

6331

RECORDATION NO. \_\_\_\_\_ Filed & Recorded

SEP 27 1971 -11 15 AM

INTERSTATE COMMERCE COMMISSION

---

---

COUNTERPART	
No. <b>2</b>	OF <b>7</b>

CONDITIONAL SALE AGREEMENT

BETWEEN

PULLMAN INCORPORATED (Pullman-Standard division)

AND

THE WESTERN RAILWAY OF ALABAMA

Dated as of September 1, 1971

---

FOR TWENTY-FIVE 100-TON SEXTUPLE WOOD CHIP HOPPER CARS

---

AGREEMENT AND ASSIGNMENT

BETWEEN

PULLMAN INCORPORATED (Pullman-Standard division)

AND

THE FIRST NATIONAL BANK OF ATLANTA

ATLANTA, GEORGIA

Dated as of September 2, 1971

---

---

## CONDITIONAL SALE AGREEMENT

THIS AGREEMENT, dated as of September 1, 1971, by and between PULLMAN INCORPORATED (Pullman-Standard division), a corporation of the State of Delaware (hereinafter sometimes called the "Seller"), a party of the first part, and THE WESTERN RAILWAY OF ALABAMA, a corporation of the State of Alabama (hereinafter called the "Buyer"), party of the second part;

WITNESSETH, THAT:

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. CONSTRUCTION, SALE AND DELIVERY. The Seller hereby agrees to construct, sell and deliver to the Buyer, and the Buyer hereby agrees to buy from the Seller and to accept delivery as hereinafter provided, and to pay therefor as hereinafter set forth, the following described railroad equipment (hereinafter sometimes referred to as "cars"):

Twenty five (25) 100-Ton PS-3-SD Sextuple Wood Chip Hopper Cars (7000 Cu. Ft. Capacity) to bear Buyer's numbers 26000 to 26024, both numbers inclusive, and to be constructed in accordance with Seller's Specification Lot No. 9574, dated August 3, 1971.

The cars shall be constructed at Seller's plant at Bessemer, Alabama.

A copy of said Specification and of Seller's General Conditions have been furnished and are, by reference, made a part of this Agreement as fully as though expressly set forth herein. Said Specification may, from time to time before or during construction of the cars, be modified by written agreement between Seller and Buyer's representatives. The design and quality of material and equipment in said cars shall conform to all Association of American Railroads, American Society of Testing Materials, and Interstate Commerce Commission requirements and specifications (unless otherwise specified in said Specification) as they apply as of the date of this Agreement to cars of this character.

(A) PURCHASE PRICE. The full purchase price agreed upon for each car to be delivered hereunder is \$20,804.00, F. O. B. Bessemer, Alabama, subject to later price adjustment at time of billing. The full purchase price for all twenty-five (25) cars is \$520,100.00, also subject to such later price adjustment at time of billing.

The aforesaid purchase price for each car is as established in Seller's letter of June 28, 1971, which confirmed our verbal order for purchase of the above cars. It is understood and agreed that Seller will issue letter confirming final price adjustment at time of billing, predicated upon the construction of the cars in accordance with Specification above set forth, said General Conditions of Seller and subject to the terms and conditions of said proposal, order and acknowledgment which are hereby incorporated herein by reference.

(B) DELIVERY. Seller shall deliver the completed cars to Buyer F. O. B. Seaboard Coast Line Railroad tracks, Birmingham, Alabama, or upon shipment, freight charges collect, to such other point or points as Buyer may designate. Seller further agrees to deliver the cars free of all liens, encumbrances and claims of any nature by or in favor of any other person or party, and subject only to the reservation of title thereto by Seller, in accordance with provisions hereof. Delivery of the cars shall begin approximately September 27, 1971, and shall be completed approximately by October 11, 1971, subject, however, as to all of said cars, to delays due to labor troubles, fires, floods, explosions or other accidents, or to delays of carriers or of subcontractors, or in receipt of material, or to any other cause or causes (whether or not of the same general character as those herein specifically enumerated) beyond the reasonable control of Seller.

Seller shall give Buyer full opportunity to inspect the cars during the construction thereof at its plant in Bessemer, Alabama. On completion of each of the cars Buyer shall arrange for final inspection thereof and shall have its inspector execute in quintuplicate the usual form of certificate of inspection covering all cars found to be completed in accordance with the Specification. Each such certificate with respect to the car or cars covered thereby shall be final and conclusive evidence that such car or cars conform in workmanship, material, construction and in all other respects to the requirements and provisions of this Agreement. Buyer shall arrange also for acceptance of each car or cars by a duly authorized agent upon arrival thereof at the place of delivery and shall execute in quintuplicate a certificate of acceptance of such car or cars. Neither such certificate of inspection nor such certificate of acceptance shall constitute a waiver of any of the warranties in said Specification.

(C) ASSUMPTION OF RISK. The Buyer agrees to indemnify the Seller against any loss in the transportation of said cars from the Seller's plant to the point or points of delivery to and acceptance by the Buyer.

