6303

RECORDATION NO. _____ Filed & Recorded

SEP 7 - 1971 -11 55 AM

INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

Between

PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION)
Lessor

And

TRAILER TRAIN COMPANY
Lessee

THIS AGREEMENT dated as of the date set forth in Section 1 of Schedule A, attached hereto, between PULLMAN INCORPORATED (Pullman-Standard Division), a corporation organized under the laws of the State of Delaware, with an office at 200 South Michigan Avenue, Chicago, Illinois, (hereinafter sometimes called the "Lessor"), and TRAILER TRAIN COMPANY, a corporation organized under the laws of the State of Delaware, with an office at 300 South Wacker Drive, Chicago, Illinois 60606 (hereinafter sometimes called the "Lessee"):

WITNESSETH:

1. Lease and Rental. The Lessor will construct at its manufacturing plant at Butler, Pennsylvania, the railroad flat cars set forth in Section 2 of Schedule A, attached hereto, (all of the cars being referred to as the "Cars") in accordance with the specifications applicable thereto and any modification thereof as agreed to between the Lessor and the Lessee (hereinafter sometimes called the "Specifications").

The Lessor hereby leases to the Lessee and the Lessee hereby hires from the Lessor each of the Cars for use upon lines of railroad under the terms of car contracts made by the Lessee with others; provided, however, that the Cars shall not be used outside the United States of Americas without the written consent of Lessor. Said Lease and use are upon the terms and subject to the conditions hereinafter set forth, such lease to be effective as to each Car for a period beginning with the delivery of such Car and ending as to each such Car (a) on such date

as the Lessee shall make payment, or cause payment to be made. for each such Car under conditional sale agreement, equipment trust agreement, or other equipment financing agreement , or (b) upon purchase of the Cars by the Lessee or assignee of the Lessee on the date set forth in Section 3 of Schedule A, attached hereto, pursuant to Article 14 hereof. Such termination of leasing under this Lease may be confirmed by an appropriate instrument executed by Lessor and Lessee.

For the use and rental of each Car, the Lessee agrees to pay the sum which is equivalent to the product of the purchase price of each Car, as defined in Article 14 hereof, multiplied by such rate or rates of interest per annum as shall from time to time be the prime rate of interest charged by the First National City Bank, New York, for ninety-day loans to borrowers of the highest credit standing, for the period such rental shall be payable with respect to each Car. Rental of each of the Cars shall not commence until thirty-one (31) days after its delivery to an authorized representative of the Lessee and acceptance thereof by the Lessee under the terms of the Lease and shall cease one day prior to the date of termination.

The rental on each Car shall be due and payable to the Lessor in cash upon the termination of the Lease as to such Car.

2. Delivery. The Lessor will deliver the Cars to the Lessee f. o. b. tracks at the location designated on the purchase agreement.

On delivery of each Car by the Lessor, the Lessee will assume the responsibility and risk of loss with respect to the Cars so delivered.

The Lessee shall cause each Car to be inspected by a representative of Lessee at the plant at which it is manufactured. The Car shall be tendered by Lessor to Lessee at the appropriate point of delivery hereinbefore specified and a representative of Lessee shall inspect the Car. If such Car is in good order and condition and comforms to the Specifications and to all applicable Interestate Commerce Commission requirements and all standards recommended by the Association of American Railroads, such representative of Lessee shall execute a certificate of acceptance (hereinafter called the "Certificate of Acceptance"), in the form attached hereto. Such Certificate of Acceptance shall constitute conclusive evidence that the Car has been delivered to and accepted by the Lessee under this Lease: provided, however, that the Lessor shall not be relieved of its warranties set forth in Article 7 hereof. The Certificate of Acceptance shall be delivered to the Lessor at the time of the delivery of each Car to the Lessee. The Lessee shall promptly, after the execution of this agreement, deliver to the Lessor a certificate stating the persons authorized to execute and deliver on behalf of the Lessee Certificate of Acceptance under this agreement.

3. Title to the Equipment. The Lessor shall and hereby does retain the full legal title to and property in each of the Cars notwithstanding the delivery of the Cars to and the possession and use thereof by the Lessee as herein provided, subject only to the rights of the Lessee under this Lease.

