RECORDATION NO. 7735
DEC 9 1974 - 9 40 AM
INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT
Dated as of August 1, 1974

Between

THE MANUFACTURER NAMED HEREIN

and

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
as Agent ("Assignee")

* * *

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AGREEMENT AND ASSIGNMENT

Agreement And Assignment dated as of August 1, 1974, between the corporation named as Manufacturer at the foot of this Agreement (the "Manufacturer") and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Agent (the "Assignee").

Whereas, the Manufacturer, MILWAUKEE LAND COMPANY, an Iowa corporation (the "Vendee") and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, a Wisconsin corporation (the "Guarantor"), have entered into a Conditional Sale Agreement dated as of August 1, 1974 (the "Conditional Sale Agreement") providing for the construction, sale and delivery on the conditions therein set forth, by the Manufacturer and the purchase by the Vendee of the railroad equipment described in Schedule A to the Conditional Sale Agreement (collectively the "Equipment" and individually "Item" or "Items of Equipment") and including the unconditional guaranty by the Guarantor of all obligations of the Vendee under the Conditional Sale Agreement; and

Whereas, the Assignee, the Vendee and the Guarantor have entered into a Finance and Agency Agreement dated as of August 1, 1974 (the "Finance Agreement") providing for the acquisition from the Manufacturer by the Assignee of the right, title and interest of the Manufacturer under the Conditional Sale Agreement, subject to the conditions set forth below; and

Whereas, the Vendee has entered into an equipment lease (the "Lease") dated as of August 1, 1974 with **ALASKA INTERNATIONAL INDUSTRIES, INC.**, an Alaska corporation (the "Lessee") in the form attached as Annex I to the Conditional Sale Agreement providing, among other things, for the leasing of the Equipment by the Vendee to the Lessee and the Lessee has entered into an equipment lease (the "Sublease") dated as of August 1, 1974 with the Guarantor in the form attached as Annex II to the Conditional Sale Agreement providing, among other things, for the leasing of the Equipment by the Lessee to the Guarantor.

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

(a) All the right, security 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 and payment by the Vendee of the amount required to be paid with respect to such Item under Section 3.3(a) of the Conditional Sale Agreement;

(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 and the right to receive the payments specified in Section 3.3(a) 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 thereof), 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 Vendee or the Guarantor under the Conditonal Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited in subparagraph (b) above, all of 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 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 in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Sections 11.3, 12 and 13.5 (with respect to marking) of the Conditional Sale Agreement or relieve the Vendee or the Guarantor from their respective obligations to the Manufacturer under Sections 2, 3.3(a), 7, 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 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Vendee or the Guarantor shall be and remain enforceable by the Vendee or the Guarantor,

their respective agents, 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 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 the Vendee, in accordance with the provisions of the Conditional Sale Agreement (but only after filing of the Conditional Sale Agreement and this Assignment with the Interstate Commerce Commission under Section 20c of the Interstate Commerce Act), 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 to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each Item of Equipment to the 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 Vendee under the Conditional Sale Agreement, the rights of the Lessee under the Lease and the rights of the Guarantor under the Sublease; and the Manufacturer further covenants and agrees that it will defend the title to such Item built by it against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by the Manufacturer to the Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder, the rights of the Lessee under the Lease and the rights of the Guarantor under the Sublease.

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 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 Vendee or the Guarantor by the Manufacturer. The Manufacturers's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Section 13.4 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Vendee or the Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Manufacturer of the asserted defense, set-off, counterclaim or recoupment and the Assignee's giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the 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 security 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, systems, processes, formulas or combinations specified by the Vendee or the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Vendee or 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 construction or operation of the Equipment, or any Item thereof, of any design, system, process, formula, combination article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give notice to the Manufacturer of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such claim.

The Manufacturer agrees that any amount payable to it by the 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 Item of Equipment.

Section 3. Equipment Markings. 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 Vendee, in letters not less than one inch in height, the following legend:

> "SUBLEASED FROM ALASKA INTERNATIONAL INDUSTRIES, INC., SUBLESSOR AND LESSEE FROM MILWAUKEE LAND COMPANY, LESSOR AND VENDEE - AND SUBJECT TO A SECURITY INTEREST RECORDED WITH THE I.C.C."