2. PAYMENT OF PURCHASE PRICE. Conditional only upon the receipt and acceptance of said cars, which may be conclusively presumed from the execution of the certificates of acceptance above referred to, the Buyer hereby promises to pay to the Seller, at such place as may be designated by the Seller, the full purchase price of each car, as specified in the invoice therefor, in the following manner:

(A) That part of the full purchase price of each car, which is in excess of the deferred purchase price thereof, hereinafter specified, shall be paid in cash to Pullman Incorporated (Pullman-Standard division) upon receipt by Buyer of such invoice.

(B) The deferred purchase price of each car being Eighteen Thousand Seven Hundred Twenty Three Dollars and Sixty Cents (\$18,723.60), shall be paid in sixty (60) consecutive quarterly payments of Seven Thousand Eight Hundred One Dollars and Fifty Cents (\$7,801.50).

The total deferred purchase price of the twenty five (25) cars is Four Hundred Sixty Eight Thousand and Ninety Dollars (\$468,090.00).

(C) The first of such quarterly installment payments in respect of each car shall be due and payable on the first day of the third month after the date of certificate of acceptance covering the final delivery of all cars purchased under this Agreement, and subsequent installment payments shall be due and payable on the first day of each third month thereafter until said total deferred purchase price shall have been paid in full, and with each such quarterly payment there shall be interest due and payable as follows:

(i) Interest at the rate of six per cent (6%) per annum on the unpaid principal balance of the deferred purchase price represented by quarterly installment payments numbered 1 through 60.

(ii) It is understood and agreed that the interest rate of 6% per annum hereinabove stated in sub-paragraph (i) is considered to be the prime

6. REPLACEMENTS AND MAINTENANCE. The Buyer covenants and agrees that it will at all times after the delivery of said cars, maintain and keep said cars in good order and repair, at its expense, and shall bear the risk of, and shall not be released from its obligations hereunder in case of any and all damage, loss or destruction of said cars from whatever cause arising.

The Buyer shall replace the cars or any thereof, or any parts thereof, at its own cost, except as otherwise herein provided, if one or any of them shall be lost or destroyed from any cause whatever during the continuance of this Agreement, with other standard gauge rolling stock equal in value to the depreciated value as that lost or destroyed, or the Buyer shall promptly pay to the Seller a sum equal to the then unpaid balance applicable to such car or cars, together with interest accrued on such unpaid balance to the date of such payment, in which event all succeeding monthly payments shall be correspondingly reduced. The Buyer will cause any such car or cars used in replacement to be marked as above provided and to be numbered with the same road number as the car or cars so replaced. Any and all such replacements of any cars or any of them and of any parts shall constitute accessions to the cars and shall be subject to all the terms and conditions of this Agreement as though part of the original cars delivered hereunder, and included in the word "cars", as used in this Agreement. Title to all such cars shall be taken initially, and shall remain, in the name of the Seller, subject to the provisions hereof.

7. REPORTS AND INSPECTION. The Buyer hereby agrees to furnish to the Seller, or its assignee, upon request, as long as this Agreement shall be in force, an accurate statement showing the cars in actual service, the condition of the cars, the numbers and the description of such cars as may have been destroyed and replaced by other cars, and that the cars remain properly marked in accordance with Section 3 of this Agreement.

The Buyer shall promptly and fully inform the Seller, or its assignee, of any loss, material damage to, or destruction of any of the cars.

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

8. POSSESSION, USE AND LOCATION OF CARS. The Buyer, so long as it shall not be in default under this Agreement, shall, subject to all the terms and conditions of this Agreement, be entitled to the possession and use of the cars, from and after delivery thereof by the Seller to the Buyer, upon lines of railroad, owned or operated by the Buyer, or by carriers participating in joint or connecting service, or over which it or they have trackage rights, in the usual interchange of such cars,

but at all times subject to all the terms and conditions of this Agreement.

9. PROHIBITION AGAINST LIENS. The Buyer hereby agrees to pay or satisfy and discharge any and all sums claimed by any party which, if unpaid, might become a lien or a charge upon the cars or any of them, 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 Seller in and to the cars.

10. INDEMNITIES AND GUARANTIES. The Buyer hereby covenants and agrees to save, indemnify and keep harmless the Seller from and against all losses, damages, injuries, claims, and demands whatsoever, regardless of the cause thereof, arising on account of the use or operation of the cars during the life of this Agreement, except as herein provided. With respect to such losses, damages, injuries, claims and demands, said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the cars, as provided in Section 3 hereof, or the termination of this Agreement in any manner whatsoever.

The Buyer 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 any or all of the cars; provided, however, that Pullman Incorporated (Pullman-Standard division) and any successor or successors to its manufacturing property and business shall not, as to any of the cars, be relieved from its guaranty covering material and workmanship set forth in the Seller's General Conditions hereinbefore referred to. Pullman Incorporated (Pullman-Standard division), for itself and any successor or successors to its manufacturing property and business, also agrees to save, indemnify and keep harmless the Buyer from and against any and all royalties, damages, claims, suits, judgements, and costs that may arise in the use of any patented article on the cars at the time of delivery, except with regard to any appliances, devices, or materials specified or required by the Buyer and not manufactured by the Seller.

