

8163-14
RECORDATION NO. Filed & Recorded

DEC 31 1975 - 9 DE AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT dated as of December 1, 1975, between PULLMAN INCORPORATED (PULLMAN STANDARD DIVISION) (hereinafter called the Builder), and SEATTLE-FIRST NATIONAL BANK, with an address at P.O. Box 24186, Seattle, Washington 98124, acting as Agent under a Finance Agreement dated as of December 1, 1975 ("Finance Agreement"), said Agent, so acting, being hereinafter called the Assignee.

WHEREAS the Builder, SCHOENFELD INVESTMENT CORPORATION ("Vendee") and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY ("Railroad") have entered into a Conditional Sale Agreement dated as of the date hereof ("Conditional Sale Agreement"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement ("Equipment"); and

WHEREAS, Vendee and Assignee have entered into a collateral assignment of lease dated as of the date hereof ("Collateral Assignment of Lease") covering the assignment of certain right, title and interest of the Vendee in and to a lease of the Equipment between Vendee and the Railroad;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT ("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 Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Incorporation of Model Provisions. Whenever this Assignment incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Assignment Provisions for Lease Transactions" annexed to the Conditional Sale Agreement as Part III of Annex C thereto ("Model Assignment Provisions"), such provision of the Model Assignment Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full herein except that each and every reference to the term "Guarantor" in any provision of the Model Assignment Provisions so incorporated by reference herein shall be deemed a reference to the term "Railroad".

Any such reference to the term "Guarantor" in any provision of the Model Assignment Provisions shall in no sense mean or otherwise imply an actual guarantee by the Railroad of the obligations of the Vendee under the Conditional Sale Agreement.

SECTION 2. The Builder hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Builder in and to each unit of the Equipment;

(b) All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 4 thereof, in the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder 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 Vendee or the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee or the Railroad 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 Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Article 14 of the Conditional Sale Agreement or relieve the Vendee or the Railroad from their respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the Conditional Sale Agreement,

it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder 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 Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee and the Railroad 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 3. Section 3 of the Model Assignment Provisions is herein incorporated as Section 3 hereof.

SECTION 4. Section 4 of the Model Assignment Provisions is herein incorporated as Section 4 hereof.

SECTION 5. The Builder will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

“OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER
THE INTERSTATE COMMERCE ACT, SECTION 20c”.

SECTION 6. Section 6 of the Model Assignment Provisions is herein incorporated as Section 6 hereof except that (a) the last three lines of the introductory paragraph of said Section 6 shall be deemed to state “to it, in such number of counterparts as it may reasonably request and”, (b) the first five lines of subparagraph (c) of said Section 6 shall be deemed to state “(e) An opinion of Messrs. Mayer, Brown & Platt, counsel to the Investor named in the Finance Agreement, dated as of the Closing Date, addressed to the Investor stating that (a) the Finance”, (c) the phrase “each of the Collateral Assign-

ment of Lease and'' shall be deemed to be inserted at the beginning of clause (ii) of subparagraph (e) of said Section 6, (d) the phrase "", the Collateral Assignment of Lease'' shall be deemed to be inserted after the phrase "Conditional Sale Agreement" in each of clauses (vi), (vii), (viii) and (ix) of subparagraph (e) of said Section 6 and in subparagraph (f) of said Section 6, (e) the phrase "and the Assignee is vested with all the right, title and interest of the Vendee purported to be assigned to it by the Collateral Assignment of Lease" shall be deemed to be inserted after the word "terms" in subparagraph (f) of said Section 6 and (f) the phrase "and stating that Railroad has taken all action (and specifying such action) required under Section 20 of the Clayton Act (15 U.S.C. § 20) and under the applicable regulations of the Interstate Commerce Commission (49 CFR § 1010), in connection with the bid for, and the purchase of, the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) by Continental Illinois National Bank and Trust Company of Chicago other than filing a report with the Interstate Commerce Commission under the foregoing statute and regulations within 30 days of the Closing Date" shall be deemed to be inserted after the word "conducted" in subparagraph (g) of said Section 6.

SECTION 7. 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 Vendee or the Railroad thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. Section 8 of the Model Assignment Provisions is herein incorporated as Section 8 hereof.

SECTION 9. 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, 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, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 10. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of December 1, 1975, for convenience, 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 parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

PULLMAN INCORPORATED
(PULLMAN STANDARD DIVISION)

[CORPORATE SEAL]

By Stanley Brown
Title: Vice President

Attest:

William O'Keefe
Assistant Secretary

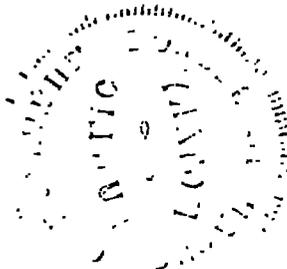
SEATTLE-FIRST NATIONAL BANK,
as Agent,

[CORPORATE SEAL]

By [Signature]
Title: Vice President and
Trust Officer

Attest:

[Signature]
Title: Corporate Trust Officer



STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 30th day of December, 1975, 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 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.

Susan M. George
Notary Public

[NOTARIAL SEAL]

My Commission Expires My Commission Expires October 31st, 1979

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 30th day of December, 1975, before me personally appeared R. M. DAGG, to me personally known, who, being by me duly sworn, says that he is a Vice President and Trust Officer of SEATTLE-FIRST NATIONAL BANK, 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.

Susan M. George
Notary Public

[NOTARIAL SEAL]

My Commission Expires My Commission Expires October 31st, 1979

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of December 1, 1975.

SCHOENFELD INVESTMENT CORPORATION,

By Irwin L. Jaeger
Title: *Vice President*

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY,

By RK Merrill
Title: *VICE PRESIDENT - LAW*

**Schedule A
to Lease**

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100 ton low side gondola car	No. 3258 dated January 17, 1974, as revised on August 28, 1974	Butler, Pennsylvania	220	MILW 81000-81194 and MILW 92100-92124	\$26,698.91	\$5,873,760.20	Dec. 1975 at Butler, Pa.