The Lessee will, through ther terms of this Lease, cause the Cars to be kept numbered with their identifying numbers as set forth in Section 2 of Schedule A, attached hereto. The Lessee will not change the number of any of the Cars without first notifying the Lessor in writing. In any such case, the new number shall be set forth in a supplemental lease or in an amendment to this Lease which the Lessor and Lessee shall execute, and the Lessee shall file or record such supplemental lease or amendment in each jurisdiction wherein this Lease is recorded or filed in accordance with Article 13 hereof.

4. Maintenance and Repair. The Lessee shall at its own cost and expense maintain and keep said Cars in good order and repair at all times subject to the right of the Lessor to inspect the condition and supervise the maintenance thereof (but the Lessor shall be under no obligation to so inspect and supervise). However, in the event the Lessor does so inspect and supervise as provided in this Article 4, the Lessee will not assume liability for any injury to, or death of, any agent or employe of Lessor while exercising these rights. The Lessee shall not effect any change in the design, construction of specifications of the Cars or component parts thereof, without the prior authority and approval of the Lessor.

5. Loss or Destruction. In the event of loss or destruction of or irreparable damage to any of the Cars from any cause whatsoever during the term of this Lease, the Lessee shall promptly and fully inform

the Lessor in regard to such loss, destruction or damage, and the Lessee shall pay promptly to the Lessor, in addition to the rent, if any, secured for such Car pursuant to Article 1 hereof to the date of payment pursuant to this Article 5, and performance of all of Lessee's obligations herein a sum equal to the purchase price of each Car so lost, destroyed or irreparably damaged, as defined in Article 14 hereof, which represents the agreed value for each Car so lost, destroyed or damaged, whereupon this Lease shall terminate as to such Car and Lessor shall not thereafter have any interest in any material salvageable from such Car.

6. Taxes and Compliance with Laws, Rules and Regulations. The Lessee shall promptly pay all taxes (other than income taxes imposed upon the Lessor), licenses and assessments on or in respect of the Cars (including any which may be imposed upon or in respect of said Cars by reason of or in connection with the Lessee's possession or use of the Cars under this agreement) and agrees at all times to keep said Cars free and clear of all taxes, assessments, liens, and encumbrances, and covenants that the Cars at all times hereunder will be maintained, used and operated under and in lawful compliance with the laws, rules and regulations to which they may be subject in any local , state or federal jurisdiction. Any sums of money that may be paid by the Lessor at its option by way of release, discharge of otherwise, of any of the foregoing, shall be promptly reimbursed and paid to the Lessor by the Lessee on demand as an additional part of the obligation herein with interest thereon at the rate of 6% percent per annum for the date of payment.

The Lessee, however, may withhold any such payment so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner and such withholding does not in the judgment of the Lessor affect the Lessor's title in and to any of the Cars.

7. Lessor's Warranty of Workmanship and Material.

(a) The Lessor warrants to the Lessee that each Car delivered will comply on the date of its delivery with the Rules of Interchange of the Association of American Railroads (or of any successor thereto) and with all governmental regulations and requirements relating to the construction and equipment of railroad cars of the same character as such Car.

(b) The Lessor warrants to the Lessee that each Car delivered will comply with the Specifications and be free from defects in material (except as to specialties incorporated therein specified by Lessee) or workmanship or design (except as to the designs specified by Lessee) under normal use and service; provided, however, that the Lessor's obligations under this subsection (b) with respect to any Car shall be limited to making good at its manufacturing plant, any part or parts of such Car which shall, within one year after the dlivery of such Car, be returned to the Lessor, with transportation charges prepaid, and which the Lessor's examination shall disclose to its satisfaction to have been thus defective. The Lessor shall not be liable for indirect or

consequential damage resulting from defects in material, workmanship or design.

(c) The Lessor's warranties set forth in subsection (a) and (b) of this Article are exclusive and in lieu of all other warranties by the Lessor, whether written, oral or implied, except with respect to title of the Lessor to the Cars.

8. Prohibition Against Liens. The Lessee will pay or satisfy and discharge any and all sums claimed by any party by, through or against the Lessee and its successors or substitutes or assigned, or a person, firm or corporation using the Cars, which, if unpaid, might become a lien or a charge upon the Cars but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Lessor in and to the Cars.

