

LAW OFFICES

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A PROFESSIONAL CORPORATION

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JAN 11 1990 - 1 15 PM

INTERSTATE COMMERCE COMMISSION  
MARYLAND OFFICE  
TRIPLE BANK CENTER, TOWER II  
100 SOUTH CHARLES STREET, 5TH FLO  
BALTIMORE, MARYLAND 21201  
(301) 783-3500

January 11, 1990

0-011A049

Mildred Lee  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed for filing under recordation #7441 is a notarized original of the Renewed and Amended Lease of Railroad Equipment by and between First National Bank of Louisville and Delaware and Hudson Railway Company, dated May 1, 1989. Also enclosed are two (2) additional notarized originals to be file stamped and returned to us. A \$15.00 filing fee is enclosed.

Thank you for your assistance.

Sincerely,

HAZEL, THOMAS, FISKE, WEINER,  
BECKHORN & HANES, P.C.

*Richard E. Lear*  
Richard E. Lear

Enclosures

*Handwritten notes on the left margin, including a signature and the number 6.*

**Interstate Commerce Commission**  
Washington, D.C. 20423

1/11/90

OFFICE OF THE SECRETARY

Richard E. Lear  
Hazel Thomas Fiske  
Weiner Beckhom & Hanes  
1575 Eye St N.W.  
Washington, D.C. 20005

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 1/11/90 at 1:15pm, and assigned recordation number(s). 7441-C

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

RECORDATION NO. 7441-c FILED 1488

JAN 11 1990 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

RENEWED AND AMENDED  
LEASE OF RAILROAD EQUIPMENT

by and between

FIRST NATIONAL BANK OF LOUISVILLE

and

DELAWARE AND HUDSON RAILWAY COMPANY

Dated as of May 1, 1989

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021689:4:WRB  
LS/0216

RENEWED AND AMENDED LEASE OF RAILROAD EQUIPMENT, dated as of May 1, 1989, between FIRST NATIONAL BANK OF LOUISVILLE, a national banking association (hereinafter called the Lessor) and DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation (hereinafter called the Lessee), acting by and through Francis P. Dicello, Trustee (hereinafter called the Trustee) in proceedings for a Railroad Reorganization under Chapter 11 of the United States Bankruptcy Code in Case No. 88-342 (the Reorganization Proceedings) pending in the United States Bankruptcy Court for the District of Delaware (the Bankruptcy Court).

WHEREAS, the Lessor and the Lessee entered into a Conditional Sale Agreement dated as of March 11, 1974, hereinafter called the Conditional Sale Agreement), with PULLMAN INCORPORATED (Pullman Standard division) (hereinafter called the Manufacturer), wherein the Manufacturer agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto plus four additional units of equipment which were destroyed after March 11, 1974; and

WHEREAS, the Manufacturer assigned its interest in the Conditional Sale Agreement to GIRARD TRUST BANK (hereinafter called the Vendor);

WHEREAS, the Lessee leased all the units of said equipment at the rentals and for the terms and upon the conditions provided in a Lease of Railroad Equipment dated as of March 11, 1974 (the Original Lease);

WHEREAS, the Lessee performed its obligations under the Conditional Sale Agreement and the Original Lease through June 20, 1988 when it commenced the Reorganization Proceedings, in which Proceedings the Trustee was appointed to operate the Lessee's business,

WHEREAS, the Trustee has performed the Lessee's post-petition obligations under the Conditional Sale Agreement and the Lease, has assumed the benefits and burdens of the Original Lease through an application approved by Order of the Bankruptcy Court dated January 11, 1989, and has elected to exercise the Lessee's option to renew the Original Lease for the first renewal term under the provisions of Section 12 of the Original Lease; and

WHEREAS, the Vendor, now known as Mellon Bank (East), N.A., has executed and delivered to the Lessor for redelivery to the

Interstate Commerce Commission a Release of the Conditional Sale Agreement and a Release of the Agreement and Assignment defined in the Conditional Sale Agreement;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions for the renewal term hereinafter set forth;

Section 1. Delivery and Acceptance of Units. The Trustee, for and on behalf of the Lessee, acknowledges that the Units are in possession of the Lessee and are in good operating order and condition.

