

RECORDATION NO. 11864 Filed 1425

MAY 30 1980 - 12 05 PM

SLADE PELLMAN & BIEHL

INTERSTATE COMMERCE COMMISSION COUNSELORS AT LAW

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

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

MELVIN S. SLADE
STUART M. PELLMAN
FREDERICK R. BIEHL

JOHN F. TRIGGS
ELLIOTT D. HEFLER
J. ANDREW RAHL, JR.
SIDNEY M. SEGALL
MICHAEL W. STAMM

No. 0-151A086

Date MAY 30 1980

Fee \$ 350.00

May 29, 1980 RECORDATION NO. 11864 Filed 1425

ICC Washington, D. C.

MAY 30 1980 - 12 05 PM

INTERSTATE COMMERCE COMMISSION

FEE OPERATION BR.
T.O.C.

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RECEIVED

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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

Re: Recordation and Filing of Documents
pertaining to 120 Railroad Gondola
Cars Numbered: SB 6150 through
SB 6199, inclusive; PBR 5070 through
PBR 5099, inclusive; and PBNE 4000
through PBNE 4039, inclusive

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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 turned 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

David H. Cox
Charles [unclear]

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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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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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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.

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

AGREEMENT NO. 2 ✓
11864
RECORDATION NO. Filed 1425

GONDOLA CAR AGREEMENT

MAY 30 1980 - 12 02 PM

THIS AGREEMENT made as of this 7th day of September INTERSTATE COMMERCE COMMISSION
1979, between EMONS INDUSTRIES, INC., a New York corporation ("Emons") and PATAPSCO & BACK RIVERS RAILROAD COMPANY, a Maryland corporation (the "Railroad").

WHEREAS, Emons owns or Leases or will acquire or lease railroad gondola cars and desires to make available certain railroad gondola cars for use by Railroad; and

WHEREAS, Railroad is agreeable to using railroad gondola cars supplied by Emons, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Agreement

(a) Emons agrees to supply to Railroad and Railroad agrees to use fifty (50) specially equipped 52 foot 6 inch railroad gondola cars, rigid underframe, fixed ends, 100 ton with interior lading securement devices, as more fully described in Exhibit A annexed hereto (hereinafter collectively called the "Gondola Cars").

(b) It is the intent of the parties to this Agreement that Emons shall at all times be and remain the legal or beneficial owner of the Gondola Cars. Emons shall, however, as provided in Section 12 hereof, have the right to finance the Gondola Cars and create a security interest in them.

Railroad shall not have any right, title or interest in and to any of the Gondola Cars except pursuant to this Agreement. Railroad agrees that it will at no time take any action or file any document which is inconsistent with the ownership or other interest of Emons as aforesaid, and that it will take such action and execute such documents as may be necessary to accomplish and confirm such ownership or other interest. Action taken and documents filed by Railroad pursuant to the requirements of paragraph 4 (b) of this Agreement and its functioning as "owner" for railroad interchange purposes will not be deemed inconsistent with Emons' interest.

2. Term

This Agreement shall remain in full force and effect from the date of the delivery of the first of the Gondola Cars to Railroad until the redelivery of the last of them to Emons. It shall be applicable to individual cars from the date of their delivery to Railroad until their redelivery to Emons or their destruction. It shall have an initial term of ten (10) years commencing upon the date of the delivery of the first of the Gondola Cars as set forth in Section 3(a) hereof, unless terminated earlier as provided in this Agreement. If this Agreement has not been earlier terminated and if no default has occurred and is continuing at the time of the expiration of the initial term, the term of this Agreement shall be automatically extended for an additional five years, provided, however that Emons or Railroad may by written notice delivered one

to the other not less than twelve months prior to the end of the initial term, terminate this Agreement at the expiration of the initial term.

