

6845-D

COUNTERPART NO.

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RECORDATION NO. _____ Filed & Recorded

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INTERSTATE COMMERCE COMMISSION
ASSIGNMENT AND SECURITY AGREEMENT

THIS AGREEMENT DATED as of *February 5*, 1973,
between PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION), a Dela-
ware corporation (herein "Pullman"), and CONTINENTAL ILLINOIS
NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking
association (herein the "Bank"),

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

WHEREAS, Pullman and BANKERS TRUST COMPANY, a New York
banking corporation as trustee under a Trust Agreement dated as
of December 1, 1972 (herein "Owner-Trustee") and TRAILER TRAIN
COMPANY, a Delaware corporation (herein "TTX"), have entered into
a Manufacturing Agreement dated as of December 1, 1972 (herein the
"Manufacturing Agreement") under which Pullman has agreed to con-
struct and deliver to Owner-Trustee 310 railroad flat cars (more
particularly described in Annex B to the Manufacturing Agreement
and herein the "Cars"); and

WHEREAS, Owner-Trustee has executed a Lease of Equipment
dated as of December 1, 1972 with TTX covering the leasing of the
Cars to TTX; and

WHEREAS, the Manufacturing Agreement provides among other things that Pullman is to deliver the Cars during the months of January, February and March to TTX as such Cars are completed and accepted by TTX, and the Manufacturing Agreement further provides that Owner-Trustee will enter into an Equipment Trust Agreement with a corporate trustee (herein "Trustee") and that Owner-Trustee will, subject to the conditions of the Manufacturing Agreement, pay or cause to be paid to Pullman the Purchase Price as defined in the Manufacturing Agreement of such Cars on July 2, 1973 as set forth in Pullman's invoice plus interest on the Invoiced Purchase Price as defined in the Manufacturing Agreement on each delivered Car computed from the 31st day after delivery thereof to and including July 1, 1973 at the prime rate on May 1, 1973 which the Manufacturers Hanover Trust Company of New York, New York, charges for 90-day loans to borrowers of the highest credit standing, all as set forth in said Manufacturing Agreement; and

WHEREAS, under the terms and conditions of this Agreement, Pullman has requested the Bank to purchase the rights of Pullman to payments from Owner-Trustee and/or the Trustee under the Manufacturing Agreement and to pay Pullman therefor the amount of the Purchase Price of the Cars, payable as to each group of approximately 50 Cars as such group is delivered to and accepted

by TTX under the terms of the Manufacturing Agreement and in order to afford the Bank security for the due performance of the undertakings of Owner-Trustee and Pullman under the Manufacturing Agreement, and of Pullman under this Agreement, Pullman has agreed to grant the Bank a lien on and security interest in the interest of Pullman in the Cars and the Bank is willing, under the terms and conditions of this Agreement, to purchase the rights of Pullman to such payments from Owner-Trustee.

NOW, THEREFORE, the parties agree as follows:

1. ASSIGNMENT. For value received, Pullman hereby assigns, transfers, conveys and sets over to the Bank, as the sole property of the Bank, all of the right, title and interest which Pullman now has or hereafter may have in and to all payments, including without limitation the Purchase Price and interest, which Owner-Trustee and/or the Trustee is now obligated or may hereafter become obligated to make under the Manufacturing Agreement.

2. LIEN AND SECURITY INTEREST.

a. As collateral security for the due performance by Pullman of all of its obligations to the Bank under this Agreement (including without limitation the obligations of Pullman to the Bank to perform all of the obligations of Pullman to Owner-Trustee and TTX

under the Manufacturing Agreement and all expenses, including court costs and reasonable attorneys fees, incurred by the Bank in enforcing any of such obligations of Pullman), Pullman hereby transfers to the Bank a lien upon and security interest in all rights of Pullman, whether now or hereafter existing, in and to the Cars.

(b) Notwithstanding anything in this Agreement to the contrary the Bank and Pullman, each for itself, agree for the benefit of the Owner-Trustee, the Trustee and TTX that (i) upon payment to the Bank of amounts equal to the Purchase Price and interest thereon referred to in the Manufacturing Agreement all of its respective right, title and interest in and to the Cars shall forthwith cease and terminate and thereupon such right, title and interest shall be merged into the security title to and property in the Cars created by the Equipment Trust Agreement in favor of the Trustee, or, if the Equipment Trust Agreement has not then been executed and delivered such right, title and interest shall forthwith cease and terminate without further act, and (ii) the Bank and Pullman will execute and deliver

all such documents and instruments as the Owner-Trustee, the Trustee or TTX may reasonably request in connection therewith, including without limitation an instrument for recordation with the Interstate Commerce Commission evidencing such cessation and termination.

