RECORDATION NO. 6121 Filed & Recorded
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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

between

PULLMAN INCORPORATED (PULLMAN STANDARD DIVISION), AS SELLER

and

ERIE LACKAWANNA RAILWAY COMPANY, AS BUYER

dated as of April 1, 1971

AGREEMENT AND ASSIGNMENT

between

PULLMAN INCORPORATED (PULLMAN STANDARD DIVISION),
AS MANUFACTURER

and

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY
OF CHICAGO, AS ASSIGNEE

dated as of April 1, 1971

Covering 500 52'-6" 100-Ton Gondola Cars

TRANSACTION 71-2

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976, 12:01 a.m., the Financing Agreement described below has been assigned to the Consolidated Rail Corporation by the Trustees of:

Erie Lackawanna Railway Company
Midland Building
Baltimore, Maryland 21201

The Financing Agreement is a Conditional Sale Agreement, dated April 1, 1971, bearing the ICC recordation number 6121.

The payee's name and address is:

Continental Illinois National Bank and
Trust Company of Chicago
231 South LaSalle Street
Chicago, Illinois 60693

This Notice of Assignment has been placed in the file of the ICC recordation number listed above and the entire assignment is contained in the ICC recordation file stamped in the margin of this assignment. A copy hereof will be promptly mailed to the payee listed above for distribution to the beneficial holder(s) of the Financing Agreement described in this Notice of Assignment.

Consolidated Rail Corporation

April 22, 1971

Richard Jackson, Esquire
Vice President - Law
Erie Lackawanna Railway Company
1336 Midland Bldg.
Cleveland, OHIO 44115

RE: Your file 1000.53 (Transaction No. 71-1), Conditional Sale Agreement between Greenville Steel Car Company and Erie Lackawanna Railway Company, etc., dated April 1, 1971

Dear Mr. Jackson:

6121

This has reference to the subject document recorded in this office on April 21, 1971, at 9:15 a.m., and acknowledged by our letter of that date.

Because of a clerical error, the recordation number originally assigned has been discovered to be incorrect. The correct number is Recordation No. 6122, same date and time. The Commission's records have been corrected, and it will be greatly appreciated if you will correct your copies accordingly.

The Commission regrets this unfortunate clerical error and any inconvenience caused your company. Appropriate corrective measures have been taken to prevent its happening again.

Sincerely,

Robert L. Oswald
Secretary

CONDITIONAL SALE AGREEMENT

THIS AGREEMENT, dated as of April 1, 1971, between the Seller, party of the first part, and ERIE LACKAWANNA RAILWAY COMPANY, a Delaware corporation (hereinafter sometimes called the Buyer), party of the second part.

WHEREAS, the Buyer proposes to acquire from the Seller certain railroad equipment;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Appended hereto and made a part hereof is Exhibit A. All of the matter found in Exhibit A which is relevant to the material found in this Conditional Sale Agreement is deemed to be and is incorporated herein as if set forth at large.

2. The Seller hereby agrees to construct, sell and deliver to the Buyer, and the Buyer hereby agrees to purchase from the Seller and to pay for the equipment as set forth in Exhibit A.

Seller's obligation as to time of delivery is subject, however, to delays due to accident, fire, flood, explosion, labor troubles, acts of the Government, including embargoes, priorities and allocations, war and war conditions, delays of carriers or delays or defaults of subcontractors or in receipt of materials or to any other cause or causes (whether or not of the same kind as herein specifically enumerated and whether or not existing as of the date hereof) beyond the Seller's reasonable control, each of which causes is hereafter referred to as a "force majeure." The equipment, during construction, shall be subject to inspection by an inspector or other authorized representative of the Buyer and the Buyer may keep one or more inspectors or representatives at the plant of the Seller during the construction of the equipment to inspect and accept the same upon delivery. Upon completion and delivery of each unit of equipment by the Seller it shall be inspected by such inspector or representative and, if such unit of equipment conforms to the requirements hereof, such inspector or representative shall promptly deliver to the Seller a certificate (hereinafter called the Certificate of Ac-

ceptance) in respect to such unit of equipment, stating that such unit of equipment has been inspected and is accepted by him on behalf of the Buyer as conforming in all respects to the requirements and provisions of this Agreement and such Certificate of Acceptance shall constitute conclusive evidence that such unit of equipment has been constructed and conforms to the requirements of this Agreement. As and when accepted, the equipment shall become subject to the terms and provisions of this Agreement as if delivered and accepted simultaneously with the execution and delivery of such Certificate of Acceptance.

On delivery of each of the units of equipment hereunder, the Buyer will assume with respect thereto the responsibility and risk of loss.

The Seller warrants the equipment hereunder to the extent set forth in Exhibit A.

