OCT 4 1971

63415-D

RECORDATION NO. _____ Filed & Recorded

DEC 30 1971 -2 10 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of September 1, 1971

Between

PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION)

Manufacturer

and

LIBERTY MUTUAL INSURANCE COMPANY

Assignee

B.&L.E. Trust No. 3

AGREEMENT AND ASSIGNMENT dated as of September 1, 1971, between PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION) (the "Manufacturer") and Liberty Mutual Insurance Company (the "Assignee").

WHEREAS, the Manufacturer, TRUST COMPANY FOR USL, INC., not in its general corporate capacity but solely as Trustee (the "Trustee-Vendee") under a Trust Agreement dated as of September 1, 1971 (the "Trust Agreement"), UNITED STATES LEASING INTERNATIONAL, INC., a California corporation, as Agent for the Trustee-Vendee (the "Agent") and BESSEMER AND LAKE ERIE RAILROAD COMPANY, a Pennsylvania corporation (the "Guarantor"), have entered into a Conditional Sale Agreement dated as of September 1, 1971, (the "Conditional Sale Agreement"), covering the construction, sale and delivery on the conditions therein set forth, by the Manufacturer and the purchase by the Trustee-Vendee of the railroad equipment described in Schedule A-3 to the Conditional Sale Agreement (collectively the "Equipment" and individually "Items of Equipment") and including the unconditional guaranty by the Guarantor of all obligations of the Trustee-Vendee under the Conditional Sale Agreement.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (the "Assignment"),

W I T N E S S E T H:

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:

Section 1. Assignment. The Manufacturer hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each Item of Equipment to be built by it when and as delivered and accepted and upon payment by the Assignee to the Manufacturer of the amount required to be paid under Section 5 hereof with respect thereto;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the various Items of Equipment to be built by it and the right to receive the payments specified in subparagraph (a) of Section 3.3 thereof and in Section 13.7 thereof and reimbursement for taxes paid or incurred by the Manufacturer and the right to indemnity

from the Guarantor for claims arising against the Manufacturer as provided in Sections 11.1 and 12 therecf) insofar as the same relates to the Equipment, and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Trustee-Vendee or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited above in subparagraph (b) hereof, all of the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement insofar as the same relate to the Equipment;

without any recourse, however, against the Manufacturer for or on account of the failure of the Trustee-Vendee or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the various Items of Equipment to be built by it in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Section 11.3, 12 and 13.5 (with respect to marking) of the Conditional Sale Agreement or relieve the Trustee-Vendee or the Guarantor from their respective obligations to the Manufacturer under Sections 2, 11, 12 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 13.5 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Trustee-Vendee with respect to the Equipment shall be and remain enforceable by the Trustee-Vendee, its successors and assigns, against and only against the Manufacturer. 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 nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer to ask, demand, sue for, collect, recieve and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Trustee-Vendee and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

Section 2. Covenants and Agreements of Manufacturer. The Manufacturer covenants and agrees that it will construct and deliver the various Items of Equipment to be built by it to the Trustee-Vendee, in accordance with the provisions of the Conditional Sale Agreement, and that, notwithstanding this Assignment, it will perform and fully comply with each and all of 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 warrant to the Assignee and the Trustee-Vendee that at the time of delivery of each Item of Equipment to be built by it to the Trustee-Vendee under the Conditional Sale Agreement it had legal title to such Item and good and lawful right to sell such Item and the title to such Item was free of all claims, liens and encumbrances of any nature except only the rights of the Trustee-Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such Item against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by the Manufacturer to the Trustee-Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Trustee-Vendee thereunder and the Guarantor under the lease.

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 installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Trustee-Vendee arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Sections 11 and 12 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee-Vendee or the Guarantor by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Trustee-Vendee or the Guarantor against and only against the Manufacturer and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The Assignee will give notice to the Manufacturer of any suit, proceeding or action by the Assignee herein described.

Except in cases of designs specified by the Trustee-Vendee or the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Trustee-Vendee and the Guarantor and not manufactured by the Manufacturer, 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 reasonable royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any Item thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

The Manufacturer agrees that any amount payable to it by the Trustee-Vendee or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Items of the Equipment.

Section 3. Marking of Equipment. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each Item of Equipment, at the time of delivery thereof to the Trustee-Vendee, in letters not less than one inch in height the following legend:

> "Leased through United States Leasing International, Inc., as Agent for Trustee-Vendee, and Subject to a Security Interest Recorded with I.C.C."

Section 4. Execution of Documents. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute and record all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

Section 5. Conditions Precedent to Payment by Assignee. The Assignee, on or before noon on the Closing Date fixed as provided in Section 3.5 of the Conditional Sale Agreement with respect to the Equipment, shall pay to the Manufacturer at the offices of Messrs. Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603, an amount equal to that portion of the Purchase Price (as defined in Section 3.1 of said Agreement) of the Equipment not required to be paid pursuant to subparagraph (a) of Section 3.3 of said Agreement, provided that there shall have been delivered to the Assignee the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to its special counsel hereinafter mentioned:

(a) Bill or Bills of Sale from such Manufacturer to the Assignee, transferring to the Assignee title to each of the Items of Equipment and warranting to the Assignee and to the Trustee-Vendee that at the time of delivery to the Trustee-Vendee under the Conditional Sale Agreement the Manufacturer had legal title to such Items and good and lawful right to sell such Items and title to such Items was free of all claims, liens and encumbrances of any nature except only the rights of the Trustee-Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance signed by an inspector or other authorized representative of the Guarantor and Trustee-Vendee stating that each of the Items of Equipment has been inspected and accepted by him on behalf of the Guarantor and the Trustee-Vendee and further stating that there was plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each of such Items at the time of its acceptance, in letters not less than one inch in height, the following legend:

> "Leased through United States Leasing International, Inc., as Agent for Trustee-Vendee, and Subject to a Security Interest Recorded with the I.C.C."

