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INTERSTATE COMMERCE COMMISSION

COUNTERPART NO. 5 OF
10 COUNTERPARTS.

CONDITIONAL SALE AGREEMENT

Dated as of April 15, 1970

Between

SOUTHERN IRON & EQUIPMENT COMPANY

and

SEABOARD COAST LINE RAILROAD COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of April 15, 1970

Between

SOUTHERN IRON & EQUIPMENT COMPANY

and

MORGAN GUARANTY TRUST COMPANY OF NEW YORK,
as Agent

CONDITIONAL SALE AGREEMENT, dated as of April 15, 1970, between the Southern Iron & Equipment Company, a Georgia Corporation (hereinafter sometimes called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof), and SEABOARD COAST LINE RAILROAD COMPANY, a Virginia corporation (hereinafter called the Railroad).

WHEREAS, the Manufacturer has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule A attached hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant as set forth in Schedule A hereto and will sell and deliver the Equipment to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The Railroad represents and warrants that the Equipment, when constructed in accordance with the Specifications, will conform to all requirements and specifications of the United States Department of Transportation and of the Interstate Commerce Commission and to all standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of the Specifications.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Railroad, ~~freight charges, if any, prepaid, at such point or points within the United States of America as shall be specified by the Railroad,~~ in accordance with the delivery schedule set forth in Schedule A hereto, *F.O.T. Manufacturer's Plant.*

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embar-

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goes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, disputes with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before December 31, 1970, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Vendor and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder. If the Manufacturer's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the next preceding paragraph, the Railroad shall nevertheless be obligated to accept all such Equipment and to pay the full purchase price therefor, determined as provided herein, if and when such Equipment shall be completed and delivered by the Manufacturer, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Railroad, and the Manufacturer shall grant to such inspector or such authorized representative reasonable access to its plant. The Manufacturer agrees to inspect all materials entering into the construction of the Equipment. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector or other authorized representative of the Railroad for inspection at the place designated for delivery of such unit or units and, if each such unit or units conform to the Specifications, such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 6 hereof.

On delivery of each of the units of Equipment hereunder, the Railroad assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The price to be paid for the purchase of each unit of equipment (hereinafter called the Purchase price) is the amount set forth under Unit Purchase Price in Schedule A hereto and includes the fair market value or sale price of the old car (\$625.00) by Railroad to Manufacturer for reconstruction and the cost of reconstruction of such car by Manufacturer.

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as may be agreed upon by the parties hereto (the Equipment settled for on each such Closing Date being hereinafter called a Group); *provided, however*, that if there shall at any time have been delivered to and accepted by the Railroad units of the Equipment and the Manufacturer shall be prevented by one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 30 days or more following the last day of delivery with respect to such delivered and accepted units, such delivered and accepted units may constitute a Group for the purpose of settlement.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) In 24 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (a) shall not, when divided by 24, result in an amount ending in an integral cent) semiannual instalments, as hereinafter provided, the amount of the Purchase Price set forth under Deferred Purchase Price per Unit in Schedule A hereto (hereinafter called the Deferred Purchase Price) for all the units of Equipment for which settlement is then being made; and

(b) On each Closing Date (as hereinafter defined), with respect to each Group, that part of the Purchase Price of each unit of equipment which is in excess of the Deferred Purchase Price thereof.

The first instalment of the Deferred Purchase Price of each Group payable pursuant to subparagraph (a) of the third paragraph of this Article 3 shall be payable on October 15, 1970, and subsequent instalments shall be payable semiannually thereafter on each April 15 and October 15 through April 15, 1982. The Deferred Purchase Price shall bear interest from the respective Closing Dates, regardless of any postponement thereof pursuant to the provisions of any assignment of this Agreement, at the minimum com-

mercial lending rate charged by Morgan Guaranty Trust Company of New York, or its successor, for loans in The City of New York on the first business day of the month in which the interest is payable plus one quarter of one percent ($\frac{1}{4}\%$) per annum on each of the instalments of principal repayable in 10 equal semi-annual instalments commencing October 15, 1970 and at the rate of ten percent (10%) per annum on each of the instalments of principal repayable in 14 equal semi-annual instalments commencing October 15, 1975. Such interest shall be payable, to the extent accrued, on the 15th day of April and October in each year, commencing October 15, 1970.