3. Supply Provisions

(a) Emons and Railroad will inspect each Gondola Car tendered by the manufacturer for delivery to Railroad. Railroad will exercise due diligence in inspecting each Gondola Car when notified by Emons that such car is available for inspection. If Emons finds that the Gondola Car conforms to the specifications of the equipment ordered for, or manufactured by, Emons and to all applicable governmental regulatory specifications, and this Agreement has not been terminated, Emons will accept delivery thereof at the manufacturer's facility and shall notify Railroad in writing of such acceptance. The Gondola Cars shall be deemed delivered to Railroad upon written notice to Railroad of acceptance by Emons. The Gondola Cars shall be moved to Railroad's line or to such other location as Railroad may specify at the sole cost and expense of Railroad and with due diligence on the part of Railroad.

(b) Railroad agrees to use reasonable efforts, consistent with its then current gondola car utilization practices, to keep the Gondola Cars in regular service. In furtherance thereof Railroad will not give preference in "Outbound Loadings" to other gondola cars over the Gondola Cars during any period during the term of this Agreement. As used herein "Outbound Loadings" shall mean shipments loaded on Railroad's tracks destined for locations off Railroad's tracks.

4. Railroad Markings and Record Keeping

(a) Emons agrees that at its expense on or before delivery of the Gondola Cars to Railroad, the Gondola Cars will be lettered with the logo, railroad markings and name and/or other insignia of Railroad and the name of any secured party. The names or insignia of any secured party shall comply with all applicable regulations and shall be affixed to the Gondola Cars in the space directly above Railroad's marks. The name and insignia of any secured party acquiring an interest in any of the Gondola Cars after delivery and during the term of this Agreement will, upon written request of Emons, be affixed by Railroad.

(b) During the term of this Agreement, Railroad shall promptly prepare and file all documents relating to the registration, maintenance and record keeping functions for the Gondola Cars in accordance with generally accepted railroad practice including all documents required to be filed by a subscriber to the AAR Interchange, Car Service and Car Hire Agreements and all documents required by law and regulation concerning the use and operation of cars by railroads. Similarly, Emons shall prepare and file such documents as may be necessary or required by law, regulation or railroad custom by reason of its ownership or other interest in the Gondola Cars.

(c) Railroad shall register each Gondola Car subject to this Agreement in the Universal Machine Language Equipment Register and the Official Railway Equipment Register and proof

of such registration shall promptly be provided to Emons. Correspondence from railroads using such Gondola Cars shall be addressed to Railroad.

(d) All record keeping performed by Railroad hereunder and all records of payments, charges and correspondence related to the Gondola Cars shall be separately recorded and maintained by Railroad and upon reasonable prior notice documents disclosing such payments, charges and correspondence shall be made available for reasonable inspection by Emons from time to time during regular business hours of Railroad. Railroad shall supply Emons promptly with such reports regarding the use of Gondola Cars by Railroad on its railroad line as Emons may reasonably request and with copies of all records and correspondence related thereto. All such record keeping shall be at the expense of Railroad.

5. Maintenance, Taxes and Insurance

(a) Railroad shall keep all Gondola Cars in good operating condition and repair so as to meet the requirements of the Association of American Railroads, Interstate Commerce Commission and Federal Railroad Administration and shall be responsible for inspecting all Gondola Cars interchanged to it to insure that such Gondola Cars are in good working order and condition. Railroad shall give Emons notice promptly after its discovery of any defects in the Gondola Cars which qualify as "owner's responsibility defects", as defined in Rule 96 of the AAR Field Manual. Expense bills for repairs

to the Gondola Cars shall be paid by Emons as to (1) repairs which qualify as "owner's responsibility defects" and (2) repairs for damage noted by Railroad at the time of interchange in accordance with applicable interchange rules as to which Railroad has unsuccessfully pursued all remedies, including arbitration, available under those rules to recover the cost thereof from another railroad; and shall be paid by Railroad as to (1) repairs, including owner's responsibility defect repairs, occasioned by the fault of Railroad or a shipper on its line while the car was in possession of Railroad or such shipper, (2) repairs as to which Railroad has failed to use its best efforts in pursuit of its remedies under the interchange rules, and (3) repairs for damage not noted at the time of interchange. If the cost of any repair, including an "owner's responsibility defect" repair, is estimated to be less than \$1,000.00, Railroad shall make the repair. If the cost of a repair, including an owner's responsibility defect repair, is estimated to exceed \$1,000.00, Railroad may request Emons to make the repair or Emons may request Railroad to make such repair. Absent an agreement for Railroad to make such repair, Railroad shall promptly cause such Gondola Car to be delivered to Emons at a place designated by Emons and Emons shall make such repair. As to Gondola Cars delivered to Emons (or to a place designated by Emons) Emons shall only be responsible for transportation charges incurred in excess of charges which would accrue were such cars delivered to and repaired by Railroad. Railroad shall be responsible for transportation

