

RECORDATION NO. 9662 - A Filed & Recorded

AUG 29 1978 - 12 35 PM

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LOUISVILLE & NASHVILLE RAILROAD COMPANY

908 W. BROADWAY • LOUISVILLE, KENTUCKY 40203 TELEPHONE (502) 587-5235

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9662 Filed & Recorded

LAW DEPARTMENT

AUG 29 1978 - 12 35 PM

August 28, 1978

DAVID M. YEARWOOD
GENERAL ATTORNEY

INTERSTATE COMMERCE COMMISSION

Mr. H. G. Homme, Jr.
Acting Secretary

RECORDATION NO. 9662 - B Filed & Recorded

8-241A080

DATE AUG 29 1978

DATE

Fee \$ 100

Interstate Commerce Commission
Washington, D. C. 20423

AUG 29 1978 - 12 35 PM

ICC Washington, D. C.

Dear Mr. Secretary:

Agreement
and assignment,
lease of railroad
equipment and
assignment
of lease and
agreement
(each copy
under
separate
letter attached)

There is transmitted to you herewith for filing and recordation, pursuant to Section 20c of the Interstate Commerce Act, duly executed counterparts of a Conditional Sale Agreement dated as of July 15, 1978 between Louisville and Nashville Railroad Company, as Vendor, whose address is 908 West Broadway, Louisville, Kentucky 40203, and The Liberty National Leasing Company, as Vendee, whose address is 416 West Jefferson Street, Louisville, Kentucky 40202.

The equipment covered by said Conditional Sale Agreement is seven hundred forty-seven (747) 70-ton open top hopper cars bearing the Louisville and Nashville Railroad Company's road numbers set forth in Annex A to said Agreement, a copy of which is attached hereto.

There has been no prior recordation of any document relating to this transaction.

Attached hereto is a draft in the amount of \$50 payable to the Treasurer of the United States covering the prescribed recordation fee for said Conditional Sale Agreement.

This letter of transmittal is signed by an officer of Louisville and Nashville Railroad Company designated for the purpose hereof who has knowledge of the matters set forth herein.

After recordation, please forward the recorded counterparts of said Conditional Sale Agreement to:

Grand Johnson

Mr. Allen H. Harrison, Jr.
Wilmer, Cutler & Pickering
1666 K Street, N. W.
Washington, D. C. 20006

Respectfully yours,

Louisville and Nashville Railroad Company

By David M. Yearwood
David M. Yearwood
General Attorney

Attachments

SEE NEXT
LETTERS
ATTACHED
FOR ALL
DOCS FILED
HERE UNDER

760
RECORDATION NO. 9662-A Filed & Recorded

AUG 29 1978 12 35 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of July 15, 1978

between

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

and

MORGAN GUARANTY TRUST COMPANY OF NEW YORK,
as Trustee of a Commingled Pension Trust and
as Agent for Various Institutional Investors

AGREEMENT AND ASSIGNMENT dated as of July 15, 1978, between LOUISVILLE AND NASHVILLE RAILROAD COMPANY (hereinafter called the Vendor) and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee of a Commingled Pension Trust and as Agent for Various Institutional Investors (hereinafter called the Assignee).

WHEREAS the Vendor and The Liberty National Leasing Company (hereinafter called the Vendee) have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the CSA) covering the sale and delivery, on the conditions therein set forth, by the Vendor and the purchase by the Vendee of the used railroad equipment described in Annex A to the CSA (said equipment being hereinafter called the Equipment); and

WHEREAS the Vendee and Louisville and Nashville Railroad Company (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 the Vendor, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

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

(a) all the right, title and interest of the Vendor in and to each unit of the Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to the Vendor of the amount required to be paid pursuant to Section 4 hereof and subject to the payment to the Vendor by the Vendee pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA;

(b) all the right, title and interest of the Vendor in and to the CSA (except the right to 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 the Vendor), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Vendor under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Vendor's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Vendor 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 CSA; 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 Vendor to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to the Vendor contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of the Vendor 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 Vendor. In furtherance of the foregoing assignment and transfer, the Vendor 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 the Vendor, 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 CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Vendor agrees that it will deliver the Equipment to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed

and complied with by the Vendor. The Vendor further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the CSA 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 CSA and the rights of the Lessee under the Lease; and the Vendor 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 the Vendor under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder.