The term Closing Date with respect to any Group of the Equipment shall mean such date (on or prior to December 31, 1970), not more than fifteen business days following presentation by the Manufacturer to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays in The City of New York, New York.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of one percent (1%) per annum above the rate of interest applicable to the Deferred Purchase Price, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

ARTICLE 4. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal taxes (other than net income, gross receipts [except gross receipts in the nature of and in lieu of sales taxes], excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the Deferred

Purchase Price. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however*, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of invoice therefor; *provided, however*, that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Vendor shall have been legally liable with respect thereto, or unless the Railroad shall have approved the payment thereof.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Vendor shall have been paid the Deferred Purchase Price, together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad, will execute a bill or bills of

sale of the Equipment transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 22 hereof, and will execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and will pay to the Railroad any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand of the Railroad.

ARTICLE 6. *Marking of Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered with the identifying road number as set out in Schedule A of this Agreement and will keep and maintain, or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked in stencil, or by a metal plate placed and fastened, on each side of such unit, in letters not less than one inch in height, the name of the Vendor followed by the word "Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over any part thereof until such names and word or words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. The Railroad will not change or permit the change of the numbers of any such units except with the consent of the Vendor and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with the Vendor by the Railroad and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Equipment may be lettered "Seaboard Coast Line Railroad" "S.C.L." or "SCL RR" or with the name or initials of any affiliate of the Railroad which is permitted to use the Equipment, or in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

ARTICLE 7. Sale and Replacement of Equipment. In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the Deferred Purchase Price, together with interest thereon and all other payments required hereby, the Railroad, after it shall have been determined that such unit has suffered a Casualty Occurrence, shall promptly and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as herein defined) of units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 7) shall exceed \$150,000, the Railroad, after it has knowledge of such event, shall pay to the Vendor on the date on which the next instalment of the Deferred Purchase Price is payable a sum equal to the aggregate Casualty Value of such units as of the date of such payment and shall file with the Vendor a certificate of the President or the Treasurer or the Vice President and Comptroller of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence. For all purposes of this Article 7 the Casualty Value of any unit suffering a Casualty Occurrence shall be a sum equal to the then unpaid balance of the Deferred Purchase Price applicable to such unit together with interest accrued on such unpaid balance to the date of such payment, the higher of the cost of such unit or the cost of acquiring a similar unit at the time of such payment to the Vendor with respect to such Casualty Occurrence, less in each case depreciation at the annual rate (but not in excess of 8% per annum) approved by the Interstate Commerce Commission for such unit for each period of twelve calendar months elapsed since the date of delivery and acceptance of such unit to the date of such payment.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 7 shall, so long as none of the events of default specified in Article

16 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Vendor in such number of counterparts or copies as may reasonably be requested, to prepay the indebtedness of the Railroad in respect of the Deferred Purchase Price of the Equipment hereunder or to or toward the cost of a unit or units of standard gauge railroad equipment first put into service no earlier than April 15, 1970, to replace such unit or units having suffered a Casualty Occurrence, as the Railroad may direct in such written instrument. In case any such money shall be applied to prepay the Deferred Purchase Price, it shall be so applied on the date on which the next instalment is payable and such instalment and each instalment thereafter falling due shall be reduced on a *pro rata* basis, but without premium. In the event that any moneys paid to, or held by, the Vendor pursuant to this Article 7 are applied to the prepayment of the Deferred Purchased Price, the Railroad will pay to the Vendor on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

In case of replacement the amount to be paid by the Vendor with respect to any replacing unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest date when any of such money was paid to the Vendor and the Railroad shall pay any additional cost of such unit. The amount which any such replacing unit would have cost if acquired on the earliest date when any of such money was paid to the Vendor shall be conclusively determined by the certificate of the President or the Treasurer or the Vice President and Comptroller of the Railroad to be filed as hereinafter provided. The Railroad will cause any replacing unit to be marked as provided in Article 6 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Vendor to such replacements. All such replacements shall be warranted in like manner as the original Equipment delivered hereunder, and the manufacturer of such replacements shall, if other than the Manufacturer, duly consent to the subjection

thereof to this Agreement and agree to be bound by all the terms and provisions contained herein with respect to such replacements in like manner as the Manufacturer is with respect to the original Equipment delivered hereunder.

