

Executed in 8 Counterparts of
which this is Counterpart No. 6598-7.

RECORDATION NO. _____ Filed & Recorded

MAY 15 1972 - 12 22 AM

INTERSTATE COMMERCE COMMISSION

RECEIVED
MAY 16 12 26 PM '72
I.C.C.
FEE OPERATION BR.

AGREEMENT

between

PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION)
Vendor

and

SOUTHERN RAILWAY COMPANY
Vendee

THIS AGREEMENT, dated as of the 1st day of May, 1972, by and between PULLMAN INCORPORATED (Pullman-Standard division), a Delaware corporation, with an office at 200 South Michigan Avenue, Chicago, Illinois ("Vendor"), and SOUTHERN RAILWAY COMPANY, a Virginia corporation, with an office in Washington, D.C. ("Vendee"):

W I T N E S S E T H: that

WHEREAS, the Vendor and the Vendee have heretofore entered into a Purchase Agreement (the "Purchase Agreement") designated as Vendee's Purchase Order No. 1156643, dated April 23, 1972, under which the Vendor has agreed to construct and deliver to the Vendee at Butler, Pennsylvania, with freight charges prepaid, and the Vendee has agreed to accept and pay for the railroad cars set forth in Section I of Schedule A hereto (the "Cars"); and

WHEREAS, inasmuch as the Vendee has not as yet consummated financing arrangements for the acquisition of the Cars, it is not in a position to accept delivery of and pay for the Cars under the terms of the Purchase Agreement at this time. The Vendee represents that such financing arrangements will be consummated on or before November 1, 1972, (hereinafter referred to as the "Cut-Off Date"). The Vendee, in order that it may use the Cars pending completion of the above financing arrangements, has requested the Vendor to give the Vendee temporary custody and possession of the Cars on

their completion, solely as a lessee of the Cars, and the Vendor is willing to do so upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. Lease and Rental. Vendor will construct the Cars in accordance with the specifications applicable thereto and any modification thereof as agreed to between Vendor and Vendee (hereinafter sometimes called "the Specifications").

Vendor hereby leases to Vendee and Vendee hereby hires from Vendor each of the Cars. Such leasing and the care of the Cars shall be upon the terms and subject to the conditions hereinafter set forth. This Agreement shall be effective as to each Car for a period beginning with the delivery of such Car to and acceptance thereof by an authorized representative of Vendee under the terms of this Agreement and ending on the earlier of the Cut-Off Date or the date on which Vendee shall make payment, or cause payment to be made, for each Car under a conditional sale agreement, equipment trust agreement, or other equipment financing.

For the use and rental of each Car, Vendee agrees to pay to Vendor the sum which is equivalent to the product of the purchase price of each Car, as defined in Article 12 hereof, multiplied by the rate of interest per annum, adjusted for that portion of the year during which this Agreement is in effect, as shall be equal to

one percent (1%) above the prime rate of interest, from time to time in effect, charged by Continental Illinois National Bank and Trust Company of Chicago, Illinois, for ninety-day loans to borrowers of the highest credit standing, for the period such rental shall be payable with respect to each Car. If such rate changes, the new rate shall be effective on the day following the day such change is announced. Rental for the Cars shall commence on the date on which all of the Cars are delivered to and accepted by an authorized representative of Vendee under the terms of this Agreement and shall cease one day prior to the date of termination of this Agreement as described above in this Article.

The rental on each Car shall be due and payable to Vendor in cash upon the termination date of this Agreement with respect to such Car.