9. Lessee's Indemnities and Guaranties. The Lessee will save, indemnity and keep harmless the Lessor from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the Cars or the use or operation thereof during the term of this Agreement. This convenant of indemnity shall continue in full force and effect notwithstanding the purchase of the Cars by the Lessee as provided in Article 14 hereof, or the termination of this Lease in any manner whatsoever.

The Lessee will bear the risk and shall not be released from its obligations hereunder in the event of any damage to, or the destruction

or loss of the Cars; provided, however, that the Lessor and any successor or successors to its manufacturing property and business shall not as to the Cars, be relieved from its warranty covering workmanship and material or design hereinbefore in Article 7 set forth.

10. Patent Indemnities. The Lessor, for itself and any successor or successors to its manufacturing property and business, will save, indemnity and keep harmless the Lessee from and against any and all damages, costs, royalties and claims arising out of charges of infringement of United States patents which may be alleged to cover the Cars, articles, or parts thereof, excepting those patents covering the manufacture, sale or use in said Cars, articles, or parts thereof, of designs, devices, parts arrangements, specialties and equipment furnished or specified by the Lessee and as to such excepted United States patents the Lessee shall in like manner save the Lessor harmless.

The Lessee agrees that it will give prompt notice in writing to the Lessor of the commencement of any action in respect of which the Lessor may be charged with liability hereunder, and the Lessor agrees to give prompt notice in writing to the Lessee of the commencement of any action in respect of which the Lessee may be charged with liability hereunder. Said convenants of indemnity shall continue in full force and effect notwithstanding the purchase of the Cars by the Lessee or the termination of this Lease in any manner.

11. Assignments by the Lessor. All or any of the rights, benefits and advantages of the Lessor under this agreement may be assigned

by the Lessor and reassigned by the assignee at any time and from time to time, provided, however, that no such assignment shall subject any assignee to or relieve the Lessor or the successor or successors to its manufacturing property and business from any of the obligations of the Lessor to construct and deliver the Cars in accordance with the Specifications or to respond to its guarantees, warranties or indemnities contained in Articles 7 and 10 hereof, or relieve the Lessee of its obligations to the Lessor under Articles 6, 9 and 10 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virture of such assignment acquire all of Lessor's right, title and interest in and to the rights, benefits and advantages of the Lessor thereby assigned, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Lessee of the notification of any such assignment, all payment thereafter to be made by the Lessee hereunder shall, to the extent so assigned, be made to the assignee.

In the event of any assignment by the Lessor of its rights to receive any payments under this Lease, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever arising out of any breach

of any obligation of the Lessor in respect of the Cars of the manufacture, construction, delivery, guarantee or warranty thereof, or in respect of an indemnity contained in this Lease, nor 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 Lessee by the Lessor. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Lessee, its successors or assigns, against the Lessor, its successors and assigns (other than assignees, as such, of rights, benefits and advantages assigned pursuant to this Lease). The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Lessee to waive any remedies which it might otherwise possess for the enforcement of any and all such obligations of the Lessor as against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by payment to the Lessor of the consideration for the assignment of any of the Lessor's rights under this Lease.

12. Assignments by the Lessee. The Lessee will not sell, assign, transfer or otherwise dispose of its rights under this agreement nor transfer possession of said Cars to any other form, person or corporation (except as herein otherwise provided) without first obtaining the written consent of the Lessor to such sale, assignment or transfer.

13. Recording. Lessee will, at its expense, upon execution and delivery of this agreement cause the same to be duly filed and recorded

with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended, and wherever else required in order to publish notice of and to protect the title of Lessor to the Cars.

14. Agreement of the Lessee to Purchase. In the event that payment to Lessor for all Cars has not been made prior to the date set forth in Section 3 of Schedule A, attached hereto, pursuant to Section 1 (a) of this agreement and this Lease thereby terminated as to all Cars, and the Lessee will immediately purchase or provide a purchaser for all such Cars delivered hereunder on or before that date for which payment has not been theretofore made to Lessor. The base purchase price for each of the Cars is set forth in Section 4 of Schedule A, attached hereto. Title to the Cars shall vest in purchaser thereof upon such purchase and payment therefore in cash and delivery shall be deemed to be effected at such points as the Cars shall be at such time.

The base purchase price is subject to increase or decrease in accordance with the contract, numbered as set forth in Section 5 of Schedule A, attached hereto, between Lessor and Lessee as supplemented or amended.

