

RECORDATION NO. 11864 Filed 1425

MAY 30 1980 - 12 05 PM

SLADE PELLMAN & BIEHL
INTERSTATE COMMERCE COMMISSION COUNSELORS AT LAW

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No. 0-151A086

Date MAY 30 1980

Fee \$ 350.00

ICC Washington, D. C.

Office of the Secretary
Recordation Office
Interstate Commerce Commission
Twelfth St. and Constitution Ave., N.W.
Washington, DC 20423

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION
Dear Sirs:

In accordance with the provisions of Section 11303 of the Revised Interstate Commerce Act, 49 U.S.C. §11303, and Part 1116 of Title 49 of the Code of Federal Regulations, we request that the enclosed documents be recorded and filed by the Interstate Commerce Commission (the "Commission").

A. Description of the Documents and the Parties Thereto

Enclosed herewith are three originals of the documents listed below. We request that one original of each document be recorded and filed in the order listed below. We request that the additional original be stamped by your office and returned to us.

1. LEASE AGREEMENT (the "Lease") dated as of May 1980, between Seafirst Leasing Corporation, as lessor the ("Lessor"), and Emons Industries, Inc., as lessee the ("Lessee");

2. GONDOLA CAR AGREEMENT NO. 4, dated September 7, 1979, between the Lessee and South Buffalo Railway Company ("South Buffalo");

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INTERSTATE COMMERCE COMMISSION

540 MADISON AVENUE
NEW YORK, N. Y. 10022
TEL: (212) 838-6670

FEE OPERATIONS BR.
I.C.C.

MAY 30 11 59 AM '80

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

David H. Cox
Charles [unclear]

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Interstate Commerce Commission
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3. SUPPLEMENT NO. 1 dated May 23, 1980, to Gondola Car Agreement No. 4, between the Lessee and South Buffalo; B

4. ASSIGNMENT OF RENTS AND SECURITY AGREEMENT dated as of May 27, 1980, among the Lessor and the Lessee relating to South Buffalo Gondola Car Agreement No. 4, together with South Buffalo's Acknowledgement of Notice of Assignment; C

5. GONDOLA CAR AGREEMENT NO. 2, dated September 7, 1979, between the Lessee and Patapsco & Back Rivers Railroad Company ("Patapsco"); D

6. SUPPLEMENT AND AMENDMENT NO. 1, dated April 23, 1980, to Gondola Car Agreement No. 2 between the Lessee and Patapsco; E

7. ASSIGNMENT OF RENTS AND SECURITY AGREEMENT dated May 27, 1980, between the Lessor and the Lessee relating to Patapsco Gondola Car Agreement No. 2, together with Patapsco's Acknowledgement of Notice of Assignment; F

8. GONDOLA CAR AGREEMENT NO. 1, dated September 7, 1979, between the Lessee and Philadelphia, Bethlehem & New England Railroad Company ("PBNE"); G

9. SUPPLEMENT AND AMENDMENT NO. 1, dated May 23, 1980, to Gondola Car Agreement No. 1 between the Lessee and PBNE; and H

10. ASSIGNMENT OF RENTS AND SECURITY AGREEMENT, dated May 27, 1980, between the Lessor and the Lessee, relating to PBNE Gondola Car Agreement No. 1, together with PBNE's Acknowledgement of Notice of Assignment. I

The names and addresses for the parties to the transaction are:

EMONS INDUSTRIES, INC.
490 East Market Street
York, Pennsylvania 17403

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May 29, 1980
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SEAFIRST LEASING CORPORATION
P.O. Box 3586
Seattle, Washington 98124

SOUTH BUFFALO RAILWAY COMPANY
1275 Daly Avenue
Bethlehem, Pennsylvania 18015

PATAPSCO & BACK RIVERS RAILROAD COMPANY
1275 Daly Avenue
Bethlehem, Pennsylvania 18015

PHILADELPHIA, BETHLEHEM & NEW ENGLAND
RAILROAD COMPANY
1275 Daly Avenue
Bethlehem, Pennsylvania 18015

B. Procedural Matters

It is hereby respectfully requested that each of the following names be inserted in the Commission Index established pursuant to Section 1116.5(c) of Title 49 of the Code of Federal Regulations.

1. Seafirst Leasing Corporation
2. Emons Industries, Inc.
3. South Buffalo Railway Company
4. Patapsco & Back Rivers Railroad Company
5. Philadelphia, Bethlehem & New England Railroad Company

A check in the amount of \$ has been enclosed with this letter of transmittal to cover the recordation fee.

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Page 4

Please stamp and return the enclosed copy of this letter of transmittal.

If there are any questions with respect to the enclosed or the transactions described therein, please telephone Melvin S. Slade or Michael W. Stamm of this office, collect.

Very truly yours,

A handwritten signature in cursive script that reads "Slade Pellman & Biehl". The signature is written in dark ink and is positioned above the typed name.

SLADE PELLMAN & BIEHL

SP&B:ab
Encl.

Interstate Commerce Commission
Washington, D.C. 20423

5/30/80

OFFICE OF THE SECRETARY

Melvin S. Slade
Slade Pellman & Biehl
540 Madison Avenue
New York, N.Y. 10022

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **5/30/80** at **12:05pm**, and assigned re-
recording number(s). **11864, 11864-A, 11864-B, 11864-C, 11864-D**

11864-E

11864-F

11864-G

11864-H

11864-J

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)



11864

RECORDATION NO. Filed 1425

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INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

between

EMONS INDUSTRIES, INC.

and

SEAFIRST LEASING CORPORATION

May 27, 1980

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LEASE AGREEMENT

Lease Agreement dated as of May 27, 1980, between EMONS INDUSTRIES, INC., a New York corporation (the "Lessee") and SEAFIRST LEASING CORPORATION, a Washington corporation (the "Lessor").

1. LEASE OF EQUIPMENT.

Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, upon the terms and conditions hereinafter set forth --

120 100-Ton 52'6" Railroad Gondola Cars specially equipped with rigid underframes, fixed ends, and interior lading securement devices, and manufactured by Berwick Forge & Fabricating, a division of Whittaker Corporation

(the "Cars") (the Cars are sometimes referred to as the "Equipment" and each such Car is sometimes referred to as a "unit" or a "unit of Equipment") and identified by the car numbers set forth on annexed Exhibit A, as may be amended from time to time. The aggregate cost for the acquisition and delivery of all the Cars ("Lessor's Cost of Cars") shall not exceed \$5,000,000.

Lessee shall assign the purchase orders (the "Purchase Orders") for the Cars to the Lessor in accordance with a Purchase Order Assignment in the form of annexed Exhibit B (the "Purchase Order Assignment") and the Lessee shall direct the manufacturer of the Cars to submit its invoices for the Cars to the Lessor. The Cars shall be conveyed to the Lessor by bills of sale (the "Bills of Sale").

2. LEASE TERM.

2.1 Basic Lease Term. The basic lease term of lease under this Lease Agreement of each Car shall commence on July 1, 1980 (the "Commencement Date"), and shall end one hundred eighty (180) months thereafter.

2.2 Interim Lease Term. The interim lease term of lease under this Lease Agreement of each Car shall commence on the date such Car is accepted by Lessor from the manufacturer and shall end on the Commencement Date.

3. RENT, NET LEASE.

Lessee shall pay to Lessor rent during the basic lease term (as defined in Section 2.1), quarterly in arrears, for the Cars

in sixty (60) installments, each of which shall be in an amount equal to 2.807568% of Lessor's Cost of Cars. The first installment of rent shall be payable on the first quarterly anniversary of the Commencement Date. Subsequent installments of rent shall be payable thereafter on each successive quarterly anniversary of the Commencement Date.

Lessee shall also pay Lessor on the Commencement Date interim rent for the period commencing with the date of payment by Lessor of any part of Lessor's Cost of Cars and ending on the Commencement Date. Interim rent shall be in an amount equal to .036726% per day of any part of Lessor's Cost of Cars paid by Lessor prior to the Commencement Date computed from the dates so paid to (but not including) the Commencement Date, and computed for the actual number of days elapsed.

All rent and other amounts due from Lessee to Lessor shall be paid to Lessor at P.O. Box 3586, Seattle, Washington 98124, Attention Large Ticket and Leverage Leasing, or at such other place as Lessor shall specify in writing. In the event any rent or other amounts due hereunder shall not be paid promptly when due, Lessee shall pay Lessor, as additional rent hereunder, interest on such overdue amount from the due date thereof to the date of payment thereof at a rate per annum equal to the lesser of (i) one hundred twenty percent (120%) of Seattle-First National Bank's prime rate of interest charged from time to time to major commercial borrowers for unsecured loans, or (ii) the maximum rate permitted by law; provided, however, that Lessee shall not be required to pay any such interest if such overdue amount shall have been paid prior to the expiration of any applicable grace period under Section 16 hereof.

This Lease Agreement provides for a net lease and the rent and other amounts due hereunder from Lessee to Lessor shall not be subject to any defense, claim, reduction, setoff, abatement or adjustment for any reason whatsoever. Except as otherwise specifically provided herein, Lessee shall promptly pay all costs, expenses and obligations of every kind and nature incurred in connection with the use or operation of the Equipment which may arise or be payable during the lease term of such Equipment hereunder, whether or not such cost, expense or obligation is specifically referred to herein.

This Lease Agreement shall not, except as otherwise expressly provided herein, terminate, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease Agreement.

