

EMRR, Inc.

RECORDATION NO. 13128 Filed 1425

June 2, 1981

JUN 5 1981 - 9 25 AM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

~~Attention: E.S. P... Recordation Clerk, Room 2302~~

Subject: Lease Dated May 27, 1981, Between EMRR, Inc. and the
Detroit, Toledo and Ironton Railroad

Gentlemen:

Please find enclosed an original and one signed copy of the subject lease. This document and a check for \$50.00 should enable you to file this lease to memorialize the following relationship:

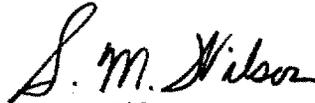
- A. The lessor is EMRR, Inc., a Maryland Corporation, 1970 Chain Bridge Road, Suite 610, McLean, Virginia 22102.
- B. The lessee is the Detroit, Toledo and Ironton Railroad Company, a Delaware corporation, 131 West Lafayette Boulevard, Detroit, Michigan 48226. The lessee's performance is being guaranteed by the Grand Trunk Western Railroad Company (same address as the DT & I).
- C. The subject lease including the equipment thereunder is being assigned by EMRR, Inc. to the American Mutual Life Insurance Company, 418 Sixth Avenue, Des Moines, Iowa 50307 to secure an indebtedness relating to the purchase of the equipment by EMRR, Inc.
- D. The equipment being leased and assigned is 40 PORTEC manufactured Auto Racks. The serial numbers of the Auto Racks and the ETTX numbers of the flat cars on which they are installed are shown on Attachment "A" to the lease.
- E. EMRR, Inc. does not own the flat cars. Those units are the property of Trailer Train Company, 300 South Wacker Drive, Chicago, Illinois 60606.

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This is a new recordation. We understand the original lease will be returned to EMRR, Inc. Upon receipt of recordation EMRR, Inc. and the previous assignees intend to close out filing 8872-C dated July 6, 1977 on the predecessor transaction with William M. Gibbons, as Trustee for the Chicago, Rock Island and Pacific Railroad Company.

Sincerely,



S. M. Wilson
Corporate Counsel

SMW/slg
Enc.

cc: William R. Engel
Senior Vice President
American Mutual Life Insurance Company

JUN 5 1981 - 10 25 AM

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

This Lease Agreement (the "Agreement") made as of this 27th day of May, 1981, between EMRR, INC., A Maryland corporation, 1970 Chain Bridge Road, Suite 610, McLean, VA 22102, as the lessor ("Lessor"), and DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY, a Delaware corporation, 131 West Lafayette Boulevard, Detroit, Michigan 48226 as the lessee ("Lessee").

1. Scope of Agreement

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor upon the terms and conditions set forth herein a number of items of equipment of the number, type, construction and other description as set forth in Attachment A, attached hereto and made a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Racks" and each individual scheduled item of equipment is hereinafter called a "Rack".

2. Term and Options

- A. This Agreement shall remain in full force until it is terminated as to all of the Racks as provided herein. The term of this Agreement with respect to each Rack shall commence upon the date when such Rack has been delivered as set forth in Section 3 hereof and shall expire on June 1, 1989.
- B. Renewal Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or such original term as extended in the manner hereinafter set forth, as the case may be, elect to extend the term of this Lease in respect of all, but not fewer than all, of such Racks then covered by this Lease, for successive additional terms of one year each commencing on the scheduled expiration of such original or extended term, as the case may be, at a rental payable in quarterly payments in arrears, each in an amount equal to the "Fair Rental Value" of such Racks.

Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee-user (other than a lessee-user currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before two months prior to the expiration of the term of this Lease, or extended term hereof, as the case may be, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Racks, such value shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

- C. Limited Right to Purchase. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Lessor elects to sell any Racks to third parties at the expiration of the original term of this Lease, the Lessee shall be given written notice of such intention prior to the expiration of such term. In the event that the Lessor shall receive, prior to the end of such term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase the Racks and the Lessor elects to sell the Racks pursuant to such offer at the expiration of such term of this Lease, the Lessor shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Lessor. The Lessee shall have the sole right and option to purchase the Racks for cash at the price at which the Racks are proposed to be sold or under the other terms and conditions of payment offered by the other party, as hereinafter provided. Within 10 business days of receipt of notice from the Lessor, the Lessee shall exercise such purchase right by delivery to the Lessor of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Lessor or (ii) 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Racks, the Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date of such notice is delivered to the Lessor until the date of such purchase.

