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MICHIGAN COMMERCE COMMISSION

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**AGREEMENT AND ASSIGNMENT**

**Dated as of May 15, 1976,**

**Among**

**SOUTHERN REGION INDUSTRIAL REALTY, INC.,  
GANTT MANUFACTURING CORPORATION,**

**and**

**UNITED STATES TRUST COMPANY OF NEW YORK,  
As Agent**

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AGREEMENT AND ASSIGNMENT

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ACKNOWLEDGMENTS

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Note: This Table of Contents is for convenience of reference and is not part of the Agreement.

AGREEMENT AND ASSIGNMENT, dated as of May 15, 1976, between United States Trust Company of New York, acting as Agent under a Finance Agreement dated as of the date hereof (said Finance Agreement being hereinafter called the Finance Agreement and said Agent, so acting, being hereinafter called the Assignee), and each of the other corporations named at the foot hereof (each such corporation being hereinafter called the Seller and together the Sellers).

WHEREAS the Sellers and Southern Railway Company (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the acquisition or construction, and sale and delivery, on the conditions therein set forth, by the Sellers, severally, and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment and the Equipment sold by each Seller being hereinafter sometimes called "such Seller's Equipment" or "its 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 each Seller as provided in Section 4 hereof, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained the parties hereby agree as follows:

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

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

(b) all the right, title and interest of such Seller in and to the Conditional Sale Agreement (except the right to acquire or construct, and deliver such Seller's Equipment and the right to receive the

payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by such Seller as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to such Seller under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of its Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

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

without any recourse against such Seller for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Seller to acquire or construct, and to deliver such Seller's Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to such Seller contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of each Seller to the Railroad with respect to such Seller's Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Seller. In furtherance of the foregoing assignment and transfer, each Seller 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 such Seller, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be

performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Seller agrees that its Equipment has been or shall be constructed in full accordance with the Conditional Sale Agreement and will be delivered 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 such Seller. Each Seller further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of its Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and each Seller further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Seller under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. No Seller will deliver any of its Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 19 of the Conditional Sale Agreement have been effected (the respective Sellers and their counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. Each Seller 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 Purchase Price of its Equipment or to enforce any provision of the Conditional Sale Agreement, such Seller will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Seller of any obligation with respect to such Seller's Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising

by reason of any other indebtedness or liability at any time owing to the Railroad by such Seller. Each Seller's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Seller of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Seller the right, at such Seller's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Seller and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Seller, such Seller agrees, except as otherwise specifically provided in Schedule A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, 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 construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Seller of any such liability or claim actually known to the Assignee and will give such Seller the right, at such Seller's expense, to compromise, settle or defend against such claim. Each Seller agrees that any amounts payable to it by the Railroad with respect to its Equipment, with the exception of amounts payable pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement (other than amounts owing under supplemental invoices as therein provided), whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to each Seller (or as such Seller may direct) whose Equipment shall be included in such Group and to each Seller who shall submit a supplemental invoice for settlement on such Closing Date as contemplated in Article 4 of the Conditional Sale Agreement, an amount equal to the portion of the Purchase Price of such Seller's Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

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

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

(c) an invoice of such Seller for the units of such Seller's Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and such Seller and is a legal, valid and binding instrument enforceable against the Railroad and such Seller in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Seller and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by such Seller by this Assignment, (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and title to such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, was free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad, dated as

of such Closing Date, to the effect set forth in clauses (i), (ii), (vi) and (vii) of subparagraph (d) above and stating that (A) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (B) assuming due authorization, execution and delivery thereof by the parties thereto, this Assignment is a legal, valid and binding instrument;

(f) an opinion of counsel for such Seller, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above in respect of its Equipment and stating that (i) such Seller is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by such Seller and is a legal and valid instrument binding upon such Seller and enforceable against such Seller in accordance with its terms and (iii) this Assignment has been duly authorized, executed and delivered by such Seller and is a legal and valid instrument binding upon such Seller; and