If the equipment is not delivered and accepted on or before the "terminal date" specified in Exhibit A, regardless of the reason therefor, the provisions of this Agreement shall be inoperative as to such undelivered equipment, without any penalty whatsoever. Each unit of equipment which is delivered and accepted in the manner provided in this Section 2 on or before said terminal date, shall be paid for by the Buyer in accordance with Section 3 hereof. In the event this Agreement shall be inoperative as to any of the equipment not delivered and accepted on or before said terminal date, the Buyer and the Seller agree to execute (a) an agreement supplemental hereto limiting this Agreement to the equipment delivered and accepted on or before said terminal date, (b) a separate agreement providing for the purchase by the Buyer of such excluded equipment on completion and delivery thereof, at the price and in accordance with provisions effective under the specifications referred to in Exhibit A, except that the Buyer may arrange to purchase and pay for such excluded equipment under a conditional sale agreement, equipment trust, or other financing plan with terms acceptable to the Seller, and providing for and assuring payment of the full price thereof in cash to the Seller promptly after completion and delivery thereof.

From and after the delivery of the equipment by the Seller to the Buyer under the terms and conditions of this Agreement, the Buyer, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the equipment and the use thereof upon the lines of railroad in the possession or control of the Buyer or operated by it under lease or otherwise or over which it has trackage rights, and also upon connecting and other railroads in the usual interchange of traffic. The Buyer may receive such compensation for such use from any corporation so using the equipment as the Buyer may determine; provided, however, that the right to such use shall be subject to all the terms and conditions of this Agreement.

3. The base purchase price of the equipment shall be the amount set forth in Exhibit A; provided, however, that such base price may be increased or decreased as to any unit of equipment prior to the delivery thereof, (i) upon any modification of the specifications for such unit of equipment made pursuant to agreement of the Buyer and the Seller or (ii) in the event of change in the cost of materials applicable to such unit of equipment.

Upon the delivery and acceptance of all of the equipment (or each group of units of equipment if so specified in Exhibit A), as conclusively evidenced by the delivery of a Certificate of Acceptance in respect thereof, the Buyer agrees to pay the purchase price for each unit of equipment as follows:

(a) With respect to each unit of equipment, included in the equipment, or the group thereof as the case may be, an amount up to but not exceeding the unit price for each unit of equipment as set forth in Exhibit A, depending upon final determination of the base price as provided in the preceding paragraph, shall be paid to the Seller in such number of instalments, with such interest on unpaid balances as is set forth in Exhibit A.

(b) The balance of the purchase price of each unit of equipment in excess of the sum stated in the preceding paragraph (a) shall be paid to the Seller upon presentation of the invoice for such unit of equipment supported by the Certificate of Acceptance in respect of such unit of equipment.

All payments hereinabove provided for shall be made by the Buyer to the Seller at its office as specified in Exhibit A, or at such bank or trust company as the Seller and Buyer may agree upon, in such coin or currency of the United States of America as at the time of payment is legal tender for public and private debts. All payments hereinabove provided for shall be made to seller, or after assignment by seller, to the assignee at the city of the bank or trust company designated by this assignee.

4. The Seller's rights under this Agreement, except its rights to manufacture, may be assigned as a whole or in respect of any unit of equipment. Upon any such assignment, the Seller shall give written notice to the Buyer together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee. The Seller's assignee, or any successive assignee, shall, to the extent of such assignment, be entitled to all the rights of the Seller hereunder with respect to the equipment covered by such assignment; provided, however, that no such assignment shall subject any assignee to, or relieve Seller from any of its obligations as to the construction and delivery of the equipment or in respect to any of its obligations contained in Sections 2 and 10, or relieve the Buyer from its obligations to the Manufacturer under the first paragraph of Section 5 and under Section 10 hereof.

In the event that this Agreement is assigned by the Seller, or reassigned by any assignee as herein provided, the rights of such assignee shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Seller in respect of the manufacture or delivery of the equipment, or in respect of any of Seller's obligations contained in Sections 2 and 10 hereof, and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Buyer by the Seller. The Buyer does hereby indemnify any such assignee against all claims arising out of the ownership or use of the equipment.

If this Agreement shall have been assigned by the Manufacturer and the Assignee shall fail to make payment to the

Manufacturer of the deferred purchase price of the equipment on the date provided for payment in such Assignment, the Manufacturer will promptly notify the Buyer of such event, and if the Assignee's default in making payment of such amount shall not have been previously cured by the Assignee, the Buyer will, not later than ninety (90) days after such payment date, pay or cause to be paid to the Manufacturer the aggregate deferred purchase price of the equipment delivered to the Buyer, together with interest from such due date of payment to the date of payment by the Buyer at the prime commercial rate of interest of the Assignee, as defined in Exhibit A, in effect at the time of such payment by the Buyer.

The term "Seller," whenever used in this Agreement, means, before any assignment of any rights of the Seller hereunder as hereinbefore provided in this Section 4, the manufacturer of the equipment, and after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also the assignor as regards any rights hereunder that are retained and excluded from such assignment.