4. ACCEPTANCE OF EQUIPMENT.

Lessee shall act as Lessor's agent for the purpose of accepting units of Equipment from the manufacturer of the Equipment and on the day of accepting a unit of Equipment from the manufacturer as such agent, the Lessee shall simultaneously accept such units of Equipment under a Certificate of Acceptance in the form of annexed Exhibit C (a "Certificate of Acceptance") which shall constitute Lessee's acknowledgement that a unit of Equipment is accepted for and leased under this Lease Agreement; is in good order and condition; is of the manufacture, design and capacity selected by Lessee; and is suitable for Lessee's purposes; provided, however, that nothing in this Lease Agreement or in any Certificate of Acceptance shall in any way diminish or otherwise affect any rights which Lessor or Lessee may have against the vendor or manufacturer of any Unit or any subcontractor or supplier of such vendor or manufacturer.

5. PAYMENTS FOR EQUIPMENT.

5.1 Promptly following acceptance of each unit of Equipment Lessee shall deliver to Lessor the following documents with respect to each such unit of Equipment:

(i) An invoice from the manufacturer of the Equipment to the Lessor;

(ii) A Certificate of Acceptance in the form of annexed Exhibit C executed and dated as provided in Section 4 hereof; and

(iii) Bills of Sale which shall have been executed, dated and delivered by the manufacturer of the Equipment with respect to each such unit of Equipment on the date of the Certificate of Acceptance for such unit of Equipment.

5.2 Lessor shall make payments to the manufacturer of the units of Equipment on (a) the earlier of (i) June 18, 1980 or (ii) the date on which 60 units of Equipment have been accepted and on (b) June 30, 1980, such payments in each case to be in an amount equal to the aggregate invoice amount of all invoices received on or prior to such date as provided in Section 5.1 hereof and which are accompanied by the other documents specified in said Section 5.1. This Lease Agreement shall cover only those units of Equipment which have been purchased by Lessor on or prior to the Commencement Date, and Lessor shall reassign to the Lessee the Purchase Orders for those Cars which have not been so purchased by Lessor.

6. DISCLAIMER OF LESSOR'S WARRANTIES.

Lessee agrees and acknowledges that all units of Equipment have been or will be ordered by Lessee in accordance with Lessee's specifications, that Lessee leases all of the units of Equipment in their "as is" condition and that LESSOR DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY WHATSOEVER OF TITLE, MERCHANTABILITY, FITNESS FOR ANY PURPOSE, DESIGN OR CONDITION, OR OTHERWISE REGARDING THE EQUIPMENT OR ANY UNIT THEREOF. So long as no event of default or no event which might mature into an event of default (as defined in Section 16.1) exists, Lessor shall, at Lessee's sole expense, take all action reasonably requested by Lessee to make available to Lessee to the fullest extent possible any rights of Lessor with respect to the Cars under any express or implied warranties it may have with respect to acquisition of the Equipment.

7. LESSEE'S WARRANTIES.

Lessee represents and warrants that:

7.1 Lessee is a corporation duly organized and existing in good standing under the laws of the State of New York and is qualified to do business in each other jurisdiction where failure to so qualify would have a material adverse effect on the Lessee's financial condition or business operations.

7.2 Lessee is duly authorized to execute and deliver this Lease Agreement, and is and will continue to be duly authorized to lease Equipment hereunder and to perform its obligations hereunder.

7.3 The execution and delivery of this Lease Agreement, the Purchase Order Assignment, and the Assignment of Rents (as defined in Section 24.4) by the Lessee and the performance by Lessee of its obligations hereunder and thereunder, do not and will not conflict with any provision of law (including without limitation the provisions of 15 U.S.C. § 20) or of the charter or bylaws of Lessee or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Lessee or to which Lessee is a party or by which its property is bound.

7.4 The execution, delivery and performance of this Lease Agreement, the Purchaser Order Assignment, and the Assignment of Rents by Lessee and the consummation by Lessee of the transactions contemplated hereby and thereby do not require the consent, approval of authorization of, or notice to, any Federal or State governmental authority or public regulatory body.

7.5 Lessee's financial statements as at June 30, 1979, a copy of which has been furnished to Lessor, have been prepared

in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal years and present fairly the financial condition of Lessee as at the date thereof, and the results of its operations for the period then ended, and since such date there has been no material adverse change in its financial condition.

7.6 This Lease Agreement, the Purchase Order Assignment, and the Assignment of Rents are legal, valid and binding obligations of Lessee and are enforceable in accordance with their respective terms.

7.7 Except as heretofore disclosed in writing to Lessor, there are no pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Lessee, nor to the best of Lessee's knowledge does any basis therefor exist.

7.8 Each Car on the date of delivery thereof (a) will have an estimated useful life of at least forty-four (44) months beyond the expiration of the basic lease term of lease (excluding any renewal terms) under this Lease Agreement for such Car, (b) will have an estimated fair market value at the end of such lease term of at least twenty percent (20%) of Lessor's Cost of Cars for such Car, without including in such fair market value any increase or decrease for inflation or deflation during the term of the basic lease term for such Car, and (c) will not have been previously used and the original use thereof will commence subsequent to the delivery to and acceptance by Lessor thereof.

7.9 Upon the purchase by the Lessor of the Cars, no mortgage, deed of trust, indenture, lease or other lien or security interest of any nature whatsoever which now covers or affects any property or interest of the Lessee will attach or thereafter will attach to the Equipment or in any manner affects or will affect adversely Lessor's right, title and interest herein (other than sublease and similar usage arrangements permitted under Section 17 hereof).

8. OWNERSHIP, LOCATION, USE OF AND LIENS ON EQUIPMENT.

8.1 Equipment shall be the exclusive property of Lessor, and Lessee shall have no rights therein except the right to use it so long as no event of default hereunder has occurred and is continuing unremedied. It is the intention of the parties hereto that the Equipment shall be and remain personal property and Lessee shall not permit the Equipment to become or remain a fixture to any real estate or an accession to any personalty not leased hereunder.

8.2 Lessee agrees that the Equipment will be used solely in the conduct of its business, with due care to prevent injury thereto or to any person or property and in conformity with all applicable laws, ordinances, rules, regulations and other requirements of any insurer or governmental body (including, without limitation, any requirements regarding licensing or registration, or evidencing title to the Equipment, all of which shall be done in such manner as shall have previously been approved in writing by Lessor). Lessee agrees that the Equipment will be primarily used in the continental United States and it will use its best efforts to cause any Cars which are used outside of the continental United States to remain outside of the continental United States for the shortest possible time. Lessor, or any duly authorized representative thereof, may during reasonable business hours from time to time inspect the Equipment and Lessee's records with respect thereto wherever the same may be located.

8.3 Lessee agrees to comply in all respects with all laws of the jurisdictions in which the units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the units. In the event that such laws or rules require the alteration of the units, or in case any equipment or appliance on any such unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such unit in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and Lessee agrees at its own expense to use, maintain and operate such unit in full compliance with such laws, regulations, requirements and rules so long as the units are subject to this Lease Agreement; provided, however, that Lessee may, in good faith, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not adversely affect the property or rights of the Lessor hereunder; and further provided, that, subject to the provisions of Section 14 hereof, any such additions to the units made by Lessee which can be removed without material damage to the units shall become the property of Lessee on the termination of this Lease Agreement.

8.4 Except as provided in Section 17, Lessee shall not permit any lien, charge, encumbrance, security interest, or other similar interest to arise or remain on any Equipment other than (a) liens placed by Lessor or liens of persons claiming against Lessor but not Lessee, which arise out of obligations to which

Lessee is not required by this Lease Agreement to pay or discharge, (b) liens of current taxes not delinquent, (c) inchoate materialmen's or mechanics' liens arising in the ordinary course of business and not delinquent.

8.5 Lessee shall place and maintain on each side of each Car a notice (in letters not less than one inch in height) conspicuously disclosing Lessor's ownership thereof as follows:

"Seafirst Leasing Corporation,
OWNER-LESSOR"

or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such unit and the rights of Lessor under this Lease Agreement. Lessee will not place any such unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. Lessee shall maintain on each unit of Equipment the serial and other identifying numbers, if any, set forth on the applicable Certificate of Acceptance. Lessee will not change the identifying number of any Car except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been delivered to Lessor by Lessee and filed, recorded or deposited by Lessee in all public offices where this Lease Agreement shall have been filed, recorded or deposited. Except as above provided, Lessee, so long as this Lease Agreement shall remain in effect, will not allow the name of any person, association or corporation to be placed on the units as a designation that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the units to be lettered with the names or initials or other insignia customarily used by Lessee, its affiliates, or any sublessee or other user permitted hereunder, on railroad equipment used by them of the same or a similar type for convenience of identification of their right to use the units as permitted under this Lease Agreement.

8.6 Lessor will not permit any lien, charge, encumbrance, security interest, or other similar interest to arise or remain on the Equipment which will affect or impair Lessee's right to use the Equipment as contemplated by this Lease Agreement.

9. MAINTENANCE OF EQUIPMENT.

Lessee shall at all times keep, or cause others to keep, the Equipment in good repair and efficient condition and working order, reasonable wear and tear excepted. Lessee shall supply,

or cause to be supplied, all parts, service, and other items required in the operation and maintenance of the Equipment. Lessee shall not, without the written consent of Lessor, make any additions to the Equipment, other than additions required under Section 8.3 hereof. All parts, replacements, substitutions and additions to or for any Equipment shall immediately become Equipment and the property of Lessor; provided, however, that, subject to the provisions of Section 14, any additions to the Equipment which can be removed without material damage to the Equipment shall become the property of Lessee on the termination of this Lease Agreement. Except as otherwise provided in Section 10, Lessee assumes all risk of, and Lessee's obligations under this Lease Agreement shall continue unmodified despite, any loss, theft, destruction, damage, condemnation, requisition or taking by eminent domain or other interruption or termination of use of any Equipment regardless of the cause thereof.