3. Delivery and Remarketing

- A. Each Rack shall become subject to the terms and conditions of this Agreement on the date such Rack is delivered to the lines of Grand Trunk Western Railroad Company at Chicago, Illinois; provided however, that Lessee may reject delivery of (1) any Rack which is in a state of disrepair more extensive than that of Racks which have been inspected as shown on Attachment A, and (2) any Rack which is not delivered on or before September 1, 1981.

- B. Lessee shall remove the insignia of any earlier lessee and, at its option, may remark the Racks with its insignia and/or that of any affiliated railroad.

4. Record Keeping

Lessee shall, at its expense, prepare and file, with respect to the Racks, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to, the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Racks; (ii) registration of the Racks in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) such reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or any other regulatory agencies with respect to the Racks.

5. Maintenance, Taxes & Insurance

- A. As long as this Agreement shall remain in effect, Lessee shall be responsible for the Racks (i) while in Lessee's possession or control, and (ii) in the same manner that Lessee is responsible under AAR Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained (a) property insurance in respect of the Racks provided, however, that the Lessee may self-insure such Racks to the extent it self-insures equipment similar to the Racks and to the extent such self-insurance is consistent with prudent industry practice, and (b) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice, provided, however, that Lessee may self-insure against such liability to the extent such self-insurance is consistent with prudent industry practice, but in any event at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it.
- B. Lessee shall be responsible for and shall pay, when due and payable, all taxes, assessments and other governmental charges levied or assessed against (i) the Racks, other than sales or use taxes, if any, on Lessor's purchase of the Racks or any transfer of Lessor's ownership interest therein, (ii) this Agreement and (iii) Lessee's interest in the Racks, or the ownership, operations, use or leasing thereof (together with any fines, interest, penalty or late charges imposed with respect thereto), and shall comply with all federal, state and local laws requiring the filing of tax returns relating thereto, provided, however, the Lessee shall have no obligation to pay any net income taxes of Lessor or any tax, assessment or charge upon Lessor's right to engage in business.

6. Rent

- A. Lessee shall pay quarterly in arrears for each quarter after all the Racks have been delivered as follows:

Quarter ending September 1, 1981 through quarter ending June 1, 1986: \$49,998.49.

Quarter ending September 1, 1986 through quarter ending June 1, 1988: \$27,576.02.

Quarter ending September 1, 1988 through quarter ending June 1, 1989: \$16,545.61.

Rent shall be reduced by 1/40 for each Rack which shall not have been delivered in acceptable condition by the beginning of a quarter, provided however that if a Rack is delivered during a quarter, the rent for such Rack shall be \$13.88 per day for each day after the day of delivery to the end of the quarter.

- B. Loss or Destruction

In the event it is determined that a Rack is lost, destroyed or damaged beyond repair in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said Rack shall be removed from the rental calculations of this Agreement on the date car hire ceases as set forth in the aforementioned Rule 7.

Lessee shall promptly notify Lessor of any Rack so lost, destroyed, or damaged and shall pay promptly to Lessor the Casualty Value for such Rack. (Casualty Value to be calculated as EMRR's casualty value payment due to secured lenders, but never less than \$500,000 for all Racks, see Attachment B hereto.)

7. Possession and Use

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Racks in accordance with the terms of this Agreement and in the manner and to the extent the Racks are customarily used in the railroad freight business. Lessee agrees that to the extent it has physical possession and can control use of the Racks, the Racks shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.