11. ASSIGNMENT OF INTEREST OF SELLER. The Buyer agrees that the Seller, or its assignee, may at any time and from time to time transfer, assign, pledge, or sell participations in this Agreement and its rights hereunder, or any part thereof, and its title and ownership in and to the cars or any thereof and its rights, powers, privileges and remedies hereunder, or any part thereof, on such terms and conditions as it may deem proper, and in any such event all rights, powers,

privileges and remedies given to or vested in the Seller hereunder shall inure to the benefit of, vest in and may be exercised by and for the benefit of the transferee, assignee, pledgee or participant, or for the use and benefit of the proper parties in interest, to the extent specified in such transfer, assignment, pledge or participation; provided, however, that no such transfer, assignment, pledge or participation shall subject any such transferee, assignee, pledgee or participant to, or relieve the Seller from, any obligation as to the construction, delivery or warranty of the cars or any indemnity or any other duty, obligation or liability of the Seller hereunder. Any such transfer, assignment, pledge or participation may be to one or more transferees, assignees, pledgees or participants, or jointly to more than one transferee, assignee, pledgee or participant. Specific reference to any assignee in other provisions of this Agreement shall not be construed as limiting the foregoing provisions of this Section. In addition, it is understood that in the event of any assignment of this Agreement by the Seller, the Buyer shall upon receipt of notification of such assignment be required with respect to any provision of this Agreement requiring the consent or approval of the Seller to thereafter obtain the consent and approval of the assignee and not the consent of the Seller before it shall be authorized to take any action or refrain from any actions which are conditioned upon such consent and approval.

In case of assignment of this Agreement by the Seller, prompt written notice of such assignment shall be given by the Seller to the Buyer, and the Buyer shall be protected by the Seller in any payments made hereunder to the Seller prior to notice of such assignment. A copy of such notice shall be sent by the assignor to the assignee. Upon receipt of notice from the Seller of any such assignment, the Buyer will thereafter pay to the assignee, specified in such notice, to the extent specified in such assignment, all amounts payable by the Buyer hereunder after receipt of such notice.

The Buyer expressly represents, for the purpose of assurance to any person, firm or corporation considering the purchase of this Agreement or of all or any of the rights of the Seller hereunder and for the purpose of inducing such purchase, that in the event of such purchase and of the assignment by the Seller of this Agreement or of all or any of the rights of the Seller hereunder, the rights of the assignee or assignees to the entire unpaid purchase price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any suit or action or to any defense, set-off, counterclaim or recoupment whatsoever, arising out of any breach of any obligation of Pullman Incorporated (Pullman-Standard division) in respect of the cars or the manufacture, construction, delivery, or warranty thereof, or in respect of any indemnity herein contained, nor subject to any suit or action or to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebt-

6. REPLACEMENTS AND MAINTENANCE. The Buyer covenants and agrees that it will at all times after the delivery of said cars, maintain and keep said cars in good order and repair, at its expense, and shall bear the risk of, and shall not be released from its obligations hereunder in case of any and all damage, loss or destruction of said cars from whatever cause arising.

The Buyer shall replace the cars or any thereof, or any parts thereof, at its own cost, except as otherwise herein provided, if one or any of them shall be lost or destroyed from any cause whatever during the continuance of this Agreement, with other standard gauge rolling stock equal in value to the depreciated value as that lost or destroyed, or the Buyer shall promptly pay to the Seller a sum equal to the then unpaid balance applicable to such car or cars, together with interest accrued on such unpaid balance to the date of such payment, in which event all succeeding monthly payments shall be correspondingly reduced. The Buyer will cause any such car or cars used in replacement to be marked as above provided and to be numbered with the same road number as the car or cars so replaced. Any and all such replacements of any cars or any of them and of any parts shall constitute accessions to the cars and shall be subject to all the terms and conditions of this Agreement as though part of the original cars delivered hereunder, and included in the word "cars", as used in this Agreement. Title to all such cars shall be taken initially, and shall remain, in the name of the Seller, subject to the provisions hereof.

7. REPORTS AND INSPECTION. The Buyer hereby agrees to furnish to the Seller, or its assignee, upon request, as long as this Agreement shall be in force, an accurate statement showing the cars in actual service, the condition of the cars, the numbers and the description of such cars as may have been destroyed and replaced by other cars, and that the cars remain properly marked in accordance with Section 3 of this Agreement.

The Buyer shall promptly and fully inform the Seller, or its assignee, of any loss, material damage to, or destruction of any of the cars.

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

8. POSSESSION, USE AND LOCATION OF CARS. The Buyer, so long as it shall not be in default under this Agreement, shall, subject to all the terms and conditions of this Agreement, be entitled to the possession and use of the cars, from and after delivery thereof by the Seller to the Buyer, upon lines of railroad, owned or operated by the Buyer, or by carriers participating in joint or connecting service, or over which it or they have trackage rights, in the usual interchange of such cars,

but at all times subject to all the terms and conditions of this Agreement.