Whenever the Railroad shall file with the Vendor, pursuant to the foregoing provisions of this Article 7, a written direction to apply money to or toward the cost of a replacement unit, the Railroad shall file therewith, in such number of counterparts or copies as may reasonably be requested,

(1) a certificate of the President or the Treasurer or the Vice President and Comptroller of the Railroad certifying that such replacement unit is standard gauge railroad equipment first put into service no earlier than April 1, 1970, and has been marked as required by the provisions of this Article 7 and certifying the cost of such replacement unit and the amount which such replacement unit would have cost if acquired on the earliest date when any such money was paid to the Vendor;

(2) an opinion of counsel for the Railroad that title to such replacement unit is vested in the Vendor free and clear of all claims, liens, security interests and encumbrances and that such unit has come under and become subject to this Agreement; and

(3) a bill of sale.

So long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 7, shall, if the Railroad shall in writing so direct, be invested, either directly or under repurchase agreement, pending its application as hereinabove provided, as may be specified by the Railroad in such written direction (hereinafter called Investments). Any such Investments may from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any Investments shall be sold by the Vendor at or about the time required for the application of the proceeds thereof to the prepayment of the Deferred Purchase Price, if such application is requested by the Railroad as hereinabove provided, or as otherwise required by the provisions of this Article 7. Any interest or earned discount received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or payment at maturity of any Investments, the proceeds thereof, plus any interest or earned discount received by the Vendor thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Vendor for application pursuant to

this Article 7. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency; but, unless an event of default specified in Article 16 hereof shall have occurred and be continuing, if the amounts received thereon including interest received upon or prior to such disposition shall exceed such cost, the excess shall be paid to the Railroad upon its written request. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one of the events of default specified in Article 16 hereof shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Vendor pursuant to this Article 7 (including for this purpose Investments and interest or discount thereon) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

Upon full payment of all indebtedness in respect of the Deferred Purchase Price of the Equipment, and all interest thereon, and all other amounts payable by the Railroad hereunder, any money held by the Vendor pursuant to this Article 7 (including for this purpose the Investments and interest and earned discount thereon) or any other provision hereof shall be paid to the Railroad.

In order to facilitate the sale, remanufacture or other disposition of any units of the Equipment suffering a Casualty Occurrence, the Vendor shall, after deposit by the Railroad of the amount required to be deposited hereunder with respect to such units, execute and deliver to the Railroad or to the Railroad's vendee, assignee or nominee, a Bill of Sale for such units and such other documents as may be required to release such units from the terms and scope of this Agreement in such form that said release may be filed and recorded with the Interstate Commerce Commission pursuant to the provisions of Section 20c of the Interstate Commerce Act.

ARTICLE 8. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment in good order and repair at its own expense.

ARTICLE 9. *Compliance with Laws and Rules.* During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation and Interstate Commerce

Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* Upon the written request of the Vendor, but not more than once in any twelve month period, the Railroad will furnish to the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Article 6 hereof have been preserved or replaced.

ARTICLE 11. *Possession and Use.* The Railroad, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Railroad, to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by the Railroad or over which the Railroad has trackage rights or rights for operation of its trains, and upon connecting and other carriers in the usual interchange of traffic, and to lease such Equipment to other responsible railroads or responsible industries, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior

to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. *Indemnities.* The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Manufacturer guarantees that the units of the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 1 hereof and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein and not manufactured by the Manufacturer) or workmanship under normal use and service, the Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. This warranty is expressly in lieu of all other

warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 14 hereof, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. The Manufacturer further agrees with the Railroad that the acceptance of any units by the Railroad under Article 2 hereof shall not be deemed a waiver by the Railroad of any of its rights under this paragraph.