5. The Buyer agrees that, until it has paid in full the purchase price of the equipment and has paid all other sums of money payable by it hereunder, it will keep the equipment numbered with identifying road numbers; will cause each side of each unit of equipment to be plainly marked by stencil, with the name of the then owner of such unit of equipment followed by the words "Owner," in letters not less than one inch in height, and will renew any such marking, which may become illegible wholly or in part; will keep the equipment in good order and repair at its own proper cost and charge; will comply with all laws and regulations of any governmental authority with reference to the equipment or the manner of using or operating the same; will, subject to the provisions of Section 10 hereof, indemnify and save the Seller harmless from any and all liabilities, damages, claims, suits, judgments and costs that may arise from the use or operation of the equipment after its acceptance by the Buyer, which covenant of indemnity shall survive the full payment of the indebtedness or the transfer of

title to the equipment, as provided in Section 7 hereof, or the termination of this Agreement in any manner whatsoever; and all payments to be made by the Buyer hereunder will be free of expense to the Seller for collection or other charges and will be free of expense to the Seller with respect to the amount of any local, state or federal taxes (other than income, gross receipts, excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by this Agreement, or any use, payment, shipment, or delivery under the terms hereof, all of which expenses, taxes and licenses the Buyer assumes and agrees to pay on demand in addition to the indebtedness in respect of the purchase price of the equipment. The Buyer will also pay all taxes and assessments which may be imposed upon the equipment or for the use or operation thereof by the Buyer or upon the earnings arising therefrom or upon the Seller solely by reason of its ownership thereof and will keep at all times all and every part of the equipment free and clear of all taxes and assessments, or any encumbrance which might in any way affect the title of the Seller or result in a lien upon any unit of equipment; provided, however, that the Buyer shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind, so long as it is contesting the same in good faith and by appropriate legal proceedings and the nonpayment thereof does not in the opinion of the Seller adversely affect the property or rights of the Seller hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Seller directly and paid by the Seller, the Buyer shall reimburse the Seller on presentation of invoice therefor; provided, however, that the Buyer shall not be obligated to reimburse the Seller for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Seller shall have been legally liable in respect thereof, or unless the Buyer shall have approved the payment thereof. The Buyer agrees, upon the Seller's request, at least once in every year during the continuance of this Agreement, to furnish an accurate inventory of the equipment, whether

originally delivered or replaced. Nothing in this Section 5 contained, however, shall relieve the Seller of the obligation imposed by Section 2 hereof to replace as therein provided any part or parts of the equipment which may fail after delivery to the Buyer, by reason of faulty work performed or defective material furnished by the Seller.

The Seller shall have the right but shall be under no obligation to inspect the equipment at any reasonable time or times during the continuance of this Agreement.

The equipment may be lettered "Erie Lackawanna" or in some other appropriate manner for convenience of identification of the interest of the Buyer or its successor or successors therein.

6. In the event of loss or destruction of, or irreparable damage to, the equipment from any cause whatsoever (including wear or other cause which shall render equipment permanently unfit for use) during the continuance of this Agreement, the Buyer shall promptly and fully inform the Seller in regard to such loss, destruction or damage, and the Buyer shall promptly pay to the Seller a sum equal to the then unpaid balance applicable to such unit or units of equipment together with interest to date of payment, such payments to be applied to the unpaid instalments, referred to in Section 3, in the inverse order of their maturity.

7. The Seller shall and hereby does retain the full legal title to all of the equipment until the Buyer shall have made all of the payments and shall have kept and performed all of the agreements in this Agreement provided to be made, kept or performed by the Buyer, notwithstanding the delivery of the equipment to and the possession and use thereof by the Buyer as herein provided. Any and all replacements of parts of equipment under the "Warranty" clause of Exhibit A, and additions thereto, shall constitute accessions to the equipment and be subject to all the terms and conditions of this Agreement and included in the term "equipment" as used in this Agreement. When and only when the Seller has been paid the full purchase price for all the equipment, with interest, and all other payments as herein provided, and all the Buyer's agreements and conditions herein con-

tained have been performed by the Buyer, title to all the equipment shall pass to and vest in the Buyer without further transfer or act on the part of the Seller, except that the Seller shall, if requested by the Buyer so to do, execute and deliver to the Buyer at the Buyer's expense a bill or bills of sale of all the equipment, transferring Seller's title thereto and property therein to the Buyer or upon its order free of all liens and encumbrances created or retained hereby except any and all liens and encumbrances created by the Buyer in connection with or against the equipment or arising from the Buyer's use and possession of the equipment, and shall execute for record or filing in public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Buyer to all of the equipment under the laws of any jurisdiction.

8. If the Buyer shall refuse or fail to perform any agreement herein on its part to be performed, the Seller may perform the same and give to the Buyer notice in writing of the expense incurred in such performance and the Buyer agrees to repay promptly all expenses so incurred after such notice with interest from the date of payment by the Seller at the rate of 1½% in excess of the prime rate of the Assignee as defined in Exhibit A.

