

MAY 8 - 1981 - 3 35 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT dated as of April 1, 1981 (this "Assignment"), by and between MELLON INTERNATIONAL LEASING COMPANY (the "Lessor" or the "Vendee") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION (the "Builder"), providing for the sale to the Vendee of such units of railroad equipment (the "Units") described in the Annexes thereto as are accepted by the Vendee thereunder;

WHEREAS the Lessor and UTILITY FUELS, INC. (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;

WHEREAS HOUSTON INDUSTRIES INCORPORATED (the "Guarantor") has executed and delivered a Guarantee dated as of the date hereof (the "Guarantee") pursuant to which the Guarantor has guaranteed unconditionally the payment by the Lessee of all its obligations under the Lease and the Participation Agreement and the Consent referred to in the Guarantee; and

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in Paragraph 4.3(b) of the CSA), the Lessor agrees to assign for security purposes its rights in, to and under the Lease and the Guarantee 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 under the CSA, all the Lessor's right, title and interest, powers, privileges and other benefits under (i) the Lease (except for the Lessor's rights under §§ 6, 12 and 20 of 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, 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, and (ii) the Guarantee (except for the Lessor's rights under the second sentence of the Guarantee and except to the extent the Guarantee relates to §§ 6, 12 and 20 of the Lease), including without limitation all amounts paid or payable to the Lessor thereunder and all rights of the Lessor to enforce payment of any amounts thereunder (except for amounts payable under the second sentence thereof and except for amounts payable under the Guarantee to the extent the Guarantee relates to the Lessee's obligations under §§ 6, 12 and 20 of the Lease) or performance of any duty, agreement, covenant or obligation thereunder. (Moneys paid or payable to or receivable by the Lessor under the Lease (except for moneys paid or payable to or receivable by the Lessor under §§ 6, 12 and 20 of the Lease) or the Guarantee (except pursuant to the second sentence of the Guarantee and except to the extent the Guarantee relates to §§ 6, 12 and 20 of the Lease) are hereinafter called collectively the "Payments".) 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.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease or by the Guarantor pursuant to the Guarantee. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the CSA, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA 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. If the Vendor shall not receive any rental payment under § 3.1 of the Lease when due, the Vendor shall promptly notify the Lessor, and the Lessee at their addresses set forth in the Lease; 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 CSA.

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, 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 is 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 or the Guarantee to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions

of the Lease and by the Guarantor with all the terms and provisions of the Guarantee, 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 CSA, 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 and the Guarantee shall revert to the Lessor without further act or deed, but the Vendor shall execute and deliver such documents as the Lessor may reasonably request in order to confirm, or make clear upon the public record, such termination and/or reversion. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums due from the Lessor under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder. The Vendor will give written notice to the Lessor and the Lessee of any such assignment.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease or the Guarantee, 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.

8. This Assignment shall be governed by the laws of the Commonwealth of Pennsylvania, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

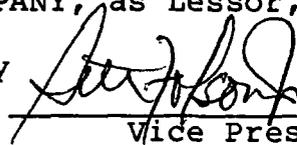
9. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA 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, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease.

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 corporate seals to be affixed and duly attested, all as of the date first above written.

MELLON INTERNATIONAL LEASING
COMPANY, as Lessor,

by



Vice President

[Corporate Seal]

Attest:



MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

by

[Corporate Seal]

Assistant Vice President

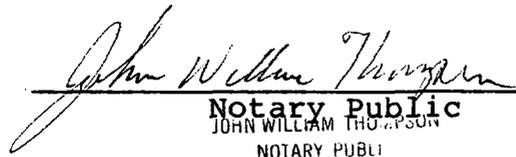
Attest:

Corporate Trust Officer



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

On this *6th* day of *MAY* 1981, before me personally appeared *Arthur Folsom*, to me personally known, who, being by me duly sworn, says that he is a Vice President of MELLON INTERNATIONAL LEASING COMPANY, 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.



Notary Public
JOHN WILLIAM THOMPSON
NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES JUNE 29, 1981

[Notarial Seal]

My Commission expires

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this _____ day of _____ 1981, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the 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.

Notary Public

[Notarial Seal]

My Commission expires

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

by

A. J. Smith
 Vice President

[Corporate Seal]

Attest:

F. H. Gilbert
Corporate Trust Officer

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

On this day of 1981, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of MELLON INTERNATIONAL LEASING COMPANY, 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.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this *7th* day of *MAY* 1981, before me personally appeared *A. F. SAFFRAN*, to me personally known, who, being by me duly sworn, says that he is a Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the 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.



Notary Public

[Notarial Seal]

My Commission expires *7-1-82*

CONSENT AND AGREEMENT

The undersigned, UTILITY FUELS, INC., a Texas corporation (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment") and HOUSTON INDUSTRIES INCORPORATED, a Texas corporation (the "Guarantor"), the guarantor pursuant to the guarantee (the "Guarantee") referred to in the Lease Assignment, hereby (a) acknowledge receipt of a copy of the Lease Assignment and (b) consent to all the terms and conditions of the Lease Assignment and agree that:

(1) in the case of the Lessee, it will pay all rentals, casualty payments, liquidated damages, indemnities (except any amounts of indemnity payable to the Lessor pursuant to §§ 6, 12 and 20 of the Lease) other moneys provided for in the Lease due and to become due under the Lease, and, in the case of the Guarantor, it will pay all amounts payable under the Guarantee (except amounts payable under the second sentence thereof and except for amounts payable under the Guarantee to the extent the Guarantee relates to the Lessee's obligations under §§ 6, 12 and 20 of the Lease), directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Lease Assignment, by wire transfer of immediately available funds to Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, for credit to the Corporate Trust Department's Account No. 08246-5, with advice that the funds are re: "Utility 4/1/81" (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) except as otherwise contemplated by Paragraphs 1 and 10 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 and by the Guarantor under the Guarantee 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) neither the Lease nor the Guarantee shall, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee or the Guarantor, the taking or omission of which might result in an alteration or impairment of the Lease or the Guarantee or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement shall be construed in accordance with the laws of the State of Texas.

UTILITY FUELS, INC.,

by

[Corporate Seal]

Vice President

Attest:

Secretary

HOUSTON INDUSTRIES INCORPORATED,

by

[Corporate Seal]

Vice President

Attest:

Secretary

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(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become

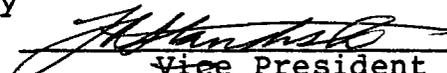
subject to any liability or obligation under the Lease or otherwise; and

(4) neither the Lease nor the Guarantee shall, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee or the Guarantor, the taking or omission of which might result in an alteration or impairment of the Lease or the Guarantee or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement shall be construed in accordance with the laws of the State of Texas.

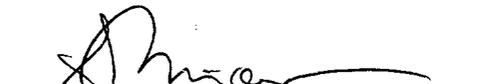
UTILITY FUELS, INC.,

by


Vice President

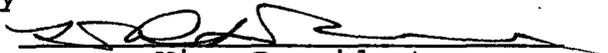
[Corporate Seal]

Attest:


Secretary

HOUSTON INDUSTRIES INCORPORATED,

by


Vice President

[Corporate Seal]

Attest:


Secretary