10. EVENT OF LOSS.

10.1 Upon the happening of any loss, theft, destruction, damage, condemnation, requisition, taking by eminent domain or other interruption or termination of use of any unit of Equipment regardless of the cause thereof (herein collectively called an "Event of Loss"), Lessee shall promptly make all repairs and replacements necessary to restore or repair such unit of Equipment so that the Equipment thereafter subject to lease hereunder is substantially equivalent to, and of a value not less than, the Equipment subject to lease hereunder prior to such Event of Loss; provided, however, that Lessee may instead on the next quarterly rent payment date following such Event of Loss, furnish Lessor with an affidavit of an officer of Lessee setting forth the fact of such Event of Loss and pay to Lessor the Stipulated Loss Value (as defined in annexed Exhibit D, determined as of such next subsequent rent payment date) of such unit of Equipment. Upon payment of (a) such Stipulated Loss Value, (b) any rent accrued and unpaid on such unit of Equipment to and including such next rent payment date, and (c) any other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such unit of Equipment it may have free of all liens arising by, through, or under Lessor or any of its affiliates. Upon such transfer the lease of such unit of Equipment hereunder shall end.

10.2 When Lessee has fulfilled the requirements of Section 10.1 regarding an Event of Loss, Lessor shall (if no event of default has occurred and is continuing), reimburse Lessee for its costs thus incurred to the extent of any proceeds received by Lessor because of such Event of Loss either under any policies of insurance provided for in Section 11 or as satisfaction of any claim (other than one to which an insurer is or may

be subrogated) by Lessor against any person or persons liable in respect of such Event of Loss, after subtracting in each instance all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor and not otherwise reimbursed by Lessee in respect thereto.

11. INSURANCE.

11.1 Lessee will cause to be carried and maintained at all times during the term of this Lease Agreement liability insurance covering the Equipment in the name of Lessor and Lessee in such amounts, with such deductibles, and in such form as is reasonably required by Lessor, and in any event, as is commonly maintained on comparable equipment by companies similarly situated. If Lessee carries and maintains physical damage insurance on any railroad cars which it hereafter owns or leases (other than the railroad cars now leased under two leases of railroad equipment, dated December 18, 1979 and January 21, 1980, respectively, between the Lessee and Connecticut Bank and Trust Company, as trustee, then Lessee shall cause to be carried and maintained physical damage insurance covering the Equipment in accordance with the requirements of the preceding sentence. Such insurance policy or policies shall provide that all losses thereunder will be adjusted with Lessee and Lessor and will be payable to Lessor and Lessee as their respective interests shall appear.

11.2 The policies of insurance required under this Section 11 shall be valid and enforceable policies issued by insurers of recognized responsibility reasonably acceptable to Lessor. Upon the execution of the first Certificate of Acceptance, and thereafter not less than thirty (30) days (if insurance industry practice so allows) prior to the expiration dates of any expiring policies theretofore furnished under this Section 11, originals of the policies and satisfactory evidence of the payment of premiums thereon shall be delivered by Lessee to Lessor except that Lessor may accept copies of the policies and certificates of insurance in lieu of original policies. Such policies may be blanket policies covering other equipment not covered by this Lease Agreement, provided that any blanket policy shall in an accompanying certificate of insurance or rider specifically designate the units of Equipment described in such Certificate of Acceptance as being included therein and covered thereby to the full extent of the amounts herein required and shall name Lessor as an additional insured party thereunder with respect to such units of Equipment. All such policies shall contain an agreement by the insurers that such policies shall not be cancelled without at least thirty (30) days' (if insurance industry practice so allows) prior written notice to Lessor.

12. TAXES.

Lessee agrees to pay and discharge (and does hereby agree to indemnify and hold Lessor harmless from and against) all sales, use, personal property, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines or interest thereon) imposed against Lessor, Lessee or the Equipment by any Federal, state or local government or taxing authority upon or with respect to the Equipment or upon the purchase, ownership, delivery, lease, possession, use, operation, return, sale or other disposition (other than sale of the Equipment by Lessor at a time when Lessee is not in default hereunder) thereof hereunder or in connection herewith, or upon the rentals, receipts, or earnings arising therefrom, or upon or with respect to this Lease Agreement (excluding, however, taxes on, or measured by, the net or gross income of Lessor imposed by the United States or the jurisdiction in which the principal office of Lessor is located) unless, and to the extent only that, any such tax, levy, impost, duty, charge or withholding is being contested by Lessee in good faith and by appropriate proceedings which do not adversely affect the property or rights of the Lessor hereunder. In addition, Lessee shall pay on demand the amount of any Federal, state and local taxes required to be paid by Lessor in respect of the receipt of amounts referred to in this Section 12. Lessee agrees to file, on behalf of Lessor, all required tax returns and reports concerning the Equipment with all appropriate governmental agencies and to furnish Lessor upon request a copy of each such return or report, including evidence of payment, within thirty (30) days after the due date of such filing. To the extent that any taxes hereinabove referred to in this Section 12 are included in Lessor's Cost of Cars for any unit, Lessee shall not be obligated under this Section 12 for indemnification with respect to such taxes.

13. INDEMNIFICATION AND EXPENSES.

13.1 Lessee agrees to and does hereby indemnify and hold Lessor and its agents, employees, stockholders, officers and directors, harmless from and against any and all expense, liability or loss whatsoever, including (without limitation) reasonable legal fees and expenses, relating to or in any way arising out of this Lease Agreement, the Purchase Order Assignment, the Assignment of Rents, or the purchase, ownership, delivery, lease, possession, rental, use, operation, return, sale or disposition (other than sale of the Equipment by Lessor at a time when Lessee is not in default hereunder) of the Equipment hereunder or in connection herewith (including without limitation, expense, liability or loss relating to or in any way arising out of injury to persons or property, patent or invention rights or strict liability in tort). Lessor shall give Lessee and Lessee shall

give Lessor notice of any event or condition which requires indemnification by Lessee hereunder, or any allegation of such event or condition, promptly upon obtaining knowledge thereof, and, to the extent that Lessee makes or provides to the satisfaction of Lessor for payment under the indemnity provisions hereof, Lessee shall be subrogated to Lessor's rights with respect to such event or condition and shall have the right to determine the settlement of claims thereon, it being agreed that except to the foregoing extent, Lessor shall have the right to determine such settlement. Lessee shall pay all amounts due hereunder promptly on notice thereof from Lessor.

13.2 Lessee understands that Lessor expects to realize the following tax benefits (the "Tax Benefits"):

(i) the investment credit under Section 38 of the Internal Revenue Code, as amended (the "Code"), for property with a useful life of more than seven (7) years equal to ten percent (10%) of Lessor's Cost of Cars for each unit of Equipment.

(ii) depreciation deductions with respect to Lessor's Cost of Cars for each unit of Equipment over an asset depreciation period of twelve (12) years to a net salvage value of zero (0), computed initially under the double declining balance method of depreciation provided in Section 167(b)(2) of the Code and then switching to the sum-of-the-years digit method of depreciation provided by Section 167(b)(3) of the Code, all without the consent of the Commissioner, with the annual allowance determined without reduction for salvage, and with the first year's depreciation deduction being maximized by the election of the "half-year convention" pursuant to the Treasury Regulation Section 1.167(a)-11(c)(2) (as in effect on the date of this Lease Agreement).

If the Lessor shall, for any taxable year or portion thereof, fail to realize, lose, or suffer the recapture of all or any portion of any Tax Benefit as a result of:

(i) any amendment, modification, addition or change made in or to the provisions of the Code, the Treasury Regulations under the Code, published Internal Revenue Service Revenue Procedures, Revenue Rulings or other administrative interpretations, or applicable judicial precedents (all of the foregoing amendments, modifications, additions or changes being hereinafter collectively referred to as a "Change in Tax Law") effective as of a date prior to the Commencement Date and which was not effective on the date hereof.

(ii) a claim by any federal taxing authority that any unit of Equipment has a net salvage value greater than zero (0), or

(iii) an act or omission of Lessee (whether or not permitted or required by this Lease Agreement, including without limitation, breach of any of Lessee's representations, warranties or agreements contained in or made pursuant to this Lease Agreement or the transactions contemplated hereby),

then Lessee shall pay, as an indemnity, the sum of (1) the amount of any additional federal, state, or local tax required to be paid with respect to such year by reason of such loss of Tax Benefits, (2) the amount of any interest (net of any actual decrease in federal income tax caused by any allowable deduction of such interest from taxable income), penalties or additions to tax, and (3) the amount of any federal, state and local taxes required to be paid by Lessor in respect of the amounts referred to in clauses (1) and (2) and the receipt of amounts pursuant to this clause (3).

