

8164

RECORDATION NO. .... Filed & Recorded

Executed in 5 Counterparts of  
which this is Counterpart No. 4

DEC 30 1975-10 35 AM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of December 1, 1975, by  
and between SOUTHERN REGION INDUSTRIAL REALTY, INC.,  
a Georgia corporation (the "Vendor"), and SOUTHERN RAILWAY  
COMPANY, a Virginia corporation (the "Vendee"),

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

WHEREAS, by Purchase Order No. 125700 dated July  
30, 1975, Vendee contracted with ACF Industries, In-  
corporated, to build 150 100-ton 3300 cu.ft. capacity  
Covered Hopper Cars to bear Vendee's road numbers 91950 -  
92099, inclusive, and by Purchase Order No. 126158 dated  
July 30, 1975, Vendee contracted with Pullman Incorporated  
(Pullman-Standard division), to build 230 50' 70-ton  
10' door Box Cars to bear Vendee's road numbers 528970 -  
529199, inclusive (such Purchase Orders hereinafter called  
"Purchase Orders" and such cars hereinafter called "Cars");  
and

WHEREAS, the builders of the Cars, ACF and Pullman,  
are, under the terms of the Purchase Orders, to deliver  
the Cars to Vendee at Lexington, Kentucky, and Bessemer,  
Alabama, respectively, freight charges prepaid; and

WHEREAS, inasmuch as Vendee has not as yet consummated  
financing arrangements for the acquisition of the Cars,  
it is not in a position to accept delivery of and pay  
for the Cars under the terms of the Purchase Orders  
at this time; and

WHEREAS, Vendee represents that such financing arrangements will be consummated on or before July 1, 1976, and Vendee, in order that it may use the Cars pending completion of the above financing arrangements, has requested Vendor to take an assignment of Vendee's rights to receive and purchase the Cars under the Purchase Orders, to purchase the Cars on delivery and to give Vendee temporary custody and possession of the Cars, solely as a lessee of the Cars; and

WHEREAS, Vendor is willing to accept such assignment, and to purchase and lease the Cars upon the terms and conditions hereinafter stated;

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. Vendee hereby assigns to Vendor its rights to receive and purchase the Cars under the Purchase Orders and Vendor hereby accepts such assignment and designates the Vendee as its agent to accept delivery of the Cars.

2. Vendor agrees to lease the Cars to Vendee and Vendee agrees to hire the Cars from Vendor at the delivery points above referred to. The rights of Vendee hereunder in respect of each Car shall commence on the date of acceptance of such Car as agent for the Vendor and end on the earlier of July 1, 1976, or the date of payment of the purchase price of such Car under the above financing arrangements. Vendee shall purchase the Cars from Vendor

or provide a purchaser therefor on or before July 1, 1976, and Vendor shall sell the Cars to Vendee or such purchaser as Vendee may provide, at the purchase price as set in the Purchase Orders, and its obligation so to do shall be absolute, regardless of the condition of the Cars at such time. When the purchase price of any Car has been paid, this Agreement shall automatically be terminated with respect to such Car without further action by or notice to any party concerned. On delivery of each Car to Vendee, Vendee will assume the responsibility and risk of loss with respect to such Car.

3. Title to the Cars shall remain in Vendor and Vendee's right and interest therein is and shall be solely that of possession, custody, and use as lessee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. Vendee shall do such acts as may be required by law, or reasonably requested by Vendor, for the protection of Vendor's title to and interest in the Cars.

4. As rental for the Cars, Vendee agrees to pay in cash to Vendor upon the termination of this Agreement the sum of \$1.00.

5. Vendee agrees that it will permit no liens of any kind to attach to the Cars, and that it will (a) indemnify and save harmless Vendor from any and all claims, expenses, or liabilities of whatsoever kind, and (b) pay any and all taxes, fines, charges, and penalties

that may accrue or be assessed or imposed upon the Cars or the Vendor because of its ownership or because of the use, marking, operation, management or handling of the Cars by Vendee during the term of this Agreement.

6. Vendee will, at its own expense, keep and maintain the Cars in good order and running condition and will, at its option, repair or replace or promptly pay to Vendor the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term that this Agreement applies to such Cars.

7. Prior to the delivery of the Cars to Vendee there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Vendee upon each side of each Car in letters not less than one-half inch in height the following words:

"OWNED BY A BANK OR TRUST COMPANY UNDER A FINANCING AGREEMENT RECORDED WITH THE INTERSTATE COMMERCE COMMISSION UNDER SECTION 20c OF THE INTERSTATE COMMERCE ACT."

8. Vendor shall have the right to assign its rights under this Agreement or under the Purchase Orders pursuant to the financing arrangements referred to above.

9. Vendor shall have no obligation to warrant the condition of the Cars but agrees to pass to Vendee or Vendee's nominee the builders' warranties on the Cars.

10. Vendee shall have the right to assign or transfer its rights hereunder, or transfer or sublet the Cars (subject to this Agreement and the rights of Vendor hereunder, and without releasing Vendee from any of

its obligations hereunder) to any affiliate of Vendee.

SOUTHERN REGION INDUSTRIAL REALTY,  
INC.

By

... *K.A. Stoecker* ... *FRW*  
Vice President

ATTEST:

... *R. Allen* ...  
Assistant Secretary

SOUTHERN RAILWAY COMPANY,

By

... *K.A. Stoecker* ... *FRW*  
Vice President

ATTEST:

... *R. Allen* ...  
Assistant Secretary

DISTRICT OF COLUMBIA.

On this 29<sup>th</sup> day of *December*, 1975, before me personally appeared *K. A. STOECKER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of SOUTHERN REGION INDUSTRIAL REALTY, INC., 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.

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PHILIP J. CAFFREY

NOTARY PUBLIC  
IN AND FOR THE DISTRICT OF COLUMBIA  
MY COMMISSION EXPIRES JUNE 14, 1978

DISTRICT OF COLUMBIA.

On this 29<sup>th</sup> day of *December*, 1975, before me personally appeared *K. A. STOECKER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of SOUTHERN RAILWAY 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.

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PHILIP J. CAFFREY

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