3. REPRESENTATIONS AND WARRANTIES OF PULLMAN. Pullman represents and warrants to the Bank:

a. Pullman is a corporation duly existing and in good standing under the laws of Delaware and has full power and authority to execute, deliver and perform its obligations under the Manufacturing Agreement and this Agreement; the Manufacturing Agreement and this Agreement are not in conflict with any agreements binding upon Pullman or with any provision of law or of the charter or by-laws of Pullman; the Manufacturing Agreement and this Agreement, are the valid and binding respective obligations of Pullman, Owner-Trustee and TTX, fully enforceable in accordance with their respective terms.

b. Pullman has sole right and title to the payments, including without limitation the Purchase Price and interest, which it has assigned to the

Bank by this Agreement, and has not heretofore transferred or assigned any of such rights or interests; no payments hereby assigned have been prepaid or anticipated; and there are no defenses, setoffs, counterclaims, recoupments, or abatements which may be validly asserted by or in the right of Owner-Trustee or TTX against the obligations to make such payments to the Bank.

c. An original counterpart of the Manufacturing Agreement has been delivered to the Bank; the Manufacturing Agreement is presently in full force and effect and no defaults or defenses exist or are or have been asserted as to the obligations of either Pullman, Owner-Trustee or TTX under the Manufacturing Agreement.

4. COVENANTS AND AGREEMENTS OF PULLMAN. Pullman covenants to and agrees with the Bank that:

a. Pullman will duly keep and perform each and every obligation Pullman has to Owner-Trustee, Trustee and TTX by reason of the Manufacturing Agreement, all to the end that Owner-Trustee and TTX shall duly perform all of their respective obligations under the Manufacturing Agreement and shall duly pay or cause to be paid to the Bank the Purchase Price of and the interest for the Cars.

b. Pullman will duly enforce the provisions of the Manufacturing Agreement in accordance with its terms and will not agree to or permit any change, amendment, waiver, settlement, adjustment, cancellation or termination of the Manufacturing Agreement without in each case the prior written consent of the Bank, (except as supplemented pursuant to the first whereas clause of the Manufacturing Agreement).

c. Pullman will not sell, transfer, lease or otherwise dispose of, and will not create or permit to exist, any mortgage, pledge or other encumbrance or security interest in or upon the rights of Pullman in the Cars, the Manufacturing Agreement or any payments provided thereby, except (i) to Owner-Trustee and the Trustee in accordance with the terms of the Manufacturing Agreement, or (ii) to the Bank as provided in this Agreement.

d. If, despite the terms of this Agreement, Pullman shall receive any payment assigned by this Agreement to the Bank, Pullman will forthwith transmit the same to the Bank.

e. Pullman will execute and deliver such documents of further assignment or assurance as the Bank may from time to time request to carry out the intent hereof.

5. PAYMENTS TO PULLMAN BY THE BANK. From time to time, upon the request of Pullman and subject to all of the terms and conditions of this Agreement, including the performance by Pullman of each of the following conditions precedent, the Bank will pay to Pullman, as and when a particular group of 50 Cars (except the last group which may be a different number) is actually delivered to and accepted by TTX under the Manufacturing Agreement, an amount equal to that portion of the Purchase Price which is attributable to the Cars so delivered and accepted, provided that all of such payments to Pullman by the Bank shall not exceed in the aggregate the amount provided in the Manufacturing Agreement and provided further, that no payments to Pullman by the Bank shall be required to be made after July 1, 1973:

a. In connection with the first payment by the Bank, Pullman shall cause the following, dated the date of such first payment and addressed to the Bank, to be executed and delivered:

(1) Evidence that the Manufacturing Agreement and this Agreement have been duly

filed with the Interstate Commerce Commission pursuant to the provisions of Section 20c of the Interstate Commerce Act;

(2) Copies, duly certified, of resolutions of Pullman's Board of Directors authorizing the transactions contemplated hereby.

(3) An Incumbency and Signature Certificate as to Pullman.

(4) A favorable opinion of Pullman's counsel covering, among other matters, (i) due authorization, execution and delivery of the Manufacturing Agreement and this Agreement (including the assignment and the granting of the lien and security interest provided by this Agreement) and that such actions are not in conflict with any provision of law or of the charter or by-laws of Pullman nor in conflict with any agreement binding upon Pullman of which such counsel has knowledge, (ii) the actions enumerated in sub-clause (i) above either do not require approval by the Interstate Commerce Commission or any other regulatory authority or all requisite approvals of such regulatory authority or authorities have been duly obtained, and (iii) the Manufacturing Agreement and this Agreement,

including the assignment and the lien and security interest provided hereby, are the legal and binding obligations of Pullman fully enforceable in accordance with their respective terms.