charges in accordance with applicable AAR interchange rules. In addition, while a Gondola Car is being repaired on the lines of Railroad, Rent for such car, as provided in Section 6, shall cease to accrue as if such car were being repaired by another railroad in accordance with applicable AAR rules. The aforesaid \$1,000.00 limitation shall be subject to adjustment annually by written notice by Emons to Railroad in accordance with any increase in standard AAR labor rates. Railroad hereby transfers and assigns to Emons for and during the term of this Agreement all of its right, title and interest in any warranty in respect to each of the Gondola Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by Emons at its sole expense and Railroad shall have no obligation or authority to make any claim or such warranty. Railroad shall cooperate with Emons in the prosecution of any such claim. Any recovery under such warranty shall be made payable to Emons.

(b) Railroad shall not make any alterations, improvements or additions to the Gondola Cars without the prior written consent of Emons. Title to any such alteration, improvement, replacement or addition occurring in the course of or as a result of normal and customary maintenance shall be and remain with Emons.

(c) Notwithstanding anything to the contrary contained in this Section 5, Railroad, at its sole cost and expense, shall be exclusively responsible for the repair and maintenance of all interior lading securement devices on the Gondola Cars.

(d) Emons may make or cause to be made such inspections of, and maintenance and repairs to, the Gondola Cars as may be required of Railroad by this Section 5. However, nothing contained herein shall be construed to obligate Emons

to take any such action. Emons shall at any time during normal business hours and on reasonable notice to Railroad, have the right to enter the premises where the Gondola Cars may be located for the purpose of inspecting and examining the Gondola Cars to insure compliance by Railroad with its obligations under this Section 5.

(e) Railroad will at all times while this Agreement is in effect be responsible for the Gondola Cars while they are on its railroad tracks in the same manner that it is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules - Freight for cars not owned by it which are operated on its railroad tracks. Railroad agrees to enforce all rights against carriers handling a Gondola Car which becomes damaged while on such carrier's line.

(f) Railroad is, for the most part, a self-insurer of its assets against damage or destruction, including liability to others for personal injury and property damage caused by its assets. Railroad shall consider and treat the Gondola Cars as its assets at all times during the term of this Agreement and shall be responsible for all public liability and property damage related to the use of the Gondola Cars while on its railroad line. Railroad shall have the right, at its sole cost and expense, to obtain insurance with respect to the use of the Gondola Cars on its railroad line. In the event insurance is so obtained, Railroad will furnish to Emons copies of any insurance policies with respect to the Gondola Cars.

Railroad will cause any such insurer to advise Emons promptly of any lapse of any such insurance or of any default of payment or any premium and of an other act or omission of Railroad of which it has knowledge which might, in its opinion, invalidate or render unenforceable, in whole or in part, any insurance on the Gondola Cars. All insurance if taken out, shall be taken out in the name of Railroad and Emons (or its assignee) as their interest may appear. The policies or certificates shall provide for at least ten business days' prior written notice to be given to Emons by the underwriters prior to their cancellation. If such insurance is obtained, Railroad shall pay the premiums for such insurance prior to the end of any grace periods applicable to any such insurance policies.

(g) Railroad agrees to pay all taxes, assessments and other governmental charges of whatsoever kind or character (other than taxes on gross receipts, excess profits and similar taxes assessed against Emons arising from income earned by Emons from the Gondola Cars) relating to each Gondola Car and on the use, delivery or operation thereof which may be accrued, levied, assessed or imposed during the term of this Agreement. Railroad will comply with all state and local tax laws. Railroad shall have the right at its sole risk and expense to contest any such tax, assessment or governmental charge. Emons agrees to give reasonable assistance to Railroad in connection with the conduct of such contests, and Railroad shall have the right to take action regarding such contests as it deems appro-

appropriate and in its best interest. Railroad shall assume responsibility for all costs and expenses incurred in making such contest and agrees to indemnify Emons against any cost or expense accrued against or incurred by Emons in making such contest.

