1 15498
RECORDATION NO. ..... Filed 1425

FEB 8 1988 -10 30 AM

INTERSTATE COMMERCE COMMISSION

Emons Industries, Inc.

1 15498 A
RECORDATION NO. ..... Filed 1425

FEB 8 1988 -10 30 AM

INTERSTATE COMMERCE COMMISSION

February 3, 1988

2/8/88
30.00

1 15498 B
RECORDATION NO. ..... Filed 1425

FEB 8 1988 -10 30 AM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Interstate Commerce Commission
12th and Constitution Ave., N.W.
Washington, D.C. 20423

Dear Ms. Lee:

I am enclosing the following documents to be recorded:

1. Original and a copy of Agreement between the Maryland and Pennsylvania Railroad Company and Burlington Northern Railroad Company, as user, for 48 boxcars.

2. Original and a copy of a Lease of Railroad Equipment between Chase Manhattan B-Air Holdings Corporation, as Lessor, and the Maryland and Pennsylvania Railroad Company, as Lessee, for 48 boxcars.

3. Original and a copy of a Security Agreement between Chase Manhattan B-Air Holdings Corporation, as secured party, and the Maryland and Pennsylvania Railroad Company.

Also enclosed is a check in the amount of $30.00 ($10.00 for each document) to cover the costs of filing. I understand that all original documents will be returned to me with the recordation information noted thereon within about a week.

Please let me know if you have any questions regarding this matter.

Very truly yours,

Florence M. Yatchisin

Florence M. Yatchisin
Manager, Leasing Administration
(717) 771-1722

Enclosures

1 WEST MARKET STREET • YORK, PENNSYLVANIA 17401-1231

UN No. 5498
FEB 8 1988 -10 AM
INTERSTATE COMMERCE COMMISSION

AGREEMENT

THIS AGREEMENT, made as of this 3rd day of December, 1987, between the MARYLAND AND PENNSYLVANIA RAILROAD COMPANY, (hereinafter referred to as "MPA"), and BURLINGTON NORTHERN RAILROAD COMPANY, (hereinafter referred to as "BN").

It is Agreed:

1. Scope. MPA agrees to and does hereby permit BN to use those certain forty-eight (48) railroad cars identified on Schedule 1 attached hereto (hereinafter referred to as the "Cars").

2. Term. The term of this Agreement shall commence on the date of delivery and acceptance of each Car, and unless earlier terminated in accordance with Paragraph 7, shall terminate on the date months after the average date of delivery to BN of the Cars; provided, however, this Agreement shall be automatically extended on a month to month basis after the initial term until terminated by either party on thirty (30) days' prior written notice to the other.

3. Service. The Cars will be used in general commodity service (non-corrosive and non-contaminating commodities).

4. Delivery of Cars. Delivery of forty-eight (48) Cars shall commence on or about October 1, 1987. Each such car shall be delivered to BN's trackage at a mutually agreeable interchange point with all freight or other transportation charges to be for the account of MPA. Each Car so delivered shall be in good operating condition, meeting all AAR and FRA requirements for movement and use.

5. Railroad Markings; Inspection.

A. Cars will bear the reporting marks of MPA. Such markings shall comply with all applicable regulations.

B. MPA, its officers, employees and agents, shall have reasonable access to the physical inspection of Cars or records pertaining thereto upon prior written notice to BN. MPA agrees that it shall not unreasonably interfere with the Cars' movement as a result of any such inspection.

6. Rental Per Car.

A. MPA shall be entitled to any car hire revenue earned by the Cars, including, but not limited to, any mileage and/or per diem payments received by MPA while the Cars are not on the lines of BN, except as provided in 6(b) below.

B.

All payments due MPA from BN shall be made in accordance with AAR Car Hire Rules.

7. Substitution; Earlier Termination.

A. MPA shall have the right at any time and from time to time to substitute one or more boxcars of similar design, age, quality and per diem level upon at least 60 days' notice thereof, all at the expense of MPA both for the displaced Car and its replacement. The parties shall cooperate with each other to effectuate such substitution at a mutually agreeable point without unduly burdening BN's operation hereunder. Upon such substitution this Agreement shall terminate as to the Car being substituted for, and the boxcar substituted in place of that Car shall thereupon become a "Car" for all purposes of this Agreement.

B. If the off-line utilization of the Cars shall fall below an average of percent (%) for any calendar quarter after the commencement of the term hereof, as to all Cars in BN's possession at the beginning of such quarter, MPA may, within thirty (30) days after all car hire revenue payments shall have become due and payable for such period give BN not less than thirty (30) days' written notice of its election to terminate this Agreement. (As used herein, the term "off-line utilization" shall mean, for any period during the term of this Agreement, the percentage equivalent of a fraction, the numerator of which shall be the aggregate car hire revenues actually received for the Cars by MPA hereunder with respect to such period (including any on-line payments made to MPA by BN), and the denominator of which shall be the maximum amount of car hire revenues which could have been earned by the Cars which are serviceable, including Cars which are in need of running repairs, during such period pursuant to the car hire rate tables of the Association of American Railroads in effect as of the date hereof, assuming operation of the Cars off the lines of the BN during all hours of such period and moving an average of fifty-five (55) miles per car per day and taking into effect the actual UMLER value of each car.) If such notice of termination of the Agreement is given, BN may, but shall not be required to, within the thirty (30) day notice period pay to MPA such additional amount as will make the total portion of car hire revenues retained by MPA for such three-month period equal to the minimum amount which would be required for all Cars under the Agreement if the off-line utilization of the Cars were percent (%). If such additional payment is made, such Cars shall not be removed from the Agreement.