13.3 Lessee shall not be required to pay Lessor the amounts provided for in Section 13.2 if the loss of Tax Benefit results from the occurrence of any of the following events and would not have been suffered but for the occurrence of such event:

(i) Lessor shall fail to claim such investment credit or depreciation deductions in its income tax returns for the appropriate years or shall fail to follow the proper procedures in claiming such investment credit or depreciation deductions and such failure to claim or follow such procedures, as the case may be, shall preclude Lessor from claiming such investment credit or depreciation deductions; or

(ii) Lessor shall not have sufficient income to benefit from such investment credit or depreciation deductions; or

(iii) Lessee shall have paid Lessor Stipulated Loss Value of a Unit of Equipment pursuant to Section 10.1, except as provided in Section 13.6.

(iv) Voluntary sale, transfer or other disposition by the Lessor of legal title to the Equipment, or a unit of Equipment, at a time when no default hereunder has occurred and is continuing unremedied (not including any transfer pursuant to Section 10 hereof, unless Lessee has paid in full Stipulated Loss Value as

required by Section 10 hereof and all other amounts due pursuant to such section, and not including any transfer pursuant to Section 16 hereof).

13.4 In the event a claim shall be made by the Internal Revenue Service or any state or local taxing authority which, if successful, would result in a loss of Tax Benefits under circumstances which would require Lessee to indemnify Lessor Lessor shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, Lessor shall, so long as such proceedings do not involve any danger of sale, forfeiture or loss of any units of Equipment, or any interest therein, and upon the receipt of indemnity reasonably satisfactory to it and at the expense of the Lessee (including without limitation, all costs, expenses, losses, legal and accountants' fees and disbursements, penalties and interests), in good faith contest (after consultation with Lessee) in the name of the Lessee or the Lessor, the validity, applicability and amount of such tax, fee or other charge by such proceedings as the Lessor, after considering in good faith such request as the Lessee shall make concerning the most appropriate mode of contest, shall in its sole discretion determine appropriate, including (i) resisting payment thereof, (ii) not paying the same except under protest, if protest is necessary and proper, and (iii) if payment be made, using reasonable efforts to obtain a refund thereon in appropriate administrative and judicial proceedings; provided, however, to the extent legally permissible, every such contest shall be made by Lessee in its own name or, if Lessor so requests, in the name of Lessor. If the Lessee elects to resist payment of such tax, fee or other charge, no indemnity with respect thereto shall be payable by the Lessee until the contest is resolved. If the Lessee should object to a proposed compromise of any such contest and furnish an opinion of independent tax counsel stating that the proposed compromise does not fairly reflect the litigation potential of such contest, and if the Lessor nevertheless accepts such compromise, such acceptance shall operate as a waiver of the Lessor's right of indemnity against the Lessee with respect to the specific tax, fee or other charge being contested. If the Lessor shall obtain a refund of all or any part of such tax, fee or other charge paid by the Lessee, the Lessor shall pay the Lessee an amount which after taking into the tax consequences under the laws of any federal, state, local or other taxing authority resulting from the receipt of the Lessor of such a refund and the payment hereunder to the Lessee is sufficient to place the Lessor in the same position as it would have been had no refund been received by Lessor and Lessor had not made any payment hereunder; provided, that such amount shall not be payable before such time as Lessee shall have made payment of all indemnities then due under this Section 13. If in addition to such refund Lessor shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid that proportion of such interest which is fairly

attributable to taxes, fees or other charges paid by the Lessee prior to the receipt of such refund.

13.5 References in Section 12 and this Section 13 to "Lessor" shall be deemed to include any affiliated group of which Lessor is a part which files a consolidated or combined return for federal, state or local income tax purposes, provided that only Lessor shall be obligated with respect to the covenants and duties therein expressed to be imposed on Lessor, provided further that Lessee's rights to contest pursuant to Section 13.4 hereof shall be effective against Lessor or any member of such affiliated group.

13.6 All of the indemnities and agreements of Lessee contained in Section 12 and in this Section 13 shall survive and continue in full force and effect notwithstanding termination of this Lease Agreement or of the lease of any or all units of Equipment hereunder.

13.7 Any payments required to be made by Lessee pursuant to Section 13.2 as a result of a Change in Tax Law shall be reduced by all tax savings which have theretofore been or in the current taxable year will be realized by Lessor on account of any Change in Tax Law resulting in federal income tax consequences to Lessor more favorable than the tax benefits presently existing on the date hereof.

13.8 Any amount payable in accordance with this Section 13 shall be payable on Lessee's receipt of the invoice of Lessor which invoice shall contain an explanation of the calculations used to determine the amount of such payment. Each such invoice shall be accompanied by a statement from an officer of the tax department of Lessor that he has examined the determination of the amount due and that, in his opinion, such amount due has been properly calculated pursuant to this Section 13.

At Lessee's option any amount payable in accordance with Section 13.2 may be paid by paying to Lessor on each rent payment date, as additional rent hereunder, an amount which, after deduction of all federal, state and local taxes required to be paid by Lessor in respect of the receipt thereof, shall be sufficient to yield to the Lessor the same after-tax economic yield and cash flow (computed on the same assumptions as were utilized by Lessor in originally evaluating this transaction) as of each rent payment date as would have been realized by Lessor in respect of this Lease Agreement if such loss, disallowance or recapture of Tax Benefits had not occurred, which amount shall, if subsequent circumstances require, be thereafter adjusted when and to the extent necessary so that Lessor's after-tax economic yield and cash flow shall be as aforesaid.

14. RETURN OF EQUIPMENT.

Upon final termination of the lease term hereunder of any unit of Equipment (other than a termination under Section 10.1), Lessee shall forthwith deliver possession of the units to Lessor in the same condition as when received, ordinary wear and tear excepted, and such units shall meet the standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction over such units and the applicable standards then in effect for such units under the interchange rules of the Association of American Railroads, subject to Lessee's good faith contest, pursuant to Section 8.3 hereof, of the validity or application of any standard, law, regulation, requirement or rule, which contest is made in a reasonable manner and does not adversely affect the property or rights of Lessor. For the purposes of delivering possession of any unit or units to Lessor as above required, Lessee shall at its own cost, expense and risk:

(i) Forthwith place such units upon such storage tracks of Lessee or its affiliate as Lessor reasonably may designate, provided, however, that Lessee shall be permitted to arrange alternative storage tracks (reasonably acceptable to Lessor) if storage space is not available on tracks controlled by Lessor or its affiliates;

(ii) Permit Lessor to store such units on such tracks at the risk of Lessee during the first ninety (90) days of any storage period until such units have been sold, leased or otherwise disposed of by Lessor, provided that such period shall not exceed two (2) years and that Lessor agrees to pay Lessee's reasonable storage charges for any storage after ninety (90) days; and

(iii) Transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor; and

the removal, assembling, delivery, storage (except as above provided) and transporting of the units as hereinabove provided shall be at the expense and risk of Lessee and are of the essence of this Lease Agreement, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to remove, assemble, deliver, store and transport the units. During the first ninety (90) days of any storage period, Lessee shall maintain insurance on the units of Equipment in accordance with Section 11 hereof and shall upon notice permit Lessor or any person designated by it, including

the authorized representative or representatives of any prospective purchaser of any such unit, to inspect the same; provided, however, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 14, Lessee hereby irrevocably appoints Lessor as the agent and attorney-in-fact of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any unit to Lessor, to demand and take possession of such unit in the name and on behalf of Lessee from whomsoever shall be in possession of such unit at the time.

15. FINANCIAL STATEMENTS.

Lessee shall furnish or cause to be furnished to Lessor (a) within one hundred twenty (120) days after each fiscal year of Lessee, a copy of the annual audited report of Lessee and any consolidated subsidiaries, prepared in accordance with generally accepted accounting principles consistently applied and certified by nationally recognized independent certified public accountants, (b) within sixty (60) days after each quarter (except the last quarter) of each fiscal year of Lessee, a copy of its unaudited consolidated and consolidating financial statement, prepared in accordance with generally accepted accounting principles consistently applied and consisting of at least a balance sheet as at the close of such quarter and a profit and loss statement and analysis of surplus for such quarter and for the period from the beginning of such fiscal year to the close of such quarter, and signed by a proper accounting officer of Lessee, (c) with the annual audited report each year, a certificate of a responsible officer of Lessee to the effect that, except as otherwise specified therein, (i) all units of Equipment are in existence and in good and efficient condition and have been marked as required by Section 8.5, and (ii) no event of default, or event which might mature into an event of default, has occurred and is continuing under this Lease Agreement, and (iii) from time to time, such other information as Lessor may reasonably request.

16. EVENTS OF DEFAULT.

16.1 The following shall be events of default hereunder:

(i) Default, and continuance thereof for ten (10) days, in the payment of any regular rental

installments hereunder (including rental installments payable under Section 13.8 hereof);

(ii) Any obligation of Lessee or any material subsidiary of Lessee for borrowed money the aggregate outstanding principal amount of which is in excess of \$250,000, or for the payment of rent under leases of real or personal property having aggregate remaining unpaid rentals in excess of \$250,000, or for the deferred purchase price of property having aggregate remaining unpaid payments in excess of \$250,000 (other than any such obligation of any such subsidiary to Lessee or any other subsidiary) becomes or is declared to be due and payable prior to its express maturity by reason of default by Lessee or any such subsidiary in the performance or observation of any obligation or condition;

(iii) Default in the performance of any of Lessee's agreements herein set forth (and not constituting an event of default under either of the preceding clauses (i) or (ii) and continuance of such default for thirty (30) days after notice thereof from Lessor to Lessee;

(iv) Any representation or warranty made by Lessee in this Lease Agreement was untrue when made in any material and adverse respect, or any statement, report, schedule, notice or other writing furnished by Lessee to Lessor in connection herewith is untrue in any material and adverse respect on the date as of which the facts set forth are stated or certified; or

(v) Lessee or any material subsidiary of Lessee becomes insolvent or generally is not paying its debts as such debts become due, or applies for, consents to or acquiesces in the appointment of a trustee or a receiver for Lessee or any such subsidiary or any property of either thereof; or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for Lessee or any such subsidiary, or for a substantial part of the property of any thereof, and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding is instituted by or against Lessee or any material subsidiary of Lessee, and, if instituted against Lessee or any material subsidiary of Lessee is consented to or acquiesced in by Lessee or any material subsidiary of Lessee or remains for sixty (60) days undismissed.

