

CRAVATH, SWAIN & MOORE FEB 23 1979 - 1 50 PM

ONE CHASE MANHATTAN PLAZA INTERSTATE COMMERCE COMMISSION

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9-054A072

FEB 23 1979
FEB 23 1979

RECORDATION NO. 10233
FEB 23 1979 - 1 50 PM

INTERSTATE COMMERCE COMMISSION
Washington, D. C.

February 23, 1979

Maryland and Pennsylvania Railroad Company
Conditional Sale Financing dated as of January 1, 1979

Dear Sir:

Herewith for recordation pursuant to 49 U.S.C. § 11303, on behalf of Chemical Bank, are executed copies of the following:

(1) Conditional Sale Agreement dated as of January 1, 1979, between Whittaker Corporation (Berwick Forge & Fabricating Division), P.O. Box 188, West Ninth Street, Berwick, Pennsylvania 18603, and Maryland and Pennsylvania Railroad Company, 490 East Market Street, York, Pennsylvania 17403; and

(2) Agreement and Assignment dated as of January 1, 1979, between Whittaker Corporation (Berwick Forge & Fabricating Division) and Chemical Bank, 55 Water Street (Suite 1822), New York, N. Y. 10041.

The Equipment covered by the aforementioned Agreements consists of 188 70-ton, 50' 6" Box Cars with rigid under-frame and 10' sliding doors bearing the road numbers MPA 9400 through 9587.

FILE OPERATION ON
FEB 23 1979
RECEIVED

Edward Johnson

Cautioner's Note

Enclosed is a check for \$50 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed Agreements, stamp the remaining counterparts and the enclosed copy of this letter with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,



Paul W. Voegeli

The Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

L

BY HAND

Interstate Commerce Commission

Washington, D.C. 20423

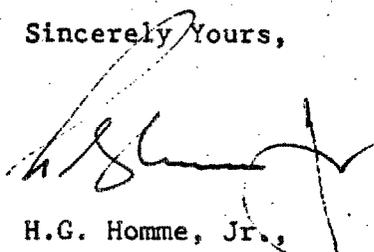
OFFICE OF THE SECRETARY

Paul W. Voegeli
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, New York 10005

Dear Mr. Voegeli:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on February 23, 1979 at 1:50 PM, and assigned recordation number(s) 10133 and 10153-A

Sincerely Yours,



H.G. Homme, Jr.,

Secretary

Enclosure(s)

SE-30-T
(2/78)

10133 -A
RECORDATION NO. Filed 1425

FEB 23 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of January 1, 1979

Between

WHITTAKER CORPORATION (BERWICK
FORGE & FABRICATING DIVISION),

and

CHEMICAL BANK

AGREEMENT AND ASSIGNMENT

TABLE OF CONTENTS

	<u>Page</u>
PREAMBLE	1
RECITALS	1
SECTION 1. Assignments by Builder to Assignee; No Recourse	1
SECTION 2. Builder Agrees to Construct Equipment and Warrant Title thereto	2
SECTION 3. Indemnification of Assignee; Patent Indemnification	3
SECTION 4. Conditions to Obligation of Assignee to Pay Builder	4
SECTION 5. Further Assignments by Assignee	8
SECTION 6. Representation and Warranty and Agree- ment of Builder	8
SECTION 7. Law Governing	9
SECTION 8. Notice of Assignment to Railroad	9
SECTION 9. Counterparts	9
TESTIMONIUM	9
EXECUTION	9
ACKNOWLEDGMENTS	
ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT	

AGREEMENT AND ASSIGNMENT, dated as of January 1, 1979, between CHEMICAL BANK, acting as Investor under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) (said Investor being hereinafter called the Assignee), and WHITTAKER CORPORATION (BERWICK FORGE & FABRICATING DIVISION) (hereinafter called the Builder).

