RECORDATION NO. 9164 Filed & Recorded

JAN 6 1978 -10 40 AM

INTERSTATE COMMERCE COMMISSION

LOUISVILLE & NASHVILLE RAILROAD COMPANY

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

RECORDATION NO. 9164 Filed & Recorded

RECORDATION NO. 9164-A Filed & Recorded

LAW DEPARTMENT

JAN 6 1978 -10 40 AM

January 5, 1978

JAN 6 1978 -10 40 AM

DAVID M. YEARWOOD
GENERAL ATTORNEY

8-006A047

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

RECEIVED
JAN 10 33 AM '78
CERTIFICATION UNIT

Mr. H. G. Homme, Jr.
Acting Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Date JAN 6 1978

RECORDATION NO. 9164 Filed & Recorded

Fee $ 100

JAN 6 1978 -10 40 AM

Washington, D. C.

INTERSTATE COMMERCE COMMISSION

Dear Mr. Secretary:

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 September 1, 1977 between Whitehead & Kales Company, Vendor, whose address is 58 Haltiner, River Rouge, Michigan 48218 and the Exchange National Bank of Chicago, as trustee, Vendee, whose address is 130 South LaSalle Street, Chicago, Illinois 60690.

The equipment covered by said Conditional Sale Agreement are one hundred seventy-one (171) enclosed tri-level auto racks bearing Louisville and Nashville Railroad Company's I. D. Nos. 1669-1839, inclusive.

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

Attached hereto is a draft 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 the Louisville and Nashville Railroad Company designated for the purpose hereof who has knowledge of the matters set forth herein.

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

Mr. David M. Yearwood
General Attorney
Louisville and Nashville Railroad Company
908 West Broadway
Louisville, Kentucky 40203

Respectfully yours,
Louisville and Nashville Railroad Company
By David M. Yearwood
David M. Yearwood
General Attorney

Attachment

Counterparts — David M. Yearwood

no Nos.

RECORDATION NO. 9164-14 Filed & Recorded

JAN 6 1978 -10 ~~40~~ AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of September 1, 1977

between

WHITEHEAD & KALES COMPANY

and

AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, not in its individual capacity but solely as Agent

AGREEMENT AND ASSIGNMENT dated as of September 1, 1977, between WHITEHEAD & KALES COMPANY (hereafter called the Builder) and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not in its individual capacity but solely as Agent (hereinafter called the Assignee).

WHEREAS the Builder and EXCHANGE NATIONAL BANK OF CHICAGO, as Trustee (hereinafter called the Vendee) under a Trust Agreement dated as of the date hereof with Ford Motor Credit Company, as beneficial owner (hereinafter called the Beneficiary), 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 Builder 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), the original counterpart of which has been delivered by the Builder to the Assignee; 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 Builder, the receipt of which is hereby acknowledged, as well as of the mutual convenants herein contained, the parties hereto agree as follows:

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

(a) all the right, title and interest of the Builder 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 Builder of the amount required to be paid pursuant to Section 4 hereof

and subject to the payment by the Vendee pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement;

(b) all the right, title and interest of the 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 the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the 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 the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the 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 the 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 the 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 the 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 Builder. In furtherance of the foregoing assignment and transfer, the 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 the 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. The 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 the Builder. The 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 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 the 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 the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. The Builder will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement (i) until the Conditional Sale Agreement and the Lease and related financing statements have been filed and recorded in accordance with the provisions of the Conditional Sale Agreement and the Lease, (ii) until the Builder shall have been notified in writing by or on behalf of the Assignee that the conditions contained in Paragraph 7 of the Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) among the Assignee, the Lessee, the Beneficiary, the Vendee and the parties named in Schedule A thereto have been met (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred and such conditions have been met), (iii) until the Builder shall have been notified in writing by the Vendee that the conditions contained in Paragraph 8 of the Participation Agreement have been met or (iv) if the Builder has been notified in writing

by the Assignee or the Vendee of the commencement of any proceedings specified in clauses (c) or (d) of Article 15 of the Conditional Sale Agreement or of the occurrence of any event of default (as described in said Article 15) or event which, with the lapse of time and/or demand, could constitute such an event of default.

SECTION 3. The 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 or to enforce any provision of the Conditional Sale Agreement, the 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 the Builder of any obligation with respect to the manufacture, construction, delivery or warranty of the Equipment, 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 the Builder. The 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 Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the 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 Lessee and not manufactured by the Builder and in cases of design, processes, formulae, or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Article 13 of 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 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 Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The 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 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, Messrs. Cravath, Swaine & Moore, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee the security interest of the 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, the 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, the Assignee under this Agreement and Assignment 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 the 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 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; and

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid instrument or instruments and invoice have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee the security interest of the Builder in, and in the Vendee title to, 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 this Agreement and Assignment and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder 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 the 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.

In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, 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 4 and compliance by the Builder with the provisions of Sections 2 and 7 hereof 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 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. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that this Agreement and Assignment and the Conditional Sale Agreement were duly authorized by it and lawfully executed and delivered by it for valid consideration, that, assuming due authorization, execution and delivery by the other parties hereto and thereto, this Agreement and Assignment and the Conditional Sale Agreement are, in so far as the Builder is concerned, legal, valid and existing agreements binding upon the Builder in accordance with their terms and that, in so far as the Builder is concerned, they are 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 Conditional Sale Agreement 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 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 Michigan, wherein the Builder has its chief place of business; provided, however, that the parties shall be entitled to all the rights arising out of the filing, recording or depositing of the Conditional Sale Agreement or this Assignment and any financing statements related thereto as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment or any financing statements related

thereto shall be filed, recorded or deposited, or in which 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, such counterparts together constituting but one and the same contract, but the counterpart marked Original Counterpart delivered to the Assignee shall be deemed to be the original counterpart and all other counterparts shall be deemed to be duplicates thereof. 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 names by duly authorized officials, and their respective seals to be hereunto affixed and duly attested, all as of the date first above written.

WHITEHEAD & KALES COMPANY,

by

Vice President-Finance
C. E. WIESER

[Corporate Seal]

Attest:

G. KONCHAL
TREASURER

Treasurer

AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, not in its individual capacity but solely as Agent,

by

Authorized Officer

[Seal]

Attest:

Authorized Officer

STATE OF MICHIGAN,)
) ss.:
COUNTY OF WAYNE,)

On this 9th day of Dec 1977, before me personally appeared C. E. WIESER, to me personally known, who, being by me duly sworn, says that he is the Vice President-Finance of WHITEHEAD & KALES COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Ardis W. Hall
Notary Public

[Notarial Seal]

ARDIS W. HALL
Notary Public, Wayne County, Mich.
My Commission Expires on July 22, 1981

My Commission expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK ,)

On this 6th day of December 1977, before me personally appeared William Ansley & Howard Isaacson, to me personally known, being by me duly sworn, says that he is an authorized officer of AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the seal of said national bank, that said instrument was signed and sealed on behalf of said national bank 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 national bank.

Notary Public

[Notarial Seal]

My Commission expires [illegible]

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 September 1, 1977, is hereby acknowledged as of September 1, 1977.

EXCHANGE NATIONAL BANK OF CHICAGO,
not in its individual capacity
but solely as Trustee,

by

Authorized Officer

[Seal]

Attest:

Authorized Officer