

Southern Railway System

P.O. Box 1808
Washington, D.C. 20013

KARL A. STOECKER
VICE PRESIDENT AND
CHIEF FINANCIAL OFFICER

920 15TH STREET, N.W.
TEL: (202) 628-4460

December 19, 1977
60225

RECORDATION NO. 9126 Filed & Recorded

DEC 19 1977-12 05 PM

INTERSTATE COMMERCE COMMISSION

Mr. H. G. Homme, Jr.
Acting Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RECORDATION NO. 9126-1A Filed & Recorded

DEC 19 1977-12 05 PM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Homme:

I enclose eight original counterparts of the instrument described in paragraph (1) hereof for recordation pursuant to Section 20c of the Interstate Commerce Act and return, together with two original counterparts thereof which are for the Commission's files.

In accordance with 49 CFR Part 1116, covering the recordation of documents, I wish to advise you as follows:

(1) The enclosed document is a Conditional Sale Agreement covering the purchase of certain railroad equipment, more fully described below, between Southern Region Industrial Realty, Inc., P. O. Box 1808, Washington, D.C. 20013, and Southern Railway Company, P. O. Box 1808, Washington, D.C. 20013, to which is attached as a part thereof an Agreement and Assignment between Southern Region Industrial Realty, Inc. and United States Trust Company of New York, 130 John Street, New York, New York 10038, as Agent, both instruments being dated October 1, 1977.

(2) The equipment covered by this document is described as follows:

201 Enclosed Tri-level Automobile Rack Cars with Tri-fold End Doors, Southern Region Industrial Realty, Inc., P. O. Box 1808, Washington, D.C. 20013, Vendor, bearing Railroad's road numbers 159000 - 159200, both inclusive, AAR designation FA.

7-353A098

Date DEC 19 1977

Fee \$ 50-

ICC Washington, D. C

C. Dunlap
Ara J. Bates

RECEIVED
DEC 19 11 59 AM '77
OPERATION DIV.

Each unit of the equipment will be marked in letters no less than 1/2 inch in height, as follows:

"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."

- (3) After recordation, the original documents should be returned to Joseph C. Dimino, Attorney, Law Department, Southern Railway Company, P. O. Box 1808, Washington, D.C. 20013.
- (4) The recordation fee of \$50.00 is enclosed.

Please acknowledge receipt on the enclosed copy of this letter.

Sincerely,

K.A. Foecker
Senior Vice President

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

12/19/77

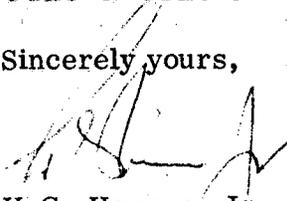
OFFICE OF THE SECRETARY

Karl A. Stoecker
Southern RYW. System
P.O.Box 1808
Washington, D.C.

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 12/19/77 at 12:05pm and assigned recordation number(s) 9126 & 9126-A

Sincerely yours,



H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

9126-A

RECORDATION NO. Filed & Recorded

DEC 19 1977-12 05 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of October 1, 1977

Between

SOUTHERN REGION INDUSTRIAL REALTY, INC.

AND

UNITED STATES TRUST COMPANY OF NEW YORK,
As Agent

AGREEMENT AND ASSIGNMENT, dated as of October 1, 1977, between the corporation first named following the testimonium below (hereinafter called the Owner) and UNITED STATES TRUST COMPANY OF NEW YORK acting as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) (said Agent so acting being hereinafter called the Assignee).

WHEREAS the Owner and SOUTHERN RAILWAY COMPANY (hereinafter called the Railroad) have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the sale and delivery, on the conditions therein set forth, by the Owner and the purchase by the Railroad of the equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this 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 Owner, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained the parties hereby agree as follows:

SECTION 1. The Owner hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Owner in and to each unit of the Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Owner of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of the Owner in and to the Conditional Sale Agreement (except the right to arrange for the delivery of the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Owner as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to

the Owner under the Conditional Sale Agreement on account of its 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 Railroad under the Conditional Sale Agreement other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Owner's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Owner for or on account of the failure of 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 liability of the Owner to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Owner contained or referred to in Articles 2, 3, 4, 5, 13, 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 15 of the Conditional Sale Agreement, all obligations of the Owner to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Owner. In furtherance of the foregoing assignment and transfer, the Owner 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 Owner, 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 to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part 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 Owner agrees that it will deliver the Equipment to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and

complied with by the Owner. The Owner further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement and the Owner further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Owner under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. The Owner 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 Owner will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Owner of any obligation with respect to the Equipment or the delivery or warranty thereof, 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 Railroad by the Owner. The Owner'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 Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad 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, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Owner of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Owner the right, at the Owner's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

The Owner agrees that any amounts payable to it by the Railroad with respect to the Equipment, 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 upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Owner (or as the Owner may direct) an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, at least two business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Owner to the Assignee transferring to the Assignee security title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Owner had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Owner under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) an invoice of the Owner for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and

the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Owner and is a legal, valid and binding instrument enforceable against the Railroad and the Owner in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Owner and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and title to such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, was free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment by the parties thereto, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment 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 any state of the United States of America or in the District of Columbia, and (viii) registration of the Conditional Sale Agreement, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors.

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (iii), (iv), (v), (vi) and (vii) of

subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and this Assignment by the Agent) and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) an opinion of counsel for the Owner, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above and stating that (i) the Owner is a duly organized and existing corporation in good standing under the laws of its jurisdiction of 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 has been duly authorized, executed and delivered by the Owner and is a legal and valid instrument binding upon the Owner and enforceable against the Owner in accordance with its terms and (iii) this Assignment has been duly authorized, executed and delivered by the Owner and is a legal and valid instrument binding upon the Owner;

(g) a receipt from the Owner for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Owner with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad;

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, 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 similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Owner of the documents executed by the Owner and as to title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Owner; and, in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any

jurisdiction other than New York or the United States, on the opinion of counsel for the Owner or the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time or demand, or both, as provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Owner, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or an of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment and upon the giving of notice required in Article 15 of the Conditional Sale Agreement, any such subsequent or successive assignee 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 6. The Owner hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Owner is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its succes-

sors 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, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it 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 Owner therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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 Owner and the Assignee, each pursuant to due authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

SOUTHERN REGION INDUSTRIAL REALTY, INC.,

by W.D. McLean
Vice President

[CORPORATE SEAL]

Attest:

R. Allen
Assistant Secretary



UNITED STATES TRUST COMPANY OF
NEW YORK, as Agent,

[CORPORATE
SEAL]

by *Jene B. Socca*
Assistant Vice President

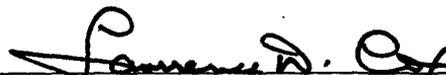
Attest:

Thomas B. Zehner
Assistant Secretary



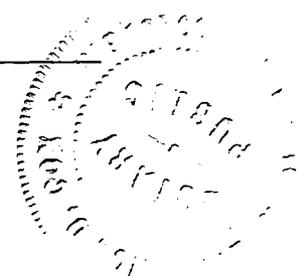
DISTRICT OF COLUMBIA) ss.:

On this 19th day of December 1977, before me personally appeared **WILLIAM D. McLEAN**, to me personally known, who, being by me duly sworn, says that 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.


Notary Public

[NOTARIAL SEAL]

My Commission Expires August 31, 1979



ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

SOUTHERN RAILWAY COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of October 1, 1977.

SOUTHERN RAILWAY COMPANY,

by



Vice President