge and security agreement (the "Pledge"), the mortgages (the "Mortgages"), four (4) notes (the "Notes"), a guaranty of payment (the "Guaranty"), two (2) collateral assignments of leases and rents (the "Lease Assignments"), an assignment of proceeds, contracts and agreements (the "Proceeds Assignment"), an assignment of life insurance (the "Assignment of Life Insurance") and various other Financing Documents (as defined in the Loan Agreement) (the Loans, the Debt, the Loan Agreement, the Pledge, the 3 Mortgages, the Notes, the Guaranty, the Lease Assignments, the Proceeds Assignment, the Assignment of Life Insurance and the Financing Documents hereinafter collectively referred to as the "Bank Documents"); and

WHEREAS, as further inducement for the Bank to extend credit to DOC, the NJEDA agrees to subordinate the NJEDA Debt and its security interest and rights to that of the Bank Debt in accordance with the terms and conditions contained herein.

NOW, THEREFORE, the NJEDA agrees to subordinate the NJEDA Debt and its lien and various rights associated therewith on the following terms and conditions:

1. The NJEDA hereby subordinates the NJEDA Debt to the prior payment in full of the Bank Debt in the aggregate principal amount not to exceed Eleven Million Dollars (\$11,000,000).
2. All liens and mortgages created by the NJEDA Documents are hereby subordinated to the liens and mortgages created by the Bank Documents to the full extent of the Bank Debt. All rights (including assignments of leases and rents) given to NJEDA under the NJEDA Documents are hereby subordinated to the lien given to the Bank and the rights of the Bank thereunder.
3. The parties understand and consent that, without releasing or affecting the subordination in this Agreement, the Bank may, without notice to the NJEDA, in its sole and absolute discretion, for value or without value, renew or extend the time of payment of any of the Bank Debt, modify the same, modify in any manner or release in whole or in part the Bank Debt and any security therefor or any obligations of endorsers, sureties or guarantors thereof, add or substitute any security for the Bank Debt, release from the terms of this or of any other subordination any claims subordinated, or

take any other action with respect to the Bank Debt, except that the Bank shall not increase the aggregate amount of the Loans without the express written consent of the NJEDA.

4. The NJEDA shall not accept any prepayment of principal or interest by the Corporation at any time unless the Bank has provided the NJEDA with its prior written consent. If the NJEDA accepts any prepayment of principal or interest prior to receiving written notice from the Bank that the Corporation is in default under the Bank Documents, the NJEDA shall return such prepayment to the Corporation within five (5) days from the date the NJEDA becomes aware it has received such prepayment. If the NJEDA accepts any prepayment of principal or interest after receiving written notice from the Bank that the Corporation is in default under the Bank Documents, the NJEDA shall deliver such prepayment to the Bank within five (5) days therefrom if the NJEDA has received the written authority from the Corporation authorizing the NJEDA to deliver such prepayment to the Bank. If the NJEDA does not receive written authority from the Corporation to deliver to the Bank such prepayment, the NJEDA shall return such prepayment to the Corporation within five (5) days from the date the NJEDA becomes aware it has received such prepayment.

5. Nothing contained in this Agreement or in any of the NJEDA Documents is intended to or shall impair, as between the Corporation, its creditors other than the Bank, and the holder of the NJEDA Debt, the obligations of the Corporation to pay to the parties entitled thereto under the terms thereof the principal of and interest on the NJEDA Debt, or to affect the relative rights of the holder of the NJEDA Debt and creditors of the Corporation other than the Bank, except as otherwise provided in this Agreement. If the Corporation defaults under its obligations with the NJEDA, the NJEDA agrees that it shall not exercise any remedies it may have under the NJEDA Documents (unless it shall have received the prior written consent of the Bank) for a period of one hundred fifty (150) days from the date the Bank provides written notice to the NJEDA that the Corporation is in default under the Bank Documents. Within forty-five (45) days of the receipt of such written notice, the Bank and the NJEDA must meet to discuss the Corporation's default and the financial condition of the Corporation.

6. The NJEDA shall from time to time on the Bank's request, furnish the Bank with statements as to the amount, terms and the manner in which the NJEDA Debt is carried on the NJEDA's books of account. No waiver by the Bank of any right shall be deemed a waiver of any other right. Except as specifically otherwise provided herein, nothing herein shall limit or affect in any manner any right the Bank may have by virtue of any other instrument or agreement.

7. This subordination shall inure to the benefit of the Bank, its successors and assigns, and shall be binding upon the Corporation and its successors and assigns. It shall be a continuing irrevocable subordination, and shall remain in full force and effect as and to the extent herein provided, until all of the Bank Debt in the aggregate principal amount not to exceed Eleven Million Dollars (\$11,000,000) shall have been paid or otherwise discharged in full.

