

AGREEMENT AND ASSIGNMENT dated as of March 11, 1974, between PULLMAN INCORPORATED (Pullman-Standard division) (hereinafter called the Manufacturer or Vendor) and GIRARD TRUST BANK, (hereinafter called the Assignee).

WHEREAS, the Manufacturer, FIRST NATIONAL BANK OF LOUISVILLE (hereinafter called the Company), and DELAWARE and HUDSON RAILWAY COMPANY (hereinafter called the Guarantor) have entered into a Conditional Sale Agreement dated as of March 11, 1974 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, intending to be legally bound, 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. 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 unit of the Equipment;

(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 Equipment and the right to receive the payments specified in the fourth paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof and in the last paragraph of Article 16 thereof and reimbursement for taxes paid or incurred by the Manufacturer), 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, other than those excluded above, and interest thereon, and in and to any other sums becoming due from the Company or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

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

without any recourse, however, against the Manufacturer for or on account of the failure of the Company 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 Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Articles 14 and 15 of the Conditional Sale Agreement or Schedule A thereof or relieve the Company or the Guarantor from their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, 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, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company 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. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company 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 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 Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company 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 unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

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 (as that term is defined in the Conditional Sale Agreement) or to enforce any provision of the Conditional Sale Agreement the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company 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 Article 15 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Guarantor by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 16 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Company or the Guarantor and (2) if the court or other body having jurisdiction denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and giving the Manufacturer the right, at the Manufacturer's expense, to compromise or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by 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 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 unit 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 Company 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, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer 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 Company, in letters not less than one inch in height, the following legend:

"GIRARD TRUST BANK, PHILADELPHIA, PA. - VENDOR'S ASSIGNEE

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and 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. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement, shall pay to the Manufacturer an amount equal to that portion of the Purchase Price (as defined in said Article 3) of the Equipment not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there have been delivered to the Assignee and its counsel (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer hereunder to the Assignee of title to the units of Equipment and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Manufacturer had legal title to the Equipment and

good and lawful right to sell the Equipment and title to the Equipment was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the Equipment as contemplated by Article 2 of the Conditional Sale Agreement and Section 1 of the Lease;

(c) Certificate of an officer of the Guarantor stating that prior to delivery and acceptance of units of the Equipment under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor;

(d) Invoices for the Equipment accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion, dated as of the Closing Date of counsel for the Company addressed to the Assignee to the effect that (i) the Company is a national banking association and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement, the Lease and the acknowledgment attached hereto have been duly authorized, executed and delivered on behalf of the Company and are valid and binding instruments enforceable against the Company in accordance with their terms;

(f) Opinion, dated as of the Closing Date, of counsel for the Guarantor addressed to the Assignee stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of Delaware and has the power and authority to own its properties and to carry on its business as now conducted; (ii) the Conditional Sale Agreement, the Lease and the acknowledgment attached hereto have been duly authorized, executed and delivered by the Guarantor and are legal and valid instruments binding upon the Guarantor and enforceable in accordance with their terms; (iii) no approval of the

Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Lease, the Conditional Sale Agreement or this Assignment, or, if any approval is necessary, it has been obtained, and (iv) 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, recording or deposit (or giving of notice) is necessary for the protection of the rights hereunder of the Assignee in any State of the United States of America or the District of Columbia;

(g) Opinion, dated as of the Closing Date, of counsel for the Manufacturer addressed to the Assignee stating that (i) the 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, (ii) the Conditional Sale Agreement and this Assignment have 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 terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a legal and valid instrument binding upon the parties hereto, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) title to the units of the Equipment is validly vested in the Assignee and the Equipment, at the time of delivery thereof to the Company under the Conditional Sale Agreement, was free of all claims, liens, security interests and other encumbrances except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(h) Unless payment of the amount, if any, payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, the receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal and valid instrument binding upon the parties thereto and 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 opinion specified in subparagraph (e) of the first paragraph of this Section 5, counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction, other than Kentucky and the United States, on the opinions of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for the Equipment is hereby expressly conditioned upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

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 will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the payments required to be made by the Assignee here: shall not be paid, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. 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 Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignor 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. 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 Company and the Guarantor) it is a valid and existing agreement binding upon the Manufacturer, the Company and the Guarantor, 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 provision hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intend so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania provided, however, that the parties shall be entitled to all rights of Section 206 of the Interstate Commerce Act.

SECTION 9. This Assignment may be executed in any number of counterpart parts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of March 11, 1974, 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 have caused this instrument to be executed in their respective corporate names by officers or officials duly authorized, and their respective corporate seals to be affixed and duly attested all as of the date first above written.

(CORPORATE SEAL)

PULLMAN INCORPORATED  
(Pullman-Standard division)

Attest:   
Assistant Secretary

By   
Title VICE PRESIDENT

(CORPORATE SEAL)

GIRARD TRUST BANK

Attest:   
SENIOR BANKING OFFICER

By H. T. E.   
Title Vice President

STATE OF ILLINOIS

SS

COUNTY OF *Cook*

On this *3<sup>rd</sup>* day of *April*, 1974, before me personally appeared *R. E. Roberson* to me personally known, who, being by me duly sworn says that he is a *Vice President* of PULLMAN INCORPOR (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)

*Jerome F. Roszell*  
NOTARY PUBLIC

My Commission expires: ~~Feb. 24, 1978~~

COMMONWEALTH OF PENNSYLVANIA

SS

COUNTY OF PHILADELPHIA

On this *10<sup>th</sup>* day of *April*, 1974, before me personally appeared *A. J. Easter* to me personally known, who, being by me duly sworn, says that he is a *Vice President* of GIRARD TRUST BAN 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)

*Catherine Passer*  
NOTARY PUBLIC

My Commission expires: CATHERINE PASSER  
Notary Public, Philadelphia, Pa.  
My Commission Expires Aug