

JAN 24 1973

AGREEMENT AND ASSIGNMENT

Dated as of December 1, 1972

BETWEEN

CHEMICAL BANK

Original Assignee of Vendors' Interest

AND

UNITED BENEFIT LIFE INSURANCE COMPANY

Assignee

(1972 Weyerhaeuser Trust)

6876-B
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INTERSTATE COMMERCE COMMISSION

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AGREEMENT AND ASSIGNMENT dated as of December 1, 1972 between CHEMICAL BANK, a New York banking corporation ("Chemical") and UNITED BENEFIT LIFE INSURANCE COMPANY (the "Assignee").

WHEREAS, THRALL CAR MANUFACTURING COMPANY (the "Manufacturer") and THE LIBERTY NATIONAL BANK AND TRUST COMPANY OF OKLAHOMA CITY, not in its individual capacity but solely as Trustee (the "Trustee-Vendee") under a Trust Agreement dated as of December 1, 1972, as heretofore or hereafter restated and amended (the "Trust Agreement") have entered into a Conditional Sale Agreement dated as of December 1, 1972 (the "Conditional Sale Agreement"), covering the construction, sale and delivery on the conditions therein set forth, by the Manufacturer and the purchase by the Trustee-Vendee of the railroad equipment described in Schedule A to the Conditional Sale Agreement (collectively the "Equipment" and individually "Items of Equipment"); and

WHEREAS, the Trustee-Vendee is leasing the Items of Equipment described in said Schedule A under an Equipment Lease as amended and restated by First Amendment and Restatement thereof, each dated as of the date hereto (the "Lease") to TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY, an Oklahoma corporation (the "Lessee"); and

WHEREAS, the obligations of Texas Railroad under said Equipment Lease are guaranteed under a Guaranty Agreement (the "Guaranty Agreement") dated as of the date hereof by WEYERHAEUSER COMPANY, a Washington corporation ("Weyerhaeuser"); and

WHEREAS, the Manufacturer and Chemical have heretofore entered into an Agreement and Assignment (the "Manufacturer's Assignment") dated as of December 1, 1972 pursuant to which the Manufacturer has assigned, transferred and set over unto Chemical, its successors and assigns, certain of its right, title and interest in the Equipment to be manufacturer by it and in the Conditional Sale Agreement as it relates to such Equipment, including certain of its rights, powers, privileges and remedies under the Conditional Sale Agreement as the same relate to such Equipment, all as more fully set forth in the Manufacturer's Assignment; and

WHEREAS, the Items of Equipment have been delivered by the Manufacturer and accepted by the Trustee-Vendee under the Conditional Sale Agreement and by the Lessee under the Lease, and Chemical has paid to the Manufacturer for such Items of Equipment an amount equal to that portion of the Purchase Price (as defined in Section 3.1 of the Conditional Sale Agreement) of such Items of Equipment not required to be paid pursuant to subparagraph (a) of Section 3.2 of the Conditional Sale Agreement.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (the "Assignment"),

W I T N E S S E T H:

That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to Chemical, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

Section 1. Assignment. Chemical hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, effective July 17, 1973, but only upon the payment by the Assignee to Chemical of the sum provided to be paid in Section 2 hereof (and subject to the obligations of the Assignee to reassign to Chemical all right, title and interest assigned hereunder in the event the Assignee shall not make payment of such sum as provided in the final paragraph of Section 2 hereof):

(a) All right, title and interest of Chemical in and to each Item of Equipment upon payment by the Assignee to Chemical of the amount required to be paid under Section 2 hereof;

(b) All the right, title and interest of Chemical in and to the Conditional Sale Agreement insofar as the same relates to the Equipment, and in and to any and all amounts which may be or become due or owing to Chemical under the Conditional Sale Agreement on account of the indebtedness 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 Trustee-Vendee under the Conditional Sale Agreement, other than those hereinabove excluded;

(c) All of Chemical's rights, powers, privileges and remedies under the Conditional Sale Agreement insofar as the same relate to the Equipment; and

