

MAR 30 1979-9 55 AM

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

TELEX
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INTERSTATE COMMERCE COMMISSION

MAURICE T. MOORE
BRUCE BROMLEY
WILLIAM B. MARSHALL
RALPH L. McAFEE
ROYALL VICTOR
ALLEN H. MERRILL
HENRY W. de KOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
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MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON

COUNSEL
ROSWELL L. GILPATRICK
ALBERT R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER

CARLYLE E. MAW
L. R. BRESLIN, JR.
GEORGE B. TURNER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON

4, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 265-81-54
TELEX: 290530

33 THROGMORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 01-606-1421
TELEX: 8614901

CABLE ADDRESSES
CRAVATH, N.Y.
CRAVATH, PARIS
CRAVATH, LONDON E.C. 2

9-089A036
MAR 30 1979
Date
Fee \$ 100.00

RECORDATION NO. 10238-4 Filed 1425
ICC Washington, D. C.

MAR 30 1979-9 55 AM
INTERSTATE COMMERCE COMMISSION

March 28, 1979

The Denver and Rio Grande Western Railroad Company
Lease Financing Dated as of January 1, 1979
9.6% Conditional Sale Indebtedness Due 1980-1989

[CS&M Ref: 4650-037]

Dear Sir:

Pursuant to 49 U.S.C. § 11303(a) I enclose herewith on behalf of The Denver and Rio Grande Western Railroad Company, for filing and recordation, counterparts of the following:

(1) (a) Conditional Sale Agreement dated as of January 1, 1979, between First Security Bank of Utah, National Association and Whitehead & Kales Company;

(1) (b) Agreement and Assignment dated as of January 1, 1979, between United States Trust Company of New York and Whitehead & Kales Company;

(2) (a) Lease of Railroad Equipment dated as of January 1, 1979, between The Denver and Rio Grande Western Railroad Company and First Security Bank of Utah, National Association; and

(2) (b) Assignment of Lease and Agreement dated as of January 1, 1979, between First Security Bank of Utah, National Association and United States Trust Company of New York.

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MAR 30 1979-9 55 AM
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MAR 30 1979-9 55 AM
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Counterparts -
Mark Stearns

The addresses of the parties to the aforementioned agreements are:

Lessor-Vendee -Trustee:

First Security Bank of Utah, National Association,
79 South Main Street,
Salt Lake City, Utah 84125.

Builder-Vendor:

Whitehead & Kales Company,
58 Haltiner Street,
River Rouge,
Michigan 48218.

Lessee:

The Denver and Rio Grande Western Railroad Company,
One Park Central,
1515 Arapahoe Street,
Denver, Colorado 80217.

Agent-Vendor-Assignee:

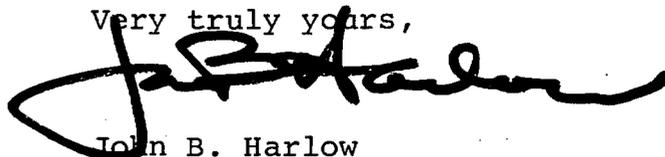
United States Trust Company of New York,
130 John Street,
New York, N. Y. 10038

The equipment covered by the aforementioned agreements consists of 36 fully-enclosed trilevel auto racks bearing the I.D. numbers of the Lessee 207-242, inclusive, 14 fully-enclosed coverless trilevel auto racks bearing the I.D. numbers of the Lessee 243-256, inclusive, and 36 fully-enclosed bilevel auto racks, bearing the I.D. numbers of the Lessee 171-206, inclusive, and also bearing the legend "Leased from First Security Bank of Utah, National Association, as Trustee, and Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission and a Security Interest under the Uniform Commercial Code".

Enclosed is our check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt,

addressed to the undersigned.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'John B. Harlow'.

John B. Harlow
As agent for
The Denver and Rio Grande
Western Railroad Company

Mr. H. G. Homme, Jr., Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

MAR 30 1979-9 55 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT dated as of January 1, 1979, by and between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, not in its individual capacity but solely as trustee (the "Lessor" or the "Vendee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with George S. Eccles (the "Owner") and UNITED STATES TRUST COMPANY OF NEW YORK, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

The Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (the "Security Documentation") with Whitehead & Kales Company (the "Builder"), providing for the sale to the Vendee of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Vendee thereunder.