Section 2. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease on May 1, 1989, \$350.00 with a like \$350.00 payable on the same day of every month thereafter for the next succeeding fifty-nine (59) months thereafter, until a total of sixty (60) monthly rental payments shall have been paid.

Lessor irrevocably agrees that all payments provided for in this Renewed and Amended Lease (this Lease) to First National Bank of Louisville shall be paid to the Lessor by federal funds wire to attention of Manager, Leasing Division (or to any assignee of said Bank under an assignment made pursuant to Section 11 hereof).

The Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

Section 3. Term of Lease. The term of this Lease as to each Unit shall begin on May 1, 1989 and, subject to the provisions of

Sections 6 and 9 hereof, shall terminate thirty (30) days after the date on which the final monthly payment of rent in respect thereof is payable.

Section 4. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A attached hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"FIRST NATIONAL BANK OF LOUISVILLE, LOUISVILLE, KY., LESSOR"

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

Section 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than any federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes

which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees (and any charges, fines or penalties in connection therewith) (hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interest of the Lessor in such Units or will notify the Lessor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

Section 6. Payment for Casualty Occurrences. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of Lessee, irretrievably damaged, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. Following the giving of written notice of a Casualty Occurrence, the Lessee's obligations under the terms of this Lease as to such Unit arising after surrender of possession shall terminate and (except in the case of the loss, theft, complete destruction or condemnation of such Unit), the Lessor shall be entitled to recover possession of such Unit and the Lessee shall cooperate fully with the Lessor in seeking bids for the sale of

such Unit, but the Lessee shall remain obligated to pay all amounts accrued through, and to complete performance of all covenants arising with respect to such Unit through, the date of surrender of possession.

On the next succeeding rental payment date after any Unit has suffered a Casualty Occurrence, the Lessee shall pay to the Lessor an amount equal to the total of the accrued rental for such Unit to the date of such payment and the Casualty Value for such Unit. The Casualty Value for each Unit shall be determined by the following schedule, which is based upon an agreed present value for each Unit of \$18,304.69 per Unit:

<u>Prior to or with Rental Payment</u>	<u>Percentage</u>	<u>Amount</u>
3	94.26376519	\$17,254.69
6	91.51226989	16,751.04
9	88.66554415	16,229.95
12	85.72161324	15,691.08
15	82.66776299	15,132.08
18	79.49876466	14,552.00
21	76.20985492	13,949.98
24	72.79854726	13,325.55
27	69.26307391	12,678.39
30	65.60246539	12,008.33
33	61.81175129	11,314.45
36	57.88823371	10,596.26
39	53.82992911	9,853.40
42	49.63564775	9,085.65
45	45.30019442	8,292.06
48	40.82064174	7,472.09
51	36.19477193	6,625.34
54	31.42115616	5,751.55
57	26.49435518	4,849.71
60 and thereafter until such Unit has been returned	21.41119249	3,919.25

Following payment of the Casualty Value, Lessee shall be entitled to retain the proceeds of any sale of such Unit and/or the proceeds of any insurance covering the Unit up to an amount equal to but not in excess of the Casualty Value previously paid but in no event shall the aggregate of amounts refunded to Lessee exceed the amount of the Casualty Value paid by the Lessee. Any excess of such proceeds of the Unit resulting from condemnation payments, sale and insurance payments over the Casualty Value previously paid by the Lessee shall be retained by the Lessor.

Except as hereinabove in this Section 6 provided, the Lessee shall not be released from its obligations hereunder in the event

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of, and shall bear the risk of, any Casualty Occurrence to any Unit during the term of this Lease.

Section 7. Pre-Amendment Rights of Lessor to Survive. This Agreement constitutes the terms under which Lessor agrees to continue to lease the Units to Lessee following the expiration of the term of the Original Lease on April 30, 1989. If as of the expiration of the term of the Original Lease, Lessee is in default under any one or more covenants of the Original Lease, Lessor's right to declare the existence of such default and to pursue any and all remedies available for such default shall survive execution and delivery of this Amended and Restated Lease Agreement and the Lessor shall have all rights with respect to such defaults provided for in the Original Lease as though this Amended and Restated Lease Agreement had not been entered into.

