



**Emons Industries, Inc.**

Date: 2/29/88  
Fee: \$39.00

1 5515/B  
RECORDATION NO. 5515/B  
Filed & Recorded

February 18, 1988

FEB 29 1988 3-0 5 AM

INTERSTATE COMMERCE COMMISSION

1 5515/A  
RECORDATION NO. 5515/A  
Filed & Recorded

FEB 29 1988 3-0 5 AM

INTERSTATE COMMERCE COMMISSION  
RECORDATION NO. 5515  
Filed & Recorded

FEB 29 1988 3-0 5 AM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee  
Interstate Commerce Commission  
12th and Constitution Ave., N.W.  
Washington, D.C. 20423

Dear Ms. Lee:

I am enclosing the following documents to be recorded:

1. Original and a copy of Agreement between the Maryland and Pennsylvania Railroad Company and Burlington Northern Railroad Company, as user, for 11 boxcars.
2. Original and a copy of a Lease of Railroad Equipment between E. T. Railcar Corporation, as Lessor, and the Maryland and Pennsylvania Railroad Company, as Lessee, for 11 boxcars.
3. Original and a copy of a Security Agreement between E. T. Railcar Corporation, as secured party, and the Maryland and Pennsylvania Railroad Company.

Also enclosed is a check in the amount of \$39.00 (\$13.00 for each document) to cover the costs of filing. I understand that all original documents will be returned to me with the recordation information noted thereon within about a week.

Please let me know if you have any questions regarding this matter.

Very truly yours,

Florence M. Yatchisin  
Manager, Leasing Administration  
(717) 771-1722

Enclosures

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

3/1/88

OFFICE OF THE SECRETARY

Florence M. Yatchisin  
Emons Industries, Inc.  
11 West Market Street  
York Pennsylvania 17401-1231

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/29/88 at 3:05pm, and assigned recordation number(s). 15515, 15515A & 15515-B

Sincerely yours,

*Narita L. McLee*

Secretary

Enclosure(s)

LEASE OF RAILROAD EQUIPMENT

1 5515  
RECORDATION NO. \_\_\_\_\_ FILED & RECORDED

FEB 29 1988 3:05 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT entered into as of the 11<sup>th</sup> day of December, 1987 by and between E. T. RAILCAR CORPORATION, a Delaware corporation with an office at 3224 Skycroft Drive, Minneapolis, Minnesota 55418, (hereinafter referred to as "Lessor") and THE MARYLAND AND PENNSYLVANIA RAILROAD COMPANY, a Maryland and Pennsylvania corporation whose address is 1 West Market Street, York, Pennsylvania 17401 (hereinafter sometimes referred to as the "M&P").

W I T N E S S E T H:

Pursuant to an Agreement (the "BN Agreement") dated as of the date hereof, between Burlington Northern Railroad ("BN") and the M&P, the M&P is providing to BN eleven (11) boxcars with identifying marks listed on Exhibit A hereto, as such Exhibit may from time to time be supplemented or amended (the "Cars");

The Lessor owns the Cars and desires to lease the Cars to the M&P on the terms and conditions set forth in this Lease, with the understanding that the Cars will be used in the BN Agreement (the M&P in its capacity as lessee of the Cars hereunder is hereinafter referred to as the "Lessee").

NOW, THEREFORE, in consideration of the premises, the parties hereto agree:

1. Lease and Hire: Lessor hereby lets to Lessee and Lessee hereby leases from Lessor the Cars.

2. Rental Payments: The Lessee hereby covenants and agrees to pay, or cause to be paid to the Lessor and its successors and assigns, as basic rent hereunder, not later than ten days after the end of each month where revenues are received, an amount equal to (i) the Gross Revenues (as such term is defined below) received during such month minus (ii) the aggregate cost of any expenses relating to the Cars paid by Lessee pursuant to this Lease or the BN Agreement. For the purpose of this Lease, "Gross Revenues" shall be defined as all revenues in the form of rents, car hire payments of any kind or any other payments (other than indemnification payments) collected pursuant to the BN Agreement, less any paid or accrued reclaims, rebates or incentive loads fees with respect to the Cars during such month.

3. Term of Lease: The term of this Lease as to each Car shall begin as of the date of commencement of the BN Agreement with respect to such Car and shall terminate with respect to such Car on the date of any termination of the BN Agreement.

4. Maintenance, Taxes and Insurance:

(a) Except as otherwise provided herein, Lessor will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Car during its lease term and any extension thereof, including but not limited to taxes, repairs, maintenance and servicing.

(b) Lessor (or the Manager on behalf of Lessor) shall be responsible for the filing and payment of all taxes, assessments and other governmental charges of whatsoever kind or character which may be accrued, levied, assessed or imposed during the lease term and which relate to the operation and use of any Car, except taxes on income imposed on Lessee.