Section 4. Recordation. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute and deliver 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 (the "Closing Date") fixed as provided in Section 3.2 of the Conditional Sale Agreement with respect to each Group (as defined in said Section 3.2) of Equipment, shall pay to the Manufacturer by transfer of Chicago Federal funds or other funds immediately available in Chicago, payable to the order of the Manufacturer at the office of American National Bank and Trust Company of Chicago, La Salle at Washington, Chicago, Illinois 60690, or at the office of such other bank or trust company in the United States of America as the Manufacturer shall designate for payment to it, an amount equal to that portion of the Purchase Price of such Items required to be paid pursuant to Section 3.3(b) of said Agreement, provided that there shall have been delivered to the Assignee and Messrs. Davis Polk & Wardwell, its special counsel, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to the Assignee and its special counsel:

(a) Bill or Bills of Sale from the Manufacturer to the Assignee, transferring to the Assignee security title to the Items of Equipment in the Group and warranting to the Assignee and to the Vendee that at the time of delivery to

the 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 Vendee under the Conditional Sale Agreement, the rights of the Lessee under the Lease and the rights of the Guarantor under the Sublease;

(b) Certificate or Certificates of Acceptance signed by an inspector or other authorized representative of the Guarantor stating that the Items of Equipment in the Group have been inspected and accepted by him on behalf of the Guarantor and further stating that each of such Items at the time of its acceptance was marked as required by Section 3 hereof;

(c) Invoices for the Items of Equipment in the Group 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) Opinions required to be delivered to the Assignee pursuant to Section 18 of the Lease and Section 18 of the Sublease;

(e) Opinion of Messrs. Davis Polk & Wardwell, addressed to the Assignee, dated as of such Closing Date, to the effect that (i) the Conditional Sale Agreement, the Lease and the Sublease 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, (ii) assuming the due authorization, execution and delivery of this Assignment and the Finance Agreement by the Assignee and of the Finance Agreement by the Interim Lenders and Investors named therein, this Assignment and the Finance Agreement 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, (iii) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) security title to the Items of Equipment in the Group is validly vested in the Assignee and such Items, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only for the rights of the Vendee under the Conditional Sale Agreement, the rights of the Lessee under the Lease and the rights of the Guarantor under the Sublease, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, this Assignment, the Lease or the

Sublease, (vi) the Conditional Sale Agreement, this Assignment, the Lease and the Sublease 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 the United States of America, (vii) registration of the Conditional Sale Agreement or this Assignment or of any certificates of interest herein delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, and (viii) such other matters as may reasonably be requested by the Assignee or any such Investors;

(f) Opinion of counsel for the Guarantor addressed to the Assignee, dated as of such Closing Date, to the effect set forth in clause (iv) of subparagraph (e) above;

(g) Opinion of counsel for the Manufacturer, addressed to the Vendee, the Guarantor, the Assignee and the Lessee, dated as of such Closing Date, to the effect set forth in clauses (iii) and (iv) of subparagraph (e) above and 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, and (ii) the Conditional Sale Agreement and this Assignment have each been duly authorized, executed and delivered by the Manufacturer and, assuming the execution and delivery thereof by each other party thereto, are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms;

(h) Certificate of a Vice President of the Guarantor to the effect that no Event of Default as specified in the Lease, the Sublease or the Conditional Sale Agreement or any event which with the lapse of time and/or notice provided for in the Lease, the Sublease or the Conditional Sale Agreement would constitute such an Event of Default, has occurred and is continuing, and to the effect that, since December 31, 1973, there has been no adverse change in the affairs or financial condition of the Guarantor; and

(i) Evidence satisfactory to the Assignee that the amount payable pursuant to subparagraph (a) of Section 3.3 of the Conditional Sale Agreement has been paid by the Vendee to the Manufacturer.

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 (e) and (f), counsel may rely as to the title to the Items of Equipment upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (g), counsel may rely as to matters governed by the law of the State of Illinois, Wisconsin or Iowa upon the opinion of counsel for the Guarantor and as to matters governed by the law of the State of Alaska upon the opinion of counsel for the Lessee.

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 notice 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, security 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. Further Assignments. Subject to the terms and provisions of the Finance Agreement, the Assignee may assign in the entirety all 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 thereunder. In the event of any such assignment each such subsequent or successive assignee 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. Representation of Manufacturer; Further Assurances. 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, security 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 in Counterparts. 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 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 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)

By _____
Vice President

Attest:

_____
Assistant Secretary

AMERICAN NATIONAL BANK AND
TRUST COMPANY OF CHICAGO,
as Agent

By _____
Second VICE PRESIDENT

Attest:

_____
Assistant Secretary

State of Illinois)
:ss
County of Cook)

On this 8th day of ~~October~~ November, 1974, 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.

J. J. Clifford
Notary Public

(SEAL)

My Commission Expires: November 30, 1975

State of Illinois)
:ss
County of Cook)

On this 25 day of October, 1974, before me personally appeared W. A. Ansley to me personally known, who being by me duly sworn, says that he is a Second VICE PRESIDENT of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, 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.

Cassandra Cardaras
Notary Public

(SEAL)

My Commission Expires:

EXPIRATION DATE MARCH 6, 1978