2. Delivery. Vendor will deliver the Cars to Vendee f.o.b. Vendee's tracks at Vendor's plant at Butler, Pennsylvania.

Vendee shall cause each Car to be inspected by a representative of Vendee at Vendor's plant in Butler, Pennsylvania. If such Car is in good order and condition and conforms to the Specifications and to all applicable Interstate Commerce Commission requirements and all standards recommended by the Association of American Railroads, such representative of Vendee shall execute a certificate of acceptance (the "Certificate of Acceptance"), in the form attached hereto as Exhibit A. Such Certificate of Acceptance shall constitute conclusive evidence that such Car was delivered to and accepted by Vendee under this Agreement; provided, however, that Vendor shall not be relieved of its warranties as set

forth in the Purchase Agreement . Such Certificate of Acceptance shall be delivered to Vendor at the time of the delivery of each Car to and acceptance thereof by Vendee. Vendee shall promptly, after the execution of this Agreement, deliver to Vendor a certificate stating the persons authorized to execute and deliver Certificates of Acceptance on behalf of Vendee under this Agreement.

3. Title to the Cars. Vendor 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 Vendee as herein provided, subject only to the rights of Vendee under this Agreement.

Vendee will, during the term of this Agreement, cause the Cars to be kept numbered with their identifying numbers as set forth in Section 1 of Schedule A hereof. Vendee shall not change the number of any of the Cars without first notifying Vendor and receiving its approval thereof in writing. In case of any such approved change, the new number shall be set forth in an amendment to this Agreement executed by Vendor and Vendee shall file or record such amendment in each jurisdiction wherein this Agreement is recorded or filed in accordance with Article 11 hereof.

Upon termination of this Agreement and purchase of the Cars by Vendee or its nominee, the Vendor shall by appropriate instrument convey good and marketable title to the Cars to the Vendee or such nominee free of all liens and encumbrances.

4. Maintenance and Repair. Vendee shall at its own cost and expense maintain and keep the Cars in good order and repair at all times. Vendor shall have the right to inspect the Cars and

supervise the maintenance thereof; however, Vendor shall be under no obligation to inspect the Cars or supervise the maintenance thereof. In the event that Vendor does so inspect the Cars or supervise the maintenance thereof as provided in this Article 4, Vendee, regardless of Vendee's negligence, shall not have any liability for any injury to, or death of, any agent or employee of Vendor while exercising such rights and the Vendor shall indemnify the Vendee against any such liability. Vendee shall not effect any change in the design, construction or specifications of the Cars or component parts thereof, without the prior written approval of Vendor.

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 Agreement, Vendee shall promptly and fully inform Vendor in regard to such loss, destruction or damage and Vendee shall promptly thereafter pay to Vendor all accrued rent for such Car pursuant to Article 1 hereof to the date of payment for such loss, destruction or damage, and a sum equal to the purchase price of each Car so lost, destroyed or irreparably damaged, as defined in Article 12 hereof. The sum of such items shall represent the agreed value for each Car so lost, destroyed or damaged. Upon such payment by Vendee, this Agreement shall terminate as to such Car and Vendee shall be entitled to any material salvageable from such Car.

6. Taxes and Compliance with Laws, Rules and Regulations. Vendee shall promptly pay all taxes (other than income taxes imposed

upon Vendor), licenses and assessments on or in respect of the Cars, including, but not limited to, any taxes which may be imposed upon or in respect of said Cars by reason of or in connection with Vendee's possession or use of the Cars under this Agreement and Vendee agrees to keep the Cars free and clear of all taxes and assessments. Vendee further agrees that the Cars at all times during the term of this Agreement will be used and operated under and in lawful compliance with all of 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 Vendor at its option by way of release, discharge or otherwise, of any of the foregoing, shall be promptly reimbursed and paid to Vendor by Vendee on demand as an additional part of the obligation herein with interest thereon at the rate of 7-1/2% per annum from the date of payment by the Vendor.

Notwithstanding the foregoing provisions of this Article 6, Vendee may withhold any such payment so long as it shall in good faith and by appropriate legal proceedings be contesting the validity thereof in any reasonable manner and so long as such withholding does not, in the judgment of Vendor, affect Vendor's title in and to any of the Cars.