When used in this Lease Agreement, unless the context otherwise requires, the term "event of default" shall mean any event described in clauses (i) through (v) and the term "event which might mature into an event of default" shall mean any event which with the lapse of time, or with notice to Lessee and lapse of time, would constitute an event of default. Lessee shall give Lessor prompt notice of any event of default or of any event which might mature into an event of default, other than the event of default described in clause (i).

16.2 Upon the happening of an event of default, Lessor shall (except to the extent otherwise required by law) be entitled to:

(i) Proceed by appropriate court action or actions to enforce performance by Lessee of the applicable covenants and terms of this Lease Agreement or to recover damages for the breach thereof;

(ii) Repossess any or all units of Equipment without prejudice to any remedy or claim hereinafter referred to;

(iii) Elect to sell any or all units of Equipment, after giving fifteen (15) days' notice to Lessee, at one or more public or private sales and recover from Lessee as liquidated damages for Lessee's default hereunder an amount equal to the amount, if any, by which (A) the sum of (i) the aggregate Stipulated Loss Value of such units of Equipment determined as of the rent payment date next following the date such notice is given, (ii) all rent owing hereunder to and including the rent payment date immediately following the date such notice is given, (iii) all reasonable costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing, restoring, and selling such units of Equipment, (iv) all other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise, and (v) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor as a result of Lessee's default hereunder, exceeds (B) the amount received by Lessor upon such public or private sales of such units of Equipment;

(iv) Upon notice to Lessee receive prompt payment from Lessee of an amount equal to the aggregate Stipulated Loss Value determined as of the rent payment date next following the date such notice is given of all units of Equipment which have not been sold by Lessor pursuant to clause (iii) above plus, to the

extent not otherwise recovered from Lessee pursuant to said clause (iii) above, (a) any rent and other amounts owing hereunder to and including the rent payment date immediately following the date such notice is given, (b) all reasonable costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing and restoring such units of Equipment, (c) all other amounts owing by Lessee hereunder whether as additional rent, indemnification or otherwise, and (d) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor as a result of Lessee's default hereunder; provided that upon receipt of payment in full of such amount, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such units of Equipment it may have, free of all liens arising by, through or under Lessor or any of its affiliates;

(v) By notice to Lessee, declare this Lease Agreement terminated without prejudice to Lessor's rights in respect of obligations then accrued and remaining unsatisfied; or

(vi) Avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity, or in bankruptcy or insolvency proceedings.

The remedies herein set forth or referred to shall be cumulative. The references to additional rent in clauses (iii) and (iv) of this Section 16.2 shall each include, without limitation, interest at the applicable rate specified in the third paragraph of Section 3, to the date of receipt by Lessor of the amount payable under said clause, on installments of rent owing hereunder to and including the rent payment date immediately following the date on which notice is given under said clause, from the respective due dates of such installments, and interest on all other costs, expenses and losses for which Lessor is entitled to payment under said clause from the respective dates incurred by Lessor.

17. SUBLEASE, ASSIGNMENT, ETC. BY LESSEE.

17.1 So long as no event of default hereunder has occurred and is continuing unremedied, Lessee shall be entitled to the possession of the units in accordance with the terms of this Lease Agreement and to the use thereof upon the lines of railroads over which Lessee or any permitted sublessee has trackage or other operating rights or over which railroad equipment of Lessee is regularly operated pursuant to contract, and also to permit the use of the unit upon other railroads in the

usual interchange of traffic, if customary at the time, but only upon and subject to all the terms and conditions of this Lease Agreement. Lessee may receive and retain compensation for such use from other railroads to using any of the Cars. Lessee agrees that during the term of this Lease Agreement the Cars will be used primarily within the continental United States and that it will use its best efforts to cause any Cars which are used outside of the continental United States to remain outside the continental United States for the shortest possible time. No assignment, sublease or interchange entered into by Lessee hereunder shall relieve Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

17.2 So long as no event of default hereunder has occurred and is continuing unremedied, Lessee may sublease (which shall be deemed to include any gondola car agreements) the Equipment to others; provided, however, that the rights of any such sublessee shall be subject and subordinate to, and any such sublease shall be made expressly subject and subordinate to, all the terms of this Lease Agreement. The Lessee's interest in any such sublease shall be fully assignable to the Lessor, and the Lessee shall, upon the request of the Lessor, assign and grant a security interest to Lessor in any such sublease to secure all existing and future obligations of Lessee under this Lease Agreement and at the expense of Lessee take such action and make such filings and recordings as Lessor may reasonably request to perfect such assignment and security interests. No sublease of any Car shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder.

18. ASSIGNMENT BY LESSOR.

Lessor and any assignee of any right, title or interest of Lessor hereunder shall have the right at any time or from time to time to assign part or all of its right, title and interest in and to this Lease Agreement. Without limiting the foregoing, Lessor and any such assignee shall have the right at any time or from time to time to transfer, subject to Lessee's rights under this Lease Agreement, any unit or units of Equipment.

19. LESSOR'S RIGHT TO PERFORM.

If Lessee fails to make any payments required by this Lease Agreement, or to perform any of its other agreements contained herein, Lessor may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and Lessor's expenses, including (without limitation) reasonable legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by Lessee to Lessor upon demand as additional rent hereunder.

20. RECORDING; FURTHER ASSURANCES.

Lessee will, at its expense, prior to the delivery and acceptance hereunder of any unit of Equipment (i) execute and file such Uniform Commercial Code financing statements as Lessor may reasonably request from time to time and (ii) cause this Lease Agreement and any assignment hereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Revised Interstate Commerce Act. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to Lessor's satisfaction, of Lessor's interest in the units, or for the purpose of carrying out the intention of this Lease Agreement or the assignment thereof by Lessor; and Lessee will promptly furnish to Lessor evidences of all such filing, registering, recording or depositing.

21. RENEWAL OPTION.

Lessee shall have an option to renew for two (2) additional terms of two (2) years each the lease term of all of the Cars then under lease provided no event of default or event which might mature into an event of default has occurred and is then continuing immediately prior to the commencement of the renewal term being then elected by Lessee. If Lessee desires to exercise such option to renew, it shall give Lessor written notice of its election to renew at least ninety (90) days (and not more than one hundred eighty (180) days) prior to the commencement of the renewal term then being elected stating Lessee's opinion as to the fair market rental value for the Equipment to be leased during such renewal term, and upon the expiration of the then current term the lease of such Equipment shall be renewed for such renewal term at the fair market rental value as hereinafter provided. A determination shall be made of the fair market rental value of the Equipment as of the date of the expiration of such current term. If Lessee and Lessor are unable to agree upon such fair market rental value within thirty (30) days after receipt by Lessor of such notice, such fair market rental value shall be determined by an independent appraiser selected by mutual agreement of Lessor and Lessee. The fee of such appraiser shall be paid by Lessee. All of the provisions of the Lease shall be applicable during any such renewal term except for the amount of each installment of rent which shall be as hereinabove provided. "Lease Term" as used in the Lease shall, except where the context otherwise requires, be deemed to include any renewal terms.

22. RIGHT OF FIRST REFUSAL.

22.1 For a period of five (5) years after expiration of the basic lease term and any renewal terms (unless the basic or renewal lease terms shall have been terminated pursuant to Section 16.2, or if any event of default or an event which might mature into an event of default shall have occurred and be continuing), Lessor shall not sell any of the Cars then under lease unless Lessor shall have given Lessee a written offer to sell such Cars to Lessee, which offer shall specify the price and other terms (to be determined in Lessor's sole discretion) upon which Lessor proposes to offer to sell such Cars. Lessee shall be deemed to have irrevocably waived its right to accept any such offer unless Lessee shall have given Lessor, within thirty (30) days after such offer is made, its irrevocable and unconditional written commitment to purchase such Cars at the price and on the terms specified in such notice. If the Lessee is deemed to have waived its right to purchase such Cars, Lessor may sell such Cars to any person at or above the price specified in such offer, and on terms no more favorable to the purchaser than the terms specified in such offer, provided, that if Lessor shall thereafter wish to sell such Cars at a price or on terms more favorable to the purchaser than the terms specified in such offer to the Lessee, Lessor shall give Lessee at least thirty (30) days' prior notice of the price, the sale date, and the other terms upon which Lessor proposes to offer to sell such Cars, and Lessee shall again have a right of first refusal upon the terms and conditions set forth in this Section 22.1.

22.2 If the Lessee shall elect to purchase Cars pursuant to Section 22.1, the closing of such purchase shall occur not more than forty-five (45) days after the date of Lessee's written commitment to purchase such Cars pursuant to Section 22.1 hereof. Upon payment of the purchase price and upon payment by Lessee of any other amounts owing under this Lease Agreement, Lessor shall transfer such Cars to Lessee without any representation of any kind, express or implied, except that such Cars shall be free of any liens resulting from acts or claims against the Lessor.