9. In case

(a) The Buyer shall make default in the payment of any sum payable by the Buyer as herein provided and such default shall continue for more than 30 days after the same shall become due and payable, or

(b) The Buyer shall, for more than 30 days after the Seller shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and agreements herein on its part to be kept and performed, or to make provision satisfactory to the Seller for such compliance, or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Buyer and, unless such petition shall within 30 days from

the filing thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Buyer under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any proceedings shall be commenced by or against the Buyer for any relief which includes, or might result in, any modification of the obligations of the Buyer hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions, and, unless such proceedings shall within 30 days from the filing thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Buyer under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Buyer or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) The Buyer shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of equipment;

then, all sums payable by the Buyer shall, at the election of the Seller, forthwith become and be immediately due and payable, whether or not then due and payable as herein provided, and the Seller at its option may lease or sell the equipment or any thereof, free from all claims of the Buyer at law or in equity, upon such terms and in such manner as the Seller may determine, either

without or before or after taking possession of the equipment and without having the equipment at the place of sale; provided, however, that the Buyer may and shall have a reasonable opportunity to bid at such sale, and without in any way requiring notice to be given in the following manner, Buyer agrees that any notice by the Seller of sale, disposition or other intended action hereunder or in connection herewith, whether required by the Uniform Commercial Code or otherwise, will constitute reasonable notice to the Buyer if such notice is mailed by registered or certified mail, postage prepaid, at least five days prior to such action, to Buyer's address specified above or to any other address which Buyer has specified in writing to Seller as the address to which notice hereunder shall be given to Buyer. The proceeds of any such lease or sale after deducting all charges and expenses, including counsel fees, incurred in connection therewith shall be applied to the payment, first, of the expenses of retaking, keeping and storing the equipment, and second, of the purchase price of the equipment and any interest accrued thereon, and third, of all other sums payable by the Buyer hereunder. If any surplus of such proceeds remains after the payment of the sums hereinabove mentioned, the Seller agrees to pay such surplus to the Buyer; and in case of a deficiency, the Buyer agrees to pay such deficiency forthwith to the Seller.

In case the Seller shall rightfully demand possession of the equipment or shall lease or sell the equipment pursuant to this Agreement, and shall reasonably designate a point or points upon the lines of railroad of the Buyer for the delivery of the equipment to it or to the purchaser or lessee of the equipment, the Buyer will, at its own expense, forthwith and in the usual manner and at the usual speed cause the equipment to be moved to such point or points and will there deliver the same to the Seller or to such purchaser or lessee and the Seller or such purchaser or lessee shall have the right to enter upon the premises of the Buyer and retake the equipment wherever the same may be found and to store the equipment upon the premises of the Buyer, without charge, until arrangements for the removal thereof can conveniently be made. The Buyer agrees that neither upon the

retaking of the equipment by the Seller or the purchaser or lessee thereof in the event of a default hereunder by the Buyer nor as a condition precedent to such retaking shall the Seller be required to refund to the Buyer any portion of the purchase price of the equipment theretofore paid by the Buyer and the Buyer expressly waives any right it may have by law or by statute to the return of any part of such purchase price upon the retaking of the equipment by the Seller or such purchaser or lessee thereof as aforesaid. The sale, lease or retaking of the equipment shall not affect any right or cause of action which the Seller may have or release the Buyer from any obligation or liability upon or under this Agreement which has accrued at the time of such sale, lease or retaking.

The powers and remedies herein provided in case of default are not to be exclusive of any other powers or remedies now or hereafter existing at law or in equity or under any statute. No delay or omission of the Seller in the exercise of any power or remedy shall be deemed to be a waiver of any default or the right to exercise such power or remedy nor shall the acceptance by the Seller of any security or of any payment of or on account of any instalment of the purchase price of the equipment or of interest thereon maturing or accruing after any default or of any payment on account of any past default be deemed a waiver of any right to take advantage of any past or future default.

The Buyer will pay reasonable expenses, including attorneys' fees, incurred by the Seller in enforcing its remedies under the terms of this Agreement. In the event that the Seller shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Seller may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Section 9 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

10. Except in cases of designs specified by the Buyer, and articles and materials specified by the Buyer and neither included in the Manufacturer's standard specifications nor manu-

factured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Buyer from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Buyer or its assigns because of the use in or about the construction or operation of the equipment built by such Seller, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right; and the Buyer likewise will indemnify, protect and hold harmless the Seller from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Seller because of the use in or about the construction or operation of the equipment built by such Seller, or any unit thereof, of any design specified by the Buyer, or article or material specified by the Buyer and neither included in the Seller's standard specifications nor manufactured by such Seller, which infringes, or is claimed to infringe, on any patent or other right. The Seller agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Buyer every claim, right and cause of action which such Seller has or hereafter shall have against the seller or sellers of any designs specified by the Buyer, or articles or materials specified by the Buyer and purchased or otherwise acquired by such Seller, for use in or about the construction or operation of the equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes, or is claimed to infringe, on any patent or other right, and the Seller further agrees to execute and deliver to the Buyer, or its assigns, all and every such further assurance as may be reasonably requested by the Buyer or its assigns more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Seller will give notice to the Buyer of any claim known to the Seller from which liability may be charged against the Buyer hereunder and the Buyer will give notice to the Seller of

any claim known to the Buyer from which liability may be charged against the Seller hereunder.