6. Rental Charges and Disposition of Damages or
Destroyed Gondola Cars

(a) The rent ("Rent") for each such Gondola Car to be paid by Railroad to Emons shall be a monthly payment in an amount equal to the total of (i) all amounts paid to Railroad with respect to that Gondola Car under the AAR Code of Car Hire Rules and Interpretations - Freight, for each month during the term hereof, including per diem, mileage and incentive per diem and penalties associated therewith ("Car Hire Charges") and (ii) an amount equal to the Car Hire Charges which would accrue for the time the Gondola Car is on the line of the Railroad were the Gondola Car to bear the reporting markings of a railroad other than Railroad, except that (iii) no payment shall be made with respect to the first 104 hours as to each Gondola Car in any calendar month. The computation of Rent shall not include any funds received by Railroad pursuant to any tariff naming demurrage, detention or storage charges or any agreement concerning per diem reclaims.

(b) The Rent for each month shall be due and payable no later than two months and ten days after the last day of the month for Car Hire Charges which accrued or were paid for such

month. Upon request, Railroad shall deliver to Emons a quarterly accounting of the computation of Rent.

(c) Railroad will use its best efforts to collect all Car Hire Charges accrued and payable from other railroads for the Gondola Cars and shall receive and hold all such Car Hire Charges in trust for Emons until paid as Rent to Emons as provided in this Agreement. In the event of disagreement between Railroad and Emons concerning the amount of Rent payable or the collection of Car Hire Charges, the dispute may be submitted to arbitration pursuant to the Rules of the American Arbitration Association in New York City by either Emons or Railroad. Railroad will also cooperate with and support any other action Emons may wish to take whether in its own name or in the name of Railroad to determine or collect Car Hire Charges.

(d) In the event damage or destruction of a Gondola Car has been reported in accordance with Rule 107 of the Field Manual of the AAR Interchange Rules, the obligation of Railroad to pay Rent shall cease and the Gondola Car shall not be subject to this Agreement after the date on which Car Hire Charges cease to accrue. Funds received by Railroad from other railroads under Rule 107 will be received in trust for Emons and transmitted promptly to Emons. In the event of damage or destruction of a Gondola Car while on the line of Railroad, including the tracks of a shipper on its line, the procedure stated in Rule 107 will be followed, Emons being in the position of owner and Railroad in the position of Handling Line.

7. Possession and Use

(a) So long as Railroad shall not be in default under this Agreement, it shall be entitled to the possession, use and quiet enjoyment of the Gondola Cars in accordance with the terms of this Agreement and the custom of railroads in the United States. Railroad agrees that to the extent it has physical possession or can control use of the Gondola Cars, the Gondola Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any government bodies or officers applicable to such property. Either Emons or Railroad may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner and at the expense of the contesting party. Railroad will indemnify and hold Emons harmless from and against any cost or expense arising out of any breach by Railroad of the provisions of this paragraph.

(b) Railroad will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other security interest or claim on or with respect to the Gondola Cars or any interest therein or in this Agreement. Railroad will promptly, at its expense, take such action as may be reasonably necessary duly to discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Remedies Upon Default

(a) The occurrence of any of the following events shall be events of default:

(i) The non-payment by Railroad of any sum required hereunder to be paid by Railroad on or before the tenth day after such payment is due under this Agreement.

(ii) The default by Railroad in Railroad's performance of any other term, covenant, or condition of this Agreement which is not cured within ten (10) days after notice thereof from Emons, except that if such default is one that is not susceptible to cure by the end of such ten day period it shall not be an event of default if Railroad shall take such reasonable action to attempt to cure such default within such ten day period and shall thereafter continue to use its best efforts to cure such default.

