

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

114 WEST ELEVENTH STREET
KANSAS CITY, MISSOURI 64105-1804

RICHARD P. BRUENING
SENIOR VICE PRESIDENT
AND GENERAL COUNSEL

(816) 556-0410

ROBERT K. DREILING
ASSISTANT GENERAL COUNSEL

PHILLIP S. BROWN
VICE PRESIDENT
ASSOCIATE GENERAL COUNSEL
AND ASSISTANT SECRETARY

FAX (816) 556-0227

JOHN J. CONNOR
JAY M. NADLMAN
GENERAL ATTORNEYS

W. JAMES WOCHNER
VICE PRESIDENT
AND GENERAL SOLICITOR

RECORDATION NO. 18320 FILED 1426

JUL 21 1993 4:45 PM

Direct Dial:
(816) 556-0384

INTERSTATE COMMERCE COMMISSION

July 16, 1993

3-202A072

Honorable Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue
Washington, D.C. 20423

MOTOR OPERATING UNIT
JUL 21 4 42 PM '93

Dear Mr. Strickland:

I have enclosed an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a User Agreement, a document dated May 28, 1993.

The names and addresses of the parties to the documents are as follows:

- (1) Bailor, (Carland, Inc., 1055 Broadway, Suite 990 Kansas City, MO 64105-1599)
- (2) Bailee, (The Kansas City Southern Railway Company, 114 West Eleventh Street, Kansas City, MO 64105-1804)

A description of the equipment covered by the document follows:

Fifteen (15) GP-40 Locomotives, KCS 4765 through KCS 4779 inclusive.
Two (2) GP-40-2 Locomotives, KCS 4763 through KCS 4764 inclusive

A fee of \$16.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to The Kansas City Southern Railway Company, 114 West Eleventh Street, Kansas City, MO 64105, Attn: Law Department.

A short summary of the document to appear in the index follows: User Agreement between Carland, Inc., 1055 Broadway, Suite 990, Kansas City, MO 64105 and The Kansas City Southern Railway Company, 114 West Eleventh Street, Kansas City, MO 64105 dated May 28, 1993, and covering fifteen GP-40 locomotives and two GP-40-2 locomotives.

Very truly yours,


Jay M. Radlman

JMN:jar

Enclosures

cc: Larry D. Nicotra
President, Carland, Inc.
John D. Patton
Director, Fleet Utilization, KCSR

Interstate Commerce Commission
Washington, D.C. 20423

7/22/93

OFFICE OF THE SECRETARY

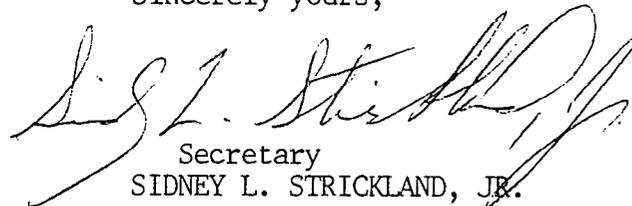
Jay M Nadlman
General Attorney

The Kansas City Southern RYW Co.
114 West Eleventh Street
Kansas City, MO.64105

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,
on 7/21/93 , at 4:45pm , and assigned
recording number(s). 18320

Sincerely yours,


Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

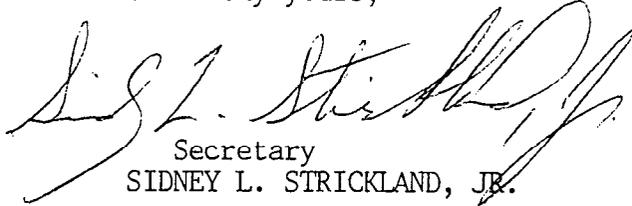
Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on _____ at _____, and assigned recordation number(s).

Sincerely yours,



Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

JUL 21 1993 4:45 PM

USER AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS USER AGREEMENT, dated this 28 day of May, 1993, between **THE KANSAS CITY SOUTHERN RAILWAY COMPANY**, a Missouri corporation ("KCS"), and **CARLAND, INC.**, a Delaware corporation ("Carland").

WITNESSETH:

WHEREAS, Carland anticipates entering into an agreement with L.I.C. Associates (L.I.C.) calling for L.I.C. to sell to Carland, and Carland to accept and pay for, Fifteen GP-40 locomotives; and

WHEREAS, Carland anticipates entering into an agreement with National Railway Equipment Company (National) calling for National to sell to Carland, and Carland to accept and pay for, Two GP-40-2 locomotives; and

WHEREAS, KCS intends, but is not obligated, to purchase the locomotives from Carland with the proceeds of one or more permanent forms of financing and Carland is not obligated to sell the locomotives to KCS; and

WHEREAS, Carland and KCS desire that KCS be permitted to use the locomotives solely as a bailee thereof, upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants contained in this agreement, and intending to be legally bound, the parties agree as follows:

1. Carland agrees to permit KCS to use the seventeen locomotives purchased by Carland from L.I.C. and National for a term commencing on the respective dates of delivery thereof and ending on the earlier of December 31, 1993 and the date, if any, of purchase of such locomotives by KCS from Carland. At the end of such term, this Agreement shall automatically terminate without further action by or notice to either party to this Agreement, except for those provisions which, in order to be given effect, must survive termination.
2. Upon delivery of each locomotive from Carland to KCS, KCS shall execute a Certificate of Acceptance, in the form of Exhibit A hereto, acknowledging the receipt of delivery of each such locomotive under this Agreement and the commencement of the term of this Agreement with respect to such locomotive. Title to and ownership of each locomotive shall remain in Carland with KCS' rights and interests therein being solely that of possession, custody and use as bailee under this Agreement.
3. KCS shall do such acts as may be required by law or as reasonably requested by Carland for the protection of Carland's title to, interest in, and ownership of the loco-

tives, including, but not limited to, filing this Agreement (or a memorandum hereof) with the Interstate Commerce Commission.