22.3 If Lessee accepts any offer to sell any of the Cars made by Lessor pursuant to Section 22.1 by timely delivering to Lessor the irrevocable written commitment and absolute undertaking specified above, but fails timely to satisfy its obligations thereunder and hereunder (and time shall be of the essence with respect to such obligations), Lessee shall no longer have any rights to purchase such Cars pursuant to this Section 22, and Lessor may proceed by appropriate court action to recover damages or other appropriate relief with respect to such failure and may sell such Cars to any person at a price and on terms either more or less favorable to the purchaser than the terms specified in Lessor's offer to Lessee.

23. DEFINITIONS OF SUBSIDIARY.

When used herein, the term "subsidiary" shall mean a corporation of which Lessee or its other subsidiaries own, directly or indirectly, such number of outstanding shares as have the power (disregarding any voting power, solely by reason of the happening of any default, of shares of any class) to elect a majority of the board of directors.

24. CONDITIONS TO LESSOR'S OBLIGATIONS.

24.1 Lessor shall not be obligated to make payment for any unit of Equipment hereunder unless on or prior to first date Equipment is accepted hereunder:

(i) The Purchase Orders shall have been assigned to the Lessor in accordance with the Purchase Order Assignment and the manufacturer(s) shall have consented to the Purchase Order Assignment.

(ii) Lessee shall have entered into agreements with the South Buffalo Railway Company, Patapsco and Back Rivers Railroad Company, and Philadelphia, Bethlehem, and New England Railroad Company (collectively, the "Railroads"), pursuant to which all of the Cars shall be used by the Railroads, and the Lessee shall have executed and delivered to Lessor an Assignment of Rent and Security Agreement (the "Assignment of Rents") substantially in the form of annexed Exhibit E with respect to each of such agreements.

(iii) Lessee shall have furnished to Lessor, in form and substance satisfactory to Lessor, the following:

(a) Resolutions of the Board of Directors of Lessee, certified by its Secretary or an Assistant Secretary, authorizing the lease of Equipment hereunder, the execution, delivery and performance by Lessee of this Lease Agreement, the Purchaser Order Assignment and the Assignment of Rents, and the execution and delivery of the Certificates of Acceptance, designating the title of the officers of Lessee authorized to execute and deliver the Certificates of Acceptance;

(b) A favorable opinion of counsel for Lessee, acceptable to Lessor, to the effect that:

(1) Lessee is a corporation duly organized and existing in good standing under the laws of the State of New York.

(2) Lessee is duly authorized to execute and deliver this Lease Agreement, the Purchaser Order Assignment, and the Assignment of Rents, and is duly authorized to lease Equipment hereunder and to perform its obligations hereunder and thereunder.

(3) The execution and delivery by Lessee of this Lease Agreement, the Purchase Order Assignment, and the Assignment of Rents, and the performance by Lessee of its obligations hereunder and thereunder do not and will not conflict with any provision of law (including without limitation the provisions of 15 U.S.C. § 20) or of the charter or bylaws of Lessee or of any indenture, mortgage, deed of trust or agreement or instrument known to such counsel binding upon Lessee or its properties, or to which Lessee is a party.

(4) The execution, delivery and performance of this Lease Agreement, the Purchase Order Assignment, and the Assignment of Rents and the consummation by Lessee of the transaction contemplated hereby and thereby does not require the consent, approval or authorization of, or notice to, any Federal or state governmental authority or public regulatory body.

(5) This Lease Agreement, the Purchaser Order Assignment, and the Assignment of Rents are legal, valid, and binding obligations of Lessee enforceable in accordance with their respective terms (except as may be affected by bankruptcy, reorganization, insolvency and similar laws affecting the rights of creditors generally and judicial doctrines affecting the availability of remedies).

(6) There are to the knowledge of such counsel no pending or threatened actions or proceedings before any court or administrative agency which will, in the opinion of such counsel, if determined adversely to Lessee, have a material adverse affect on the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis, which have not heretofore been disclosed in writing to Lessor.

(7) This Lease Agreement and the Assignment of Rents are duly filed and recorded with the ICC pursuant to Section 11303 of the Revised Interstate Commerce Act, such filing and recordings protect the Lessor's interest in and to the units of Equipment

and perfect the first lien priority of the Lessor's security interest in the rentals assigned under the Assignment of Rents, and no further filing or recording (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of Lessor in and to the units while they are in the United States and to perfect Lessor's security interest in such rentals;

(c) An appraisal certificate issued by Alexander Kerr, an independent appraiser, to the effect that (a) the Cars on the date of delivery thereof to Lessor will have an estimated useful life of at least forty-four (44) months beyond the expiration of the basic lease term (excluding any renewal terms) for the Cars under this Lease Agreement and an estimated fair market value at the end of such term of at least twenty percent (20%) of Lessor's Cost of Cars for such Cars, without including in such fair market value any increase or decrease for inflation or deflation during such term of the basic lease term for such Cars and (b) setting forth the manner in which such fair market value and useful life were determined.

(d) Original or true and accurate copies of policies, certificates or riders of insurance required by Section 11 hereof.

24.2 Lessee shall not accept any unit of Equipment unless at the time such unit of Equipment was to be accepted as provided in Section 4 hereof:

(i) All of Lessee's representations and warranties in Section 7 of this Lease Agreement were true and correct as though made as of such date;

(ii) No litigation or governmental proceedings were threatened or pending against Lessee or any material subsidiary of Lessee which in Lessee's reasonable opinion would, if adversely determined, to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis, except as heretofore disclosed in writing to Lessor.

(iii) No event of default, or event which might mature into an event of default, occurred or was continuing hereunder.

(iv) Lessee shall not have received from Lessor a notice to the effect that either (a) an applicable law, regulation thereunder or interpretation

thereof by appropriate courts or regulatory authorities, in the reasonable opinion of Lessor or its counsel, has been enacted or promulgated which makes it illegal for Lessor to participate in the transactions contemplated by this Lease Agreement or subjects Lessor to any penalty or other liability, or (b) a Change in Tax Law has occurred which results in the Lessor realizing a lower after-tax economic yield and cash flow (computed on the same assumptions as were utilized by Lessor in originally evaluating this transaction) than would have been realized but for such Change in Tax Law.

25. MISCELLANEOUS.

25.1 Unless otherwise specifically provided herein, any provision in this Lease Agreement that Lessee shall take any action shall require Lessee to do so at its sole cost and expense.

25.2 Any notice hereunder shall be in writing and, if mailed, shall be deemed to be given when sent by registered or certified mail, postage prepaid, and addressed: (i) if to Lessee, at its address shown below, (ii) if to Lessor, to Seafirst Leasing Corporation, P.O. Box 3586, Seattle, Washington 98124, Attention Large Ticket and Leverage Leasing, or to either party at such other address as it may, by written notice received by the other, designate as its address for purposes of notice hereunder.

25.3 If this Lease Agreement or any provision hereof shall be deemed invalid, illegal, or unenforceable in any respect or in any jurisdiction, the validity, legality and enforceability of this Lease Agreement in other respects and other jurisdiction shall not be in any way impaired or affected thereby. Each of the parties hereto acknowledges that the other party shall not by act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Lease Agreement unless such waiver is in writing, and such writing shall be binding only to the extent therein provided and only upon the party signing it. A waiver on any one occasion shall not be construed as a waiver on any future occasion. Without limiting the foregoing, Lessor's rights and Lessee's duties shall in no way be affected by Lessor's inspection of, or failure to inspect, the Equipment or any of the documents referred to in this Lease Agreement or by Lessor's failure to inform Lessee of any failure to comply with any of Lessee's obligations under this Lease Agreement. To the extent permitted by applicable law, Lessee hereby waives any right to assert that Lessor cannot enforce this Lease Agreement or that this Lease Agreement is invalid because of any failure of Lessor to qualify to do business in any jurisdiction. This Lease Agreement has been delivered for acceptance by Lessor in Seattle,

Washington, shall be governed by the laws of the State of Washington, shall be binding upon Lessor and Lessee and their respective successors and assigns, and shall inure to the benefit of Lessor and Lessee and the successors and assigns of Lessor.

25.4 The section headings in this Lease Agreement are for convenience of reference only and shall not be considered to be a part of this Lease Agreement.

25.5 This Lease Agreement may be signed in any number of copies, any one of which shall be considered as the original Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

EMONS INDUSTRIES, INC.

Attest:

[Signature]
Title _____

By [Signature]
Title Chairman of the Board

Address: 490 East Market Street
York, Pennsylvania 17403

SEAFIRST LEASING CORPORATION

Attest:

Title _____

By _____
Title _____

Address: P. O. Box 3586
Seattle, Washington 98124

STATE OF New York
COUNTY OF New York ss.

On this 27 day of May, 1980, before me personally appeared Robert Grossman, to me personally known, who being by me duly sworn, says that he is the Chairman of the Board of Emons Industries, Inc., that the seal 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

EXHIBIT A

CAR NUMBERS

SB 6150 through SB 6199

PBR 5070 through PBR 5099

PBNE 4000 through PBNE 4039

WGP5C

EXHIBIT B

PURCHASE ORDER ASSIGNMENT

Purchase Order Assignment dated _____, 1980 between EMONS INDUSTRIES, INC., a New York corporation (the "Assignor") and SEAFIRST LEASING CORPORATION, a Washington corporation (the "Assignee").