The Lessor and The Denver and Rio Grande Western Railroad Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing by the Lessor to the Lessee of the Units.

In order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Indebtedness (as that term is defined in the Security Documentation), the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee under the Security Documentation, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as

rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Notwithstanding the foregoing, the Payments shall not be deemed to include, either before or after an Event of Default shall have occurred and be continuing under the Lease, payments made by the Lessee to the Vendee or the Owner pursuant to §§ 6 and 9 of the Lease (except indemnification payments owing to the Vendor pursuant to Articles 6 and 13 of the Security Documentation and except to the extent that the Vendee is obligated to pay and discharge claims, liens, charges or security interests under Paragraph 6 of this Assignment).

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation and Paragraph 8 of the Participation Agreement, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. The Vendor shall notify the Lessor at the address set forth in the Lease if the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security

and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment for security purposes, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than those created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder

claimed by any party from, through or under the Lessor or the Beneficiary, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor or the Beneficiary shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. 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 Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303. The counterpart of this Assignment delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all Payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers,

privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment to the extent they are for the sole benefit of the Lessor and not required to satisfy the obligations of the Lessor under the Security Documentation, without the prior consent of the Lessor.

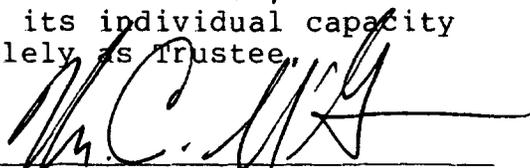
12. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), (a) so long as there is no event of default under the Security Documentation, and to the extent that the Vendor does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of the Lessor under the Security Documentation, the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the Security Documentation, or empower the Vendor in any way to waive or release the Lessee's obligation to pay the same, and the Lessor shall continue to be empowered to ask, demand, sue for, collect and receive any and all of such excess amounts, but shall not take any action under subparagraph (b) of Section 10 of the Lease without the written consent of the Vendor and (b) each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or negligence, or against the Owner under the Trust Agreement (except under the last paragraph of Section 5.01 thereof) or on account of any representation, undertaking or agreement herein of the Lessor or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date first above written.

FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION,
not in its individual capacity
but solely as Trustee.

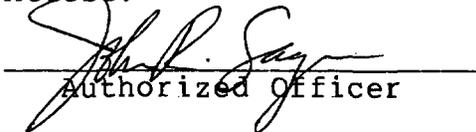
by



Authorized Officer

[Seal]

Attest:



Authorized Officer

UNITED STATES TRUST COMPANY OF
NEW YORK,
as Agent,

by



Asst Vice President

[Corporate Seal]

Attest:



Assistant Secretary

STATE OF UTAH ,)
) ss.:
COUNTY OF SALT LAKE,)

On this the *14* day of *March* 1979, before me, personally appeared **WILLIAM C. MCGREGOR**, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of First Security Bank of Utah, National Association, that one of the seals affixed to the foregoing instrument is the seal of said bank, that said instrument was signed and sealed on behalf of said bank 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 bank.

Verna L. Allcorn

Notary Public

[Notarial Seal]

My Commission expires
My Commission Expires November 15, 1981

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

On this *13* day of *March* 1979, before me personally appeared **GEORGE BOSWELL** to me personally known, who, being by me duly sworn, says that he is a ASST. VICE PRESIDENT of United States Trust Company of New York, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation 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.

Christine Collins

Notary Public

[Notarial Seal]

My Commission expires
March 30, 1980

CHRISTINE C. COLLINS
Notary Public, State of New York
No. 31-4624735
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1980

CONSENT AND AGREEMENT

The undersigned, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a Delaware corporation (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the "Payments") due and to become due under the Lease or otherwise in respect of the Units (as defined in the Lease) leased thereunder, directly to United States Trust Company of New York, as Agent (the "Vendor"), the assignee named in the Lease Assignment, at 130 John Street, New York, New York 10038, attention of Corporate Trust and Agency Division, (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) in accordance with the provisions of the Lease Assignment, the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York

and, for all purposes, shall be construed in accordance with the laws of said State.

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the first day of January 1979.

UNITED STATES TRUST COMPANY OF NEW YORK,
as Agent,

by



Asst. Vice President