9. PROHIBITION AGAINST LIENS. The Buyer hereby agrees to pay or satisfy and discharge any and all sums claimed by any party which, if unpaid, might become a lien or a charge upon the cars or any of them, 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 Seller in and to the cars.

10. INDEMNITIES AND GUARANTIES. The Buyer hereby covenants and agrees to save, indemnify and keep harmless the Seller from and against all losses, damages, injuries, claims, and demands whatsoever, regardless of the cause thereof, arising on account of the use or operation of the cars during the life of this Agreement, except as herein provided. With respect to such losses, damages, injuries, claims and demands, said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the cars, as provided in Section 3 hereof, or the termination of this Agreement in any manner whatsoever.

The Buyer 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 any or all of the cars; provided, however, that Pullman Incorporated (Pullman-Standard division) and any successor or successors to its manufacturing property and business shall not, as to any of the cars, be relieved from its guaranty covering material and workmanship set forth in the Seller's General Conditions hereinbefore referred to. Pullman Incorporated (Pullman-Standard division), for itself and any successor or successors to its manufacturing property and business, also agrees to save, indemnify and keep harmless the Buyer from and against any and all royalties, damages, claims, suits, judgements, and costs that may arise in the use of any patented article on the cars at the time of delivery, except with regard to any appliances, devices, or materials specified or required by the Buyer and not manufactured by the Seller.

11. ASSIGNMENT OF INTEREST OF SELLER. The Buyer agrees that the Seller, or its assignee, may at any time and from time to time transfer, assign, pledge, or sell participations in this Agreement and its rights hereunder, or any part thereof, and its title and ownership in and to the cars or any thereof and its rights, powers, privileges and remedies hereunder, or any part thereof, on such terms and conditions as it may deem proper, and in any such event all rights, powers,

privileges and remedies given to or vested in the Seller hereunder shall inure to the benefit of, vest in and may be exercised by and for the benefit of the transferee, assignee, pledgee or participant, or for the use and benefit of the proper parties in interest, to the extent specified in such transfer, assignment, pledge or participation; provided, however, that no such transfer, assignment, pledge or participation shall subject any such transferee, assignee, pledgee or participant to, or relieve the Seller from, any obligation as to the construction, delivery or warranty of the cars or any indemnity or any other duty, obligation or liability of the Seller hereunder. Any such transfer, assignment, pledge or participation may be to one or more transferees, assignees, pledgees or participants, or jointly to more than one transferee, assignee, pledgee or participant. Specific reference to any assignee in other provisions of this Agreement shall not be construed as limiting the foregoing provisions of this Section. In addition, it is understood that in the event of any assignment of this Agreement by the Seller, the Buyer shall upon receipt of notification of such assignment be required with respect to any provision of this Agreement requiring the consent or approval of the Seller to thereafter obtain the consent and approval of the assignee and not the consent of the Seller before it shall be authorized to take any action or refrain from any actions which are conditioned upon such consent and approval.

In case of assignment of this Agreement by the Seller, prompt written notice of such assignment shall be given by the Seller to the Buyer, and the Buyer shall be protected by the Seller in any payments made hereunder to the Seller prior to notice of such assignment. A copy of such notice shall be sent by the assignor to the assignee. Upon receipt of notice from the Seller of any such assignment, the Buyer will thereafter pay to the assignee, specified in such notice, to the extent specified in such assignment, all amounts payable by the Buyer hereunder after receipt of such notice.

The Buyer expressly represents, for the purpose of assurance to any person, firm or corporation considering the purchase of this Agreement or of all or any of the rights of the Seller hereunder and for the purpose of inducing such purchase, that in the event of such purchase and of the assignment by the Seller of this Agreement or of all or any of the rights of the Seller hereunder, the rights of the assignee or assignees to the entire unpaid purchase price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any suit or action or to any defense, set-off, counterclaim or recoupment whatsoever, arising out of any breach of any obligation of Pullman Incorporated (Pullman-Standard division) in respect of the cars or the manufacture, construction, delivery, or warranty thereof, or in respect of any indemnity herein contained, nor subject to any suit or action or to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebt-

edness or liability at any time owing to the Buyer by Pullman Incorporated (Pullman-Standard division). Any and all such obligations, howsoever arising, shall be and remain enforceable by the Buyer against and only against Pullman Incorporated (Pullman-Standard division). The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Buyer to waive any remedies which it might otherwise have to enforce any and all such obligations of Pullman Incorporated (Pullman-Standard division), as against such assignees, which offer may be accepted by such assignee by payment to the assignor of the consideration for the purchase and assignment of this Agreement or of some or all of the rights hereunder and by giving notice of such assignment to the Buyer.