8. Maintenance.

A. Except as otherwise provided below, BN shall be required to preserve the Cars in good operating condition, while the Cars are on BN's trackage or under its control. All running repairs, whether on or off BN's trackage, shall be performed at MPA's expense except that BN shall assume the cost of and pay for any damage to a Car which is caused by cornering, sideswiping, derailment or similar occurrences while on BN's line of railroad.

B. BN shall promptly give MPA written notice of the need to repair a Car (other than running repairs) when on BN's trackage or of which BN has notice or to perform maintenance thereon, but shall not perform or cause to be performed any

repairs (other than running repairs) or maintenance without MPA's prior consent.

C. MPA shall have the right to all and any settlement received by it as the result of any loss or destruction of a Car occurring while on the trackage of others. All settlements for loss or destruction of any Car occurring on or off BN's property shall be in accordance with and on at least as favorable terms as those set forth in the Field Manual of the AAR Interchange Rules. Settlements for a destroyed Car shall be in accordance with AAR Rule 107. This Agreement shall terminate as to any such loss or destroyed Car effective on the date of any such loss or destruction.

D. Notwithstanding anything herein contained, MPA may notify BN that it is withdrawing from this Agreement any Car which has been damaged or needs repairs and which would in the reasonable judgment of MPA be uneconomic to perform such repairs, whereupon this Agreement will terminate as to such withdrawn Car; provided, however, MPA may substitute a car of similar design, age, quality and per diem level for such withdrawn Car, in which case all of the terms and conditions of this Agreement will apply to the substituted Car.

9. Liens. BN shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under BN which may be a cloud upon or otherwise affect MPA's title, including, but not limited to liens or encumbrances which arise out of any suit involving BN, or any act or omission of BN or BN's failure to comply with the provisions of this Agreement, and BN shall promptly discharge any such lien, encumbrance or legal process.

10. Indemnities. BN agrees to indemnify and hold MPA harmless from and against all losses, damages, injuries, claims and liabilities of whatsoever nature and regardless of the cause thereof arising out of or in connection with BN's use and operation of the Cars during the term of this Agreement. MPA shall not be liable to BN for any loss of or damage to any commodities loaded or shipped in the Cars.

11. Termination. At the expiration or termination of this Agreement as to any of the Cars, BN will surrender possession of such Cars which are on BN's railroad lines or on the line of an affiliate of BN to MPA by delivering the same to MPA at a point on BN's line of railroad designated by MPA. BN shall use its best efforts to load the Cars off-line. All transportation charges beyond said point will be paid by MPA. BN agrees to follow MPA's instructions in directing railroads in possession of the Cars to return the Cars, at MPA's expense. MPA shall be entitled to one hundred percent (100%) of the car hire revenues for the period after termination of this Agreement and shall be responsible for all obligations, other than those caused by BN's negligence, relative to the Cars which accrue after such termination. Each Car so surrendered shall be free from all accumulations or deposits from commodities transported in or on the Cars while in the service of BN, and shall be in substantially the same condition as delivered, normal wear and tear excepted. BN shall provide up to thirty (30) days free

storage on its railroad tracks for any terminated Car or Cars. Such stored Cars will be free of car hire while on BN's lines.

12. Default; Remedies.

A. The occurrence of any of the following events shall be an event of Default:

(i) The failure of BN to make payment of any sum required to be paid hereunder within thirty (30) days after the due date of such payment;

(ii) The default by BN under any other term, covenant or condition of this Agreement which is not cured within thirty (30) days after receipt by BN of written notice thereof from MPA;

(iii) Any affirmative act of insolvency by BN or the filing by BN of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law for the relief of debtors;

(iv) The adjudication of BN as a bankrupt under the Bankruptcy Act;

(v) The declaration by any court of competent jurisdiction that this Agreement is null and void or has ceased to be in full force and effect;

(vi) The contesting of the validity or enforceability of this Agreement in any court or in any insolvency or reorganization proceeding by BN or by the Trustee of BN's properties; or

(vii) The subjection of a substantial part of BN's property to any levy, seizure assignment, application or sale for or by any creditor or governmental agency.

B. Upon the occurrence of any Event of Default, MPA may, at its option, terminate this Agreement and also may proceed by appropriate court action to enforce the performance by BN of its obligations hereunder or to recover damages (if any) for which BN is responsible at law, under contract or otherwise. All remedies of MPA under this Agreement shall be cumulative. BN agrees to bear MPA's costs and expenses, including reasonable attorney's fees, in taking such action or actions.

