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10313-BB

# SLADE PELLMAN & BIEHL

850 THIRD AVENUE  
NEW YORK, N.Y. 10022

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STUART M. PELLMAN  
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RECORDATION NO. 10313-BB Filed 1425 TELEPHONE  
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RONALD B. RISDON  
MICHAEL W. STAMM

2-077A063

March 17, 1982  
INTERSTATE COMMERCE COMMISSION

No. MAR 18 1982

Date .....

Fee \$ 10.00

ICC Washington, D. C.

Office of the Secretary  
Division of Recordations  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Washington, D.C.

Re: Emons Industries, Inc.  
Equipment Trust Agreement  
Recorded on April 26, 1979  
Recordation No. 10313 (the  
"Equipment Trust Agreement")

Gentlemen:

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

Enclosed herewith are three executed original copies of a Supplemental Agreement, dated as of March 9, 1982, to the Equipment Trust Agreement. The enclosed Supplemental Agreement provides for the amendment of Sections 4.06, 5.06 and 5.08 of the Equipment Trust Agreement. We request that one original of such document be filed and recorded as document 10313BB, and that the additional originals be stamped by your office and returned to us.

A check in the amount of \$ 10.00 has been enclosed with this letter of transmittal to cover the recordation fee.

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

If there are any questions with respect to the enclosed, please telephone Michael W. Stamm at this office.

Very truly yours,

SLADE PELLMAN & BIEHL

MWS:mah  
Enclosure

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

**Michael W. Stamm**  
**Slade Pellum & Bishl**  
**850 Third 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 **3/18/82** at **1:15pm**, and assigned re-  
recording number(s). **10313-BB**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

MAR 18 1982 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

SUPPLEMENTAL AGREEMENT

to

EQUIPMENT TRUST AGREEMENT

Supplemental Agreement, dated as of March 9, 1982, between UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation as successor trustee under the Equipment Trust Agreement (as such term is defined below) (the "Successor Trustee"), and EMONS INDUSTRIES, INC., a New York corporation (the "Company").

The Company and The Chase Manhattan Bank (National Association), a national banking association organized and existing under the laws of the United States (the "Original Trustee"), have entered into an Equipment Trust Agreement dated as of April 1, 1979 (as supplemented through the date hereof, the "Equipment Trust Agreement) providing for the issuance of the Company's 11.45% Equipment Trust Certificates due April 1, 1994 (Series 1);

The Company, the Original Trustee and the Successor Trustee executed, as of December 11, 1981, an Instrument of Appointment and Acceptance of Appointment by Successor Trustee and Transfer pursuant to which the Original Trustee resigned as Trustee (as such term is defined in the Equipment Trust Agreement) and the Successor Trustee was appointed, and accepted appointment as, Trustee.

The Company requested the Successor Trustee enter into a supplemental agreement to amend Sections 4.06, 5.06 and 5.08 of the Equipment Trust Agreement in accordance with Section 12.02 of the Equipment Trust Agreement. Section 12.02 requires that the holders of not less than 66-2/3% in the aggregate principal amount of outstanding Trust Certificates give their consent to the execution of the Supplemental Agreement adopting such amendments.

The Company solicited consents from the holders of the outstanding Trust Certificates pursuant to a Solicitation Statement dated January 31, 1982, which Solicitation Statement and the related Form of Consent were filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

Prior to the date hereof, the Successor Trustee has received from the holders of not less than 66 2/3% in aggregate principal amount of outstanding Trust Certificates evidence of their consent to the adoption of the amendments to the Equipment Trust Agreement provided herein and to the execution of this Supplemental Agreement in accordance with Section 12.02 of the Equipment Trust Agreement.

The Company, in order to amend the Equipment Trust Agreement and in accordance with a resolution of its Board of Directors, has requested the Successor Trustee to execute this Supplemental Agreement.

