

RECORDATION NO. 8041-^A Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of August 1, 1975,

BETWEEN

FMC CORPORATION

AND

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Agent

AGREEMENT AND ASSIGNMENT

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imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (e), counsel may rely (i) as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder and (ii) as to any matter governed by the law of any jurisdiction other than the State of New York or the United States, on the opinion of counsel for the Builder, the Lessee or the Guarantor as to such matter.

The obligation of the Vendor hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Vendor having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment and upon payment by the Owner-Trustee 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. The Vendor shall not be obligated to make any of the above-mentioned payments at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the Conditional Sale Agreement or if 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 have occurred and be continuing under the Conditional Sale Agreement. In the event that the Vendor shall not make any such payment, the Vendor shall reassign to the Builder, without recourse to the Vendor, all right, title and interest of the Vendor in and to the units of the Equipment with respect to which payment has not been made by the Vendor.

SECTION 5. The Vendor 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 Owner-Trustee or the Guarantor 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 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Vendor, its 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 Owner-Trustee and the Guarantor, the Conditional Sale Agreement is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the 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 and at all times, at the request of the Vendor 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 Vendor or intended so to be; and

(c) agrees that, upon request of the Vendor, 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 the 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 Illinois, *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 the Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Vendor 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.

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 the date thereof.

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee,

by

[Handwritten Signature]
Vice President

NORFOLK AND WESTERN RAILWAY
COMPANY,

by

[Handwritten Signature]
EXECUTIVE Vice President