RECORDATION NO. 9114-B Filed & Recorded

DEC 5 1977 -2 45 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9114 Filed & Recorded

DEC 5 1977 -2 45 PM

INTERSTATE COMMERCE COMMISSION

UNITED STATES TRUST COMPANY OF NEW YORK
130 John Street
New York, New York

RECORDATION NO. 9114 Filed & Recorded

DEC 5 1977 -2 45 PM

INTERSTATE COMMERCE COMMISSION

December 5, 1977

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. 9114-A Filed & Recorded

DEC 5 1977 -2 45 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Enclosed for filing pursuant to Section 20c of the Interstate Commerce Act are copies of the following documents:

1. Conditional Sale Agreement dated as of October 15, 1977, between Bethlehem Steel Corporation and First Security Bank of Utah, N.A., as Trustee.

2. Agreement and Assignment dated as of October 15, 1977, between Bethlehem Steel Corporation and United States Trust Company of New York, as Agent.

3. Lease of Railroad Equipment dated as of October 15, 1977, between The Denver and Rio Grande Western Railroad Company and First Security Bank of Utah, N.A., as Trustee.

4. Assignment of Lease and Agreement dated as of October 15, 1977, between First Security Bank of Utah, N.A., as Trustee, and United States Trust Company of New York, as Agent.

The names and addresses of the parties to the documents listed above are as follows:

1. Vendor-Assignor:
Bethlehem Steel Corporation
Bethlehem, Pennsylvania 18016.

2. Agent-Vendor-Assignee:
United States Trust Company of New York
130 John Street
New York, N. Y. 10038

7-339A120

Date DEC 5 1977

Fee $ 120

ICC Washington, D. C.

3. Vendee-Lessor-Assignor:
First Security Bank of Utah, N.A.
79 South Main Street
Salt Lake City, Utah 84111.

4. Lessee:
The Denver and Rio Grande Western Railroad Company
One Park Central
1515 Arapohoe Street
Denver, Colorado 80217.

The instruments mentioned above cover the railroad equipment set forth in Schedule A hereto. All such equipment bears the road numbers of the Lessee shown on such Schedule, and also bear the following legend:

"Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c".

Please file and record the documents referred to in this letter and cross-index them under the names of the parties listed above. The amount of $120 in payment of the recording fee will be furnished by the delivering messenger.

Please return to the delivering messenger the following items:

(a) All counterparts of the documents referred to in this letter that are not required for filing, stamped with the appropriate recordation number.

(b) A stamped copy of this letter.

(c) Your fee receipt and letter confirming recordation addressed to Steven Kaba, United States Trust Company of New York, New York, N. Y.

Sincerely yours,

UNITED STATES TRUST COMPANY OF NEW YORK, as Agent,

by Stephen J. Kaba

SCHEDULE A

Type	Builder	Quantity	Lessee's Identification Numbers (Both Inclusive)
100 ton open to quadruple hopper cars	Bethlehem Steel Corporation	167	D&RGW 19395-19561

Interstate Commerce Commission
Washington, D.C. 20423

12/5/77

OFFICE OF THE SECRETARY

Steven Kaba
U.S. Trust Company Of N.Y.
New York, N.Y,

Dear Sir:

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 12/5/77 at 2:45pm, and assigned recordation number(s) 9114, 9114-A, 9114-B, 9114-C

Sincerely yours,

H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

RECORDATION NO. 9111 Filed & Recorded

DEC 5 1977 -2 45 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT dated as of October 15, 1977 (hereinafter called this Assignment), by and between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, not in its individual capacity but solely as trustee (hereinafter called the Lessor or the Vendee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with Bankers Trust Company (hereinafter called the Owner) and UNITED STATES TRUST COMPANY OF NEW YORK, as Agent (hereinafter called 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 (hereinafter called the Security Documentation) with Bethlehem Steel Corporation (hereinafter called the Builder), providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in Annex B thereto as are delivered to and accepted by the Vendee thereunder;

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

WHEREAS, 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 Conditional Sale 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 Docu-

mentation, 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 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 Section 20c of the Interstate Commerce Act. 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,
as Trustee,

[Seal]

by

Authorized Officer

Attest:

Authorized Officer

UNITED STATES TRUST COMPANY OF NEW YORK,
as Agent,

[Corporate Seal]

by

Asst Vice President

Attest:

Assistant Secretary

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

On this the 3rd day of December, 1977, 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.

Marion D. Cowan
Notary Public

[Notarial Seal]

My Commission expires
4/16/79

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

On this 1st day of DECEMBER, 1977, before me personally appeared IRENE R. SCOCCA to me personally known, who, being by me duly sworn, says that she 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 she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James E. Logan
Notary Public

[Notarial Seal]

JAMES E. LOGAN
Notary Public, State of New York
No. 24-2393228
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1979

My Commission expires

CONSENT AND AGREEMENT

The undersigned, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a Delaware corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called 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 (hereinafter called 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 W. J. Hollman

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of October 1977.

UNITED STATES TRUST COMPANY OF NEW YORK,
as Agent,

by Irene R. Scocco

Asst. Vice President