(iii) Any affirmative act of insolvency by (A) Railroad or (B) any corporation now owning the issued and outstanding shares of Railroad ("Parent Corporation"), or the filing by Railroad or Parent Corporation of any petition or action under any bankruptcy, arrangement with creditors, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Railroad or Parent Corporation that is not dismissed within thirty (30) days thereafter, or the appointment of any receiver or trustee to take possession of any of the properties of Railroad or Parent Corporation unless such petition or appointment is set aside or withdrawn or ceases to be in effect within thirty (30) days from the date of said filing or appointment.

(v) The subjection of any of the property of Railroad or Parent Corporation to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which, in the opinion of Emons as stated by written notice to Railroad impairs the capacity of Railroad to fulfill its performance under this Agreement.

(b) Upon the occurrence of any event of default, Emons may, at its option:

(i) Proceed by appropriate court action to enforce performance by Railroad of this Agreement or to recover damages for a breach thereof, or

(ii) By notice in writing to Railroad, terminate this Agreement and the right of Railroad to possession and use of Gondola Cars, whereupon all rights and interests of Railroad shall terminate, and

Emons may by its agents enter upon any premises where the Gondola Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Railroad. Emons shall nevertheless have a right to recover from Railroad any and all Rent or other amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

9. Termination

At the expiration or termination of this Agreement, Railroad will deliver the Gondola Cars to Emons in the same condition as received less normal wear and tear, as provided herein. To complete delivery, Railroad, at its cost and expense, will make the Gondola Cars available to Emons on the line of Railroad, remove the Railroad markings from such Gondola Car and place thereon such markings as Emons may designate and upon written request of Emons, will remove all interior lading securement devices from the Gondola Car. Railroad will deliver the Gondola Cars at such other place or places as Emons may designate, Emons to defray any expense incurred in making delivery at such designated place over that incurred in making delivery on the lines of Railroad. Delivery shall be accomplished within five working days following expiration or termination of this Agreement as to Gondola Cars located on and to be delivered on the line of Railroad and within sixty (60) days of that date for other Gondola Cars. In

all events, Railroad will use its best efforts to assure that Car Hire Charges continue to accrue and be payable as Rent until the Gondola Car is delivered. In addition, Railroad will provide free storage on its line for a period of 120 days following the expiration or termination of this Agreement.

10. Indemnity

Railroad agrees to defend, indemnify and hold harmless Emons against any loss, liability, claim, damage or expense arising out of the use of the Gondola Cars pursuant to this Agreement, unless occurring through the negligence or fault of Emons.

11. Representations, Warranties and Covenants

(a) Railroad represents, warrants and covenants that:

(i) Railroad is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland, is duly qualified and authorized to do business wherever necessary, and has the corporate power and authority to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The execution, delivery and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Railroad, violate any charter or By-law provisions of Railroad, result in any breach of, or constitute a default

under any agreement or instrument to which Railroad is a party, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Railroad or on the Gondola Cars pursuant to any instrument to which Railroad is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or, to the knowledge of Railroad, threatened against Railroad (other than an action or proceeding generally affecting railroads) before, nor any adverse decision by, any court or administrative agency or other governmental body which might materially adversely affect the financial conditions of Railroad or its ability to perform its obligations hereunder.

(iv) Railroad's "Income Statement" for the month of July 1979 and "General Balance Sheet" as of July 31, 1979 heretofore delivered to Emons, were prepared in accordance with the accounting rules of the Interstate Commerce Commission and truly represent the financial condition of the Railroad as of such dates.

(b) Railroad shall upon becoming aware of the same shall immediately notify Emons of any loss, liability, claim, damage or expense arising from any malfunction of or defect in any of the Gondola Cars including in such report the time, place and nature of the occurrence, the damage caused to

property, the names and addresses of any persons injured and of witnesses and other information pertinent to the responsibility of Railroad or Emons arising therefrom. Railroad shall also notify Emons in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Gondola Car. Railroad shall furnish to Emons promptly upon its becoming available, a copy of its annual report submitted to the I.C.C. and, when requested, copies of any other income or balance sheet statement required to be submitted to the I.C.C.

(c) Emons hereby represents and warrants that it has full power and authority to enter into this Agreement and to supply the Gondola Cars pursuant to this Agreement.