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

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. Counsel for each of the parties may assume due authorization, execution and delivery of any document by the other parties in giving its opinion. In giving the opinion spec-

ified in said subparagraphs (d) and (e), counsel may rely on the opinion of counsel for each Seller as to authorization, execution and delivery by such Seller of the documents executed by such Seller and as to title to such Seller's Equipment at the time of delivery thereof under the Conditional Sale Agreement; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for such Seller or the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to such Seller, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of such Seller's Equipment with respect to which payment has not been made by the Assignee, except that, if the Assignee shall not make payment in respect of a supplemental invoice for any Equipment after having made a payment in respect of a preliminary invoice for such Equipment, the Assignee shall retain all right, title and interest in and to such Equipment, but the Seller shall retain, as an unsecured obligation, the right to receive and collect from the Railroad the payment due under such supplemental invoice.

SECTION 5. 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 and upon giving of notice required in Article 15 of the Conditional Sale Agreement, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Seller hereby:

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

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

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Seller therein or in the Equipment.

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

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. The rights and obligations of the

Sellers under this Assignment are several in accordance with their interests and not joint. Accordingly, whenever this Assignment, by use of such designation as "each Seller", "such Seller" or other similar term, confers a right or imposes an obligation upon any Seller or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Seller giving rise to such right or obligation and its successors as herein provided. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all the parties so long as each Seller shall sign at least one counterpart and the Agent shall sign all the counterparts. The original counterpart of this Assignment shall be deemed to be the counterpart executed by each Seller and delivered to the Agent.

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

SOUTHERN REGION INDUSTRIAL REALTY, INC.,

*Real* by K.A. Acker  
Vice President

[Corporate Seal]

Attest: R.A. Allen  
Assistant Secretary

GANTT MANUFACTURING CORPORATION,

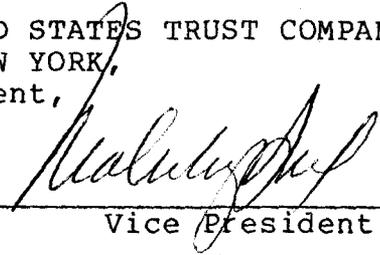
by J. J. Haag  
President

[Corporate Seal]

Attest: [Signature]  
Assistant Secretary

UNITED STATES TRUST COMPANY  
OF NEW YORK,  
as Agent,

by

  
\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Assistant Secretary

DISTRICT OF COLUMBIA ) ss.:

On this <sup>10th</sup> day of June 1976, before me personally appeared K. A. Stoecker, to me personally known, who, being by me duly sworn, says that he is a Vice President of SOUTHERN REGION INDUSTRIAL REALTY, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission expires

NOTARY PUBLIC  
DISTRICT OF COLUMBIA  
MY COMMISSION EXPIRES JUNE 14, 1978

STATE OF South Carolina, )  
COUNTY OF Greenville ) ss.:

On this <sup>3rd</sup> day of June 1976, before me personally appeared F. R. Hoas, to me personally known, who, being by me duly sworn, says that he is a ~~Vice~~ President of GANTT MANUFACTURING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission expires 11/24/79

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK, )

On this <sup>May</sup> 28 day of ~~June~~ 1976, before me personally appeared **MALCOLM J. HOOD**, to me personally known, who, being by me duly sworn, says that he is a Vice President of UNITED STATES 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 Trustees and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Christine C. Collins*

Notary Public

[NOTARIAL SEAL]

My Commission expires

CHRISTINE C. COLLINS  
Notary Public, State of New York  
No. 31-4624735  
Qualified in New York County  
Certificate filed in New York County  
Commission Expires March 30, 1978

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

SOUTHERN RAILWAY COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of May 15, 1976.

SOUTHERN RAILWAY COMPANY,

*PRW*

by

*K.A. Atwater*

Vice President