

RECORDATION NO. 9414 Filed & Recorded

GREENBERG IRWIN PELLMAN & SLADE
COUNSELORS AT LAW

JUN 1 1978 - 2 55 PM

HAROLD GREENBERG
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9416 A
RECORDATION NO. Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

May 30, 1978

INTERSTATE COMMERCE COMMISSION
540 MADISON AVENUE
NEW YORK, N.Y. 10022

RECORDATION NO. 9415 Filed & Recorded

JUN 1 1978 - 2 55 PM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Twelfth and Constitution Ave., N.W.
Washington, D.C. 20423

RECORDATION NO. 9416 Filed & Recorded

JUN 1 1978 - 2 55 PM

Attention: Mrs. Lee (Room 1227)

Re: Marine Midland Bank - Atlantic & Western

8-122A059
JUN 1 1978
Fee \$ 1.50

ICC Washington, D. C.

Dear Mrs. Lee:

We enclose with this letter, the following documents to be filed in the order as given below:

First: Chattel Mortgage and Security Agreement, original and duplicate copy, dated May 26, 1978, from Atlantic & Western Financial Corporation to Marine Midland Bank;

Second: Original and duplicate of the following Lease Agreements: Lease Agreement dated December 26, 1977 between Atlantic & Western Financial Corporation and Atlantic and Western Corporation; and Lease Agreement dated April 1, 1978, between Atlantic & Western Financial Corporation and Hutchinson And Northern Railway Company;

Third: Agreement and Assignment dated May 26, 1978 between Atlantic & Western Financial Corporation and Marine Midland Bank, original and duplicate.

Also enclosed is check to the order of the Interstate Commerce Commission in the amount of \$150.00.

Kindly file the above documents and return stamped acknowledgement thereof to the attention of the undersigned.

Yours truly,

Melvin S. Slade

MSS:ig
Enc.

RECEIVED
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FEE OPERATION BR.1
D.C.C.

Interstate Commerce Commission
Washington, D.C. 20423

6/2/78

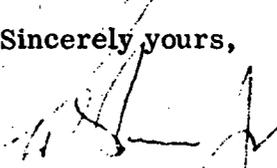
OFFICE OF THE SECRETARY

Mr. Melvin S. Slade
Greenberg, Irwin Pellman & Slade
540 Madison Avenue
New York, N.Y. 10022

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 **6/1/78** at **2:55^{pm}**, and assigned recordation number(s) **9414, 9415, 9416 & 9416-A**

Sincerely yours,


H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

RECORDATION NO. 9416-A Filed & Recorded

JUN 1 1978 2 55 PM

AGREEMENT AND ASSIGNMENT

INTERSTATE COMMERCE COMMISSION

AGREEMENT and ASSIGNMENT dated as of this 26th day of May , 1978, between ATLANTIC & WESTERN FINANCIAL CORPORATION, a corporation of the State of Delaware with an office at 317 Chatham Street, Sanford, North Carolina 27330 (Atlantic & Western), and MARINE MIDLAND BANK with an office at 140 Broadway, New York, New York 10015, a New York banking corporation (Assignee).

WHEREAS, Atlantic & Western and Atlantic & Western Corporation, a corporation of the State of North Carolina (A&W Lessee), have entered into an Agreement of Lease dated December 26, 1977 (A & W Lease), providing for the lease on the conditions therein set forth, by the Atlantic & Western to the A&W Lessee, of 25 railroad boxcars as more particularly described therein, for use or intended for use in interstate commerce, a copy of the original A & W Lease being attached hereto; and

WHEREAS, Atlantic & Western and the Hutchinson and Northern Railway Company, a corporation of the State of Kansas (H&N Lessee) have entered into an Agreement of Lease dated

April 1, 1978 (H&N Lease), providing for the lease on the conditions therein set forth, by the Atlantic & Western to the H&N Lessee of 25 railroad boxcars as more particularly described therein, for use or intended for use in interstate commerce, a copy of the original H&N Lease being attached hereto (said 50 boxcars are hereinafter collectively referred to as the "Equipment"):

Rec. No. 9415

Rec. No. 9414

NOW, THEREFORE, THIS AGREEMENT and ASSIGNMENT
WITNESSETH that, in consideration of the sum of One Dollar
(\$1.00) and other good and valuable consideration paid by
Assignee to Atlantic & Western, the receipt of which is here-
by acknowledged, as well as of the mutual covenants herein
contained:

1. Atlantic & Western hereby sells, assigns,
transfers and sets over to Assignee, its successors and
assigns:

(a) All right, title and interest of Atlantic
& Western in and to the A&W Lease and the H&N Lease, any
and all amounts which may be or become due or owing by
the A&W Lessee and the H&N Lessee under the A&W Lease
and the H&N Lease on account of the rental payments,
and any other sums which may become due from the A&W Lessee
and the H&N Lessee;

(b) All of Atlantic & Western's rights, powers,
privileges and remedies under the A&W Lease and the H&N
Lease (without any recourse, however, against Atlantic &
Western solely by reason of the failure of the A&W Lessee
or the H&N Lessee to make any of the payments provided for
in, or otherwise to comply with, any of the provisions of either
the A&W Lease or the H&N Lease; provided, however, that
this Agreement and Assignment shall not subject Assignee
to, or transfer, or pass, or in any way affect or modify,
the liability of Atlantic & Western in respect of its

obligations contained in the A&W Lease or the H&N Lease, or relieve the A&W Lessee or the H&N Lessee from its or their obligations to Atlantic & Western under the A&W Lease or the H&N Lease, it being understood and agreed that, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of the A&W Lease or the H&N Lease, all obligations of Atlantic & Western to the A&W Lessee or the H&N Lessee in respect of the Equipment shall be and remain enforceable by the A&W Lessee or the H&N Lessee as the case may be, their successors and assigns, against and only against Atlantic & Western.

In furtherance of the foregoing assignment and transfer, Atlantic & Western hereby authorizes and empowers Assignee, in Assignee's own name or in the name of Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for Atlantic & Western, to ask, demand, sue for, collect, receive and enforce any and all sums to which Assignee is or may become entitled under this Agreement and Assignment and compliance by the A&W Lessee and/or the H&N Lessee with the terms and agreements on each of their part to be performed under the A&W Lease or the H&N Lease, at the expense and liability of Atlantic & Western but for the sole benefit of Assignee.

Anything in this Agreement and Assignment to the contrary notwithstanding, Assignee shall have no right to make demand upon either Atlantic & Western, as Lessor, the A&W Lessee or the H&N Lessee for the rental payments or any other sums due under the A&W Lease or the H&N Lease, unless and until there shall have occurred an event of default which remains uncured during any applicable grace period under that certain Loan Agreement between Assignee and Atlantic & Western, dated May 26, 1978, the terms of which are incorporated herein by reference thereto.

2. Atlantic & Western represents and warrants that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all of the covenants and conditions of the A&W Lease and the H&N Lease set forth to be performed and complied with by Atlantic & Western. Atlantic & Western further represents and warrants to Assignee, its successors and assigns that at the time of execution and delivery of the A&W Lease and the H&N Lease, Atlantic & Western had legal title to the Equipment; the title to the Equipment was free of all claims, liens and encumbrances of any nature except only the rights of Assignee under that certain Chattel Mortgage and Security Agreement dated May 1978, and the rights of the A&W Lessee and the H&N Lessee under the said A&W Lease or H&N Lease. Atlantic & Western further represents and warrants to Assignee, its successors and assigns, that both the A&W Lease and the H&N Lease were duly authorized and lawfully executed by Atlantic & Western for a valid

consideration and is binding upon Atlantic & Western in accordance with its terms, and that both the A&W Lease and the H&N Lease are now in force without amendment thereto and may be assigned to the Assignee. Atlantic & Western further covenants and agrees that it will defend the title to the Equipment against the demands of all persons whomsoever, subject, however, to the provisions of the A&W Lease and the H&N Lease and the rights of Lessees under the terms thereof.

3. Atlantic & Western covenants and agrees with Assignee that, in any suit, proceeding or action brought by Assignee under either the A&W Lease or the H&N Lease for any payment due and owing, or to enforce any provision of either thereof, or to recover any other sums due from either the A&W Lessee or the H&N Lessee in respect of the Equipment, Atlantic & Western will save, indemnify and keep harmless Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of Atlantic & Western arising out of a breach by Atlantic & Western of any obligation in respect of the Equipment or any obligation of Atlantic & Western pursuant to either the A&W Lease or the H&N Lease, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to either the A&W Lessee or the H&N Lessee by Atlantic & Western. Any and all such obligations shall be and remain enforceable by either the A&W Lessee or the H&N Lessee against, and only against, Atlantic & Western.

and shall not be enforceable against Assignee or any party or parties in whom title to the Equipment or any unit thereof or the rights of Atlantic & Western under either the A&W Lease or the H&N Lease shall vest by reason of this assignment or of successive assignments or transfers. Atlantic & Western will indemnify, protect and hold harmless Assignee from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes, or is claimed to infringe, on any patent or other right.