7. Prohibition Against Liens and Encumbrances. Vendee will pay or satisfy and discharge any and all sums claimed by any person, firm or corporation to be due from Vendee, its successors or assigns, or from any person, firm or corporation using the Cars with Vendee's knowledge or consent, which, if unpaid, might become

a lien or encumbrance against the Cars; however, Vendee shall not be required to pay or discharge any such claim so long as Vendee is contesting the validity thereof in good faith and by appropriate legal proceedings in any reasonable manner and so long as such non-payment will not affect the title of Vendor in and to any of the Cars.

8. Patent Indemnities. Vendor, for itself and any successor or successors to its manufacturing property and business, will save, indemnify and keep harmless Vendee from and against any and all damages, costs, royalties and claims arising out of charges of infringement of all 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 of articles or parts thereof, designs, devices, parts arrangements, specialties and equipment furnished or specified by Vendee and, as to such excepted patents, Vendee shall in like manner save, indemnify and keep Vendor harmless.

Vendee agrees that it will give prompt notice in writing to Vendor of the commencement of any action in respect of which Vendor may be charged with liability under this Article, and Vendor agrees to give prompt notice in writing to Vendee of the commencement of any action in respect of which Vendee may be charged with liability hereunder, but failure of either party to give such notice shall not affect the liability of the parties hereunder. Said covenants of indemnity shall continue in full force and effect notwithstanding the purchase of the Cars by Vendee or the termination of this Agreement in any manner.

9. Assignments by the Vendor. All or any of the rights, benefits and advantages of Vendor under this Agreement may be assigned by Vendor 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 Vendor or the successor or successors to its manufacturing property and business from any of the obligations of Vendor to construct and deliver the Cars in accordance with the Specifications or to respond to its guarantees, warranties or indemnities whether contained herein or created by law, or relieve Vendee of its obligations to Vendor under Article 6 and 8 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 Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, (if not otherwise stated in the assignment), and such assignee shall by virtue of such assignment acquire all of Vendor's right, title and interest in and to the rights, benefits and advantages of Vendor thereby assigned, subject only to such reservation as may be contained in such assignment. From and after the receipt by Vendee of the notification of any such assignment, all payment thereafter to be made by Vendee hereunder shall, to the extent so assigned, be made to the assignee.

In the event of any assignment by Vendor of its rights to receive any payments under this Agreement, 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, recoupment, or abatement whatsoever arising out of any breach of any obligation of Vendor in respect of the Cars or the manufacture, construction, delivery, guarantee or warranty thereof, or in respect of an indemnity contained in this Agreement, nor subject to any defense set-off, counterclaim, recoupment, or abatement whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by Vendor, and Vendee shall make payment to such assignee of all such payments, including without limitation, the rentals applicable to, and the purchase price of, each Car delivered to and accepted by Vendee under this Agreement even if only some part of the aggregate Cars Vendee ordered under the Purchase Agreement should in fact have been so delivered to and accepted by Vendee. Any and all such obligations, howsoever arising, shall be and remain enforceable by Vendee, its successors or assigns, against Vendor, its successors and assigns (other than assignees, as such, of rights, benefits and advantages assigned pursuant to this Agreement). The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by Vendee to waive any remedies which it might otherwise possess for the enforcement of any and all such obligations of Vendor as against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by payment to Vendor of the consideration for the assignment of any of Vendor's rights under this Agreement.

10. Assignments by Vendee. Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement nor

transfer possession of said Cars to any other firm, person or corporation (except to an affiliated company or as herein otherwise provided) without first obtaining the written consent of Vendor to such sale, assignment or transfer. It is understood that Vendee intends to assign all of its right, title and interest under the Purchase Agreement in connection with the permanent financing arrangements for the Cars. Vendee may permit the use of the Cars upon connecting or other railroads in the usual interchange of traffic and upon connecting or other railroads over which through service may from time to time be afforded.