R E C I T A L S:

Assignor and Assignee have heretofore entered into a Lease Agreement dated as of May 27, 1980 (the "Lease"), whereby Assignee agrees to lease to Assignor, and Assignor agrees to lease from Assignee, certain railroad gondola cars (the "Cars") as more particularly described in the Lease.

Assignor has entered into the Purchase Orders (the "Purchase Orders") identified in Schedule 1 hereto with Berwick Forge & Fabricating, a division of Whittaker Corporation (the "Manufacturer") for the purchase of the Cars.

To enable Assignee to be the original owner of the Cars and related equipment, Assignor desires to assign to Assignee the Purchase Orders.

It is mutually agreed as follows:

1. Assignor hereby assigns and sets over to Assignee all of Assignor's right, title and interest in and to the Cars to be purchased pursuant to the Purchase Orders and in and to the Purchase Orders, including, but not limited to, (a) the right to purchase the Cars pursuant to the Purchase Orders, the right to take title to the Cars on delivery by the Manufacturer, and the right to be named purchaser in the Bills of Sale to be delivered pursuant to the Purchase Orders, (b) all claims in respect to the Cars arising against the Manufacturer, including, without limitation, all warranty and indemnity claims, and (c) any and all rights of Assignor to compel performance of the terms of the Purchase Orders. Assignee hereby accepts such assignment.

Notwithstanding the foregoing, Assignee authorizes Assignor, in its capacity as Lessee under the Lease, to accept delivery of the Cars from the Manufacturer on behalf of the Assignee, and, so long as no event of default (as defined in the Lease) has occurred and is continuing, authorizes Assignor to exercise in the name of and on behalf of the Assignee the right to receive and

enforce against the Manufacturer all rights, powers, privileges and benefits of the buyer under the Purchase Orders or relating to any Car furnished thereunder, to the full extent that same may be enforced by the Assignee (other than the right to acquire title to the Equipment), including without limitation, the right to enforce the same in the name of the Assignee or in the name of the Assignor, and the right to receive from the Manufacturer damages arising out of any breach of any Purchase Order in the same amounts that it would have received if this Purchase Order Assignment had not been entered into.

2. Assignor and Assignee expressly agree that, anything herein contained to the contrary notwithstanding: (a) Assignor shall at all times remain liable to the Manufacturer to perform all of the duties and obligations of the purchase under the Purchase Orders to the same extent as if the assignment to the Assignee hereunder had not been made, (b) the exercise by Assignee of any of the rights assigned hereunder shall not release Assignor from any of its duties or obligations to the Manufacturer under any Purchase Order except to the extent that such exercise by the Assignee shall constitute the performance of such duties and obligations, and (c) Assignee shall not have any obligation or liability under the Purchase Orders by reason of, or arising out of, this Purchase Order Assignment or be obligated to perform any of the obligations or duties of Assignor under any of the Purchase Orders to make any payment with respect to any of the Purchase Orders (other than the obligation of Assignee to pay the purchase price for the Cars under the terms and conditions and to the extent set forth in the Lease), or to make any inquiry as to the sufficiency of or authorization for any payment made by it or to present or file any claim, or to take any other action to collect or enforce any claim assigned hereunder.

3. In dealing with Assignor pursuant to the terms of this Purchase Order Assignment, the Manufacturer shall not be obligated to inquire as to the existence of any event of default (as defined in the Lease) unless the Manufacturer shall have received notice in writing from Assignee. The execution of this Purchase Order Assignment shall not modify any contractual rights of the Manufacturer under the Purchase Orders, and the liabilities of the Manufacturer under the Purchase Orders shall be to the same extent as if this Purchase Order Assignment had not been executed.

4. This Purchase Order Assignment shall in all respects be governed by, and construed in accordance with, the laws of the State of Washington, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, Assignor and Assignee have each caused this instrument to be executed as of the date first above written.

EMONS INDUSTRIES, INC.

By _____
Title _____

SEAFIRST LEASING CORPORATION

By _____
Title _____

SCHEDULE 1

Purchase Orders Assigned

MANUFACTURER'S CONSENT

The undersigned Manufacturer hereby acknowledges notice of, and consents to, the Purchase Order Assignment between Emons Industries, Inc., a New York corporation, and Seafirst Leasing Corporation, a counterpart or copy of which is attached hereto. Manufacturer agrees that all representations, warranties, indemnities and agreements of Manufacturer under the Purchase Orders referred to therein shall inure to the benefit of Assignee to the same extent as if Assignee were originally named the buyer therein.

Manufacturer confirms that the Assignee shall not be liable for any of the obligations or duties of Assignor under such Purchase Orders, and agrees to deliver to Assignee at the time of payment in full by or on behalf of Assignee of the Purchase price for any of the Cars covered by the Purchase Orders a Bill of Sale in favor of Assignee covering such cars.

Manufacturer confirms that notwithstanding the Purchase Order Assignment, Assignee shall have no obligations under such Purchase Orders to Manufacturer, except that Manufacturer may require Assignee to perform any unperformed obligations of buyer under such Purchase Orders as a condition precedent to the enforcement of such Purchase Orders against Manufacturer by Assignee.

DATED _____, 1980.

BERWICK FORGE & FABRICATING, a
division of Whittaker Corporation

By _____
Title _____

WGP5G

EXHIBIT C

CERTIFICATE OF ACCEPTANCE

Seafirst Leasing Corporation
P.O. Box 3586
Seattle, Washington 98124

Gentlemen:

1. The undersigned, Emons Industries, Inc. ("Lessee"), is the Lessee under the Lease Agreement dated as of May 27, 1980 (the "Lease Agreement"), between you and the Lessee. We hereby represent and certify to you as follows:

(a) That all of our representations and warranties set forth in Section 7 of the Lease Agreement are true and correct as of the date hereof as though made on this date;

(b) That the cars described below have been delivered to us, as Lessee under the Lease Agreement, on the dates indicated and have been duly inspected and are hereby accepted by us for lease under the Lease Agreement; and

(c) That each such car was at its delivery properly marked on each side thereof with the legend as provided in Section 8.5 of the Lease Assignment; and

(d) That no event of default, or event which might mature into an event of default, has occurred and is continuing under the Lease Agreement.

2. This Certificate of Acceptance shall be and become a part of the Lease Agreement, and the cars described below are hereby declared to be leased by us thereunder. The Lease Agreement was filed and recorded with the Interstate Commerce Commission on _____, 1980, at _____ .m. with Recordation No. _____.

EMONS INDUSTRIES, INC.

By _____
Its _____

Dated _____, 1980

DESCRIPTION OF CARS

All Cars are 100-Ton 52'6" Railroad Gondola Cars specially equipped with rigid underframes, fixed ends, and interior lading securement devices, and manufactured by Berwick Forge & Fabricating, a division of Whittaker Corporation.

Total No.
of Cars

Lessee's Identifying
Nos.

Invoice
Amount

WGP5D

EXHIBIT D

STIPULATED LOSS VALUE FOR CARS

"Stipulated Loss Value" of any Car as of a particular date shall mean the amount derived by multiplying (i) the percentage figure opposite the notation for the appropriate rental period set forth in the table appearing below by (ii) Lessor's Cost of Cars applicable to such Car and adding the amount of any investment tax credit recapture compensation as set forth below. Stipulated Loss Value does not include any amounts for which Lessor may be entitled to indemnification under Sections 12 and 13 of the Lease Agreement.

STIPULATED LOSS VALUE TABLE

	<u>Percentage</u>
On or before Commencement Date . . .	100% + expenses + interim rent
Thereafter, but on or before Rent Payment Date No. 1	85.909
Thereafter, but on or before Rent Payment Date No. 2	86.306
Thereafter, but on or before Rent Payment Date No. 3	86.586
Thereafter, but on or before Rent Payment Date No. 4	86.769
Thereafter, but on or before Rent Payment Date No. 5	86.913
Thereafter, but on or before Rent Payment Date No. 6	86.998
Thereafter, but on or before Rent Payment Date No. 7	87.030
Thereafter, but on or before Rent Payment Date No. 8	87.007
Thereafter, but on or before Rent Payment Date No. 9	86.930
Thereafter, but on or before Rent Payment Date No. 10	86.799
Thereafter, but on or before Rent Payment Date No. 11	86.616
Thereafter, but on or before Rent Payment Date No. 12	86.381

Thereafter, but on or before Rent Payment Date No.	13	86.093
Thereafter, but on or before Rent Payment Date No.	14	85.753
Thereafter, but on or before Rent Payment Date No.	15	85.358
Thereafter, but on or before Rent Payment Date No.	16	84.915
Thereafter, but on or before Rent Payment Date No.	17	84.421
Thereafter, but on or before Rent Payment Date No.	18	83.875
Thereafter, but on or before Rent Payment Date No.	19	83.276
Thereafter, but on or before Rent Payment Date No.	20	82.630
Thereafter, but on or before Rent Payment Date No.	21	81.934
Thereafter, but on or before Rent Payment Date No.	22	81.188
Thereafter, but on or before Rent Payment Date No.	23	80.388
Thereafter, but on or before Rent Payment Date No.	24	79.545
Thereafter, but on or before Rent Payment Date No.	25	78.653
Thereafter, but on or before Rent Payment Date No.	26	77.713
Thereafter, but on or before Rent Payment Date No.	27	76.718
Thereafter, but on or before Rent Payment Date No.	28	75.683
Thereafter, but on or before Rent Payment Date No.	29	74.601
Thereafter, but on or before Rent Payment Date No.	30	73.472
Thereafter, but on or before Rent Payment Date No.	31	72.288
Thereafter, but on or before Rent Payment Date No.	32	71.068
Thereafter, but on or before Rent Payment Date No.	33	69.803
Thereafter, but on or before Rent Payment Date No.	34	68.491
Thereafter, but on or before Rent Payment Date No.	35	67.126
Thereafter, but on or before Rent Payment Date No.	36	65.726
Thereafter, but on or before Rent Payment Date No.	37	64.284
Thereafter, but on or before		