11. The Buyer covenants that it will cause this Agreement and the first assignment thereof and all further instruments required by law to be filed and recorded with the Interstate Commerce Commission pursuant to the provisions of Section 20c of the Interstate Commerce Act, as amended, in order to publish notice of and to protect the Seller's title to the equipment, and from time to time will perform any other act required by law, and will execute any and all further instruments that reasonably shall be requested by the Seller for such publication and protection of such title.

Until it shall have discharged all its obligations under this Agreement, the Buyer shall pay all costs, charges and expenses, including all filing, recording and registration taxes and fees, incident to the preparation, execution, acknowledgment, filing, recording, registering, refiling, rerecording and reregistering of this Agreement, and all further instruments required by law.

The Buyer to the extent that it may effectively do so under applicable provisions of law, covenants not to sell, assign, transfer or otherwise dispose of all or any of its rights under this Agreement, or, except as provided in the final paragraph of Section 2 hereof, transfer the right to possession of any unit of equipment without first obtaining the written consent of the Seller. An assignment or transfer to a railroad company or other purchaser (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the lines of railroad of the Buyer, and which, by execution of an appropriate instrument satisfactory to the Seller, shall assume and agree to perform each and all of the obligations and covenants of the Buyer hereunder, shall not be deemed a breach of this covenant provided that the prior written consent of the Seller is obtained.

12. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state

be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived they are hereby waived by the Buyer to the full extent permitted by law.

13. Any extension of time granted by the Seller to the Buyer for the payment of any sums due under this Agreement, whether such extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Seller reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

14. The parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, as amended.

15. This Agreement shall inure to the benefit of, and remain binding upon, the successors and assigns of the parties hereto, respectively.

16. This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Agreement is dated for convenience as of the date first hereinabove 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 Seller and the Buyer have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

Attest:
Assistant Secretary

SELLER
By
Vice President.

ERIE LACKAWANNA RAILWAY COMPANY

Attest:
Secretary.

By
Vice President.

STATE OF ILLINOIS,
COUNTY OF COOK, SS.

On this 14th day of April, 1971, before me personally appeared Stanley Brown, to me personally known, who being by me duly sworn, says that he is a Vice President of Pullman Incorporated (Pullman Standard Division), 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.

Richard A. Moberg
Notary Public

RICHARD A. MOBERG
Notary Public, [illegible]
My [illegible]

STATE OF OHIO,
COUNTY OF CUYAHOGA, SS.

On this 9TH day of April, 1971, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of Erie Lackawanna Railway Company, 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.

Harry P. Gizler
Notary Public

Transaction 71-2

EXHIBIT A

The Following are the Definitions, Terms and Conditions Relevant to:

A. The Conditional Sale Agreement dated as of April 1, 1971, between Pullman Incorporated (Pullman Standard Division), hereinafter sometimes referred to as "Pullman" and Erie Lackawanna Railway Company, hereinafter sometimes referred to as "EL"; and,

B. The Agreement and Assignment dated as of April 1, 1971, between Pullman Incorporated (Pullman Standard Division) and Continental Illinois National Bank and Trust Company of Chicago.

"SELLER", as used in the Conditional Sale Agreement aforesaid and subject to the last paragraph of Section 4 thereof, means Pullman Incorporated (Pullman Standard Division), a Delaware corporation, with its office for the purposes of the Conditional Sale Agreement at 200 South Michigan Avenue, Chicago, Illinois 60604.

"MANUFACTURER", as used in the Agreement and Assignment aforesaid, is Pullman Incorporated (Pullman Standard Division), as hereinabove set forth.

"ASSIGNEE", as used in the Agreement and Assignment aforesaid, is Continental Illinois National Bank and Trust Company of Chicago, a national banking association duly organized and existing under the laws of the United States of America, with its offices for the purposes of the Agreement and Assignment at 231 South LaSalle Street, Chicago, Illinois 60690.

"EQUIPMENT", as used in both aforesaid Agreements includes: 500 52′6″ 100-ton gondola cars of which (i) 400 cars will have standard ends, and bear EL Road Nos. EL 44200 to 44599 both inclusive, and (ii) 100 cars will have 8′ high bulkheads and bear EL Road Nos. EL 44100 to 44199, both inclusive. Because of the production and delivery schedules of the above equipment and the understanding of the parties concerning the invoicing thereof, said equipment is divided into two groups as follows: Group I will consist of the first mentioned 400 gondola cars, and Group II will consist of the remaining 100 of the 8′ high bulkhead gondola cars.

The cars in Groups I and II are to be built in accordance with EL Specification No. FC-39A, as modified by Pullman Specification No. 2838, dated January 12, 1971, and last revised February 24, 1971, subject to changes as mutually agreed to. Said cars will be equipped with all safety devices required by the Interstate Commerce Commission and conforming in design with Association of American Railroads practices.

