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AUG 29 1986 -10 10 AM

August 27, 1986

INTERSTATE COMMERCE COMMISSION

EXPRESS MAIL

Secretary  
Interstate Commerce Commission  
Constitution Avenue and 12th Street, N.W.  
Washington, DC 20423

Date 8/29/86  
Fees \$ 10.00  
Washington, D. C.

Attn.: Recordation Unit

Gentlemen:

Enclosed are six executed counterparts of an Agreement dated August 20, 1986, among Gunderson, Inc., Intermodal Systems, Inc., and The Chesapeake and Ohio Railway Company.

This Agreement constitutes an interim user agreement, a primary document, allowing the use of the equipment described below pending establishment of permanent financing. The names and addresses of the parties are as follows:

Bailor:

Gunderson, Inc.  
4350 N.W. Front Avenue  
Portland, OR 97208

Bailee:

The Chesapeake and Ohio Railway Company  
100 North Charles Street  
Baltimore, MD 21201

Sub-Bailee:

Intermodal Systems, Inc.  
10 Parsonage Road  
Edison, NJ 08830

The equipment covered by the above document consists of 62 five-unit articulated double-stacking railroad container cars to bear identification Nos. NYSW6841 - NYSW6902, inclusive; AAR mechanical description: FCA. The equipment

Secretary  
Interstate Commerce Commission:  
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will also be marked "Sea-Land" or "owned by The Chesapeake and Ohio Railway Company" or in some other appropriate manner and will also be marked "subject to a security agreement filed with the Interstate Commerce Commission."

Also enclosed is a draft in the amount of \$10.00 representing the required recordation fee.

Pursuant to the Commission's rules and regulations for recordation of certain documents under 49 U.S.C. §11303, you are hereby requested to file one of the enclosed counterparts for record in your office and return the remaining copies to me.

Very truly yours,



Robert F. Hochwarth

RFH:awc  
(Enclosures)

AUG 29 1986 -10 10 AM

THIS AGREEMENT, dated as of August 20, 1986, among GUNDERSON, INC., an Oregon corporation (Manufacturer), INTERMODAL SYSTEMS, INC., a Delaware Corporation (Intermodal), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O):

W I T N E S S E T H:

Pursuant to one or more Purchase Orders ("Purchase Order") received from Intermodal as agent for C&O, which Purchase Order is made a part hereof by reference, the Manufacturer has agreed (among other things) to construct, at its Portland, Oregon plant, and to deliver to Intermodal at said plant, and C&O has agreed to pay for, sixty-two (62) five-unit articulated double-stacking railroad container cars (the Cars), to bear Intermodal markings and the identifying numbers NYSW6841 - NYSW 6902, inclusive.

C&O intends to lease the Cars to Intermodal and to finance the purchase of the Cars from the Manufacturer pursuant to some one or more permanent forms of financing, but deliveries of the Cars are scheduled to begin on or about ~~October 1,~~ <sup>September 1,</sup> 1986, and C&O will not have completed said financing arrangement(s) by that time. C&O represents that such financing arrangement(s) will be established, however, on or before November 20, 1986. C&O, in order that it may use (or may permit Intermodal to use) the Cars pending establishment of such financing arrangement(s), desires to let Intermodal have temporary custody and possession of the Cars upon their completion

with C&O acting solely as a bailee of the Cars and Intermodal acting solely as a sub-bailee of the Cars, and the Manufacturer is willing to grant such temporary custody and possession to C&O and/or Intermodal upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to C&O and Intermodal and C&O and Intermodal hereby accepts from the Manufacturer the Cars as of the date each of them is delivered to Intermodal at Portland, Oregon, for the period ending on the earlier of November 20, 1986, or the date of establishment of said financing arrangement(s). On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Upon delivery of each Car, Intermodal's representative shall execute a certificate of acceptance or other documents acknowledging the receipt of delivery of each such Car. Title to the Cars shall remain in the Manufacturer and C&O's and Intermodal's rights and interests therein are and shall be solely that of possession, custody and use as bailee and sub-bailee, respectively, under this Agreement. Transfer of title shall be effected only at the time of delivery of bills of sale. C&O shall, without expense to the Manufacturer, promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under 49 U.S.C. §11303.