In the event of any change of modification hereafter made in the Specifications by agreement between the Lessor and Lessee, the amount by which such change or modification increases or decreases the cost of the Cars shall be added to or subtracted from, as the case may be, the base purchase price of the Cars.

The term "purchase price" as used herein shall mean the base purchase price as increased or decreased pursuant to the two preceding paragraphs.

15. Default. In the event of any failure at any time on the part of the Lessee to comply with any of the terms and conditions contained in Article 1 through 13 hereof, the Lessee, at the election of the Lessor, which election shall be evidenced by notice thereof in writing given by the Lessor to the Lessee, shall be obligated to purchase and pay for all of the Cars subject to this agreement within five (5) days after the receipt of such notice (unless within such five-day period such default shall have been cured) in accordance with all the terms and conditions contained in this agreement with respect to purchase of the Cars other than the date for purchase set forth in Article 14 hereof.

In the event of any default by the Lessee in respect of any of its obligations under the terms of this agreement, the term of this Lease shall immediately cease and terminate and the Lessor may, without any notice or demand, take or cause to be taken immediate possession of the Cars, and, in such event, all the Lessee's rights in the Cars will thereupon terminate; provided, however, that such retaking shall not be deemed a waiver of the Lessor's right to receive the full purchase price of the Cars or of any other rights or remedies conferred upon the Lessor by this agreement or by law, and provided, further, that in the event of

such retaking and thereafter of the payment of Lessee of the purchase price, together with a sum equivalent to the costs and expenses, including attorney's fees, incurred by the Lessor in such retaking, and the making good of all defaults hereunder, the Lessor at the time of such payment shall deliver the Cars to the Lessee in the condition they were in when retaken and by appropriate instrument or instruments transfer to the Lessee title to and property in the Cars free and clear of all liens and encumbrances. In the event that the payment of the full purchase price is not made by the Lessee to the Lessor within ten days after the date when payment is due, the Lessor, at its option, may within a reasonable time thereafter, sell the Cars, in which event the Lessee's rights in the Cars shall cease and terminate and its obligation to pay to the Lessor the full amount of the purchase price, plus a sum equivalent to the costs and expenses incurred by the Lessor in retaking the Cars, shall be reduced by an amount equal to the net proceeds of sale of the Cars. As used in this Article 15, the term "purchase price" includes the rent payable pursuant to Article 1, hereof.

16. Payments by Lessee. The payments provided for in this agreement shall be made by the Lessee in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public or private debts.

17. Survival of Guarantees, Warranties and Indemnities. The warranties and indemnities provided for in Articles 7, 8, 9 and 10 hereof (except as may be otherwise specified therein) shall survive the termination of the Lease hereunder for any reason and the full payment of the purchase price by the Lessee.

18. Extension Not a Waiver. Any extension of time granted by the Lessor to the Lessee for the payment of any sum due under this agreement, or for the performance of any other obligation hereunder, shall not be deemed a waiver of any of the rights and remedies of the Lessor hereunder or otherwise existing.

19. Notice. Any notice hereunder to the Lessee shall be deemed to be properly served if deliverd or mailed to the Lessee at 300 South Wacker Drive, Chicago, Illinois 60606, or at such other address as may have been furnished in writing to the Lessor by the Lessee. Any notice to Pullman Incorporated (Pullman-Standard Division) shall be deemed to be properly served if delivered or mailed to Pullman Incorporated (Pullman-Standard Division) at 200 South Michigan Avenue, Chicago 4, Illinois, or at such other address as may have been furnished in writing to the Lessee by Pullman Incorporated (Pullman-Standard Division). Any notice hereunder to any assignee of Pullman Incorporated (Pullman-Standard Division) or of the Lessee shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Lessor or the Lessee, as the case may be, by such assignee.

20. Exeuction of Counterparts. This agreement may be simultaneously executed in several counterparts, each of which so exeucted shall deemed to be an original, and such counterparts together will constitute but one and the same agreement, which will be sufficiently evidenced by any such original counterpart.

21. Article Headings. All article headings are inserted for convenience only and will not affect any construction or interpretation of this agreement.

22. Modification of Agreement. No variation or modification of this Railroad Equipment Lease and no waiver of any of its provisions or condtions will be valid unless in writing and signed by the duly authorized officers of the Lessor and the Lessee.