Section 8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, against the manufacturer of the Units. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit 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 Unit in order to

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comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor as its interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor may incur in any manner by reason of entering into or the performance of this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

SECTION 9. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in Section 2 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease of or possession of the Units, or any thereof;

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 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. except with respect to the Reorganization Proceedings pending in the Bankruptcy Court, any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. except with respect to the Reorganization Proceedings pending in the Bankruptcy Court, a petition for reorganization under Subchapter IV of Chapter 11 of the United States Bankruptcy Code, as now constituted or as said Subchapter IV may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

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 rights of the Lessee to the use of the Units 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 Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes 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 or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any 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 other than for the payment of rental, and including, without limitation, (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the investment credit allowed by Section 38 of the Internal Revenue Code of 1954, as amended, lost by the Lessor as a result of the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default.

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 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 rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the 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 10. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its subsidiaries or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and 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 Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, 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 Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

Section 11. 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. All the rights and obligations of the Lessor hereunder (including but not limited to the rights under Sections 8, 9 and 15 hereof) shall inure to the benefit and become obligations of the Lessor's assigns (and to any corporation, trustee or other person for which the Lessor is acting as nominee). Unless the Lessee otherwise consents, from and after any such assignment all rentals and other payments made hereunder shall be paid by the Lessee to the account of 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 Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor or the Lessee therein. 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 Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease. Notwithstanding the foregoing, Lessor's consent to a proposal by the Trustee to sublease, assign or transfer any or all of the

Units incident to a Plan of Reorganization proposed in the Reorganization Proceedings shall not be unreasonably withheld upon receipt of appropriate adequate assurance of future performance by the Sublessee, Assignee or Transferee of the unperformed obligations under this Lease.

Nothing in this Section 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease the Lessee will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America and that during such term any use of any Unit outside the United States of America will be limited to temporary use in Canada and Mexico in the ordinary interchange of traffic.

Section 12. Purchase and Renewal Options. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of such term of this Lease, elect (1) to purchase all but not fewer than all the Units then covered by this Lease at the end of the original term or any extended term hereof for a purchase price equal to the "Fair Market Value" thereof as of the end of such term or (2) to extend the term of this Lease for one additional period of five years in respect of all, but not fewer than all, of the Units then covered by this Lease at the end of the original term hereof at a rental equal to the "Fair Rental Value" thereof as of the end of such term payable in twenty equal quarterly payments for such renewal period.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's length transaction between an informed and willing lessee-user (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and in such determination costs of removal from the location of current use shall not be a deduction from such rental.

If on or before four months prior to the expiration of the term or the additional term hereof, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Rental Value of the Units, such values shall be determined in accordance with the foregoing definition, by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Section 13. Return of Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease, the Lessee will (unless the Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any Units (other than any Unit that has been lost, stolen, completely destroyed or condemned) to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units 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 Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume, and hold the Lessor harmless from all liability arising in respect of such notice.

Section 14. Opinion of Counsel for Lessee. On or within ten (10) days after the date on which an Order of the Bankruptcy Court authorizing the Trustee to execute and deliver this Lease becomes final and no longer appealable, the Lessee will deliver to the Lessor counterparts of the written opinion of counsel for the Trustee on behalf of the Lessee, addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a legal and valid agreement binding upon the Lessee and enforceable against the Lessee in accordance with its terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act as amended, 49 U.S.C. § 11303, and no other act, filing, recording or deposit (or giving of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor in and to the Units;

D. The Trustee's execution, delivery and performance of this Lease for and on behalf of the Lessor have been approved by a Final Order entered by the Bankruptcy Court and no other approval is required from any public regulatory body with respect to the Lessee's entering into or performance of this Lease;

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any law, regulation, indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's prior right, title and interest to the Units and this Lease; provided, however, that such liens may attach to the Lessee's rights to use the Units on continuing performance by the Lessee of this Lease.