(5) A certified copy of resolutions of the Board of Directors of TTX authorizing the transactions contemplated by the Manufacturing Agreement.

(6) An Incumbency and Signature Certificate as to TTX.

(7) The favorable opinion of TTX's counsel covering, among other things, (i) due authorization, execution and delivery of the Manufacturing Agreement and that such actions are not in conflict with any provision of law or of the charter or by-laws of TTX nor in conflict with any agreement binding upon TTX of which such counsel has knowledge, (ii) the actions enumerated in sub-clause (i) above do not require approval by the Interstate Commerce Commission or any other regulatory authority, and (iii) the Manufacturing Agreement

is the legal and binding obligation of TTX fully enforceable in accordance with its terms.

b. In connection with the first and all subsequent payments by the Bank, Pullman shall cause the following to be delivered to the Bank:

(1) An original Certificate of Acceptance duly executed and delivered by TTX showing delivery by Pullman and acceptance by TTX of the group of Cars for which payment is to be made.

(2) An invoice as to the particular group of Cars showing the Purchase Price thereof to be the applicable price of the Cars computed in accordance with Annex B to the Manufacturing Agreement, the delivery of such invoice being a representation by Pullman that the price shown thereon is the effective price to be paid by Owner-Trustee.

(3) Evidence that all taxes and other charges have been paid or that the transaction is exempt from all taxes and there are no other similar charges to be paid.

(4) A written request for such payment, and Certificate dated the date of such requested payment by an officer of Pullman that there are no defaults or Events of Default under the Manufacturing Agreement and this Agreement and no event which with the lapse of time or notice or both might mature into Events of Default thereunder.

6. EVENTS OF DEFAULT. Each of the following events shall be an Event of Default under this Agreement:

a. Pullman shall fail to perform any of its obligations under this Agreement (including its obligations to Owner-Trustee, the Trustee and TTX under the Manufacturing Agreement).

b. Owner-Trustee or TTX shall fail to perform any of its obligations under the Manufacturing Agreement.

c. Any representation or warranty of Pullman made to the Bank under or with respect to this Agreement or the transactions contemplated by this Agreement shall prove to be untrue in any material respect.

d. Pullman shall become insolvent or admit in writing its inability to pay its debts as they mature or applies for, consents to or acquiesces in the appointment of a trustee or receiver for Pullman or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for Pullman or for a substantial part of the property thereof and is not discharged within 30 days; or any bankruptcy, reorganization, debt arrangement, or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Pullman, and if instituted against Pullman is consented to or acquiesced in by Pullman or remains for 30 days undismisssed.

e. Owner-Trustee or TTX shall become insolvent or admit in writing their inability to pay their respective debts as they mature; or if either applies for, consents to or acquiesces in the appointment of a trustee or receiver for Owner-Trustee or TTX on any of their respective properties; or in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for either Owner-Trustee or TTX for a substantial part of the property of either

and is not discharged within 30 days; or any bankruptcy, reorganization, debt arrangement, or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Owner-Trustee or TTX and if instituted against Owner-Trustee or TTX is consented to or acquiesced in by Owner-Trustee or TTX or remains for 30 days undismissed.

7. REMEDIES.

a. Upon the occurrence of an Event of Default the Bank may exercise from time to time any right and remedies available to it under applicable law with respect to the lien and security interest in the interest of Pullman in the Cars granted to the Bank by this Agreement.

b. Pullman agrees in the case of the occurrence of an Event of Default described in the provisions of subsection b or e of Section 6 of this Agreement, to cause the Cars to be assembled at its expense at a convenient place or places acceptable to the Bank. Pullman agrees to pay all costs of the Bank in the enforcement of the rights of the Bank hereunder,

including court costs, reasonable attorneys fees and legal expenses, if any. If any notification of intended disposition of any of the Cars is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed at least 5 days before such disposition, postage prepaid, addressed by the Bank to Pullman at 200 South Michigan Avenue, Chicago, Illinois. Any proceeds of any disposition of the Cars may be applied by the Bank to the payment of expenses in connection with the Cars, including reasonable attorneys fees and legal expenses and any balance of such proceeds may be applied by the Bank towards the payment of the Purchase Price of the Cars and the interest for the Cars or the obligations of Pullman set out in subsection c of this Section 7 and in such order of application as the Bank may from time to time elect.

