

6425

THIS AGREEMENT AND ASSIGNMENT, dated as of December 1, 1971, between B. H. HANSEN (hereinafter called "Hansen") and CHEMICAL BANK, as Agent (hereinafter called the "Assignee").

WHEREAS, Hansen and SEABOARD COAST LINE RAILROAD COMPANY, a Virginia corporation (hereinafter called the "Railroad"), have entered into a Conditional Sale Agreement, dated as of December 1, 1971 (hereinafter called the "Conditional Sale Agreement"), covering the construction, sale and delivery by Hansen and the purchase by the Railroad of the railroad equipment referred to in the Conditional Sale Agreement (hereinafter called the "Equipment");

NOW, THEREFORE, this Agreement and Assignment WITNESSETH that, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to Hansen, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. Hansen hereby assigns, transfers and sets over unto the Assignee, its successors and assigns (a) all the right, title and interest of Hansen in and to each unit of the Equipment when and as delivered and accepted and upon payment to Hansen of the amount required to be paid under the first paragraph of Section 6 hereof in respect of such unit, (b) all the right, title and interest of Hansen in and to the Conditional Sale Agreement in respect of the Equipment (except the right to construct and the right to receive the payments specified in the third paragraph of Article 2 thereof and in the third paragraph of Article 3 thereof and in the last paragraph of Article 16 thereof, and reimbursement for taxes paid or incurred by the Railroad as provided in Article 4 thereof) and in and to any and all amounts which may be or become due or owing by the Railroad to Hansen, as Vendor, under the Conditional Sale Agreement on account of the Railroad's indebtedness in respect of the purchase price 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) all of Hansen's rights, powers, privileges and remedies, as Vendor, under the Conditional Sale Agreement (without any recourse, however, against Hansen for or on account of the failure of the Railroad to make any of the payments provided for in, or other-

wise to comply with, any of the provisions of the Conditional Sale Agreement); *provided, however*, that this Agreement and Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of Hansen to construct and deliver the Equipment in accordance with the Conditional Sale Agreement, or relieve the Railroad from its obligations to Hansen under Articles 1, 2, 4, 14, 15 and 16 (except that the Assignee shall also be entitled to the benefit of the Railroad's obligations under said Articles) of the Conditional Sale Agreement; *it being understood and agreed that*, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of Hansen to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against Hansen. In furtherance of the foregoing assignment and transfer, Hansen 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 Hansen, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and 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.

2. Hansen covenants and agrees that he will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same under the Conditional Sale Agreement (but only after filing of the Conditional Sale Agreement and this Agreement and Assignment with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act) to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Agreement and Assignment, he will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by Hansen. Hansen further covenants and agrees that he will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment he had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement, and Hansen further covenants and agrees that he will defend the title to such unit against the

demands of all persons whomsoever based on claims originating prior to the delivery of such unit by Hansen to the Railroad pursuant to the Conditional Sale Agreement, all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

3. Hansen covenants and 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 purchase price or to enforce any provision of the Conditional Sale Agreement, Hansen will save, indemnify and hold harmless the Assignee from and against all expense, including, without limitation, counsel fees, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by Hansen of any obligation in respect of the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by Hansen. Any and all such obligations shall be and remain enforceable by the Railroad against and only against Hansen and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of Hansen under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers. The Assignee will give notice to Hansen of any suit, proceeding or action by the Assignee herein described, and shall promptly move or take other appropriate action, on the basis of Article 16 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Railroad therein, and if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee shall promptly notify Hansen of any such defense, set-off, counterclaim or recoupment asserted by the Railroad and Hansen shall thereafter be given the right by the Assignee, at Hansen's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment.

4. Hansen covenants and agrees that, at the time of delivery of each unit of the Equipment to the Railroad, there will be plainly, distinctly, permanently and conspicuously placed and fastened on each side thereof a metal plate bearing the following legend, or such legend shall be otherwise

plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case in letters not less than one inch in height:

CHEMICAL BANK, AGENT—SECURITY OWNER

5. Upon request of the Assignee, its successors and assigns, Hansen 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 Hansen therein or in the Equipment.

6. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement, shall pay to or upon the order of Hansen an amount equal to the Purchase Price (as defined in said Article 3), provided that there shall have been delivered to the Assignee, as provided in Article 16 of the Conditional Sale Agreement, at least five business days prior to the Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) A bill of sale from Hansen to the Assignee, evidencing the transfer to the Assignee of title to the Equipment and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad under the Conditional Sale Agreement, Hansen had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) A Certificate of Acceptance with respect to the Equipment as contemplated by Article 2 of the Conditional Sale Agreement;

(c) Duplicate invoice or invoices for the Equipment accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the price stated therein;

(d) An opinion of counsel for the Assignee, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (ii) this Agreement and Assignment has been duly executed and delivered and is a legal, valid and binding instrument, (iii) the Assignee is vested with all the right, title and

interest of Hansen in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the Equipment is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Agreement and Assignment, (vi) the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that 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 the District of Columbia, and (vii) registration of the Conditional Sale Agreement or this Agreement and Assignment or of the interests acquired herein 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 said opinion shall cover such other matters as shall be reasonably requested by the Assignee;

(e) An opinion of counsel for Hansen stating that (i) the Conditional Sale Agreement has been duly executed and delivered by Hansen and is a legal and valid instrument binding upon Hansen and enforceable against Hansen in accordance with its terms, (ii) this Agreement and Assignment has been duly executed and delivered by Hansen and is a legal and valid instrument binding upon Hansen, (iii) the Assignee is vested with all the right, title and interest of Hansen in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the Equipment has been validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement and (v) neither the execution and delivery of the Conditional Sale Agreement and this Agreement and Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction

or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which Hansen is now a party or constitute a default thereunder;

(f) An opinion of counsel for the Railroad covering the matters referred to in subdivisions (i) through (vii) of paragraph (d) of this Section 6, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) there is no condition, restriction or requirement in the documents constituting the corporate charter of the Railroad relating to or affecting the execution and delivery by the Railroad of the Conditional Sale Agreement or the enforceability thereof in accordance with its terms or requiring any approval of stockholders in respect thereof, and (iii) neither the execution and delivery of the Conditional Sale Agreement and this Agreement and Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or constitute a default thereunder.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed on bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving an opinion pursuant to subparagraph (d) of the next preceding paragraph, counsel for the Assignee may rely on the opinions of local counsel and of counsel for Hansen and the Railroad referred to in subparagraphs (e) and (f) of the preceding paragraph as to all matters of Virginia law and as to matters of title to the Equipment immediately prior to the time it is subjected to the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the

lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays observed by banks in the City of New York, N. Y.

7. 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.

8. Hansen hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by him and lawfully executed and delivered by him for a valid consideration, that he has no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as Hansen is concerned, a valid and existing agreement binding upon Hansen and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenants and agrees that he 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 the Assignee or intended so to be.

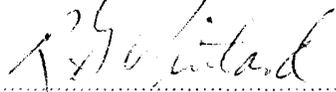
9. This Agreement and Assignment shall be construed in accordance with the laws of the State of New York, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and by the recordation provisions of any other act pursuant to which this Agreement and Assignment is recorded.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly signed, all as of the day, month and year first above written.

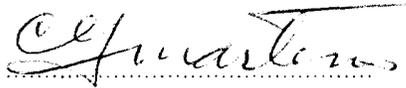

.....
B. H. HANSEN

CHEMICAL BANK, as Agent

[Corporate Seal]

By 
.....
Vice President

Attest:


.....

STATE OF VIRGINIA }
CITY OF RICHMOND } ss.

On this 14th day of December, 1971, before me personally appeared B. H. HANSEN, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

J. H. Chapman
Notary Public

[NOTARIAL SEAL]

My commission expires July 12, 1974.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

On this 13th day of December, 1971, before me personally appeared R. G. FINTASO, to me personally known, who being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, that the seal 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.

John L. Bervar
Notary Public

[NOTARIAL SEAL]

My commission expires

JOHN L. BERVAR
Notary Public, State of New York
No. 41-5303890
Qualified in Queens County
New York County
1972

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

SEABOARD COAST LINE RAILROAD COMPANY hereby acknowledges due notice of, and consents to, the assignment made by the foregoing Agreement and Assignment dated December 1, 1971.

SEABOARD COAST LINE RAILROAD
COMPANY

By *Leonard G. Anderson*
Leonard G. Anderson,
Its Treasurer