23. Supplement. Upon the execution and delivery by the parties hereto of a supplemental agreement and the recordation thereof as provided for in Section 13 of this Lease, this Lease may be supplemented from time to time to include additional railroad flat cars. Any such additional railroad flat cars will become subject to the terms and conditions of this Lease.

IN WITNESS WHEREOF, Pullman Incorporated (Pullman-Standard Division) has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful authority; and Trailer Train Company has caused these presents to be

executed and its seal to be affixed by its duly authorized officers pursuant to lawful authority, all as of the day, month and year set forth in Section 1 of Schedule A, attached hereto.

PULLMAN INCORPORATED
(PULLMAN-STANDARD DIV.)

BY

VICE PRESIDENT

ATTEST:

Assistant Secretary

TRAILER TRAIN COMPANY

BY

Vice President and Treasurer

ATTEST:

Assistant Secretary

STATE OF ILLINOIS (
(ss.
COUNTY OF COOK (

On this 2nd day of Sept. , 19 71 before me personally appeared M. R. BOCK , to me personally known, who being by me duly sworn, says that he is 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.

Elizabeth Cameron
Notary Public
My Commission expires: May 1, 1975.

STATE OF ILLINOIS (
(ss
COUNTY OF COOK (

On this 1st day of September, 1971, before me personally appeared, **J. A. Brennan, Jr.**, to me personally known, who, being by me duly sworn, says that he is **Vice President and Treasurer** of Trailer Train 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.

R J Evans

RAILROAD EQUIPMENT LEASE
BETWEEN PULLMAN INC. (PULLMAN-STANDARD DIVISION)
AND TRAILER TRAIN COMPANY, LESSEE

SECTION 1 Date of Lease:

August 27, 1971

SECTION 2 Car Descriptions and Numbers:

(5) 89'4" Standard Hydraulic Flat Cars without components except hydraulic draft gears and couplers, numbered from 940654-940658.

SECTION 3 Date by Which Purchase of Cars Must Be Made:

February 29, 1972

SECTION 4 Price of Cars:

(5) 89'4" Standard Hydraulic Flat Cars without components except hydraulic draft gears and couplers numbered from 940654-940658 shall be purchased at $16,830.91.

SECTION 5 Contract Number:

5071-CA-P
Dated August 23, 1971

CERTIFICATE OF ACCEPTANCE
UNDER RAILROAD EQUIPMENT LEASE

TO: PULLMAN INCORPORATED

I, a duly appointed inspector and authorized representative of Trailer Train Company (hereinafter called the "Lessee"), for the purpose of the Railroad Equipment Lease dated August 27, 1971 between you, as Manufacturer and the Lessee do hereby certify that I have inspected, received, approved and accepted delivery on behalf of the Lessee and under said Railroad Equipment Lease of the following units of railroad equipment:

Type of Cars:

Place Accepted:

Date Accepted:

Number of Units:

Numbered:

I do further certify that the foregoing cars are in good order and condition and conform to the specifications applicable thereto, and to all applicable Interstate Commerce Commission requirements and specifications and to all standard of the Association of American Railroads. The execution of this certificate will in no way relieve the Manufacturer of its duty or decrease its responsibility (1) to produce and deliver the railroad equipment indicated above in accordance with the terms of the Purchase Agreement and (2) in respect of its warranty in the Lease of Railroad Equipment, be of good workmanship, constructed with quality materials, and be free of defects.

_____

Inspector and Authorized
Representative of
TRAILER TRAIN COMPANY

SPECIAL CERTIFICATE

TO: TRAILER TRAIN COMPANY

I, a duly appointed inspector and authorized representative of Trailer Train Company (hereinafter called the "Company"), do hereby certify that I have inspected the following described flat cars at the time and place of their acceptance on behalf of the Company under the terms of the Railroad Equipment Lease dated August 27, 1971 between PULLMAN INCORPORATED and the Company:

Type of Cars:

Number of Units:

Place Accepted:

Date Accepted:

Numbered:

I do further certify that there was plainly, distinctly, permanently and conspicuously marked by stencilling on each side of each unit at the time of its acceptance, in letters not less than one inch in height, the following legend:

"Manufacturers Hanover Trust Company,
New York, New York, Trustee, Owner"

_____

Inspector and Authorized
Representative of
TRAILER TRAIN COMPANY