In addition, C&O and Intermodal 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.

C&O and Intermodal agree to permit no liens of any kind to attach to the Cars; and that they shall:

- (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 the Manufacturer's ownership or because of the use, operation, management or handling of the Cars by C&O or Intermodal during the term of this Agreement. C&O's and Intermodal's obligations contained in this paragraph shall survive the termination of this Agreement.

Intermodal shall, at its own expense, keep and maintain the Cars in good order and running condition and shall, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car under this Agreement, each such Car shall be numbered with a Car number as hereinbefore indicated, and there shall be plainly, distinctly, per

manently and conspicuously marked upon each side of each Car, in contemplation of the financing arrangement, as hereinbefore mentioned, the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED WITH THE INTERSTATE COMMERCE COMMISSION

C&O and Intermodal hereby agree to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Cars. In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Cars, Intermodal shall immediately cause the same to be restored or replaced.

Intermodal agrees to indemnify and save harmless C&O from any and all claims, expenses or liabilities that may be incurred by C&O as a result of this Agreement, subject, however, to the prior rights of the Manufacturer under this Agreement.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Cars, may be assigned by the Manufacturer and re-assigned 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 the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or

implied by the Purchase Order. In the event the Manufacturer shall assign its rights to receive the payments for the Cars and C&O and Intermodal shall receive 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 C&O and/or Intermodal for the Cars or in connection therewith shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O and Intermodal.

In the event of any such assignment by the Manufacturer of its rights to receive any such payments, the rights of such assignee to such payments as may be 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 in respect to the Cars, 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 C&O or Intermodal by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O and Intermodal, their successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees of such rights, benefits or advantages assigned pursuant to this Agreement).

C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Man-

ufacturer to C&O and Intermodal of the Cars, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Cars in accordance with the terms of the Purchase Order.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

Attest:  
(CORPORATE SEAL)

THE CHESAPEAKE AND OHIO  
RAILWAY COMPANY

By: *Patricia J. Hunsley*  
Secretary

By: *A. B. Nutter*  
Treasurer

Attest:  
(CORPORATE SEAL)

GUNDERSON, INC.

By: *Paul Gilbert*  
Asst. Secretary

By: *Stephen L. Ballo*  
Assistant Vice President

Attest:  
(CORPORATE SEAL)

INTERMODAL SYSTEMS, INC.

By: *David M. Ascher*  
Secretary

By: *Robert S. Ingram*  
President

STATE OF MARYLAND )  
 ) SS:  
CITY OF BALTIMORE )

On this 26th day of August, 1986, before me personally appeared A. B. Aftoria, to me personally known who, being by me duly sworn, says that he is Treasurer of THE CHESAPEAKE AND OHIO 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 acknowledges that the execution of the foregoing instrument was the free act and deed of said Corporation.

(NOTARIAL SEAL)

Beatrice M. McCauley  
Notary Public

My Commission Expires: 7-1-90

STATE OF Oregon )  
 ) SS:  
COUNTY OF Multnomah )

On this 25th day of August, 1986, before me personally appeared Stephen L. Ballo, to me personally known who, being by me duly sworn, says that he is Assistant Vice President of GUNDERSON, 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.

(NOTARIAL SEAL)

Ronstance Sicker  
Notary Public

My Commission Expires: Feb. 28, 1987

STATE OF New Jersey )  
 ) SS:  
COUNTY OF Middlesex )

On this 18th day of August, 1986, before me personally appeared David M. Ascher, to me personally known who, being by me duly sworn, says that he is the Secretary of INTERMODAL SYSTEMS, 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

Diane M. Kuhn  
Notary Public

(NOTARIAL SEAL)

My Commission Expires:

DIANE M. KUHN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Nov. 6, 1990  
Registered Middlesex County