11. Recording. Vendee 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 Vendor to the Cars.

12. Agreement of Vendee to Purchase. In the event that payment to Vendor for each Car has not been made prior to the applicable Cut-Off Date for such Car and this Agreement is thereby terminated, Vendee will immediately purchase such Car or Cars delivered to and accepted by Vendee (even if only some part of the aggregate Cars Vendee ordered under the Purchase Agreement should in fact have been so delivered to and accepted by Vendee) hereunder on or before such Cut-Off Date for which payment has not been theretofore made to Vendor. The base purchase price for each of the Cars is set forth in Section II of Schedule A hereof. Title to the Cars shall vest in purchaser thereof upon such purchase and payment therefor in cash.

In the event of any change or modification hereafter made in the Specifications by agreement between Vendor and Vendee, 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. All other increases or decreases in the base purchase price shall be by written amendment to this Agreement signed by Vendor and Vendee.

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

13. Default. In the event of any failure at any time on the part of Vendee to substantially comply with any of the terms and conditions contained in Articles 1 through 11 hereof, Vendee, at the election of Vendor, which election shall be evidenced by notice thereof in writing given by Vendor to Vendee, shall purchase and pay for all of the Cars subject to this Agreement within twenty (20) days after the receipt of such notice by Vendee unless Vendee shall have cured such default within such twenty (20) day period. Such purchase and payment, except for the date of purchase, shall be made in accordance with the terms and conditions of Article 12 hereof.

In the event of any default by Vendee in respect of any of its obligations under the terms and conditions of this Agreement, and at Vendor's election as evidenced by Vendor's 20-day prior written notice, the term of this Agreement shall immediately cease and terminate and Vendor, without any notice or demand, may take

possession of the Cars and, in such event, all of Vendee's right and interest in the Cars will thereupon terminate; provided, however, that such retaking shall not be deemed a waiver of Vendor's right to receive from Vendee the full purchase price of the Cars or to receive the benefit of any other rights or remedies conferred upon Vendor by this Agreement or by law. In the event of any such retaking by Vendor, if Vendee shall thereafter pay to Vendor the purchase price, all costs and expenses, including attorneys' fees, incurred by Vendor in such retaking, and all accrued rentals for the Cars, and shall make good all of its defaults hereunder, Vendor, at the time of such payment and performance, shall redeliver the Cars to Vendee in the condition in which they were in when retaken by Vendor and, by appropriate instrument or instruments, transfer to Vendee title to 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 Vendee to Vendor within twenty (20) days after the date when payment is due hereunder Vendor, at its option, may sell the Cars. In that event, Vendee's right and interest in the Cars shall cease and terminate and Vendee's obligation to pay to Vendor the full amount of the purchase price, the costs and expenses incurred by Vendor in retaking the Cars, and all accrued rental therefor, shall be reduced by an amount equal to the net proceeds of such sale of the Cars, with any excess being paid to Vendee.

14. Payments by Vendee. The payments provided for in this Agreement shall be made by Vendee 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.

15. Extension Not a Waiver. Any extension of time granted by Vendor to Vendee 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 Vendor hereunder or otherwise existing.

16. Notice. Any notice hereunder to Vendee shall be deemed to be properly served if personally delivered to Vendee or mailed to Vendee by Certified or Registered mail addressed to P. O. Box 1808, Washington, D. C. 20013, or at such other address as may have been furnished in writing to Vendor by Vendee. Any notice to Vendor shall be deemed to be properly served if personally delivered to Vendor or mailed to Vendor by Certified or Registered mail addressed to 200 South Michigan Avenue, Chicago, Illinois 60604, or at such other address as may have been furnished in writing to Vendee by Vendor. Any notice hereunder to any assignee of Vendor or of Vendee shall be deemed to be properly served if personally delivered to such assignee or mailed to such assignee by Certified or Registered mail to such address as may have been furnished in writing to Vendor or Vendee, as the case may be, by such assignee.