"DELIVERY DATE" AND "TERMINAL DATE"—Deliveries of cars in Group I will commence about April 19, 1971, and will continue until final delivery which is anticipated to be accomplished on or before May 31, 1971. Deliveries of cars in Group II will commence about May 24, 1971, and will continue until final delivery which is anticipated to be accomplished on or before June 30, 1971.

In any event, all deliveries shall be accomplished on or before December 1, 1971, which date is herein termed the "Terminal Date."

Deliveries will be made to EL f.o.b. at EL's tracks at Dayton, Ohio.

THE "PURCHASE PRICE" of the equipment shall be as follows: (i) for the cars in Group I, $13,893.25 per unit of equipment, or an aggregate base price for the 400 cars of $5,557,300, and (ii) for the cars in Group II, $14,293.25 per unit of equipment, or an aggregate base price for the 100 cars of $1,429,325. In the event that the base prices are increased or decreased prior to delivery of any unit of equipment, the amount of any increase shall be paid in cash by the EL at the time of delivery and acceptance of the equipment and any decrease in the price shall be credited against the base price aforesaid and the base price reduced pro tanto.

THE TERMS OF PAYMENT OF THE PURCHASE PRICE AND INTEREST THEREON—The Erie Lackawanna Railway Company will pay the purchase price of each Group of the equipment in 20 equal semi-annual installments, the initial payment in respect of each Group to be made on the first day of the sixth month following the month in which the Closing for that Group takes place, together with interest, payable semi-annually at the same time as installments of principal. The interest rates payable on unpaid balances shall be 2% over the prime rate.

Interest will be determined on the basis of a 360 day year of twelve 30 day months. "Prime" above referred to shall be deemed to mean the prime commercial rate of the Assignee as defined in this Exhibit, and the interest rate will change on the date when the said Assignee's prime rate changes.

THE "LEGEND" referred to in Section 5 and Section 6 of the Agreement and Assignment shall be and read "Continental Illinois National Bank and Trust Company of Chicago, Owner."

"CLOSINGS"—The settlements to be made in respect of each Group of equipment under the Conditional Sale Agreement shall be made not more than 10 days after each of the following events shall have taken place: (i) 200 units of equipment in Group I shall have been delivered (first closing); (ii) remaining 200 units of equipment in Group I shall have been delivered (second closing); and (iii) all units of equipment of Group II shall have been delivered (third closing).

"GOVERNING LAW"—The terms of the Conditional Sale Agreement and of the Agreement and Assignment and all rights and obligations thereunder shall be governed by the laws of the State of Ohio.

"DEFAULT"—A "default" entitling the Seller to the rights and remedies provided for in the aforesaid Conditional Sale Agreement shall include the events specified in Section 9 thereof.

"WARRANTY"—The Seller guarantees the equipment to be at the time of delivery free of defects in workmanship or material. The Seller will repair or replace f.o.b. its works or warehouse any part furnished by it which by reason of defects in workmanship or material under normal use and service requires replacement within one year after the delivery of the equipment and notwithstanding that such equipment may have been inspected by an inspector or other authorized representative of the Buyer; provided, however, that it is understood that the Seller does not guarantee materials or parts specified or furnished by the Buyer and not made or furnished by the Seller in the normal course of its manufacturing business. The Seller's liability (except as to title) arising out of the supplying of each of the units of equipment or their use, whether on warranties or otherwise, shall not in any case exceed the cost of repairing or replacing a defective part or parts as herein provided and shall not include transportation charges, the Buyer's labor or materials (except as authorized in writing in advance), loss of use or revenue or any indirect or consequential damages. Upon the expiration of said one year, all such liability with respect to the equipment or any part or parts thereof repaired or replaced by reason of this guaranty shall terminate.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE SELLER'S PART, AND THE SELLER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF ITS EQUIPMENT.

AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT, dated as of April 1, 1971, between Manufacturer and Assignee.

WHEREAS, the Manufacturer and Erie Lackawanna Railway Company, a Delaware corporation (hereinafter sometimes called the Railroad), have entered into a Conditional Sale Agreement dated as of the above date (hereinafter called the Conditional Sale Agreement) covering the manufacture, sale and delivery on the conditions therein set forth by the Manufacturer and the purchase by the Railroad of the equipment as therein described on terms as set forth in Exhibit A annexed to the Conditional Sale Agreement and made a part thereof, a counterpart of which Conditional Sale Agreement is prefixed hereto;

NOW, THEREFORE, this Agreement and Assignment Witnesseth that, in consideration of the sum of one dollar ($1) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. All of the matter found in said Exhibit A of the Conditional Sale Agreement which is relevant to the material found in this Agreement and Assignment is deemed to be and is incorporated herein as if set forth at large.