NOW THEREFORE, the parties hereto agree as follows:

1. Section 4.06 of the Equipment Trust Agreement is hereby amended to read in full as follows:

"SECTION 4.06. Additional Trust Equipment. The Company covenants and agrees, on or before April 1 in each year, commencing April 1, 1980 and continuing to and including April 1, 1984, to sell, assign and transfer to the Trustee additional Equipment or pay to the Trustee cash, or both, such that the sum of (a) the fair value to the Company of such Equipment so sold, transferred and assigned plus (b) the amount of cash so paid is not less than an amount equal to 3.75000% of the aggregate principal amount of Trust Certificates outstanding on April 1, 1980, 3.86250% of the aggregate principal amount of Trust Certificates outstanding on April 1, 1981, 3.97838% of the aggregate principal amount of Trust Certificates outstanding on April 1, 1982, 4.09773% of the aggregate principal amount of Trust Certificates outstanding on April 1, 1983 and 4.22066% of the aggregate principal amount of Trust Certificates outstanding on April 1, 1984. Notwithstanding the foregoing sentence, in lieu of making all or part of any payment of cash or delivery of additional Equipment provided for in the foregoing sentence, the Company may, at its option, credit, pursuant to a Request delivered on or before 30 days preceding the date on which such payment is due, against such payment, any Trust Certificates specified in such Request (not theretofore credited). The Company shall, at least 15 days prior to the date on which such payment is due, deliver to the Trustee for cancellation (if not theretofore delivered to the Trustee) all such Trust Certificates. The amount of the payment of cash or delivery of additional Equipment in anticipation of which the Company specifies in such Request that any Trust Certificate is to be credited shall be reduced by an amount equal to the principal amount of such Trust Certificates in respect of which such credit is taken. In determining the aggregate principal amount of Trust Certificates outstanding on any April 1 for purposes of computing the amount of any obligation of the Company pursuant to this Section 4.06, no effect shall be given to any cancellation of Trust Certificates effected pursuant to either this paragraph, the first paragraph of Section 5.06 or the first paragraph of Section 5.08, and any Trust Certificates so cancelled shall, for such purposes, be treated as outstanding as of such April 1. At the time of delivery of any Equipment pursuant to this Section 4.06, the Company shall deliver to the Trustee the following papers:

(1) an Engineer's Certificate stating the fair value to the Company of such additional units of Equipment as of such date and that additional units have an expected useful life extending beyond the fixed date on which all Trust Certificates shall mature;

(2) an Officers' Certificate stating (a) the original Cost of each unit of the additional Equipment and the date it was first put into use by the Company or an Affiliate of the Company (or that such unit was first put into use not earlier than a specified date), (b) that each such unit to be assigned and transferred to the Trustee is Equipment as herein defined, (c) whether such additional Equipment has, within six months prior to the date of its acquisition by the Company or an Affiliate of the Company, been used or operated by a person or persons other than the Company or an Affiliate of the Company in a business similar to that in which it has been or is to be used or operated by the Company or an Affiliate of the Company and (d) that, in the opinion of the signers, all conditions precedent provided for in this Agreement, relating to such addition, have been complied with; and

(3) a certificate, a bill or bills of sale and an Opinion of Counsel in respect of such additional Equipment corresponding to those provided for in subparagraphs (a), (d) and (e) of the first paragraph of Section 4.04.

If any Equipment to be conveyed to the Trustee pursuant to this Section 4.06 has, within six months prior to the date of its acquisition by the Company or an Affiliate of the Company, been used or operated by a person or persons other than the Company or an Affiliate of the Company in a business similar to that in which it has been or is to be used or operated by the Company or an Affiliate of the Company and the fair value to the Company of such Equipment exceeds the greater of (i) \$25,000 or (ii) 1% of the aggregate principal amount of Trust Certificates at the time outstanding, the Engineer's Certificate referred to in subparagraph (1) above shall be signed by an Independent Engineer. For all purposes of this Section 4.06, where fair value is not required to be determined by an Independent Engineer, fair value shall be determined in the manner provided in subparagraph (ii) of the fifth paragraph of Section 5.06. Any cash deposited with the Trustee pursuant to this Section 4.06 shall be held and applied as provided in the fourth paragraph of Section 5.06."

