

Executed in 8 Counterparts of
which this is Counterpart No. 8.

6086
RECORDATION NO. _____ Filed & Received

MAR 23 1971 - 2 50 PM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of March 15, 1971, by and between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (hereinafter called the "Manufacturer"), and SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter called the "Vendee"),

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

The Manufacturer and the Vendee have heretofore entered into the Purchase Agreement (hereinafter called the "Purchase Agreement") designated as Vendee's Purchase Order No. 104849, dated February 1, 1971, under which the Manufacturer has agreed to construct at Huntington, West Virginia, and deliver to the Vendee at Science Hill, Kentucky, with freight charges prepaid, and the Vendee has agreed to accept and pay for 506 - 100-ton 3300 cu. ft. capacity covered hopper cars (hereinafter called the "Cars"); and

Inasmuch as the Vendee has not as yet consummated financing arrangements for the acquisition of the Cars, it is not in a position to accept delivery of and pay for the Cars under the terms of the Purchase Agreement at this time. The Vendee represents that such financing arrangements will be consummated on or before October 1, 1971. The Vendee (in order that it may use the Cars pending completion of the above financing arrangements) has requested the Manufacturer to give the Vendee temporary custody and possession of the Cars on their completion, solely as a lessee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the

promises of the parties herein contained, the parties agree as follows:

1. The Manufacturer agrees to lease the Cars to the Vendee and the Vendee agrees to hire the Cars from the Manufacturer at the delivery point above referred to. The rights of the Vendee hereunder in respect of each Car shall commence on the date of acceptance of such Car and end on the earlier of October 1, 1971, or the date of payment of the purchase price of such Car under the above financing arrangements. When the purchase price of any Car has been paid this Agreement shall automatically be terminated with respect to such Car without further action by or notice to any party concerned. On delivery of each Car to the Vendee the Vendee will assume the responsibility and risk of loss with respect to such Car.

2. After the Vendee's representative finds that each Car upon completion has been built in accordance with the requirements of the Purchase Agreement, he will execute and deliver to the Manufacturer a certificate of inspection certifying to that effect. Upon delivery of each Car to the delivery point, the Vendee's representative will execute a certificate of acceptance acknowledging the receipt of delivery of each Car under this Agreement. Title to the Cars shall remain in the Manufacturer and the Vendee's right and interest therein is and shall be solely that of possession, custody, and use as lessee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. The Vendee, without expense to the Manufacturer, will promptly cause this Agreement

to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, the Vendee shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

3. For each Car the Vendee agrees to pay in cash to the Manufacturer upon the termination of this agreement an amount equal to the product of the daily rate, as hereinafter defined, and the number of days for which such rate is applicable. The daily rate for each unit shall be the product of the final invoiced price, including prepaid freight charges, for such unit multiplied by an annual rate of interest, adjusted to a daily basis, equal to 1% above the minimum commercial lending rate, the so-called "prime rate," for First National City Bank in effect during the term of this agreement. If such rate changes, the new rate will be effective on the day following the day such change is announced. The daily rate shall begin on April 1, 1971, for all Cars delivered by that day. The daily rate shall apply to the remaining Cars in groups of at least 100 following delivery of the Cars in such group and upon receipt by the Vendee of notice from the Manufacturer that the Cars in such group had been delivered to the Vendee. Such notices should be delivered or mailed to the Vendee at P. O. Box 1808, Washington, D. C. 20013, Attention - Treasurer. Such daily rate shall end for each Car on the day the purchase price is paid for such car.

4. The Vendee agrees that it will permit no liens of any

kind to attach to the Cars, and that it will

- (a) Indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and
- (b) Pay any and all taxes, fines, charges, and penalties

that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of its ownership or because of the use, marking, operation, management or handling of the Cars by the Vendee during the term of this Agreement. The Vendee's obligations contained in this paragraph shall survive the termination of this Agreement by mutual agreement or otherwise.

5. The Vendee will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term that this Agreement applies to such Cars. Upon the expiration or other termination of this Agreement, other than by full payment of the purchase price of the Cars, the Vendee will surrender and deliver up the Cars in good order and running condition to the Manufacturer free of all charges at the point designated by the Manufacturer.

6. Prior to the delivery of the Cars to the Vendee they will be numbered with Vendee's Car Numbers 91094 to 91599, both inclusive, and there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Vendee upon each side of each Car in letters not less than one-half inch in height the following words:

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

7. (a) All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Cars as provided in the Purchase Agreement, may be assigned by Manufacturer and reassigned by any Assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of Manufacturer's guarantees, warranties, indemnities, or any other obligations contained in this Agreement or in the Purchase Agreement relating to the Cars. In the event Manufacturer assigns its rights to receive the payments herein or under the Purchase Agreement, and the Vendee receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to the Vendee. It is understood that the Vendee intends to assign all its right, title and interest under the Purchase Order in connection with the permanent financing arrangements for the Cars.

(b) In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Purchase Agreement, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, setoff,

counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Cars or arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee, its successors and assigns only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

8. The Vendee agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Vendee of the Cars, as contemplated by this Agreement, shall not relieve the Vendee of its obligations to accept, take, and pay for the Cars in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement, which is by reference made a part of this Agreement as fully as though expressly set forth herein.

ACF INDUSTRIES, INCORPORATED,
By

H. H. Wilson
Vice President.

ATTEST:

[Signature]
ASSISTANT Secretary.

SOUTHERN RAILWAY COMPANY,
By

[Signature]
Vice President.

ATTEST:

[Signature]
Assistant Secretary.

STATE OF NEW YORK)
County of New York) ss:

On this 15th day of March, 1971, before me personally appeared *W. W. Wilson*, to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF Industries, Incorporated, 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.

Edwin F. Meyer
EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1972

DISTRICT OF COLUMBIA.

On this 17th day of March, 1971, before me personally appeared *E. A. Stoecker* to me personally known, who, being by me duly sworn says that he is a Vice President of Southern Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lawrence A. Huff
LAWRENCE A. HUFF
NOTARY PUBLIC
IN AND FOR THE DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JUNE 30, 1972