If this Agreement shall have been assigned by Pullman Incorporated (Pullman-Standard division), the Seller, and the assignee shall have agreed to pay to the Seller an amount equal to the deferred purchase price of each car upon delivery to the Buyer in accordance with this Agreement, and the assignee shall fail to pay said amount when due, the Seller will promptly notify the Buyer of such event and if such amount shall not have been previously paid by assignee for any such car, Buyer will not later than 90 days after such due date, pay or cause to be paid to Seller the deferred purchase price of each such car together with interest from such due date to the date of payment by Buyer at the prime rate of interest of the assignee bank as defined in Section 2 (C) (iii) of this Agreement, in effect on such due date.

The term "Seller" whenever used in this Agreement means Pullman Incorporated (Pullman-Standard division); provided, however, that, to the extent that the rights, titles and interests of the Seller hereunder shall have been assigned from time to time, the term "Seller" with respect to such rights, titles and interests, shall mean the assignee or assignees for the time being thereof, but this proviso shall not limit or affect the obligations or liability of Pullman Incorporated (Pullman-Standard division) under the terms of this Agreement.

12. SUCCESSORS TO, AND ASSIGNMENTS BY, THE BUYER. The Buyer hereby represents and warrants that its execution of this Agreement and its assumption and undertaking of the obligations, duties, and liabilities hereof, have been expressly authorized and that all the obligations then existing or to accrue of the Buyer under this Agreement, shall be assumed by any person or corporation acquiring title to or possession of the railways and properties of the

Buyer, and that upon any sale, lease, transfer, or assignment of said railways or properties, any person or corporation acquiring title thereto or possession thereof shall also, as a condition of such acquisition, be bound by all such obligations.

The Buyer hereby covenants and agrees that without the written consent of the Seller it will not pledge, hypothecate or in any way encumber or permit the encumbrance of, any part or all of the cars or assign or transfer this Agreement or any of its rights hereunder, or transfer or lease the cars or any of them.

The term "Buyer" whenever used in this Agreement means, before any assignment of the rights of the Buyer hereunder as herein provided, the Buyer, its successors and assigns, and after any such assignment shall include any assignee thereof, except only insofar as the Seller may specifically, in writing, relieve the Buyer or any such assignee from the obligations hereof.

13. DEFAULTS. In the event that the Buyer:

(a) shall make default in the payment of any installment of the unpaid purchase price of any of the cars herein provided for, or in the payment of any installment of interest thereon, and shall remain in default for more than ten (10) days after such payment shall have become due and payable; or

(b) shall make or suffer to be made any unauthorized assignment or transfer of this Agreement or of any interest therein or of its rights or interest in any of the cars or any unauthorized lease thereof, or any thereof, or shall cause or permit any of the cars to be pledged or held for any debt or obligation owing by Buyer or to be in any manner encumbered, or except as herein authorized shall part with the possession of the cars, and in any such event shall fail or refuse either to cause such assignment or transfer or lease to be cancelled effectually as to it and all others having any interest therein or to cause any such cars to be released from such pledge or encumbrance or to recover possession of such cars within thirty (30) days after Seller shall have demanded in writing such cancellation or release or the recovery of possession of such cars; or

(c) shall fail or refuse, for more than thirty (30) days after Seller shall have demanded in writing the performance thereof, to comply with any other of the terms and covenants of this Agreement to be kept and performed by Buyer or to make provision satisfactory to Seller for such compliance;

then, in any such case (in this Agreement sometimes called "events of default"), Seller at its option may by notice in writing delivered to Buyer, declare to be due and payable forthwith the entire unpaid balance of the purchase price of the cars; and thereupon the entire amount of such unpaid purchase price shall become and shall be due and payable immediately without further demand, together with interest thereon to such date of default at the rate set out in Section 2 of this Agreement, and thereafter interest shall be payable by Buyer upon any portion thereof overdue during such time as it shall remain overdue, at the prime rate of interest of the assignee bank as defined in Section 2(C)(iii) of this Agreement, in effect on such due date; and Seller shall thereupon be entitled to recover judgment for the entire amount so payable by Buyer with interest thereon at said rate and collect such judgment out of any property of Buyer wherever situated. Any and all money so collected by Seller shall be applied by it as hereinafter provided in Section 14 of this Agreement.

14. REMEDIES. Buyer covenants that, in case of the happening of any such event of default, Seller by its agents may also take possession of all or any of the cars wherever they may be found, and for that purpose enter upon the railroads and premises of Buyer, and of any corporation operated under lease by Buyer, and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made hereunder for the cars and otherwise, and may lease the cars or any thereof, or with or without retaking possession thereof (but only after making the declaration provided for in Section 13 hereof), may sell the same or any thereof as far as may be necessary to realize the balance remaining to be paid by Buyer under this Agreement, free from any and all claims of Buyer at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, after at least fifteen (15) days' prior written notice to the Buyer, and with or without any other notice or advertisement, for cash or upon credit, in its discretion, and may otherwise proceed to enforce its rights in the manner provided by this Agreement.