2. Section 5.06 of the Equipment Trust Agreement is hereby amended to read in full as follows:

"SECTION 5.06. Substitution and Replacement of Equipment. Upon Request, the Trustee shall, at any time and from time to time, execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Trustee in and to any or all of the Trust Equipment; provided, however, that none of the Trust Equipment shall be so assigned or transferred (except as provided in Section 5.05 and 5.08) unless simultaneously (a) there shall be conveyed to the Trustee other Equipment of a fair value to the Company not less than the fair value, as of the date of such Request, of the Trust Equipment so assigned or transferred by the Trustee or (b) there shall be paid to the Trustee cash in an amount not less than the fair value, as of said date, of the Trust Equipment so assigned or transferred by the Trustee. Notwithstanding the foregoing, in the case only of the assignment and transfer to a transferee named by the Company of all the right, title and interest of the Trustee in and to any or all of the Trust Equipment which was assigned and transferred to the Trustee pursuant to Section 4.06, in lieu of paying to the Trustee cash in an amount not less than the fair value of such Trust Equipment, the Company may, at its option, credit, pursuant to a Request, against such payment, any Trust Certificates specified in such Request (not theretofore credited). The Company shall, within 15 days of the date of delivery to the Trustee of such Request, deliver to the Trustee for cancellation (if not theretofore delivered to the Trustee) all such Trust Certificates. The amount of the cash payment in anticipation of which the Company specified in such Request that any Trust Certificate is to be credited shall be reduced by an amount equal to the principal amount of such Trust Certificates in respect of which such credit is taken.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

- (1) an Engineer's Certificate stating (a) the fair value, as of the date of said Request, of the Trust Equipment so to be assigned or transferred by the Trustee and (b) the fair value to the Company of such substituted units of Equipment as of such date and that such substituted units have an expected useful life extending beyond the fixed date on which all Trust Certificates shall mature;

(2) an Officers' Certificate stating (a) the date each unit of Trust Equipment so to be assigned or transferred by the Trustee was first put into use by the Company or an Affiliate of the Company (or that such unit was first put into use by the Company or an Affiliate of the Company not later than a specified date), (b) the original Cost of each unit of the Equipment so to be substituted and the date it was first put into use by the Company or an Affiliate of the Company (or, that such unit was first put into use not earlier than a specified date), (c) that each such unit so to be substituted is Equipment as herein defined, (d) whether such Equipment to be substituted has, within six months prior to the date of its acquisition by the Company or an Affiliate of the Company, been used or operated by a person or persons other than the Company or an Affiliate of the Company in a business similar to that in which it has been or is to be used or operated by the Company or an Affiliate of the Company, (e) that such assignment or transfer will not impair the security under this Agreement in contravention of the provisions hereof, (f) that no Event of Default has occurred and is continuing and (g) that, in the opinion of the signers, all conditions precedent provided for in this Agreement, relating to such substitution, have been complied with; and

(3) a certificate, a bill or bills of sale and an Opinion of Counsel in respect of such substituted Equipment corresponding to those provided for in subparagraphs (a), (d) and (e) of the first paragraph of Section 4.04.

If the fair value of the Trust Equipment to be assigned or transferred by the Trustee, together with all other property so assigned or transferred since the commencement of the then current calendar year, as set forth in the certificate or certificates required by this Section 5.06, is 10% or more of the aggregate principal amount of Trust Certificates at the time outstanding, the Engineer's Certificate referred to in subparagraph (1) above shall be signed by an Independent Engineer unless the fair value of the Trust Equipment to be assigned or transferred, as set forth in such certificate, is less than \$25,000 or less than 1% of the aggregate principal amount of Trust Certificates at the time outstanding. If any Equipment to be conveyed to the Trustee pursuant to this Section 5.06 has, within six months prior to the date of its acquisition by the Company or an Affiliate of the Company, been used or operated by a person or persons other than the Company or an Affiliate of the Company in a business similar to that in

which it has been or is to be used or operated by the Company or an Affiliate of the Company and the fair value to the Company of such Equipment exceeds the greater of (i) \$25,000 or (ii) 1% of the aggregate principal amount of Trust Certificates at the time outstanding, the Engineer's Certificate referred to in subparagraph (1) above shall be signed by an Independent Engineer.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if cash is to be paid to the Trustee in respect of the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section 5.06 in so far as they relate to the action requested.