Rent Payment Date No.	38	62.797
Thereafter, but on or before Rent Payment Date No.	39	61.257
Thereafter, but on or before Rent Payment Date No.	40	59.687
Thereafter, but on or before Rent Payment Date No.	41	58.075
Thereafter, but on or before Rent Payment Date No.	42	56.421
Thereafter, but on or before Rent Payment Date No.	43	54.713
Thereafter, but on or before Rent Payment Date No.	44	52.979
Thereafter, but on or before Rent Payment Date No.	45	51.206
Thereafter, but on or before Rent Payment Date No.	46	49.392
Thereafter, but on or before Rent Payment Date No.	47	47.526
Thereafter, but on or before Rent Payment Date No.	48	45.637
Thereafter, but on or before Rent Payment Date No.	49	43.711
Thereafter, but on or before Rent Payment Date No.	50	41.747
Thereafter, but on or before Rent Payment Date No.	51	39.731
Thereafter, but on or before Rent Payment Date No.	52	37.693
Thereafter, but on or before Rent Payment Date No.	53	35.618
Thereafter, but on or before Rent Payment Date No.	54	33.505
Thereafter, but on or before Rent Payment Date No.	55	31.338
Thereafter, but on or before Rent Payment Date No.	56	29.147
Thereafter, but on or before Rent Payment Date No.	57	26.916
Thereafter, but on or before Rent Payment Date No.	58	24.645
Thereafter, but on or before Rent Payment Date No.	59	22.317
Thereafter, but on or before Rent Payment Date No.	60	20.00
Thereafter,		20.00

INVESTMENT TAX CREDIT RECAPTURE COMPENSATION

Investment tax credit recapture compensation shall be computed as shown on the following schedule:

<u>Loss During Year (After accepted for lease pursuant to the Lease Agreement)</u>	<u>ITC Recapture Compensation (As a % Lessor's Cost of Cars)</u>
1-3	18.519%
4-5	12.346%
6-7	6.173%
Thereafter	-0-

WGP5E

EXHIBIT E

ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

This Assignment of Rents and Security Agreement is entered into as of _____, 1980, between EMONS INDUSTRIES, INC., a New York corporation (the Assignor"), and SEAFIRST LEASING CORPORATION, a Washington corporation (the "Assignee").

RECITALS

The Assignee and Assignor have entered into a Lease Agreement (the "Lease Agreement") dated as of May 27, 1980, whereby the Assignee has agreed to lease to the Assignor 100-Ton Railroad Gondola Cars (the "Cars") to which Lease Agreement reference is hereby made for a more complete description of the Equipment.

The Assignor and _____, a _____ corporation (the "Railroad"), with its principal place of business at _____, have entered into a Gondola Car Agreement (the "Agreement") dated _____, 1980, whereby the Assignor has granted to Railroad the right to use ___ of the Cars.

The Assignee's consent to the use of such Cars by the Railroad is conditioned upon the Assignor's assigning to the Assignee, as security for the Assignor's obligations to the Assignee under the Lease Agreement, all of the Assignor's right, title and interest in and to the Agreement and the proceeds deriving therefrom.

It is mutually agreed as follows:

1. Assignment of Rents and Grant of Security Interest. The Assignor, in order to secure the prompt performance of its obligations to the Assignee under the Lease Agreement, does hereby assign and transfer to and grant a security interest in favor of the Assignee in the Agreement, and all proceeds thereof, including, without limitation, all rentals, insurance and insurance proceeds, indemnity payments, termination payments, and all other monies due or to become due thereunder, and all rights of the Assignor to execute any election or option or to give any notice, consent, waiver or approval under or in respect of the Agreement, as well as all rights, powers or remedies on the part of the Assignor whether arising under the Agreement or by statute, at law, in equity or otherwise, arising out of any event of default (as defined in the Agreement).

2. No Assignment of Assignor's Obligation. It is expressly agreed, notwithstanding anything herein to the contrary, that the Assignor shall remain liable under the Agreement to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions of the Agreement, and Assignor does hereby covenant with the Assignee that it will keep and perform all of the obligations to be performed on the part of the Assignor under the Agreement and will save the Assignee harmless from any failure to do so. The Assignee shall have no obligation or liability under the Agreement by reason of or arising out of this Assignment of Rents and Security Agreement, nor shall the Assignee be required or obligated in any manner, except as herein expressly provided, to perform or fulfill any obligation of the Assignor under or pursuant to the Agreement, or except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

3. Assignee May Act for Assignor. The Assignor does hereby constitute the Assignee the true and lawful attorney of the Assignor, irrevocably, with full power (in the name of the Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies due and to be come due from the Railroad under or arising out of the Agreement, or any document contemplated thereby, to endorse any checks or other instruments or orders in connection therewith and to file claims or take any actions or to institute any proceedings which the Assignee may deem to be necessary or advisable in the premises. Assignor authorizes and empowers the Assignee to collect and receive directly from the Railroad all monies now due or to become due from the Railroad. If any assigned monies are received by the Assignor, the same will be received by the Assignor as trustee for the Assignee and will be immediately delivered in kind to the Assignee without commingling. In addition, the Assignee shall have all of the rights and remedies afforded a secured party under the Uniform Commercial Code.

4. Representations, Warranties and Covenants of the Assignor. The Assignor hereby warrants and represents that it has not assigned, pledged, or otherwise encumbered, and hereby covenants that it will not assign, pledge, or otherwise encumber so long as this Assignment of Rents and Security Agreement shall remain in effect, any of its right, title or interest hereby assigned to anyone other than the Assignee, and that it has full right and authority to enter into and perform this Assignment of Rents and Security Agreement in accordance with its terms. The Assignor will not, without the prior written consent of the Assignee, agree to, consent to or permit any amendment,

modification, waiver, termination or assignment with respect to the Agreement. Assignor covenants to reimburse the Assignee upon demand for any expense, including legal fees reasonably incurred by the Assignee in the exercise of the powers conferred upon Assignee hereunder, together with interest thereon at the rate of twelve percent (12%) per annum, or the highest lawful rate, whichever is the lesser, from the date upon which such expenses are paid.

Assignee covenants and agrees that all of its books and records relating to the Agreement shall at all times be maintained at the address set forth below its signature hereto, unless otherwise agreed to in writing by Assignor and Assignee.

5. Assignee's Rights Prior to Event of Default. So long as no event of default (as defined in Section 16.1 of the Lease Agreement) has occurred and is continuing all amounts which would otherwise be assigned and payable to the Assignee pursuant to Section 1 hereof shall be paid directly to and retained by the Assignor, and Assignor shall have the right to exercise all its rights under the Agreement.

The Railroad shall not be deemed to have knowledge of any event of default under the Lease Agreement unless and until the Railroad shall have received written notice thereof. If Assignee shall have given notice of the occurrence of any event of default under the Lease Agreement, it will give prompt written notice to the Railroad if and when all events of default have been remedied. The Railroad shall not be required to make any investigation as to the existence or non-existence of an event of default under the Lease Agreement, but shall take such action as may be required solely on the basis of written notice by Assignee as specified herein.

6. Notice of Assignment. Assignor shall promptly give Railroad written notice of this Assignment of Rents and Security Agreement and request that Railroad mark all of its copies of the Agreement in a conspicuous place substantially as follows:

This Agreement is subject to an Assignment of Rents and Security Agreement made by Emons Industries, Inc. and Seafirst Leasing Corporation.

and provide Assignee with evidence that it has given such notice and request to Railroad.

Assignor further agrees that it shall conspicuously mark all of its copies of the Agreement with the foregoing legend, that it

will deliver to Assignee the copy of the Agreement marked "Original," that it will file a copy of this Assignment of Rents and Security Agreement with the Interstate Commerce Commission in accordance with Section 11303 of the Revised Interstate Commerce Act and will file all Uniform Commercial Code financing statements and continuations thereof, and take such other actions, all at its own expense, as may be required from time to time in order to perfect and continue the perfection of this Assignment of Rents and Security Agreement.

7. Miscellaneous. This Assignment of Rents and Security Agreement may be executed by the parties hereto in separate counterparts. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof, and any such provision or unenforceability in any jurisdiction shall not invalidate or render unenforceable such a provision in any other jurisdiction. To the extent permitted by applicable law, the Assignor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. No provision hereof may be changed, waived, or otherwise modified unless done in writing signed by the party against which the enforcement of the change, waiver or other modification is sought. This Assignment of Rents and Security Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed the foregoing agreement as of the day and year first above written.

EMONS INDUSTRIES, INC.

Attest:

Title _____

By _____
Title _____

Address: 490 East Market Street
York Pennsylvania 17403

SEAFIRST LEASING CORPORATION

Attest:

Title _____

By _____
Title _____

Notice of the foregoing Assignment of Rents and Security Agreement is hereby acknowledged.

May ____, 1980.

By _____
Title _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of May, 1980, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of _____, that the seal 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 acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public in and for the State
of _____, residing at _____
My Commission expires _____

WGP5F