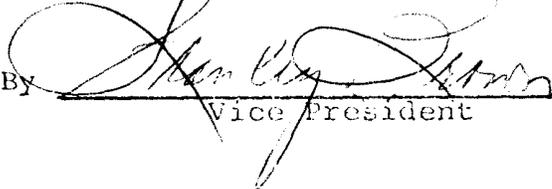
17. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together will constitute but one and the same Agreement, which will be sufficiently evidenced by any such original counterpart.

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

19. Modification of Lease. No variation or modification of this Agreement and no waiver of any of its provisions or conditions will be valid unless in writing and signed by the duly authorized officers of Vendor and Vendee.

IN WITNESS WHEREOF, Vendor and Vendee have caused this Agreement to be executed and their respective seals to be affixed by their duly authorized officers pursuant to lawful authority, all as of the day, month and year first above set forth.

PULLMAN INCORPORATED
(Pullman-Standard division)

By 
Vice President

ATTEST:


Assistant Secretary

SOUTHERN RAILWAY COMPANY

By 
Vice President

ATTEST:


Assistant Secretary

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

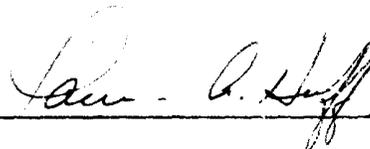
On this 15th day of May, 1972 before me personally appeared Stanley Brown, to me personally known, who being by me duly sworn, says that he is a Vice President of Pullman Incorporated (Pullman-Standard division), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jerome F. Reszel
Notary Public

My commission expires Feb. 24, 1974

DISTRICT OF COLUMBIA

On this 16th day of MAY, 1972, before me personally appeared W. D. McLEAN, to me personally known, who being by me duly sworn, says that he is a Vice President of Southern Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public
in and for the District of Columbia
LAWRENCE A. HUFF

NOTARY PUBLIC
IN AND FOR THE DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JUNE 30, 1972

SCHEDULE A TO
AGREEMENT
BETWEEN PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION)
AND SOUTHERN RAILWAY COMPANY

SECTION I Car Descriptions, Numbers and Markings:

- (12) 70-ton Flat Cars bearing Vendee's road numbers 50540 to 50551, both inclusive

Each car shall be plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one-half inch in height as follows:

OWNED BY A BANK OR TRUST COMPANY UNDER A
FINANCING AGREEMENT RECORDED WITH THE
INTERSTATE COMMERCE COMMISSION UNDER
SECTION 20c OF THE INTERSTATE COMMERCE ACT.

SECTION II Price OF Cars:

- (12) 70-ton Flat Cars shall be purchased at a price of \$21,035.00 each.

CERTIFICATE OF ACCEPTANCE
UNDER RAILROAD EQUIPMENT AGREEMENT

TO: PULLMAN INCORPORATED (Pullman-Standard division)

I, a duly appointed inspector and authorized representative of Southern Railway Company (hereinafter called "Vendee"), for the purpose of the Railroad Equipment Agreement dated as of May 1, 1972, between you, as Manufacturer, and Vendee do hereby certify (it being understood that nothing contained herein shall relieve you of any of your warranties) that I have received, inspected, approved and accepted delivery on behalf of Vendee and under said Railroad Equipment Agreement of the following units of railroad equipment:

Type of Cars:

Place Accepted:

Date Accepted:

Number of Units:

Numbered:

I do further certify that to the best of my knowledge 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 standards of the Association of American Railroads. The execution of this certificate will in no way relieve you of your duty or decrease your responsibility (1) to produce and deliver the railroad equipment indicated above in accordance with the terms of the Railroad Equipment Agreement, or (2) to warrant the foregoing Cars to be of good workmanship, constructed with quality materials, and be free of defects.

Inspector and Authorized
Representative of
SOUTHERN RAILWAY COMPANY