Any cash deposited with the Trustee pursuant to this Section 5.06 or pursuant to Section 4.06 or Section 5.08 shall, from time to time, be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of Equipment or Trust Certificates, or both, such that the sum of the fair value, as of the date of said Request of any Equipment so conveyed plus the aggregate principal amount of any Trust Certificates so conveyed is not less than the amount of cash so paid, and upon compliance by the Company with all of the provisions of the second paragraph of this Section 5.06 in so far as they relate to the action requested.

For all purposes of this Section 5.06, where fair value is not required to be determined by an Independent Engineer, fair value shall be determined as follows (and the manner of such determination shall be set forth in each Engineer's Certificate furnished in respect thereof, including a statement of actual fair value or fair value to the Company, as the case may be, without reference to the provisions of subdivisions (b) of subparagraphs (i) and (ii) of this paragraph):

(i) The fair value of any unit of Trust Equipment assigned or transferred by the Trustee as provided in this Section 5.06 shall be deemed to be the greater of (a) the actual fair value thereof or (b) the Cost thereof as theretofore certified to the Trustee less 3% of such Cost of such unit for each full period of one year elapsed between the date such unit was first put into use as certified to the Trustee and the date as of which fair value is to be determined.

(ii) The fair value to the Company of any unit of Equipment conveyed to the Trustee as provided in this Section 5.06 shall be deemed to be the lesser of (a) the actual fair value thereof or (b) the Cost of such unit, if new, or, in case of any Unit of Equipment not new, (i) the depreciated book value thereof on the books of the owner thereof, as of the date of the transfer thereof to the Trustee, or (ii) the Cost thereof, less 3% of such Cost of such unit for each full period of one year elapsed between the date such unit was first put into use by the Company or an Affiliate of the Company and the date of the transfer thereof to the Trustee or (iii) the value thereof, as of said last mentioned date, as determined in accordance with the Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic, Adopted by the Association of American Railroads, Operations and Maintenance Department, Mechanical Division, as in effect at the time in question (or, if there is no such Code then in effect, generally accepted accounting principles), whichever shall be less.

For all purposes of this Section 5.06, where fair value is required to be determined by an Independent Engineer such fair value shall be determined without requiring reference to the provisions of subparagraphs (i) and (ii) of the next preceding paragraph."

3. Section 5.08 of the Equipment Trust Agreement is hereby amended to read in full as follows:

"SECTION 5.08. Maintenance of Trust Equipment; Purchase; Deposit of Cash; Alterations. The Company agrees that it will maintain and keep or cause to be maintained and kept all the Trust Equipment in good order and proper repair and in compliance with applicable law and regulations at its own cost and expense, unless and until it becomes worn out, unsuitable for use, stolen, lost or destroyed (any such event being hereinafter called a Casualty Occurrence). Whenever any of the Trust Equipment shall suffer a Casualty Occurrence, the Company shall, within 20 days after the calendar quarter in which it shall have been informed of such Casualty Occurrence, deliver to the Trustee an Engineer's Certificate describing such Trust Equipment and stating the fair value thereof as of the date such Trust Equipment suffered such Casualty Occurrence. When the total fair value of all of the Trust Equipment having suffered a Casualty Occurrence (exclusive of Trust Equipment having suffered a Casualty Occurrence in respect of which payment shall have been made to the Trustee pursuant to this Section 5.08) shall exceed the lesser of

\$300,000 or 1% of the principal amount of Trust Certificates then outstanding (or such lesser amount as the Company may elect), the Company shall, within 30 days of its having been informed of such event, deliver to the Trustee an Engineer's Certificate describing such Trust Equipment and stating the fair value thereof as of the respective dates of such Casualty Occurrences and deposit with the Trustee an amount in cash equal to such total fair value. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such Casualty Occurrence. Notwithstanding the foregoing, in lieu of depositing with the Trustee an amount equal to the total fair value of Trust Equipment having suffered a Casualty Occurrence the Company may, at its option, credit, pursuant to a Request delivered with 30 days of the Company's having been informed of any event giving rise to an obligation to make such deposit, against all or part of the amount of the deposit required to be made, any Trust Certificates specified in such Request (not theretofore credited). The Company shall, within 15 days of the date of the delivery of such Request to the Trustee, deliver to the Trustee for cancellation (if not theretofore delivered to the Trustee) all such Trust Certificates. The amount of the cash deposit in anticipation of which the Company specifies in such Request that any Trust Certificate is to be credited shall be reduced by an amount equal to the principal amount of such Trust Certificates in respect of which such credit is taken. Cash deposited with the Trustee pursuant to this Section 5.08 shall be held and applied as provided in the fourth paragraph of Section 5.06. For all purposes of this paragraph, fair value shall mean the value thereof immediately prior to such Casualty Occurrence and shall be determined in the manner provided in subparagraph (i) of the fifth paragraph of Section 5.06, and the term "unsuitable for use" shall include any condition in which Trust Equipment is no longer usable for the purpose or purposes for which the same was designed (or an alternative purpose or alternative purposes provided that no material impairment in value shall arise therefrom) whether by virtue of its physical conditions or of the effect of any applicable law, rule, regulation or order.