WHEREAS, the Builder and Maryland and Pennsylvania Railroad Company (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement in

respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the rights, powers, privileges and remedies of the Builder under the Conditional Sale Agreement;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of

the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and the Builder further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The obligation of the Builder so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the timely motion by the assignee or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, prompt notification by the Assignee to the Builder of the asserted defense, setoff, counterclaim or recoupment and the giving

by the Assignee to the Builder the right, at the expense of the Builder, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the expense of the Builder, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, with the exception of amounts payable pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement (other than amounts owing under supplemental invoices as therein provided), whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special

counsel:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee the security interest of the Builder in the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) an invoice of the Builder for the units of Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, dated as of such Closing Date, to the effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by the Assignee, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument enforceable in accordance with its terms, (iv) the Guarantee Agreement (as defined in the Finance Agreement) has been duly authorized, executed and delivered by each Guarantor (as defined in the Finance Agreement) and is a legal, valid and binding instrument enforceable in accordance with its terms, (v) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (vi)

the Assignee has a valid and perfected security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (vii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (viii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, and (ix) registration of the Conditional Sale Agreement or this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or such Investor;

(e) an opinion of counsel for the Railroad and the Guarantors, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (iv), (vi), (vii) and (viii), insofar as such clauses pertain to the Railroad, the Guarantors, or both, of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement, the Guarantee Agreement and this Agreement by parties thereto other than the Railroad and the Guarantors) and stating that the Railroad and each Guarantor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (v) and (vi) of subparagraph (d) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the corporate power and authority to own its properties and to carry on its business as

now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that (i) no event of default, or event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and is then continuing and (ii) no tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment;

(h) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad; and

(i) all such other documents which the Investor may reasonably request in connection with the transactions contemplated by the Finance Agreement, including certified copies of all corporate proceedings and orders of regulatory agencies in connection therewith, in form and substance satisfactory to it.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion of counsel for the Builder as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment at the time of delivery

thereof under the Conditional Sale Agreement; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad and the Guarantors as to such matter; in giving the opinion specified in said subparagraph (f), counsel may rely on special Pennsylvania counsel as to all matters governed by the laws of the Commonwealth of Pennsylvania and on house counsel for the Builder as to all matters governed by the laws of the State of California; in giving the opinion specified in said subparagraph (e), counsel may rely on special Pennsylvania counsel as to all matters governed by the laws of the Commonwealth of Pennsylvania and on the opinion of special Interstate Commerce Commission counsel as to matters of filings with the Interstate Commerce Commission.

The Assignee shall not be obligated to make any payment provided for herein at any time after the commencement of any proceedings specified in clause (f) or (g) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

—(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by

the Railroad, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

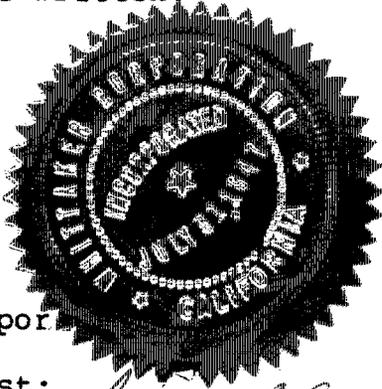
SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this instrument to be executed in their respective corporate names by duly autho-

rized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.



WHITTAKER CORPORATION (BERWICK FORGE & FABRICATING DIVISION),

by

John C. Lauer
Authorized Signatory

[Corporation]

Attest:

Charles H. Emore
Authorized Signatory

CHEMICAL BANK,

by

[Signature]
Vice President

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF COLUMBIA,)

On this 15TH day of February 1979, before me personally appeared *Peter C. Bayer*, to me personally known, who, being by me duly sworn, says that he is an *authorized signatory* of WHITTAKER CORPORATION (BERWICK FORGE & FABRICATING DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, 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.

Lloyd H. Adams

Notary Public

[NOTARIAL SEAL]

My Commission expires

LLOYD H. ADAMS, NOTARY PUBLIC
BERWICK TOWNSHIP, COLUMBIA COUNTY
MY COMMISSION EXPIRES SEPT. 19, 1982
Member, Pennsylvania Association of Notaries

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

On this 16TH day of February 1979, before me personally appeared *John R. Feldman*, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, 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.

Helen J. Burnette

Notary Public

[NOTARIAL SEAL]

My Commission expires

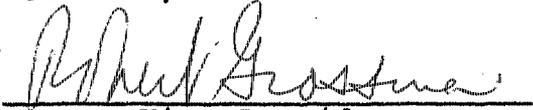
HELEN J. BURNETTE
Notary Public, State of New York
No. 41-8886200
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1980

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

MARYLAND AND PENNSYLVANIA RAILROAD COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of January 1, 1979.

MARYLAND AND PENNSYLVANIA RAILROAD COMPANY,

by



Vice President