4. Atlantic & Western represents and warrants that, as soon as practicable after the date hereof, each unit of the Equipment delivered under the A&W Lease or the H&N Lease will be plainly, distinctly, permanently and conspicuously marked by stenciling or otherwise on each side of each unit, in letters not less than one inch in height, with the following legend:

MARINE MIDLAND BANK, SECURED PARTY

5. Simultaneously with the execution of this Agreement And Assignment, there shall be delivered to Assignee:

(a) A certificate, or certificates, signed by an authorized representative of the A&W Lessee or the H&N Lessee, as the case may be, stating that the units of the

Equipment have been inspected by such Lessee; that such units are in good order and condition; that such units conform to all applicable Interstate Commerce Commission requirements and specifications and all standards recommended by the Association of American Railroads; and that such units are subject to the terms of the A&W Lease or the H&N Lease, as the case may be;

(b) Certificates of Atlantic & Western, or an authorized representative of Atlantic & Western, and of the A&W Lessee or the H&N Lessee, as the case may be, to the effect that their respective leases are in full force and effect and no default exists under the terms thereof, and no event has occurred which with the passage of time would constitute a default under the terms thereof.

(c) A favorable opinion of Messrs. McDermott & Parks, counsel for Atlantic & Western, stating that (i) both the A&W Lease and the H&N Lease have been duly authorized, executed and delivered and are valid and binding instruments enforceable in accordance with their terms; (ii) this Agreement and Assignment has been duly authorized, executed and delivered by Atlantic & Western and is a valid and binding instrument enforceable in accordance with its terms; (iii) Assignee is vested with all the right, title and interest of Atlantic & Western in and to both the A&W Lease and the H&N Lease purported to be assigned to Assignee by this Agreement and Assignment; (iv) both the A&W Lease and the H&N Lease and this

Agreement and Assignment are in recordable form for filing with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and, when recorded, will validly vest in Assignee a perfected security interest in the Equipment, free of all claims, liens, encumbrances and other security interests, except the rights of the A&W Lessee and the H&N Lessee under their respective leases, and no other filing or recordation is necessary to protect the rights of Assignee in any state of the United States of America or the District of Columbia, and (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of either of the A&W Lease or the H&N Lease.

6. Upon request of Assignee, its successors and assigns, Atlantice & Western will execute any and all instruments which may be necessary or proper in order to discharge of record any instrument evidencing any interest of Atlantic & Western in the Equipment.

7. Assignee may assign all or any of its rights under the A&W Lease or the H&N Lease, including the right to receive payments due or to become due to it thereunder. In the event of any such assignment, any such subsequent or successor assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of Assignee hereunder.

8. Atlantic & Western covenants and agrees that it will, from time to time and at all times, at the request of 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 Assignee or intended to be.

9. The terms of this Agreement and 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 rights conferred by Section 20c of the Interstate Commerce Act.

10. The A&W Lease and the H&N Lease are incorporated herein by reference and shall be deemed a part of this Agreement and Assignment.

11. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Assignment to be duly executed as of the date

first above written.

ATLANTIC & WESTERN FINANCIAL
CORPORATION

ATTEST:

O. Tracy Parker ^{MS}
Secretary

By: W. B. Spyer ^{Pres.}

ATTEST:

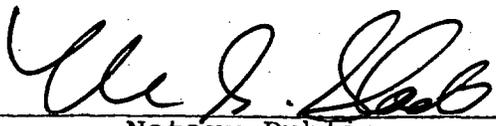
John B. Bamber

MARINE MIDLAND BANK

By: Joseph C. Lane ^{VP}

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this 26 day of May, 1978, before me personally appeared JOSEPH A. NEMIA, to me personally known, who, being by me duly sworn, says that he is a Vice President of MARINE MIDLAND 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.

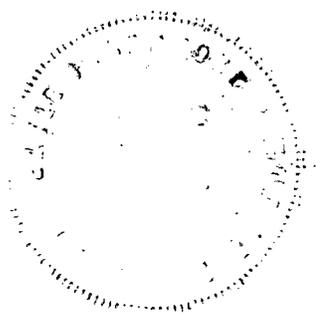


Notary Public

MELVIN S. SLADE
Notary Public, State of New York
No. 31-3700630
Qualified in New York County
Term Expires March 30, 1979

W. A. Jones

W. A. Jones



W. A. JONES