2. The Manufacturer hereby sells, assigns, transfers and sets over unto the Assignee, its successors and assigns, all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to manufacture the equipment) and any and all amounts which may be or become due or owing to the Manufacturer on account of the purchase price of each unit of equipment as set forth in Exhibit A together with interest thereon and any other sums becoming due under the Conditional Sale Agreement in respect of the equipment, excluding (i) any initial cash payments of the excess of the purchase price over the purchase price figure as it appears in Exhibit A for each unit of equipment, which excess in each case shall be paid by the Railroad to the Manufacturer, (ii) any payment pursuant to the obligation of the Railroad under the third paragraph of Section 4

of the Conditional Sale Agreement and (iii) any reimbursements made or owing to the Manufacturer under Section 5 of the Conditional Sale Agreement but also including payment therefor pursuant to Section 6 hereof, the equipment covered thereby as the same shall be manufactured and delivered, together with all the Manufacturer's rights, powers, privileges and remedies in respect of the equipment under the Conditional Sale Agreement, without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad 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 liability of the Manufacturer or of any successor or successors to its manufacturing properties and business in respect of its obligations to construct and deliver the equipment or in respect of its obligations contained in the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under the Conditional Sale Agreement; it being understood and agreed that, notwithstanding this Agreement and Assignment or any subsequent assignment pursuant to the provisions of Section 8 hereof, all said obligations of the Manufacturer to the Railroad in respect of the equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer and any successor or successors to its manufacturing properties and business. In furtherance of the foregoing assignment and transfer the Manufacturer hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's designee to ask, demand, sue for, collect, receive and enforce, in respect of the equipment, any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and compliance by the Railroad 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.

3. The Manufacturer covenants and agrees that it will construct the equipment in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Railroad free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, and in accordance with the provisions thereof; and that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will be the lawful owner of each of the units of equipment upon construction thereof and that it has good and lawful right to sell the equipment as aforesaid; and that it will warrant and defend the same against the demands of all persons whomsoever, based on claims originating prior to the delivery of the equipment by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

4. The Manufacturer covenants and 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, the purchase price or to enforce any provision thereof, the Manufacturer will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off or counterclaim of the Railroad arising out of a breach by the Manufacturer or by any successor or successors to its manufacturing properties or business of any of the Manufacturer's obligations in respect of the manufacture or delivery of the equipment under Sections 2 and 10 of the Conditional Sale Agreement or arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or the successor or successors to its manufacturing business. The Manufacturer shall have no liability under the foregoing sentence unless (a) the Assignee, in any suit, proceeding or action by the Assignee hereinabove described,

promptly moves or takes other appropriate action on the basis of Section 4 of the Conditional Sale Agreement, to strike any such defense, set-off or counterclaim asserted by the Railroad and the Court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action to strike and accepts such defense, set-off or counterclaim as a tryable issue in such suit, proceeding or action, and (b) upon any such denial and acceptance, the Assignee promptly notifies the Manufacturer of any such defense, set-off or counterclaim asserted by the Railroad and the Manufacturer is given the right by the Assignee to compromise, settle or defend against, at the Manufacturer's expense, such defense, set-off or counterclaim. The Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee because of the use in or about the construction or operation of the equipment built by the Manufacturer, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right except in cases of designs specified by the Railroad, and articles and materials specified by the Railroad and neither included in the Manufacturer's standard specifications nor manufactured by the Manufacturer.

5. The Manufacturer covenants and agrees that, at or before delivery of each of the units of equipment to the Railroad, there will be plainly marked by stencil on each side of each such unit of equipment, in letters not less than one inch in height, a legend as set forth in Exhibit A.

6. The Assignee covenants and agrees that when all of the equipment (or each group of equipment as may be specified in Exhibit A) covered by the Conditional Sale Agreement and not excluded by reason of delivery after the terminal date as defined in Exhibit A is delivered to, and accepted by, the Railroad, pursuant to the Conditional Sale Agreement, it will pay to the Manufacturer an amount up to but not exceeding the purchase price per unit of equipment as set forth in Exhibit A for each unit of

equipment so delivered and accepted, upon receipt by the Assignee of the following documents with respect to the respective units of equipment, in form and scope satisfactory to it.

(a) A Bill of Sale from the Manufacturer to the Assignee transferring to the Assignee title to the equipment so delivered and accepted and warranting that at the time of delivery thereof by the Manufacturer to the Railroad said title was free and clear of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement.

(b) A Certificate of Acceptance in respect of the equipment signed by an authorized representative of the Railroad stating that the equipment covered by such Certificate has been inspected and accepted by him on behalf of the Railroad as conforming in all respects to the requirements and provisions of the Conditional Sale Agreement and further stating that there was plainly marked by stencil on each side of each unit of equipment, in letters not less than one inch in height, a legend as set forth in Exhibit A.

(c) A duplicate of the Manufacturer's Invoice covering the equipment so accepted.