ARTICLE 14. *Patent Indemnities.* Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Railroad 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 Railroad because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor 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 Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer, or article or material not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer or against the seller or sellers of any designs or articles or materials so specified by the Railroad and purchased or otherwise acquired by the Manufacturer for use in or about the construction or

operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right and the Manufacturer further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Railroad of any claim known to the Manufacturer from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Manufacturer of any claim known to the Railroad from which liability may be charged against the Manufacturer hereunder.

ARTICLE 15. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. An assignment or transfer to a railroad company (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the property of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to cause to be constructed and to deliver the Equipment in accordance herewith or to respond to its guaranties, warranties and indemnities contained in Articles 13 and 14 hereof, or relieve the Railroad of its obligations to the Manufacturer under Articles 2, 4, 13 and 14 hereof and subparagraphs (a) and (b) of the third paragraph of Article 3 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such

assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Railroad recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents and agrees, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Deferred Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery, guaranty or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the names and word or words to be marked on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equip-

ment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Railroad. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) will be borne by the subsequent assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to such Group, all documents required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

If this Agreement shall have been assigned by the Manufacturer, and the assignee shall not make payment to the Manufacturer on the Closing Date with respect to a Group of Equipment of an amount equal to that portion of the aggregate Deferred Purchase Price of such Group to be paid pursuant to subparagraph (a) of the third paragraph of Article 3 hereof, the Manufacturer will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by the assignee, the Railroad will not later than 90 days after the Closing Date pay or cause to be paid to the Manufacturer such amount, together with interest thereon from such Closing Date to the date of payment by the Railroad at the prime rate of interest of leading New York City banks in effect at such Closing Date.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Railroad shall fail to pay in full any sum payable by the Railroad within ten days after payment thereof shall be due hereunder; or

(b) The Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad, and all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for the property of the Railroad in connection with any such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare the entire indebtedness in respect of the Deferred Purchase Price, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest thereon, to the extent legally enforceable, shall bear interest from the date of such declaration at a rate of interest per annum which is one percent (1%) higher than the rate of

interest payable with respect to each instalment of the Deferred Purchase Price prior to such declaration of default, and the Vendor shall thereupon be entitled to recover judgment for the entire Deferred Purchase Price, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Vendor may waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time after the Deferred Purchase Price shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the premises of the Railroad where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be

reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and, at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish for a reasonable period of time, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Deferred Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election retain the Equipment as its own and make such disposition thereof as the Vendor shall deem fit, and in such event all the Railroad's rights in the Equipment will thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; *provided, however*, that if the Railroad, within 20 days of receipt of notice of the Vendor's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Deferred Purchase Price of all the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; or the Vendor, with or without the retaking of possession thereof, may, at its election, sell the Equipment, or any unit thereof, free from any and all claims of the Railroad, or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; and the proceeds of such sales, less the attorneys' fees and

any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement. Written notice of the Vendor's election to retain the Equipment for its own use may be given to the Railroad by mail addressed to the Railroad as provided in Article 22 hereof, at any time during a period of 30 days after the entire indebtedness in respect of the Deferred Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Vendor shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, provided that the Railroad shall be given written notice of such sale not less than ten days prior thereto, by mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 19. *Extension not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be

deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. *Recording.* The Railroad will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited, if necessary, with the Interstate Commerce Commission, and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

ARTICLE 21. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses, except the counsel fees of the Manufacturer, but including the fees and expenses of counsel for the first assignee of this Agreement, and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement, of such first assignment, of any instrument supplemental to or amendatory of this Agreement or such first assignment, and of any certificate of the payment in full of the indebtedness in respect of the Purchase Price of the Equipment due hereunder.

ARTICLE 22. *Notice.* Any notice hereunder to the party designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 3600 West Broad Street, Richmond, Virginia 23230, Attention: Treasurer;

(b) to the Manufacturer, at 5522 New Peachtree Road, Chamblee, Georgia 30005;

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Railroad represents and warrants that its chief place of business is in Virginia.