4. KCS shall pay to Carland for the use of the GP-40 locomotives an amount equal to \$45.00 per diem for each locomotive for each day during the applicable term, payable on the earlier of December 31, 1993 and the termination of this Agreement. KCS shall pay to Carland for the use of the GP-40-2 locomotives an amount equal to \$80.00 per diem for each locomotive for each day during the applicable term, payable on the earlier of December 31, 1993 and the termination of this Agreement. Such rental payments shall not give KCS any right of ownership in the locomotives and shall in no way be considered a payment or a partial payment for the locomotives.

5. KCS shall permit no liens or encumbrances of any kind to attach to the locomotives, and it agrees to:

(a) Indemnify and save Carland harmless from any and all claims, expenses or liabilities whatsoever, including, but not limited to, attorneys' fees and costs, which may arise during the time any of the locomotives are in the possession of KCS; and

(b) Pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the locomotives or Carland because of Carland's ownership or because of the use, operation, management, maintenance, repair or handling of the locomotives during or with respect to the term of this Agreement. The obligations of KCS described in this Section 5 shall survive termination of this Agreement.

6. KCS shall, at its own expense, keep and maintain the locomotives in good order and running condition applying the manufacturer's recommended normal maintenance standards and procedures, and shall (a) promptly repair any of the locomotives which may be damaged by any cause during the term of this Agreement and (b) promptly pay to Carland \$145,000 for each GP-40 locomotive that may be destroyed by any cause during the term of this Agreement and \$285,000 for each GP-40-2 locomotive that may be destroyed by any cause during the term of this Agreement. Unless purchased by KCS at the end of the term of this Agreement, KCS shall return each locomotive to Carland at the end of the term of this Agreement in such manner as Carland shall reasonably request and in the condition required by this Agreement.

7. The locomotive covered by this Agreement shall be numbered as follows:

Fifteen GP-40 locomotives shall bear the locomotive numbers KCS 4765 - KCS 4779, inclusive.

Two GP-40-2 locomotives shall bear the locomotive numbers KCS 4763 and KCS 4764.

KCS hereby agrees to indemnify Carland against any liability, loss or expense incurred by it as a result of placing the aforementioned markings on the locomotives. If during the term of this Agreement such markings shall at any time be removed, defaced or destroyed, KCS shall immediately cause the same to be restored or replaced.

9. In the event KCS shall be in breach of any of the provisions of this Agreement for more than five days, Carland may, in addition to any other remedies it may have, terminate KCS's right to possess the locomotives and may enter upon the premises of KCS or such other premises where the locomotives may be and take possession of all or any locomotives, and thenceforth hold, possess and enjoy the same free from any right of KCS or its successors or assigns. In such event, Carland may use the locomotives for any purpose whatsoever, and may sell and deliver the locomotives to others upon such terms as Carland may see fit in its sole discretion, all without any obligation to KCS for mitigation of damages or otherwise.

10. Carland and KCS each represent and warrant to the other that:

(a) It is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement and has power and authority to own its properties and carry on its business as now conducted;

(b) The execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and this Agreement is a valid and binding obligation of each, enforceable, subject to applicable insolvency, bankruptcy or moratorium laws, against each in accordance with its terms;

(c) The rights and title of Carland to the locomotives are not subject to the lien of any mortgage, security agreement or other instrument; and

(d) No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Agreement or for the validity and enforceability hereof or the bailment of the locomotives hereunder on the terms and conditions provided herein, or, if any such authorizations are required, they have been obtained; if any such shall hereafter be required, they will promptly be obtained.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

12. Carland and KCS agree that this document may be filed with the Interstate Commerce Commission and any other appropriate recording agencies.

Attest:

{CORPORATE SEAL}

Sherry K. Cooper

Assistant Corporate
Secretary

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY

By: [Signature]

Title: Executive Vice President
Chief Operating Officer

Attest:

{CORPORATE SEAL}

[Signature]

Corporate Secretary

CARLAND, INC.

By: Harry D. Masten

Title: PRESIDENT

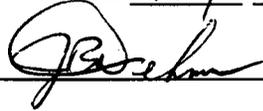
APPROVED AS TO FORM

R.P. By [Signature]

ACKNOWLEDGEMENT OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

I, JAMES B. DEHNER, certify that I am EXECUTIVE V.P. & COO of The Kansas City Southern Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporation. I further declare under penalty of perjury that the foregoing is true and correct.

Executed on MAY 28, 1993.



ACKNOWLEDGEMENT OF CARLAND, INC.

I, James E. Doss, certify that I am Secretary of Carland, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporation. I further declare under penalty of perjury that the foregoing is true and correct.

Executed on May 28th, 1993.



EXHIBIT A

Certificate of Acceptance

This is to certify that the following equipment covered by a User Agreement between The Kansas City Southern Railway Company ("KCS") and Carland, Inc. ("Carland") dated May 28, 1993, has been inspected and accepted by KCS this ____ day of _____, 1993.

Description of Equipment

Number of Units Description Engine Numbers

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

BY _____

TITLE _____