(d) An opinion of counsel for the Railroad, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered and is a valid and binding instrument enforceable in accordance with its terms, (ii) the Assignee is vested with all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement assigned to the Assignee by this Agreement and Assignment, (iii) title to the equipment is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (iv) no approval or authorization of any governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, (v) the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of Assignee within the United States of America, (vi) the legal opinion

referred to in subparagraph (e) of this Section 6 is satisfactory in form and scope to said counsel and in his opinion the Assignee is justified in relying thereon, and (vii) the Railroad is a duly organized and existing corporation in good standing under the laws of Delaware, its State of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted.

(e) An opinion of counsel for the Manufacturer stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Manufacturer and (assuming it has been duly authorized, executed and delivered by the Railroad) is a valid instrument binding upon the Manufacturer and enforceable against the Manufacturer in accordance with its terms, (iii) this Agreement and Assignment has been duly authorized, executed and delivered by the Manufacturer and (assuming it has been duly authorized, executed and delivered by the Assignee) is a valid instrument binding upon the Manufacturer and enforceable against the Manufacturer in accordance with its terms, (iv) except as provided in the Conditional Sale Agreement and in the Agreement and Assignment, the Assignee is vested with all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement, and (v) title to the equipment has been validly vested in the Assignee, and that the equipment, at the time of delivery thereof to the Railroad, was free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement; counsel may qualify the opinion specified in clauses (ii) and (iii) above by a general reference to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the enforcement of creditors' rights.

(f) A Certificate from the Secretary or Assistant Secretary of the Railroad as to the incumbency of the officers of the Railroad who signed any documents in connection with this transaction and as to the authenticity of their signatures.

(g) A Certificate from the Secretary or Assistant Secretary of the Manufacturer as to the incumbency of the officers of the Manufacturer who signed any documents in connection with this transaction and as to the authenticity of their signatures.

(h) Railroad's Certificate as to Appointment of Inspectors and Authorized Representatives.

(i) A certified copy of the Resolution adopted by the Board of Directors of the Railroad which authorizes the transaction.

(j) A certified copy of the Resolution adopted by the Board of Directors of the Manufacturer which authorizes the transaction.

7. If the equipment is not delivered and accepted on or before the "terminal date" as defined in Exhibit A, regardless of the reason therefor, the provisions of this Agreement and Assignment shall be inoperative as to such undelivered equipment, without any penalty whatsoever. Each of the units of equipment so delivered and accepted in the manner provided in Section 2 of the Conditional Sale Agreement on or before the terminal date, shall be paid for by the Railroad in accordance with Section 3 thereof and be covered by this Agreement and Assignment.

It is understood and agreed that the Assignee shall not be required to make (i) any payment in respect of any unit of equipment excluded from the Conditional Sale Agreement or (ii) any payment under this Agreement and Assignment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement shall constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment required to be made with respect to each unit of the equipment pursuant to Section 6 hereof at the time therein specified, the Assignee, shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of equipment with respect to which payment has not been made by the Assignee.

8. It is mutually agreed that the Assignee may assign its rights under the Conditional Sale Agreement, as a whole or in respect of any of the equipment including the right to receive any payments due or to become due to it from the Railroad thereunder in respect of such equipment. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

9. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement has been duly authorized, executed and delivered by the Manufacturer; and

(b) covenants and agrees that it will from time to time and at all times, 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 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.

10. The parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, as amended.

11. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad. Although this Agreement and Assignment is dated for convenience as of the date first hereinabove 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 Manufacturer and the Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

Attest:

Assistant Secretary.

MANUFACTURER

By

Vice President.

Attest:

~~*Secretary.*~~

Commercial Banking Officer

ASSIGNEE

By

Senior Vice President.

STATE OF ILLINOIS,
COUNTY OF COOK, SS.

On this 14th day of April, 1971, before me personally appeared Stanley Brown to me personally known, who being by me duly sworn, says that he is a Vice President of Pullman Incorporated (Pullman Standard Division), 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.

Richard A. Moberg
Notary Public

RICHARD A. MOBERG
Notary [illegible] County
My Commission [illegible] 1974

STATE OF ILLINOIS,
COUNTY OF COOK, SS.

On this 16 day of April, 1971, before me personally appeared R. C. RASTETTER, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of Continental Illinois National Bank and Trust Company of Chicago, 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.

Lucy K Vert
Notary Public

My Commission Expires
April 9, 1972

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Erie Lackawanna Railway Company hereby acknowledges due notice of, and consents to, the assignment made by the foregoing Agreement and Assignment as of the date thereof.

ERIE LACKAWANNA RAILWAY COMPANY

By _____
Vice President

RECORDING AND FILING DATA

EXECUTED COUNTERPART OF THE FOREGOING CONDITIONAL SALE AGREEMENT AND AGREEMENT AND ASSIGNMENT WAS RECORDED IN THE OFFICE OF THE SECRETARY OF THE INTERSTATE COMMERCE COMMISSION ON _____, 1970 AT _____, _____M. BY RECORDATION NUMBER _____, PURSUANT TO THE PROVISIONS OF SECTION 20(c) OF THE INTERSTATE COMMERCE ACT.