ARTICLE 23. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 24. *Effect and Modification of Agreement.* This Agreement, and the schedules relating hereto, exclusively and completely state the rights and agreements of the Vendor and the Railroad with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Railroad.

ARTICLE 25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Virginia; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 26. *Definitions.* The term Vendor, whenever used in this Agreement, means, before any assignment of any of its rights hereunder, Southern Iron & Equipment Company and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained and excluded from assignment; and the term Manufacturer, whenever used in this Agreement, means, both before and after any such assignment, Southern Iron & Equipment Company and any successor or successors for the time being to its manufacturing properties and business.

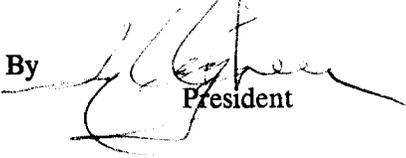
ARTICLE 27. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of April

15, 1970, 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, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

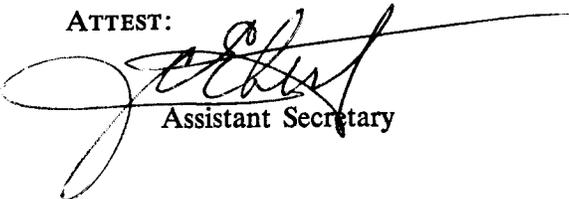
SOUTHERN IRON & EQUIPMENT COMPANY

By


President

[CORPORATE SEAL]

ATTEST:


Assistant Secretary

SEABOARD COAST LINE RAILROAD COMPANY

By


Treasurer

[CORPORATE SEAL]

ATTEST:


Assistant Secretary

STATE OF GEORGIA }
COUNTY OF DEKALB } ss.:

On this 2 day of May 1970, before me personally appeared John C. Campbell to me personally known, who, being by me duly sworn, says that he is President of SOUTHERN IRON & EQUIPMENT 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.

My Commission Expires

Notary Public, Georgia, State at Large
My Commission Expires Dec. 2, 1972

Notary Public
John C. McNeese
[NOTARIAL SEAL]

COMMONWEALTH OF VIRGINIA }
CITY OF RICHMOND } ss.:

On this ~~14th~~ day of May, 1970 before me personally appeared LEONARD G. ANDERSON, to me personally known, who, being by me duly sworn, says that he is Treasurer of SEABOARD COAST LINE RAILROAD 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.

My Commission Expires **AUG 8 1970**

J. H. Chapman
Notary Public

[NOTARIAL SEAL]

SCHEDULE A

<u>Lot</u>	<u>Type</u>	<u>Manufacturer's Specifications</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Railroad Road Numbers (Both Inclusive)</u>	<u>Unit Reconstruction Cost (including freight charges)</u>	<u>Total Reconstruction Cost (including freight charges)</u>	<u>Delivery</u>
1	55-ton 40'6" rebuilt box cars with 9' sliding doors.....	No. 69-140*	Chamblee, Ga.	400	SCL 11050 to 11449	\$8,565	\$3,426,000	April-July, 1970
2	55-ton 40'6" rebuilt box cars with 6' sliding doors.....	No. 69-140*	Chamblee, Ga.	100	SCL 10950 to 11049	\$9,040	\$ 904,000	August-October, 1970

* As revised 1/21/70.

<u>Lot</u>	<u>Type</u>	<u>Unit Purchase Price</u>	<u>Total Purchase Price</u>	<u>Deferred Purchase Price Per Unit</u>	<u>Total Deferred Purchase Price</u>
1	55-ton 40'6" rebuilt box cars with 9' sliding doors.....	\$9,190	\$3,676,000	\$8,315	\$3,326,000
2	55-ton 40'6" rebuilt box cars with 6' sliding doors.....	\$9,665	\$ 966,500	\$8,748	\$ 874,000

AGREEMENT AND ASSIGNMENT dated as of April 15, 1970, between **SOUTHERN IRON & EQUIPMENT COMPANY** (hereinafter called the **Manufacturer**), and **MORGAN GUARANTY TRUST COMPANY OF NEW YORK**, a New York corporation, with its chief place of business at 23 Wall Street, New York, New York 10015, acting as Agent under an Agreement dated as of April 15, 1970 (hereinafter called the **Agency Agreement**), (said Trust Company, so acting, being hereinafter called the **Assignee**).