8. The Corporation hereby waives any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance of this Agreement in any action brought therefor by the Bank. To the fullest extent permitted by law, the Corporation hereby further waives: presentment, demand, protest, notice of protest, notice of dishonor, notice of payment or non-payment and any and all other notices and demands of any kind (except as otherwise provided herein) in connection with all negotiable instruments evidencing all or any portion of the Bank Debt; notice of the acceptance of this Agreement by the Bank; notice of any loans made, extensions granted or other action taken in reliance hereon; and all other demands and notices of every kind in connection with this Agreement.

9. In the event of any inconsistency with respect to the obligations of the Corporation in this Agreement and other documents between the Corporation and the Bank, this Agreement shall govern to the extent such obligation is created by this Agreement.

10. This Agreement shall be performed and construed in all respects under the laws of the State of New York without reference to its principles of conflicts of laws.

11. All notices, statements, requests and demands given or made upon any party in accordance with the provisions of this Agreement shall be deemed to have been given when personally delivered or when deposited in the mail, postage prepaid, or, in the case of telegraphic notice, when delivered to the telegraph company, charges prepaid, addressed to the parties at their respective addresses as first above written and if to the Bank to the attention of the Credit Deputy.

12. This Agreement may be executed in as many counterparts as may be deemed necessary and convenient and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

13. This Agreement shall survive the transactions contemplated in the above-mentioned agreements between any of the parties hereto

and shall continue in full force and effect so long as any of the Bank Debt remains outstanding and unpaid and the obligations of the Corporation thereunder have not terminated.

14. The invalidity or enforceability of any one or more phrases, sentences or clauses in this Agreement shall not affect the validity or enforceability of the remaining portions thereof.

15. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing and signed by all parties hereto.

IN WITNESS WHEREOF, the parties have hereto set their hand to this agreement as of the day and year first above written.

THE NEW YORK SUSQUEHANNA AND WESTERN RAILWAY CORPORATION

By: 
Name: William B. Blatter
Title: Senior Vice President

Attest:


Asst. Secretary

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

By: _____
Name: John F. Walsh
Title: Deputy Director

Attest:

Eugene J. Bukowski
Director of Finance

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THE NEW YORK SUSQUEHANNA AND WESTERN RAILWAY CORPORATION

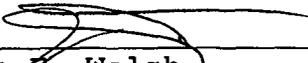
By:

Name: William B. Blatter
Title: Senior Vice President

Attest:

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

By:



Name: John F. Walsh
Title: Deputy Director

Attest:



Eugene J. Bukowski
Director of Finance

CHEMICAL BANK

BY: James D. Small
Name: James D. Small
Title: Vice President

STATE OF NEW YORK)
) SS.:
COUNTY OF MONROE)

On this 26th day of September, 1990, before me personally came William B. Blatter to me known, who, being by me duly sworn did depose and say that he resides in New Hartford, New York; that he is the Senior Vice President of THE NEW YORK SUSQUEHANNA AND WESTERN RAILWAY CORPORATION, the corporation described in and which executed the foregoing instrument; that he signed his name thereto by order of the Board of Directors.

Nathan R. Fenno
Notary Public
NATHAN R. FENNO
Notary Public for the
State of New York
Qualified in Otsego County
4786561
Commission Expires 03/30/91

STATE OF NEW YORK)
) SS.:
COUNTY OF)

On this ____ day of September, 1990, before me personally came John F. Walsh, to me known, who, being by me duly sworn did depose and say that he resides in _____, New York; that he is the Deputy Director of NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors.

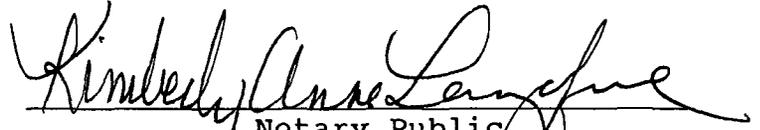
Notary Public

STATE OF NEW YORK)

SS.:

COUNTY OF MONROE)

On this 21st day of September, 1990, before me personally came James D. Small, to me known, who, being by me duly sworn did depose and say that he resides in Fayetteville, New York; that he is a Vice President of CHEMICAL BANK, the banking institution described in and which executed the above Mortgage; and that he signed his name thereto by order of the Board of Directors of said banking institution.



Notary Public
KIMBERLY ANNE LANZAFAME
Notary Public for the
State of New York
Qualified in Monroe County
Commission Expires 06/02/92