Section 15. Federal Income Taxes. The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits, if any, with respect to the Units as are provided by the Internal Revenue Code of 1986, as amended, to an owner of property. Nothing contained herein shall be construed as an election by the Lessor to treat the Lessee as having acquired the Units for any purposes of the Internal Revenue Code of 1986, as amended. If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, any benefit of ownership provided by the Internal Revenue Code of 1986, with respect to any Unit for any reason caused by Lessee's action or inaction (including casualty loss) the Lessee shall pay the Lessor, as supplemental rent, upon written demand made by the Lessor at any time after such benefit could have been claimed if it were allowable or, if claimed and then disallowed, at any time after payment of the tax attributable thereto, the following: (i) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or of any state or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of any other such taxes), shall be equal to the amount of such benefit for such reason lost or not had or with respect to which the right to claim has been lost or which has been disallowed, plus (ii) the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss or disallowance of such benefit, plus (iii) in the event the Lessor shall pay the tax claimed and then seek a refund and the final determination of such claim shall be adverse to the Lessor, interest on the amount of the tax paid attributable to the benefit, disallowed by such claim, computed at the rate of 8 1/2% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this Section 15.

Section 16. Recording; Expenses. Prior to May 1, 1989, the Lessee will cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act as amended, 49 U.S.C. § 11303. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit 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 the Lessor and its counsel, of the Lessor's respective interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease and any assignment hereof. The Lessee will promptly furnish to the Lessor evidence of such filing,

registering, depositing or recording and of such publication of notice of such deposit.

Section 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 9 1/4% per annum of the overdue rentals for the period of time during which they are overdue.

Section 18. 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 certified mails, first-class postage prepaid, addressed as follows:

if the Lessor, P.O. Box 36000, Louisville, Kentucky  
40233, Attention: Manager, Leasing Division;

if the Lessee, P.O. Box 369, Fifth Street, Watervliet,  
New York, 12189, Attention: Treasurer;

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

Section 19. Section 19 has been deleted.

Section 20. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee from and after May 1, 1989 with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units from and after such date. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers as of the Lessors and the Lessee.

Section 21. Execution. This Lease 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.

Although this Lease is dated as of May 1, 1989, for convenience, the actual date or dates of execution hereof by the

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parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

Section 22. Law Governing. This Lease shall be construed in accordance with the laws of the Commonwealth of Kentucky.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

FIRST NATIONAL BANK OF LOUISVILLE

By: [Signature]  
Title: Vice President

DELAWARE AND HUDSON RAILWAY COMPANY

By: [Signature]  
Francis P. Dicello  
Title: Trustee in Bankruptcy

COMMONWEALTH OF KENTUCKY )  
COUNTY OF JEFFERSON ) SS

On this 16<sup>th</sup> day of August, 1987, before me personally appeared Charles T. Owens to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST NATIONAL BANK OF LOUISVILLE, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL SEAL)

[Signature]  
NOTARY PUBLIC

My Commission expires: 8-5-91



Item 5 Manufacturer's Plant:

Butler, Pennsylvania

Item 6 Delivery:

March-April, 1974

Item 7 Original Base Price Per Unit of Equipment:

\$19,175.36

Item 8 Manufacturer's Warranty:

The Manufacturer warrants to First National Bank of Louisville, ("Company") and Delaware and Hudson Railway Company, ("Guarantor") that the Equipment described in Item 3 of this Schedule "A" will be built in accordance with the specifications described in Item 4 of this Schedule "A" and warrants that the Equipment will be free from defects in material or design (except as to articles, materials or designs incorporated therein which were specified or supplied by the Guarantor and not manufactured or designed by the Manufacturer) and workmanship under normal use and service, the Manufacturer's obligation under this warranty being limited to repairing or replacing at its factory any part or parts of any unit of the Equipment which shall be returned to the Manufacturer with transportation charges prepaid, within one year after the delivery of such unit to the Company in accordance with the provisions of the Conditional Sale Agreement to which this Schedule "A" is attached, and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. THE FOREGOING WARRANTY OF THE MANUFACTURER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR ITS OTHER OBLIGATIONS OR LIABILITIES UNDER ARTICLES 1, 2 AND 3 OF THE CONDITIONAL SALE AGREEMENT, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Manufacturer be liable for indirect or consequential damages of any kind.

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The Manufacturer further agrees with the Company and the Guarantor that neither the inspection as provided in Article 2 of the Conditional Sale Agreement to which this Schedule "A" is attached nor any examination nor the acceptance of any units of the Equipment as provided in said Article 2 shall be deemed a waiver or a modification by the Company and/or the Guarantor of any of its rights under this warranty.