WHEREAS, the **Manufacturer** and **SEABOARD COAST LINE RAILROAD COMPANY**, a Virginia corporation with its chief place of business in Richmond, Virginia (hereinafter called the **Railroad**), have entered into a Conditional Sale Agreement dated as of April 15, 1970 (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 **Railroad** 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, 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** 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 with respect thereto;

(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 subparagraph (b) of the third paragraph of Article 3 thereof and the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the **Manufacturer** as provided in Article 4 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 Deferred 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) 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 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 obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its guaranties, warranties and indemnities contained in Articles 13 and 14 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Articles 2, 4, 13 and 14 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 Manufacturer 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 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 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 Manufacturer covenants and agrees that it will construct and 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 and all of 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 Railroad that at the time of delivery of each unit of the Equipment to the Railroad 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 and encumbrances of any nature except only the rights of the Railroad under 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 Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

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 instalment of, or interest on, indebtedness in respect of the Deferred 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 Railroad 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 Articles 13 and 14 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 Railroad by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and shall not be enforceable against the Assignee or any party or parties in whom 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, and shall promptly move or take other appropriate action on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted

by the Railroad therein, and 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 shall promptly notify the Manufacturer of any such defense, set-off, counterclaim or recoupment asserted by the Railroad and the Manufacturer shall thereafter be given the right by the Assignee, at the Manufacturer's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment.

Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad 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.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil, or by a metal plate placed and fastened, on each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

"MORGAN GUARANTY TRUST COMPANY OF NEW YORK,
AGENT, OWNER".

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 each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group of Equipment (as defined in said Article 3), or as otherwise hereinafter set forth, shall pay to the Manufacturer an amount equal to the Deferred Purchase Price of such Group to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, *provided* that there shall have been delivered to the Assignee 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, transferring to the Assignee title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) Certificate of Acceptance signed by an inspector or other authorized representative of the Railroad stating that the units of the Equipment in such Group have been inspected and accepted by him on behalf of the Railroad and further stating that there was plainly, distinctly, permanently and conspicuously marked in stencil, or by a metal plate placed and fastened, on each side of each of such units at the time of its acceptance, in letters not less than one inch in height, the following legend:

"MORGAN GUARANTY TRUST COMPANY OF NEW YORK,
AGENT, OWNER";

(c) Invoice 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 as set forth in said invoice;

(d) Opinion of Messrs. Davis Polk & Wardwell, who are acting in this transaction as special counsel for the Assignee and for the Investors named in the Agency Agreement, dated as of such Closing Date, stating that (i) the Agency Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument enforceable in

accordance with its terms, (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 in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens, security interests, and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Agency Agreement, the Conditional Sale Agreement or this Assignment, or, if any 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, and (viii) the opinions referred to in paragraphs (e) and (f) of this Section 5 are satisfactory in form and substance and the Assignee is justified in relying thereon; *provided, however*, that in furnishing this opinion said counsel may rely on counsel referred to in paragraph (f) of this Section 5 as to the due authorization, execution and delivery by the Manufacturer of the Conditional Sale Agreement and of this Assignment and as to the title of the Manufacturer to the units of Equipment and as to such units being free, at the time of delivery thereof to the Railroad, of all claims, liens, security interests and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement and such counsel may also rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinions of local counsel or of counsel for the Manufacturer or counsel for the Railroad as to such matter;

(e) Opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (v) and (vi) of subparagraph (d) above, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of Virginia, its state 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 on behalf of the Railroad and is a valid and binding instrument enforceable against the Railroad in accordance with its terms and (iii) the Conditional Sale Agreement and this Assignment have been duly filed, recorded and deposited in accordance with Article 20 of the Conditional Sale Agreement;

(f) Opinion of counsel for the Manufacturer, 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 Manufacturer is a duly organized and existing corporation in good standing under the laws of Georgia, its state of 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 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; and