In case Seller shall rightfully demand possession of the cars in pursuance of this Agreement and shall reasonably designate a point or points upon the railroad of Buyer, for delivery of the cars to it, Buyer shall, at its own expense, forthwith and in the usual manner, cause the cars to be moved to such point or points on said railroad as shall be designated by Seller and shall there deliver the same or cause them to be delivered to Seller; or, at the option of Seller, Seller may keep the cars on any of the lines of rail

road or premises of Buyer until Seller shall have leased, sold or otherwise disposed of the same, and for such purpose Buyer agrees to furnish without charge for rent or storage the necessary facilities at any point or points selected by Seller reasonably convenient to Buyer. It is hereby expressly covenanted and agreed that the covenants in this Section 14 contained are of the essence of this Agreement and that upon application to any court having jurisdiction in the premises Seller shall be entitled to a decree against Buyer requiring the specific performance thereof.

In the event of a sale or other disposition of the cars or any of them as herein provided it shall not be necessary to have the cars or any of them present at such place or places where such sale or other disposition may be made. At any such sale or sales or other disposition, Seller may become the purchaser of the cars or any of them, and in settlement for such purchase price shall be entitled to have credited on account thereof the sums then due to the Seller by the Buyer under this Agreement.

Any such sale or sales may be held or conducted at such place or places and at such time or times as Seller may specify, or as may be required by law, and without gathering at the place of sale the cars to be sold, and in general in such manner as Seller may determine.

Upon such taking possession or lease or sale of the cars Buyer shall cease to have any rights or remedies in respect of the cars under this Agreement, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by Buyer, and no payments theretofore made by Buyer for the cars or any of them shall, in case of the happening of any such event of default and such taking possession, lease or sale by Seller, give to Buyer any legal or equitable interest or title in or to the cars or any of them or any cause or right of action at law or in equity with respect to the cars against Seller. No such taking possession or lease or sale of the cars by Seller shall be a bar to the recovery by Seller from Buyer of any unpaid balance of the purchase price of the cars and Buyer shall be and remain liable for the same, until such sums shall have been realized as with the proceeds of the lease or sale of any or all of the cars shall be sufficient for the discharge and payment in full of all sums payable by Buyer under any of the provisions of this Agreement.

If in case of the happening of any such event of default Seller shall exercise any of the powers conferred upon it by this Agreement, all payments made by Buyer to Seller under this Agreement after such event of default, and the proceeds of any judgment collected by Seller from Buyer hereunder, and the proceeds of every lease or sale by Seller hereunder of any of the cars together with any other sums which may then be held by Seller under any of the provisions of this Agreement, shall be applied by Seller in the

order of priority following, viz: (a) to the payment of all proper expenses incurred or advances made by Seller in accordance with the provisions of this Agreement, including the expense of any retaking of the whole or any part of the cars and all expenses of the custody and of any lease or sale thereof, and (b) to the payment of all sums of money due and payable to Seller under the provision of this Agreement, including any taxes, assessments or governmental charges paid by or imposed upon Seller in respect of the cars. After all such payments shall have been made in full the title to any of the cars remaining unsold shall be conveyed by Seller to Buyer, or otherwise as it may direct, free from any further liabilities or obligations to Seller hereunder. If, after applying as aforesaid all such sums of money realized by Seller there shall remain any amount due to Seller under the provisions of this Agreement, Buyer agrees to pay the amount of such deficit to Seller. If, after applying as aforesaid all such sums of money realized by Seller, there shall remain a surplus in the possession of Seller, such surplus shall be paid to Buyer, or otherwise as it may direct in writing.

The remedies in this Agreement provided in favor of Seller shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity.

The foregoing provisions, however, are subject to the condition that if, at any time after the unpaid balance of the purchase price shall have been declared due and payable as provided in this Agreement, all arrears of installment payments with interest as hereinabove provided and the expenses of Seller and all other sums which shall have become due and payable by Buyer under this Agreement (other than the unpaid installments which shall not at the time have matured according to their terms) shall have been paid by Buyer before any lease or sale by Seller of any of the cars, and every other default in the observance or performance of any covenant or condition of this Agreement shall have been made good or cured to the satisfaction of Seller or provisions deemed by Seller to be adequate shall have been made therefor, then and in every such case Seller shall waive the default by reason of which the unpaid balance of the purchase price of the cars shall have been declared and become due and payable and shall waive the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Neither such retaking possession nor any lease or sale of the cars by Seller nor any action of failure or

omission to act on the part of Seller against Buyer or with respect to the cars nor any delay or indulgence granted to Buyer by Seller shall affect the obligations of Buyer under this Agreement.

The filing by Buyer, or by creditors of Buyer, of any petition for reorganization or debt adjustment affecting the obligations of Buyer hereunder under Section 77 of the Bankruptcy Act or under any amendment or revision thereof or under any other provision of the Bankruptcy Act as now or hereafter existing or under any other statute, or any voluntary assignment or transfer of Buyer's interest in and under this Agreement, or any involuntary transfer of such interest by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise (unless such petition shall be dismissed or such assignment, transfer, decree or process shall within thirty (30) days from the filing or other effective date thereof be nullified, stayed or otherwise rendered ineffective, or unless any such receiver or trustee shall within thirty (30) days from the date of his appointment adopt this Agreement pursuant to due authority of the court appointing him) shall be deemed a breach of this Agreement and a default hereunder; whereupon Seller may elect to declare the entire unpaid balance of the purchase price immediately due and payable as hereinbefore provided and may thereupon forthwith retake possession of the cars or any of them and exercise and enforce any and all other remedies as provided by Sections 13 and 14, hereof.