- B. Lessor shall diligently pursue the obtaining of all necessary consents and orders, including those of the court with jurisdiction over the Reorganization Proceedings of the Chicago, Rock Island and Pacific Railroad and of parties with any interest in the Racks, which may be required to Lessor's participation in this Agreement. If Lessee shall be required to return any of the Racks because of Lessor's failure to obtain all said consents, (1) Lessee's obligation to Lessor shall be limited to payment of rent which shall have accrued to the date Lessee relinquishes or loses control of the Racks, and (2) Lessor shall pay to Lessee, upon submission of invoices, all costs which Lessee shall have incurred in returning the Racks and in remarking and repairing them upon delivery.
- C. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it on or with respect to the Racks, or any interest therein or in this Agreement. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Default

- A. The occurrence of any of the following events shall be an event of default:
 - (i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due;
 - (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days thereafter;
 - (iii) The commencement of any proceedings by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment,

if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(iv) The filing of a petition for reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978, as now constituted or as hereafter amended, by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by such trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier.

B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate this Agreement and/or may:

(i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, and/or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Racks, whereupon all right and interest of Lessee in the Racks shall terminate; and thereupon Lessor may enter upon any premises where the Racks may be located and take possession of the Racks and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall in addition have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

9. Termination

Upon expiration of the term of this Agreement, Lessee shall, at its own cost and expense, deliver the Racks to Lessor at such point on Lessee's lines as shall be designated by Lessor and acceptable to Lessee.

10. Indemnities

- A. Lessee shall defend, indemnify and hold Lessor harmless against any loss, damage, destruction or liability with respect to the Racks which is occasioned by the fault of Lessee, which occurs while the Racks are in Lessee's possession or control or in those instances in which the AAR Interchange Rules would assign responsibility for such loss, damage, destruction, or liability to Lessee.
- B. Subject to section 10A, and except for those claims, causes of action, damages, liabilities, costs or expenses for which Lessee shall be responsible as set forth herein, Lessor will defend, indemnify and hold Lessee harmless against any and all loss, damage or destruction of or to the Racks, usual wear and tear excepted, and any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Racks, including without limitation, the leasing or return of the Racks, use, maintenance, repair replacement or operation of the Racks or the condition of the Racks (whether defects, if any, are latent or are discoverable by Lessor or Lessee).

11. Representations, Warranties and Covenants

- A. Lessee represents, warrants and covenants that:

- (i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and, insofar as is material to Lessor's rights under this Agreement, is duly qualified and authorized to do business wherever necessary, 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 entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Racks pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.
- (iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.
- (iv) There is no fact which Lessee has not disclosed to Lessor, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as

the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligation under this Agreement.

B. Lessor represents, warrants and covenents that:

Lessor is empowered and authorized to lease to Lessee the Racks subject to this Agreement.

12. Miscellaneous

- A. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Lessee may not without the prior written consent of Lessor, except as provided below assign this Agreement or any of its rights hereunder or sublease any Racks to any party, and any purported assignment or sublease in violation hereof shall be void.
- B. Lessor hereby gives its prior written consent to any assignment and delegation by Lessee of all its rights, title and interest, privileges, duties and obligations hereunder to Grand Trunk Western Railroad.
- C. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Racks in order to confirm the financing parties' interest in and to the Racks, this Agreement.
- D. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Racks only and no joint venture or partnership is being created.
- E. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor 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.
- F. This Agreement shall be governed by and construed according to the laws of the State of Michigan.
- G. Lessee shall notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Rack. Lessee shall furnish to Lessor promptly upon its becoming available, a copy of its annual report submitted to the ICC.

- H. 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 Secretary of Lessee or President of Lessor at the address set forth herein.
- I. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of the Agreement.

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

EMRR, INC.

BY: *S M Wilson*

TITLE: Corporate Counsel

DATE: May 22, 1981

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

BY: *E Adams*

TITLE: SENIOR VICE PRESIDENT OPERATIONS

DATE: May 27, 1981

The Grand Trunk Western Railroad Company agrees to guarantee the performance obligations of Lessee hereunder.