SECTION 3. The Vendor agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Vendor 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 arising out of a breach by the Vendor of any obligation with respect to the Equipment or the delivery 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 by the Vendor. The Vendor'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 CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee 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 Vendor of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Vendor the right, at the Vendor's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

The Vendor agrees, except as otherwise specifically provided in Article 13 of the CSA, 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 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 Vendor of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Vendor the right, at the Vendor's expense, to compromise, settle or defend against such claim. The Vendor agrees that any amounts payable to it by the Vendee with respect to the Equipment, whether pursuant to the CSA 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. Subject to the provisions of Article 3 of the CSA, the Assignee, on the Closing Date fixed as provided in Article 4 of the CSA with respect to the Equipment, shall pay to the Vendor an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee on or prior to the Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, Messrs. Cravath, Swaine & Moore, in such number of counterparts as may be reasonably requested by said special counsel:

(a) an instrument or instruments from the Vendor to the Assignee transferring to the Assignee the title of the Vendor in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, the Vendor 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 CSA, the Assignee under this Agreement and its rights as 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 the Vendor under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice of the Vendor for the units of the Equipment;

(d) an opinion of counsel for the Vendor, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid instrument or instruments have been duly authorized, executed and delivered by the Vendor and are valid and effective to vest in the Assignee the title of the Vendor in the units of the Equipment free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Agreement and its rights as Lessee under the Lease) arising from, through or under the Vendor; and

(e) a receipt from the Vendor 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 the Closing Date to the Vendor with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Vendor, without recourse to the Assignee unless the Assignee shall have failed to make such payment notwithstanding its receipt of the documents specified in this Section in satisfactory form as aforesaid, 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 CSA, 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 CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Vendor hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA 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 CSA is, in so far as the Vendor is concerned, a

legal, valid and existing agreement binding upon the Vendor in accordance with its terms and that, in so far as the Vendor is concerned, 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 or intended so to be; and

(c) agrees that, subsequent to payment of the sums due it hereunder and under the CSA 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 CSA or any other instrument evidencing any interest of the Vendor therein or in the Equipment.

SECTION 7. The terms of this Agreement 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 CSA and this Agreement as shall be conferred by the laws of the several jurisdictions in which the CSA or this Agreement 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 Agreement 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 Agreement 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.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

by


ASST. Vice President

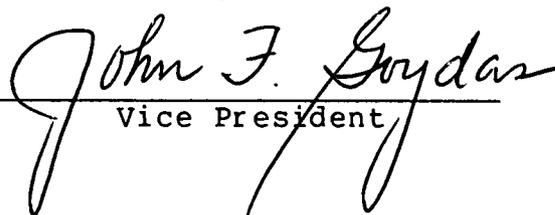
[Corporate Seal]

Attest:


ATTESTING OFFICER

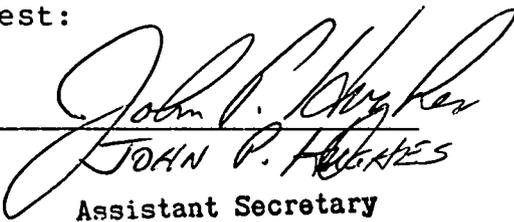
MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee of a Commingled Pension Trust and as Agent for Various Institutional Investors,

by


Vice President

[Corporate Seal]

Attest:


JOHN P. HUGHES
Assistant Secretary

COMMONWEALTH OF KENTUCKY,)
) ss.:
 COUNTY OF JEFFERSON,)

On this ^{28th} day of August 1978, before me personally appeared N. A. Stew, to me personally known, who being by me duly sworn, says that he is a Vice President of LOUISVILLE AND NASHVILLE RAILROAD 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.

Sharon W. Bowles
 Notary Public
 Sharon W. Bowles
 NOTARY PUBLIC, STATE AT LARGE
 My Commission expires July 26, 1982

[Notarial Seal]

STATE OF NEW YORK,)
) ss.:
 COUNTY OF NEW YORK,)

On this ^{24th} day of August 1978, before me personally appeared John F. Goydas, to me personally known, who being by me duly sworn, says that he a Vice President of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, 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.

GERALD H. OSTERBERG
 Notary Public, State of N. Y.
 No. 41-2981650
 Qualified in Queens County
 Cert. filed in New York County
 Comm. Expires March 30, 1979

[Signature]
 Notary Public

[Notarial Seal]

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

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

THE LIBERTY NATIONAL LEASING
COMPANY,

by

J. E. Vittitor
V.P. & SECRETARY