(d) All the right, title and interest of Chemical, as assignee under the Manufacturer's Assignment, in and to the Manufacturer's Assignment, including without limitation, all covenants and agreements of the Manufacturer to Chemical and its successors and assigns therein set forth, and all of Chemical's rights, powers, privileges and remedies relating to the same;

without any recourse, however, against Chemical for or on account of the failure of the Trustee-Vendee 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 obligations of the Manufacturer to deliver the various Items of Equipment to be built by it in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Sections 10.3 and 11 of the Conditional Sale Agreement or relieve the Trustee-Vendee from its obligations to such Manufacturer under Sections 10 and 12 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 12.4 of the Conditional Sale Agreement, all obligations of such Manufacturer to the Trustee-Vendee shall be and remain enforceable by the Trustee-Vendee, its successors and assigns, against and only against such Manufacturer. In furtherance of the foregoing assignment and transfer, Chemical 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 Chemical or the Manufacturer 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 compliance by the Trustee-Vendee with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

Section 2. Payment by Assignee. The Assignee, on July 17, 1973 (the "Assignment Closing Date"), shall pay to Chemical at its offices at 20 Pine Street, New York, New York, in Federal Reserve funds current in New York, or in funds otherwise immediately available to Chemical at such offices, a sum equal to the aggregate amount paid by Chemical to the Manufacturer of a portion of the Purchase Price (as defined in Section 3.1 of the Conditional Sale Agreement) of the Equipment on the Closing Date under the Conditional Sale Agreement, including the amount so paid, if any, by Chemical on the Assignment Closing Date; provided that, as conditions precedent to such payment, there shall be delivered to the Assignee on or before the Assignment Closing Date the following documents, in duplicate, which shall be in form and substance satisfactory to the Assignee and its special counsel:

(a) Bill or Bills of Sale from the Manufacturer to Chemical, transferring to Chemical title to each of the Items of Equipment and warranting to Chemical and to the Trustee-Vendee that at the time of delivery to the Trustee-Vendee under the Conditional Sale Agreement the Manufacturer had legal title to such Items and good and lawful right to sell such Items, and title to such Items was free of all claims, liens and encumbrances of any nature except only the rights of the Trustee-Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(b) Bill of Sale from Chemical to the Assignee transferring to the Assignee title to each of the Items of Equipment and warranting to the Assignee that Chemical will defend the title to the Equipment against all claims and demands of persons claiming by, through or under Chemical, excepting only the rights of the Trustee-Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(c) Certificate or Certificates of Acceptance signed by an inspector or other authorized representative of the Lessee thereof and Trustee-Vendee stating that each of the Items of Equipment has been inspected and accepted by him on behalf of such Lessee and the Trustee-Vendee and further stating that there was plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each of such Items at the time of its acceptance, in letters not less than one inch in height, the following legend:

"Leased by The Liberty National Bank and Trust Company of Oklahoma City, and subject to a Security Interest Recorded with the I.C.C.";

(d) Invoices to the Trustee-Vendee for the Items of Equipment accompanied by or having endorsed thereon a certification by the Lessee thereof as to the correctness of the prices of such Items as set forth in said invoices;

(e) Opinion of Messrs. Chapman and Cutler, who are acting as special counsel for the Assignee, dated such Closing Date and stating that (1) the Trustee-Vendee is a duly organized and existing corporation in good standing

under the laws of the state of its incorporation, (ii) the Trust Agreement has been duly authorized, executed and delivered by the Trustee-Vendee and constitutes a valid, binding and effective agreement and declaration of trust by the Trustee-Vendee in accordance with the terms thereof, (iii) the trust created and provided for by the Trust Agreement is not taxable as an association under existing statutes, regulations and decisions relating to Federal Income Taxes, (iv) the Acquisition Agreement (the "Acquisition Agreement") dated as of December 1, 1972 entered into by the Lessee and the Trustee-Vendee with the Manufacturer, the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the respective parties thereto and are valid and binding instruments enforceable in accordance with their respective terms (v) the Manufacturer's Assignment and this Assignment have each been duly authorized, executed and delivered by the respective parties thereto and are valid and binding instruments enforceable in accordance with their respective terms, (vi) the Assignee is vested with all the rights, titles, interest, powers, privileges and remedies purported to be assigned to it by this Assignment, (vii) title to each Item of Equipment is validly vested in the Assignee and such Item, at the time of delivery thereof to the Trustee-Vendee under the Conditional Sale Agreement, was free of all claims, liens and encumbrances except only the rights of the Trustee-Vendee under the Conditional Sale Agreement and the rights of the Lessee thereof under the Lease, (viii) 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 Assignment or the Lease, and (ix) the Conditional Sale Agreement, the Manufacturer's Assignment, this Assignment and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act 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;