For the purpose of enabling the Company to meet the transportation requirements of present and future sublessees, the Company may from time to time make, or cause to be made, changes and alterations in the design, structure and equipment of any of the cars constituting a part of the Trust Equipment, all at the expense of the Company; provided, however, no material impairment in value shall result therefrom.

Upon the deposit of cash with the Trustee pursuant to this Section 5.08, the Trustee shall execute and deliver a bill of sale assigning and transferring to the transferee named by the Company the right, title and interest of the Trustee in and

to the Trust Equipment which has suffered a Casualty Occurrence and in respect of which such deposit is made.

The Company covenants and agrees to furnish to the Trustee, whenever requested by the Trustee, and at least once, on or before April 1 in every calendar year commencing in 1981 and during the continuance of the lease provided for herein, an Officers' Certificate, dated as of the preceding December 31, stating (a) the amount, description and numbers of all Trust Equipment that has suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), and (b) that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement) the plates or marks required by Section 5.07 have been preserved, or that such Trust Equipment when repainted or repaired has been again plated or marked as required thereby. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof."

4. Confirmation of Guaranty.

The Company confirms that (i) the execution, delivery and performance of this Supplemental Agreement and the adoption of the amendments to the Equipment Trust Agreement provided herein shall not in any way diminish or affect the obligations of the Company under its guaranty of prompt payment of the principal amount of the Trust Certificates and the interest accrued thereon, which guaranty is set forth in Section 7.01 of the Equipment Trust Agreement and is endorsed on each Trust Certificate and (ii) such guaranty remains in full force and effect and is enforceable against the Company in accordance with its terms.

5. Miscellaneous.

A. Except as expressly amended herein, the Equipment Trust Agreement shall continue to be, and shall remain, in full force and effect in accordance with its terms.

B. This Supplemental Agreement may be signed in any number of counterparts, each of which shall be an original, and all of which taken together shall constitute a single agreement with the same effect as if the signatures thereto and hereto were upon the same instrument.

C. This Supplemental Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed and delivered by their respective duly authorized officers as of the date first above written.

EMONS INDUSTRIES, INC.

ATTEST:

Mark Lawinski  
Assistant Secretary

By: [Signature]  
Title: Vice President

UNITED STATES TRUST COMPANY  
OF NEW YORK

ATTEST:

Louis P. Young  
Assistant Secretary

By: [Signature]  
Title: Ass. & Vice Pres.

*Pas*  
STATE OF ~~NEW YORK~~ )  
: ss.:  
COUNTY OF ~~NEW YORK~~ )

On the *5<sup>th</sup>* day of March, 1982, before me personally appeared *J. S. Matless* to me personally known, who, being by me duly sworn, says that he is the *Vice President* of Emons Industries, Inc., that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Eduard Novotny*  
Notary Public  
MY COMMISSION EXPIRES  
JANUARY 31, 1985  
YORK, YORK COUNTY, PA

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

On the *9* day of March, 1982, before me personally appeared *Thomas B. Zakrzewski*, to me personally known, who being by me duly sworn, says that he is the *Assistant Vice President* of United States Trust Company of New York, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Christine C. Collins*  
Notary Public  
CHRISTINE C. COLLINS  
Notary Public, State of New York  
No. 31-4624735  
Qualified in New York County  
Certificate filed in New York County  
Commission Expires March 30, 1982