13. Use of Cars. So long as BN shall not be in default under this Agreement and subject to the next sentences, and BN agrees that the Cars shall at all times be used (i) in conformity with Interchange Rules; (ii) in compliance with the term and provisions of this Agreement; (iii) and in the use, service and manner customary for railcars, BN shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement. It is understood that a bank or other financial institution may own any such Cars with MPA leasing such Car from such owner, this Agreement thereupon being a sublease, fully subordinate to the Lease between such owner and MPA. If any assignment of this Agreement has been granted, the

assignee, owner or purchaser shall have all of the rights of MPA granted to it in such assignment but none of the obligations of MPA under this Agreement. In connection with any sale, lease, assignment or grant of security interest, BN shall, upon written notice thereof recognize each such assignment, sale, ownership or security interest and shall accept and comply with the direction or demands given in writing by any such owner, assignee or secured party, provided that BN's rights under this Agreement are not thereby restricted or its obligations under this Agreement enlarged. BN shall not assert against such assignee, secured party or owner (including purchaser) any defense, counterclaim or set-off that BN might have against MPA. BN's rights shall be subject and subordinate to the rights of any such assignee or transferee of MPA or any such owner or purchaser of the Cars, provided that BN's rights under this Agreement are not thereby restricted or its obligations under this Agreement enlarged.

Upon giving of notice to BN from any such transferee, bank, financial institution or secured party that an event of default by MPA has occurred and is continuing under such financing agreement or arrangement, such party may, at its option, require either (i) that the Cars be returned to such party, or (ii) if such rights have been granted by MPA to such party, that all payments otherwise due to MPA shall be made directly to such party, or both.

14. Notice. Any notice required or permitted to be given pursuant to the terms of this Agreement shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

MARYLAND AND PENNSYLVANIA RAILROAD COMPANY	BURLINGTON NORTHERN RAILROAD COMPANY
at:	at:
One West Market Street York, Pennsylvania 17401 Attention: Controller	9401 Indian Creek Parkway Overland Park, Kansas 66210 Attention: System Chief Mechanical Officer

or at such other addresses as MPA or BN may from time to time designate by such notice in writing.

15. Governing Law--Writing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York. The terms of this Agreement and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

16. Severability--Waiver. If any term or provision of this Agreement or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Failure of MPA to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

17. Terminology. In construing any language contained in this Agreement, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

18. Definitions. For all purposes of this Agreement the following terms shall have the following meaning.

A. "Interchange Rules" - All codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

B. "Car Hire Revenues" - The hourly per diem and mileage earnings of the Cars prescribed by the car hire rate tables of the Association of American Railroads then in effect.

19. Miscellaneous.

A. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their respective successors and assigns, except that neither party may assign this Agreement or any of their rights hereunder without the prior written consent of the other, except as provided in Section 13 (use).

B. Nothing contained herein shall be construed in any way whatsoever so as to constitute or establish a partnership, joint venture or contract of employment between the parties hereto.

C. If the Interstate Commerce Commission ("ICC") or any successor governmental agency, or any other regulatory body or any court shall, at any time:

(i) issue any order the effect of which would cause the Cars to cease earning revenues; or

(ii) reduce the amount of car hire revenue or mileage revenue which the Cars are able to earn as of the date of this Agreement;

BN shall not have the authority to enter into any agreement regarding car hire rates covering the Cars without the prior written consent of MPA and MPA shall have absolute authority in its sole discretion to enter into or refuse to enter into any

agreement setting such rates with any other railroad with respect to the Cars.

The MPA shall have the option of either renegotiating new rental terms placing the parties in substantially the same relative positions as existed prior to such order, or terminating this Agreement in its entirety.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

MARYLAND AND PENNSYLVANIA RAILROAD COMPANY

By: _____

Title: VICE PRESIDENT

(Corporate Seal)

ATTEST:

_____
Secretary

BURLINGTON NORTHERN RAILROAD COMPANY

By: _____

Title: GST-FC MW

(Corporate Seal)

ATTEST:

_____
Assistant Secretary

SCHEDULE 1

Description of Cars:	All-Steel, single-Door, 70-Ton, 50-Foot XP Boxcars
Number of Cars:	48 Boxcars
Lease Term:	Years
Current Identification Numbers:	LPN
New Identification Number:	MPA

STATE OF Pennsylvania)
) SS
COUNTY OF York)

On this 3rd day of December, 1987, before me personally appeared Richard E. Meyers, to me known, who being by me duly sworn, says that he is a Vice President of the MARYLAND AND PENNSYLVANIA 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.

Annmarie Wilczek
Notary Public

(Seal)

My Commission Expires:

ANNMARIE WILECZEK, Notary Public
York, York County, Pennsylvania
My Commission Expires April 16, 1990

STATE OF KANSAS)
) SS
COUNTY OF JOHNSON)

On this 23RD day of September, 1987, before me personally appeared J.W. PRATT, to me known, who being by me duly sworn, says that he is a GST FCM of BURLINGTON NORTHERN 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.

Jerry D Kirby
Notary Public

(Seal)

JERRY D. KIRBY
NOTARY PUBLIC
STATE OF KANSAS

My Commission Expires: October 5, 1987