c. If an Event of Default described in the provisions of subsections a, c or d of Section 6 of this Agreement shall occur, Pullman agrees forthwith upon the written request of the Bank to pay to the Bank in cash an amount equal to the aggregate amounts theretofore paid to Pullman by the Bank under this

Agreement plus such amounts, equal to the interest which would be payable for the period from such payments by the Bank to Pullman to and including the date that Pullman shall make payment to the Bank. Upon such payment, the Bank shall reassign to Pullman without representations or warranties of any kind, all of the right, title and interest which the Bank may at such time have in the Manufacturing Agreement and the Cars.

d. Notwithstanding any other provision of this Agreement, the Bank shall have no obligation under this Agreement to make payments to Pullman for any Cars actually delivered to and accepted by TTX after the occurrence of an Event of Default under this Agreement.

8. GENERAL.

a. The Bank shall not by reason of this Agreement or any of the transactions contemplated by this Agreement, be or become liable for any of the obligations of Pullman under or with respect to the Manufacturing Agreement.

b. No delay on the part of the Bank, in the exercise of any power or right shall operate as a

waiver thereof, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof, or the exercise of any other power or rights.

c. This Agreement shall be binding upon and inure to the benefit of Pullman and the Bank and their respective successors and assigns.

d. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

e. This Agreement has been delivered at Chicago, Illinois, and shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first above written.

ATTEST:

William O. O'Keefe
Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard Division)

By [Signature]
Vice President

ATTEST:

Paul D. Seward
Secretary
Commercial Banking Officer

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO

By [Signature]
Vice President

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK

On this 5th day of February, 1973 before me personally appeared R. E. Robinson, 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. Requil
Notary Public

My commission expires: Feb. 24, 1974

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this 8th day of February, 1973 before me personally appeared PETER D HORNE, to me personally known, who being by me duly sworn, says that he is a Vice President of Continental Illinois National Bank and Trust Company of Chicago, a national banking association, that the seal affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed 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.

William Hudson
Notary Public

My commission expires:

MY COMMISSION EXPIRES
SEPTEMBER 22, 1974

ACKNOWLEDGMENT BY TRAILER TRAIN COMPANY
AND BANKERS TRUST COMPANY

UNDERSIGNED, TRAILER TRAIN COMPANY and BANKERS TRUST COMPANY, as Trustee under a Trust Agreement dated as of December 1, 1972 (herein Owner-Trustee), hereby (a) acknowledge receipt this date of a counterpart of the foregoing Assignment and Security Agreement dated as of *February 5*, 1973, between PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION) (herein Pullman) and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO (herein the Bank), (b) agree to the assignment of the Manufacturing Agreement dated as of December 1, 1972 between Pullman and the undersigned in accordance with the terms of the aforesaid Assignment and Security Agreement, and (c) agree that Owner-Trustee will pay or cause the Trustee to pay directly to the Bank at the following address:

Continental Illinois National Bank
and Trust Company of Chicago
Attention: Peter D. Horne
231 South LaSalle Street
Chicago, Illinois 60693

the interest and Purchase Price of the Cars pursuant to Article 3 of the Manufacturing Agreement, but subject to the conditions

set forth in Article 4 thereof. By execution of this Acknowledgment, Trailer Train Company and Owner-Trustee do not waive any rights they may have under the Manufacturing Agreement.

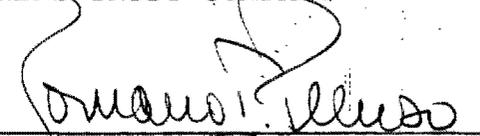
DATED at Chicago, Illinois this 5th day of Feb, 1973 as to Trailer Train Company.

TRAILER TRAIN COMPANY

By 
Vice President

DATED at New York, New York this 15th day of February, 1973 as to Owner-Trustee.

BANKERS TRUST COMPANY

By 
Assistant Vice President

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this *5th* day of *February*, 1973, before me personally appeared **N. V. Reichert**, to me personally known, who being by me duly sworn, says that he is a Vice President of Trailer Train Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Henry L. Janisch

Notary Public

My commission expires: *2-17-75*

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this *15th* day of *February*, 1973, before me personally appeared **ROMANO I. PELUSO**, to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of Bankers Trust Company, 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.

Christine Gerace

Notary Public

My commission expires:

CHRISTINE GERACE
Notary Public, State of New York
No. 24-1407147
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1973