

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

INTERNATIONAL TELETYPE: 620978

TELEPHONE: 581-0338

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RECORDATION NO. 9442 Filed & Recorded

JUN 13 1978 - 10 42 AM

INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

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CABLE ADDRESSES
CRAVATH, N.Y.
CRAVATH, PARIS
CRAVATH, LONDON E. C. 2

June 13, 1978

Dear Sir:

Herewith for recordation pursuant to Section 20c of the Interstate Commerce Act are counterparts of the following:

- (1) Conditional Sale Agreement dated as of March 15, 1978, between Hartford National Bank and Trust Company, Trustee, as vendee, and ACF Industries Incorporated and Union Tank Car Company, as builders, vendors;
- (2) Lease of Railroad Equipment dated as of March 15, 1978, between Virginia Chemicals Inc., as lessee, and Hartford National Bank and Trust Company, Trustee, as lessor;
- (3) Assignment of Lease and Agreement dated as of March 15, 1978, between Hartford National Bank and Trust Company, Trustee, as lessor, vendee, and Union Mutual Life Insurance Company, assignee; and
- (4) Agreement and Assignment dated as of March 15, 1978, between ACF Industries Incorporated and Union Tank Car Company, as builders, and Union Mutual Life Insurance Company, assignee.

The addresses of the parties to the aforementioned agreements are:

Tom Gindoff
Christy

RECEIVED
JUN 13 10 37 AM '78
I.C.C.
OPERATION SR.

8-1044053

JUN 13 1978

Date
Page 3

Washington, D. C.

Vendee-Lessor:

Hartford National Bank and Trust Company
777 Main Street,
Hartford, Connecticut 06115

Builders-Vendors:

ACF Industries Incorporated,
750 Third Avenue,
New York, N. Y. 10017

Union Tank Car Company,
111 West Jackson Boulevard,
Chicago, Illinois 60604

Lessee:

Virginia Chemicals Inc.,
3340 West Norfolk Road,
Portsmouth, Virginia 23703

Vendor-Assignee:

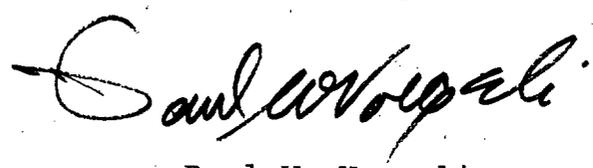
Union Mutual Life Insurance Company,
2211 Congress Street,
Portland, Maine 04112

The Equipment covered by the aforementioned consists of 34 30,800 gallon, minimum, non-insulated general purpose tank cars, road number VCFX 136, inclusive; 10 17,300 gallon capacity, tank cars equipped for chlorine or sulfur dioxide, road numbers VCFX 176-VCFX 185, inclusive, and 10 30,000 gallon minimum, non-coiled, non-insulated general purpose tank cars; road numbers VCFX 167-VCFX 175, inclusive, also bearing the legend "Ownership subject to Agreement filed under the Interstate Commerce Act, Section 20c".

Enclosed is a check for \$100 for the recordation fee. Please accept for recordation part of each of the enclosed agreements, stamp counterparts and the enclosed copy of this letter. Return the recordation number and return them to the deliverer.

along with your fee receipt, addressed to the undersigned.

Very truly yours,

A handwritten signature in cursive script, reading "Paul W. Voegeli". The signature is written in black ink and is positioned above the typed name.

Paul W. Voegeli

The Honorable A. G. Homme, Esq.,
Acting Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

U

BY HAND

Interstate Commerce Commission
Washington, D.C. 20423

6/13/78

OFFICE OF THE SECRETARY

Paul W. Voegeli
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

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 **6/13/78** at **10:40am** and assigned recordation number(s) **9442, 9442-A, 9442-B, 9442-C**

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

9442-A
RECORDATION NO. _____ Filed & Recorded

JUN 13 1978 - 10 40 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of March 15, 1978

between

ACF INDUSTRIES INCORPORATED,

UNION TANK CAR COMPANY

and

UNION MUTUAL LIFE INSURANCE COMPANY

AGREEMENT AND ASSIGNMENT dated as of March 15, 1978, between ACF INDUSTRIES INCORPORATED, and UNION TANK CAR COMPANY (hereinafter called the Builders) and UNION MUTUAL LIFE INSURANCE COMPANY (hereinafter called the Assignee).

WHEREAS the Builders and HARTFORD NATIONAL BANK AND TRUST COMPANY, as Trustee (hereinafter called the Vendee), under a Trust Agreement dated as of December 30, 1977 (hereinafter called the Trust Agreement), with Chemlease Worldwide, Inc., and GATX Aircraft Corporation have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment); and

WHEREAS the Vendee and VIRGINIA CHEMICALS INC. (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 lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of the Equipment manufactured by it when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due to such Builder under the Conditional Sale Agreement;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder 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 Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the 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 such Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to either Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of each Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the appropriate Builder. In furtherance of the foregoing assignment and transfer, each Builder 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 such Builder, 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 Vendee 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.

SECTION 2. Each Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment manufactured by it under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and each Builder further agrees that it 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 such Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. Neither Builder will deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (each Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment manufactured by it or to enforce any provision of the Conditional Sale Agreement, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to such Equipment or the manufacture, construc-

tion, delivery or warranty thereof, 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 the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the appropriate Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by either Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by either Builder, each Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment manufactured by such Builder of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the appropriate Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder of the units being settled for to the Assignee transferring to the Assignee the security interest of such Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, such Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement and § 2 of the Lease;

(c) an invoice of the Builder of the units being settled for for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder of the units being settled for, dated as of such Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and, assuming that the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the

Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, are valid and effective to vest in the Assignee the first security interest of such Builder in the units of the Equipment in such Group, free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease) arising from, through or under such Builder; and

(e) a receipt from the Builder of the units being settled for for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. 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 Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee,

the Conditional Sale Agreement is, in so far as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, 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 all 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 by such Builder or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it 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 such Builder therein or in the Equipment.

SECTION 7. 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, 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, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated 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, the parties hereto, each pursuant to due corporate authority, have caused this instrument

to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES INCORPORATED,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

UNION TANK CAR COMPANY,

by

Carl W. Peters

Vice President

[Corporate Seal]

Attest:

A. B. Hillman

Assistant Secretary

UNION MUTUAL LIFE INSURANCE
COMPANY,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF MAINE,)
) ss.:
COUNTY OF ,)

On this day of June 1978, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of Union Mutual 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.

Notary Public

[Notarial Seal]

My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of March 15, 1978.

HARTFORD NATIONAL BANK AND TRUST
COMPANY, As Owner Trustee,

by

Vice President