12. Subordination

(a) In connection with the financing of the Gondola Cars by Emons, Emons may assign this Agreement, sell the Gondola Cars, grant a mortgage on, or security interest in, any Gondola Car, in whole or in part, without notice to, or the consent of the Railroad, to any bank, other financial institution or subsidiary thereof (including a trustee f/b/o holders of equipment trust certificates). Each such assignee or owner shall have all of the rights but none of the obligations of Emons under this Agreement, and in connection therewith Railroad shall, upon written notice thereof, recognize each such assignment, sale or security interest and shall accept and comply with the direction or demands given in writing by any

such owner, assignee or secured party pursuant to this Agreement or pursuant to such financing agreement or arrangement. Railroad shall not assert against such assignee, secured party or owner any defense, counter-claim or set-off that it might have against Emons. The rights of Railroad shall be subject and subordinate to the rights of any such assignee or transferee of Emons or purchaser of the Gondola Cars or any bank or other secured party under any financing agreement or arrangement entered into by Emons in connection with the acquisition or financing of Gondola Cars. Upon giving of notice to Railroad from any such transferee, bank or secured party that an event of default by Emons has occurred and is continuing under such financing agreement, or arrangement, such party may, pursuant to such financing agreement or arrangement require that all payments otherwise due Emons shall be made directly to such party or that the Gondola Cars be returned to such party, or both. However, Railroad shall have the right to cure Emons' default under such financing agreement or arrangement and Emons agrees to reimburse Railroad for any amounts paid to such party on behalf of Emons.

13. Miscellaneous

(a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Railroad may not without the prior written consent of Emons, assign this Agreement or any of its rights hereunder or lease the Gondola Cars to any

party and any purported assignment in violation hereof shall be void.

(b) Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Agreement.

(c) It is expressly understood and agreed by the parties hereto that this Agreement is concerned with the use of the Gondola Cars only and that no joint venture or partnership is being created. Nothing herein shall be construed as conveying to Railroad any right, title or interest in the Gondola Cars, except as a user pursuant to this Agreement.

(d) A failure or delay by Emons in exercising any right, power or remedy hereunder shall not constitute a waiver or otherwise affect or impair any right, power or remedy available to Emons nor shall any waiver or indulgence by Emons or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

(e) This Agreement shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania.

(f) All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States Mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth below:

To Emons: Emons Industries, Inc.
490 East Market Street
York, Pennsylvania 17403

To Railroad:

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

IN WITNESS WHEREOF, the parties hereto have executed
this Agreement as of the year and date first above written.

PATAPSCO & BACK RIVERS
RAILROAD COMPANY

By: Thomas H. Seunel
President

EMONS INDUSTRIES, INC.

By: Jeremy W. Morin
President

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF YORK)

: SS:

April

1980

On this *24th* day of *April*, 1980, before me personally appeared Joseph W. Marino, to me personally known, who, being by me duly sworn, says that he is the President and Chief Operating Officer of EMONS INDUSTRIES, INC., one of the corporations described in and which executed the foregoing instrument; that said instrument was signed on behalf of said corporation by authority of the Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

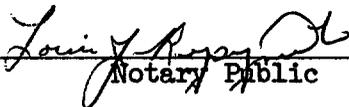
Ridgely Houston
NOTARY PUBLIC

My commission expires:

MY COMMISSION EXPIRES
JANUARY 31, 1981
YORK COUNTY, PA.

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF NORTHAMPTON :

On this 28th day of April, 1980, before me personally appeared T. H. Semmel, to me personally known, who being by me duly sworn, says that he is President of Patapsco & Back Rivers Railroad Company, that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

LOUIS J. REPYNECK, NOTARY PUBLIC
Bethlehem, Northampton County
My Commission Expires 10-23-82

(Notarial Seal)

ADMINISTRATIVE PROCEDURE
PART 1
SECTION 1-1.1

any person who is a member of the public
and who is not a member of the public
shall be deemed to be a member of the public
and shall be subject to the provisions of this
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and who is not a member of the public shall
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and who is not a member of the public shall
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section.

enacted by the