(f) Opinion of counsel for the Lessee, dated on or prior to the Assignment Closing Date, to the effect set forth in clauses (vii), (viii) and (ix) of subparagraph (e) above, and stating that (i) each Lessee 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 own properties and to carry on its business as now conducted, and (ii) the Acquisition Agreement and Lease have each been duly authorized, executed and delivered on behalf of the Lessee and are valid and binding instruments enforceable against the Lessee, in accordance with their respective terms;

(g) Opinion of counsel for the Manufacturer, dated on or prior to the Assignment Closing Date, to the effect set forth in clauses (vi) and (vii) of subparagraph (e) above and stating that (i) such Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement, the Manufacturer's Assignment and the Acquisition Agreement with such Manufacturer have each been duly authorized, executed and delivered by such Manufacturer and are valid instruments binding upon such Manufacturer and enforceable against such Manufacturer in accordance with their terms;

(h) An opinion of counsel for the Trustee-Vendee, dated on or prior to the Assignment Closing Date, addressed to the Trustor under the Trust Agreement, the Assignee and Messrs. Chapman and Cutler, to the effect that (i) the Trustee-Vendee is a duly organized and existing corporation in good standing under the laws of the state of its incorporation, (ii) the Trust Agreement has been duly authorized, executed and delivered by the Trustee-Vendee, (iii) the Trustee-Vendee has full right, power and authority under the Trust Agreement to enter into, execute and deliver the Acquisition Agreement, the Conditional Sale Agreement and the Lease and to perform each and all of the matters and things provided for in said instruments, and (iv) the Acquisition Agreement, the Conditional Sale Agreement and the Lease have been duly executed and delivered by the Trustee-Vendee;

(i) An opinion of counsel for Weyerhaeuser, dated on or prior to the Assignment Closing Date, stating that the Guaranty Agreement has been duly authorized, executed and delivered by Weyerhaeuser and constitutes the legal, valid and binding agreement of Weyerhaeuser enforceable in accordance with its terms;

(j) Receipt from the Manufacturer for payment of the amount payable with respect to the Equipment pursuant to subparagraph (a) of Section 3.3. of the Conditional Sale Agreement.

In giving the opinions specified in the preceding subparagraphs (e), (f), (g), (h) and (i), 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 by bankruptcy, insolvency,

reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in the preceding subparagraphs (e) and (f), counsel may in fact rely as to the title to the Items of Equipment upon the opinion of counsel for the Manufacturer of such Items. In the opinion required under subparagraph (e) above, counsel shall state that in their opinion the Assignee is justified in relying on the opinion required under subparagraphs (f), (g), (h) and (i).

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. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to Chemical or such other party as Chemical shall direct, without recourse to the Assignee, all right, title and interest assigned hereunder to the Assignee in and to the Items of Equipment and all other rights, titles, interests, powers, privileges and remedies assigned pursuant to Section 1 hereof with respect to which payment has not been made by the Assignee.

Section 3. Subsequent Assignment. 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 Trustee-Vendee 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 4. Governing Law. 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 by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

Section 5. Execution. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Trustee-Vendee and the Lessee. Although this Assignment is dated for convenience as of the date first above written, 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.

IN WITNESS WHEREOF, Chemical and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the day, month and year first above written.

CHEMICAL BANK

By *D. J. Delaporte*
Its VICE PRESIDENT

Attest:

Arthur A. Kelly

UNITED BENEFIT LIFE INSURANCE
COMPANY

By *Peter F. Farnen*
Its VICE PRESIDENT

Attest:

Bernard H. Kelly
Secretary

STATE OF NY)
COUNTY OF NY) SS.

On this 1st day of February, 1973, before me personally appeared D.A. Delaparte, to me personally known, who, being by me duly sworn, says that he is the 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.

(Notarial Seal)

My commission expires:

Eugene J. Venier
Notary Public
EUGENE J. VENIER
NOTARY PUBLIC, State of New York
No. 41-9457835
Qualified in Queens County
Commission expires March 30, 1974

STATE OF Nebraska)
COUNTY OF Douglas) SS.

On this 6th day of February, 1973, before me personally appeared Peter F. Freneyer, to me personally known, who, being by me duly sworn, says that he is the Vice President of UNITED BENEFIT LIFE INSURANCE COMPANY, 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.

(Notarial Seal)

My commission expires: April 26, 1974

A. Allard
Notary Public