(c) Invoices for each of the Items of Equipment accompanied by or having endorsed thereon a certification by the Guarantor as to the correctness of the prices of such Items as set forth in said invoices;

(d) Opinion of Messrs. Chapman and Cutler, who are acting as special counsel for the Assignee and for the Investors named in the Finance Agreement, dated as of such Closing Date and stating that (i) the Trustee-Vendee is a duly organized and existing corporation in good standing under the laws of the state of its incorporation, (ii) the Trust Agreement has been duly authorized, executed and delivered by the Trustee-Vendee and the Agent and constitutes a valid, binding and effective agreement and declaration of trust by the Trustee-Vendee in accordance with the terms thereof and the valid, binding and effective agreement of the Agent in respect of the covenants and agreements to be performed or observed by the Agent thereunder, (iii) the trust created and provided for by the Trust Agreement is not taxable as an association under existing statutes, regulations

and decisions relating to Federal Income Taxes, (iv) the Acquisition Agreement dated as of September 1, 1971 entered into by the Lessee, the Trustee-Vendee and the Agent with the Manufacturer the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the respective parties thereto and are valid and binding instruments enforceable in accordance with their respective terms, (v) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (vi) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (vii) title to the Items of Equipment is validly vested in the Assignee and such Items, at the time of delivery thereof to the Trustee-Vendee under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Trustee-Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (viii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment or the Lease, or, if any approval is necessary, it has been obtained, and (ix) the Conditional Sale Agreement, this Assignment and the Lease 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 the Assignee in any State of the United States of America;

(e) Opinion of counsel for the Guarantor, dated as of such Closing Date, to the effect set forth in clauses (vi), (vii) and (viii) of subparagraph (d) above, and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Acquisition Agreement, the Conditional Sale Agreement and the Lease have each been duly authorized, executed and delivered on behalf of the Guarantor and are valid and binding instruments enforceable against the Guarantor, in accordance with their respective terms;

(f) Opinion of counsel for the Manufacturer, dated as of such Closing Date, to the effect set forth in clauses (v) and (vi) of subparagraph (d) above and stating that (i) such Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation

and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement, this Assignment and the Acquisition Agreement have each been duly authorized, executed and delivered by the Manufacturer and are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their respective terms;

(g) An opinion of general counsel for the Agent who is acting as special counsel for the Trustee-Vendee addressed to the Trustor under the Trust Agreement, the Agent, the Assignee and Messrs. Chapman and Cutler, to the effect that (i) the Trustee-Vendee is a duly organized and existing corporation in good standing under the laws of the state of its incorporation, (ii) the Trust Agreement has been duly authorized, executed and delivered by the Trustee-Vendee, the Trustor thereunder and the Agent and constitutes a valid, binding and effective agreement and declaration of trust by the Trustee-Vendee in accordance with the terms thereof and the valid, binding and effective agreement of the Agent in respect of the covenants and agreements to be performed or observed by the Agent thereunder, (iii) the trust created and provided for by the Trust Agreement is not taxable as an association under existing statutes, regulations and decisions relating to Federal Income Taxes, (iv) the Trustee-Vendee has full right, power and authority under the Trust Agreement to enter into, execute and deliver the Acquisition Agreement, the Conditional Sale Agreement and the Lease, to perform each and all of the matters and things provided for in instruments and (v) the Acquisition Agreement, the Conditional Sale Agreement and the Lease have been duly executed and delivered by the Trustee-Vendee and by the Agent and constitute the legal, valid and binding obligations, contracts and agreements of the Trustee-Vendee and of the Agent in accordance with their respective terms; and

(h) Unless payment of the amount, payable with respect to the Equipment pursuant to subparagraph (a) of Section 3.3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Trustee-Vendee, the receipt from the Manufacturer for such payment.

In giving the opinions specified in the preceding subparagraphs (d), (e), (f) and (g), counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

In giving the opinions specified in the preceding subparagraphs (d) and (e), counsel may in fact rely as to the title to the Items of Equipment upon the opinion of counsel for the Manufacturer.

The Assignee shall not be obligated to make any of the above mentioned payments 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 would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the Items of Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any Items of Equipment excluded from the Conditional Sale Agreement pursuant to Section 2.3 thereof.

Section 6. Subsequent Assignments. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Trustee-Vendee thereunder. 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.

Section 7. Additional Agreements of Manufacturer. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon the Manufacturer and the other parties thereto, and that it is now in force without amendment thereto; 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.

Section 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

Section 9. Execution. This Assignment may be 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, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Trustee-Vendee and the Guarantor. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the day, month and year first above written.

PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION)

Attest:

William O. Eckridge
Assistant Secretary

By Stanley Brown
Its VICE PRESIDENT

LIBERTY MUTUAL INSURANCE COMPANY

Attest:

Mary R. Sullivan
Asst. Secretary

By L. S. Glidden
Its

L. S. GLIDDEN, JR. VICE PRESIDENT & TREASURER

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 8TH day of Oct., 1971, before me personally appeared Stanley Brown to me personally known, who, being by me duly sworn, says that he is the Vice President of PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

Notary Public

My commission expires: November 16, 1971

STATE OF Mass.)
) SS
COUNTY OF Suffolk)

On this 15th day of Oct., 1971, before me personally appeared [illegible], to me personally known, who, being by me duly sworn, says that he is the VICE PRESIDENT & TREASURER LIBERTY MUTUAL INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

(Notarial Seal)

Notary Public

My commission expires:

MY COMMISSION EXPIRES APR. 13, 1973