15. APPLICABLE STATE LAWS. 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, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

16. EXTENSION NOT A WAIVER. Any extension of time granted by the Seller to the Buyer for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall apply to the particular instance only, and shall not be deemed a waiver of the title of the Seller reserved hereunder nor any of its rights and remedies hereunder or otherwise existing.

17. RECORDING. The Buyer shall cause this Agreement to be filed, registered, and/or recorded wherever necessary for the proper protection of the Seller's, or its assignee's, title and rights to the cars, and the Buyer shall, from time to time, do and perform any other act, including the execution, acknowledgment, delivery, filing, registering and/or recording of any and all further instruments required by law, or reasonably requested by Seller, or its assignee, for the purpose of protecting its title and rights, or for the purpose of carrying out

the intention of this Agreement, and will furnish the Seller, or its assignee with an opinion or opinions of counsel for the Buyer with respect thereto, satisfactory to the Seller, or its assignee.

The Buyer will also with all convenient speed and at its own expense cause any supplemental agreement to this Agreement and the first assignment of the interest of the Seller, or its assignee, in this Agreement to be duly filed or recorded in that office, or with that agency in which this Agreement shall have been recorded.

18. PAYMENT OF EXPENSES. The Buyer shall pay all costs, charges and expenses, except counsel fees of Pullman Incorporated (Pullman-Standard division), or its assignee, incident to the preparation, execution, acknowledgment and recordation of this Agreement and of the first and second assignment hereof, and all such costs, charges and expenses in connection with any instrument supplemental hereto or amendatory hereof and of any declaration of the payment in full of the purchase money due hereunder.

19. EXECUTION OF COUNTERPARTS. This Agreement may be simultaneously executed in two or more 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, which shall be sufficiently evidenced by any such original counterpart. Although this Conditional Sale Agreement is dated for convenience, September 1, 1971, 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.

20. SECTION HEADINGS. All section, paragraph, or division headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21. MODIFICATION OF AGREEMENT. This Agreement of Conditional Sale constitutes the entire agreement between the Buyer and Seller with respect to the sale of the cars herein referred to. No variation or modification of this Agreement, and no waiver of any of its provisions or conditions, shall be valid unless in writing and signed by the duly authorized officers of the Seller and Buyer.

22. LAWS GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Alabama; provided, however, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, Pullman Incorporated (Pullman-Standard division) has caused these presents to be executed and its seal to be affixed by its duly authorized officers pursuant to lawful resolutions; and The Western Railway of Alabama has caused these presents to be executed and its seal to be affixed by its duly authorized officers pursuant to lawful resolutions, all as of the day, month and year first above written.

PULLMAN INCORPORATED  
(Pullman-Standard division),

By   
Vice-President.

(Corporate Seal)

Attest:

Assistant Secretary.

THE WESTERN RAILWAY OF ALABAMA,

BY   
President.

(Corporate Seal)

Attest:

Secretary.



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

On this 23rd day of September, 1971, before me personally appeared M R Boock, to me personally known, who being by me duly sworn, says that he is a VICE-PRESIDENT of PULLMAN INCORPORATED (Pullman-Standard division), a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him 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  
 Cook County, Illinois

(Notarial Seal)

RICHARD A. MOBERG  
 Notary Public, Chicago, Cook County  
 My Commission Expires March 31, 1974

STATE OF GEORGIA, )  
 COUNTY OF FULTON, ) ss.:

On this 17th day of September, 1971, before me personally appeared CHESTER R. LAREZA, to me personally known, who being by me duly sworn, says that he is the PRESIDENT of THE WESTERN RAILWAY OF ALABAMA, a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him 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.

B. A. Sanders  
 Notary Public

(Notarial Seal)



---

---

PULLMAN INCORPORATED (Pullman-Standard division)

AND

THE FIRST NATIONAL BANK OF ATLANTA

ATLANTA, GEORGIA

---

AGREEMENT AND ASSIGNMENT

Dated as of September 2, 1971

---

Relating to Conditional Sale Agreement Between Pullman Incorporated (Pullman-Standard division) and The Western Railway of Alabama, dated as of September 1, 1971, covering purchase of 25 new 100-Ton Sextuple Wood Chip Hopper Cars.