(g) Unless payment of the amount, if any, payable pursuant to subparagraph (b) 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 Railroad, the receipt from the Manufacturer for such payment.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 5, 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 opinion specified in subparagraph (d) of the first paragraph of this Section 5, counsel may in fact rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinions of counsel for the Manufacturer or 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 prior receipt by the Assignee, pursuant to the Agency Agreement, of all the funds to be furnished to the Assignee by the various parties to the Agency Agree-

ment with respect thereto; *provided, however*, that, in the event of failure of any party to furnish any such funds with respect to any Group, the Closing Date with respect to such Group shall be postponed (but in no event later than December 31, 1970), for not more than four business days (excluding Saturdays, Sundays and holidays) and if, on or before such postponed Closing Date, the Railroad shall pay or cause to be paid to the Assignee, on account of the Deferred Purchase Price of the Equipment in such Group, an amount equal to the funds not furnished as aforesaid, the Assignee shall make payment for such Group on such postponed Closing Date, and in that event the Railroad shall be relieved of such indebtedness to the extent of the portions of the instalments of such indebtedness on account of which such party failing to furnish funds as aforesaid was obligated to furnish such funds pursuant to the Agency Agreement. By such payment, however, the Railroad shall not acquire any rights under this Assignment.

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 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, title and interest of the Assignee in and to the units 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 units of the Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof.

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 Railroad thereunder. In the event of any such assignment 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 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 Railroad) it is a valid and existing agreement binding upon the Manufacturer and the Railroad, 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, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

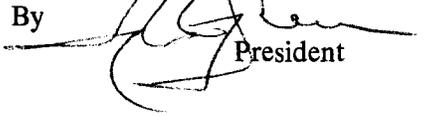
SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Virginia; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising 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. 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 the 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 Railroad. Although this Assignment is dated for convenience as of April 15, 1970, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

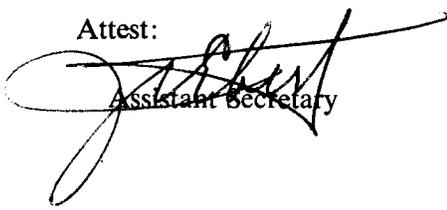
IN WITNESS WHEREOF, SOUTHERN IRON & EQUIPMENT COMPANY, a Georgia corporation, and the Assignee, Morgan Guaranty Trust Company

of New York, as Agent, 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.

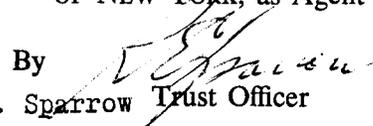
SOUTHERN IRON & EQUIPMENT COMPANY

By  President

[CORPORATE SEAL]

Attest: 
Assistant Secretary

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK, as Agent

By 
R. E. Sparrow Trust Officer

[CORPORATE SEAL]

Attest: 
M. L. THOMPSON Assistant Secretary

STATE OF GEORGIA }
COUNTY OF DEKALB } ss.:

On this 2 day of May, 1970, before me personally appeared *Terry C. Campbell* to me personally known, who, being by me duly sworn, says that he is President of SOUTHERN IRON & EQUIPMENT 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.

My Commission Expires
~~Notary Public, Georgia, State at Large~~
My Commission Expires Dec. 2, 1972
[NOTARIAL SEAL]

Notary Public
Grace C. McLeod

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 29th day of April, 1970, before me personally appeared R. E. Sparrow, to me personally known, who, being by me duly sworn, says that he is a Trust Officer of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, 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.

My Commission Expires
[NOTARIAL SEAL]

Notary Public
Lorraine Fowler

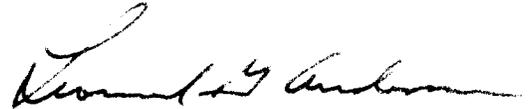
LORRAINE FOWLER
Notary Public, State of New York
No. 24-6368100
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1972

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the Assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of April 15, 1970.

SEABOARD COAST LINE RAILROAD COMPANY

By



Treasurer