GRAND TRUNK WESTERN RAILROAD COMPANY

BY: *E Adams*

TITLE: SENIOR VICE PRESIDENT OPERATIONS

DATE: May 27, 1981

STATE OF VIRGINIA)
) ss:
COUNTY OF FAIRFAX)

On this 22 day of May, 1981, before me personally appeared Sidney M. Wilson, to me personally known, who being by me duly sworn says that such person is CORPORATE COUNSELOR of EMRR, Inc., that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joe S. Lancaster
Notary Public

My Commission Expires March 12, 1985

STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

On this 27th day of May, 1981, before me personally appeared E. R. Adams, to me personally known, who being by me duly sworn says that such person is SENIOR VICE PRESIDENT OPERATIONS of Detroit, Toledo and Ironton Railroad Company, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joanne Tomkins
Notary Public

Joanne Tomkins
Notary Public
County of Wayne
State of Michigan
My Commission Expires: 10/2/84

STATE OF MICHIGAN

)

)

ss:

COUNTY OF WAYNE

)

On this 27th day of May, 1981, before me personally appeared E. R. Adams, to me personally known, who being by me duly sworn says that such person is SENIOR VICE PRESIDENT OPERATIONS of Grand Trunk Western Railroad Company, that the foregoing guarantee of the Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joanne Tomkins
Notary Public

Joanne Tomkins
Notary Public
County of Wayne
State of Michigan
My Commission Expires: 10/2/84

Forty PORTEC, INC., enclosed tri-level auto racks bearing the serial numbers designated below. The numbers listed in the "Car Number" column are numbers of cars to which the serial numbered racks directly opposite are attached.

<u>Car Number</u>	<u>Serial Number</u>
ETTX 820260	40613-5
ETTX 820261	40613-20
ETTX 820255	40613-18
ETTX 820263	40613-28
ETTX 820259	40613-15
ETTX 820265	40613-12
ETTX 820266	40613-7
ETTX 820267	40613-11
* ETTX 820268	40613-13
ETTX 820269	40613-14
ETTX 820270	40613-6
ETTX 820271	40613-4
ETTX 820272	40613-19
* ETTX 820273	40613-17
ETTX 820274	40613-3
ETTX 820275	40613-2
* ETTX 820276	40613-16
ETTX 820277	40613-9
ETTX 820278	40613-8
ETTX 820279	40613-10
* ETTX 820280	40613-29
ETTX 820281	40613-1
ETTX 820282	40613-30
* ETTX 820283	40613-31
ETTX 820284	40613-32
ETTX 820285	40613-26
ETTX 820286	40613-33
ETTX 820287	40613-34
* ETTX 820288	40613-27
ETTX 820289	40613-38
ETTX 820290	40613-22
ETTX 820291	40613-24
ETTX 820292	40613-35
ETTX 820293	40613-21
* ETTX 820294	40613-36
ETTX 820295	40613-23
ETTX 820296	40613-40
* ETTX 820297	40613-39
ETTX 820298	40613-37
ETTX 820299	40613-25

*Racks which have not been inspected. Acceptance conditioned on their being in condition at least as good as the Racks which have been inspected.

ATTACHMENT "B"

<u>DATE</u>	<u>PAYMENT</u>	<u>CASUALTY VALUE</u>
06/01/81		1,088,717.41
09/01/81	49,998.49	1,057,450.96
12/01/81	49,998.49	1,025,441.93
03/01/82	49,998.49	992,672.69
06/01/82	49,998.49	959,125.18
09/01/82	49,998.49	924,780.91
12/01/82	49,998.49	889,620.97
03/01/83	49,998.49	853,625.98
06/01/83	49,998.49	816,776.11
09/01/83	49,998.49	779,051.05
12/01/83	49,998.49	740,430.02
03/01/84	49,998.49	700,891.74
06/01/84	49,998.49	660,414.43
09/01/84	49,998.49	618,975.78
12/01/84	49,998.49	576,552.96
03/01/85	49,998.49	533,122.60
06/01/85 & thereafter	49,998.49	500,000.00

Casualty value for each Rack shall be 1/40 of the amount set out in the last column opposite the date of the rental payment last preceding the date of the casualty, less any amounts paid or to be paid as rent on such Rack for the quarter in which the casualty occurred.