---

---



AGREEMENT AND ASSIGNMENT, dated as of September 2, 1971, between PULLMAN INCORPORATED (Pullman-Standard division), a corporation of the State of Delaware (hereinafter called the "Manufacturer"), and THE FIRST NATIONAL BANK OF ATLANTA, a national banking association with its principal office at Atlanta, Georgia (hereinafter referred to as "Assignee"),

W I T N E S S E T H :

WHEREAS, the Manufacturer and The Western Railway of Alabama, a corporation of the State of Alabama, hereinafter called the "Buyer", entered into a Conditional Sale Agreement, dated as of September 1, 1971, hereinafter called the "Conditional Sale Agreement", with respect to twenty-five (25) new 100-ton sextuple wood chip hopper cars, bearing Buyer's numbers 26000 through 26024, said cars being hereinafter together called the "cars", all as more particularly described therein, a counterpart of the Conditional Sale Agreement being prefixed hereto.

Now, Therefore, This Agreement and 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 Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

(1) The Manufacturer hereby sells, assigns, transfers and sets over to the Assignee, all the right, title and interest of the Manufacturer under the Conditional Sale Agreement (except the right to manufacture and the right to receive all payments in respect of each car in excess of the deferred purchase price specified in Section 2 thereof, and in the penultimate paragraph of Section 11 thereof, and reimbursement for taxes paid or incurred by the Manufacturer as provided in Section 4 thereof), together with all the Manufacturer's powers, privileges, immunities and remedies thereunder, and all the right, title and interest of the Manufacturer in and to each car when and as the same are severally manufactured and delivered and accepted by the Buyer and upon payment by the Assignee to the Manufacturer of the amounts required to be paid under Section (7) hereof, and in and to any and all amounts which may be or become due and owing by the Buyer to the Manufacturer under the Conditional Sale Agreement on account of the deferred purchase price of each car and interest thereon, and in and to any other sums becoming due under the Conditional Sale Agreement, without any recourse, however, to the Manufacturer for or on account of any failure of payment or compliance with any of the terms or provisions of said Conditional Sale Agreement on the part of the Buyer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee, in such manner and at such times as the Assignee may deem advisable, in the name of the Manufacturer or in the name of the Assignee, or in the name of the nominee of the Assignee, to ask, demand, sue for, collect, receive and enforce, any and all sums

to which the Assignee may become entitled under this Agreement and Assignment and compliance by the Buyer with the terms and agreements on the part of the Buyer to be performed under the Conditional Sale Agreement, but without expense and liability to the Manufacturer and for the sole benefit of the Assignee.

(2) The Manufacturer covenants and agrees that it will warrant that as set forth in and subject to the provisions of the Conditional Sale Agreement as of the date of delivery of each car to the Buyer it had legal title to the cars, free and clear of all liens and encumbrances and subject to no rights or claims of any persons whatsoever except those of the Buyer under the Conditional Sale Agreement, and good right to sell the same and that as of the date of such delivery the Assignee shall have title to and a claim upon each of said cars prior and superior to the rights and claims of all other persons whatsoever as security for the payment by the Buyer of the deferred purchase price of all cars.

(3) The Manufacturer agrees that this Agreement and Assignment will not transfer or impose upon the Assignee, or in any way affect or modify (1) its obligation to construct the cars in accordance with the applicable Specification and as warranted therein, or (2) its obligations to indemnify the Buyer against and save and keep the Buyer harmless from loss and expense resulting from patent claims, all as set forth in Section 10 of the Conditional Sale Agreement, the said obligations to be and remain enforceable against and only against the Manufacturer as provided in the Conditional Sale Agreement.

(4) The Manufacturer will indemnify the Assignee against and save and keep it harmless from all expense, loss or damage incurred or sustained by the Assignee, by reason of any defense, set-off or counterclaim of the Buyer, based on any indebtedness or liability at any time owing to the Buyer by the Manufacturer, in any suit or action brought by the Assignee under the Conditional Sale Agreement. The Manufacturer agrees to indemnify and save harmless the Assignee against any and all claims, suits, actions or other proceedings, and against all expenses incurred and judgments entered in or as a result of such actions, arising in any way out of any alleged infringement of patents covering the cars or any part or appliance thereof, excepting those patents covering devices and specialties designated by the Buyer to be used by Manufacturer in the building of such cars and which are not of the own design and specification of the Manufacturer.

(5) The Manufacturer covenants and agrees that it will construct the cars in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Buyer free of all claims, liens and encumbrances and in accordance with the provisions of the

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

On this 23rd day of September, 1971, before me personally appeared W.R. Weeks, to me personally known, who being by me duly sworn, says that he is a VICE-PRESIDENT of PULLMAN INCORPORATED (Pullman-Standard division), a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed by him 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  
 Cook County, Illinois

(NOTARIAL SEAL)

RICHARD A. MOBERG  
 Notary Public, Chicago, Cook County  
 My Commission Expires March 31 1974

STATE OF GEORGIA, )  
 COUNTY OF FULTON, ) ss.:

On this 21 day of September 1971, before me personally appeared R. Gregg Wassguth, to me personally known, who being duly sworn, says that he is VICE-PRESIDENT of THE FIRST NATIONAL BANK of ATLANTA, a national banking association, that the seal affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed by him on behalf of said association 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 association.

Janet C. Babin  
 Notary Public

(NOTARIAL SEAL)

Notary Public, Georgia, State at Large  
 My Commission Expires Aug. 2, 1975