5. Identification Marks: The Lessor will permit each Car to be numbered with the names or initials or other insignia required under the BN Agreement or customarily used by BN on railroad equipment.

6. Risk of Loss: In the event that any Car shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a "Casualty Occurrence") during the term of this Lease, Lessee shall promptly and fully notify Lessor with respect thereto. Lessee shall pay to Lessor an amount equal to any amounts either received by or payable by Lessee by way of settlement for destruction of any Car. Effective as of the date of any Casualty Occurrence, this Lease shall terminate with respect to any Car affected by such Casualty Occurrence. Lessor shall not be required to replace any Car which is the subject of a Casualty Occurrence.

7. Return of Cars: On termination of this Lease, Lessee will return the Cars to the Lessor at the location at which, and in the condition in which, the Cars are returned to Lessee at the termination of the BN Agreement.

8. Assignment - Use and Possession: Except as expressly provided herein, Lessee will not assign, transfer, encumber or otherwise dispose of its leasehold interest under this Lease, the Cars or any part thereof, or sublet the Cars or place any of the Cars in assigned service without the consent of the Lessor in writing first obtained. Lessee will not permit any encumbrances or liens, based upon any action or liability of Lessee, to be entered or levied upon any of the Cars.

9. Defaults; Remedies: If during the Term of this Agreement one or more of the following events ("Events of Default") shall occur:

(a) Default shall be made in the payment when due of any amount to be paid hereunder and such default shall continue for a period of three (3) business days; or

(b) Lessee shall attempt to remove, sell, transfer, encumber or sublet (except as expressly permitted under this Agreement) any Car; or

(c) A proceeding shall have been instituted in a court having jurisdiction in the premises, seeking a decree or order (i) for relief in respect of Lessee in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of Lessee or for any substantial part of its property, or (iii) for the winding up or liquidation of the affairs of Lessee; and in any such case either (I) any such proceeding shall remain undismissed or unstayed and in effect for a period of 60 consecutive days or (II) such court shall enter a decree or order granting the relief sought in such proceeding; or

(d) Lessee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Lessee or for any substantial part of its property or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing; or

(e) Lessee shall have knowledge that there has occurred and is continuing any condition, event, act or omission which it reasonably believes constitutes, or with notice or lapse of time would constitute, an Event of Default under the BN Agreement and shall fail within five (5) business days of learning thereof to notify Lessor of such condition, event, act or omission;

then, in any such case, Lessor at its option may:

A. Proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable duties and obligations of Lessee under this Agreement; or

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Cars shall absolutely cease and terminate as though this Agreement had never been made, and thereupon, Lessor may by its agents and without notice to Lessee enter upon the premises of Lessee or other premises where the Cars may be located and take possession of all or any such Cars and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors, sublessees or assigns, to use the Cars for any purpose whatever.

10. Indemnities: Lessor agrees to indemnify Lessee and hold it harmless from any loss, expense or liability which Lessee may suffer or incur from any charge, claim, proceeding,

suit or other event which in any manner or from any cause arises in connection with the use, possession, or operation of the Cars while subject to this Lease, excepting only any such loss, expense or liability which arises solely from Lessee's gross negligence or willful misconduct or which arises as a result of the operation of the Cars on Lessee's lines and Lessee shall indemnify Lessor for such loss, expense or liability. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against. Lessee independently agrees that it shall not take any steps that would create any claim, lien, security interest or encumbrance with respect to any Car and, should any arise solely from the action of Lessee, it shall promptly discharge the same, nor will Lessee, without the prior consent of Lessor, sell, assign, transfer or sublet the Cars except pursuant to the BN Agreement.

11. Assignment of Revenues.

Pursuant to the terms of a Security Agreement in substantially the form attached hereto as Exhibit B, Lessee has granted the Lessor a security interest in all of Lessee's right, title, and interest in and to the BN Agreement and in and to revenues to become due and payable from time to time under the BN Agreement, as collateral security for the payment and performance of all obligations and duties of Lessee to Lessor arising under or by virtue of this Lease.

12. Amendment of Lease. Lessee will not take any action to amend, modify or cancel the BN Agreement in any respect without the prior written consent of Lessor.

13. Delay or Partial Exercise. No failure or delay on the part of Lessor in exercising any right, power or privilege hereunder shall operate as a waiver thereof or of any other right, power or privilege of Lessor hereunder, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege, provided, however, that Lessee shall not be liable to Lessor for any consequential or incidental damages suffered by Lessor as a result of any such delay on the part of Lessor. The rights and remedies of Lessor hereunder are cumulative and not exclusive of any rights or remedies which it may otherwise have.

14. Elections, Notices.

(a) Lessee shall not make any election under the BN Agreement or give BN notice of substitution of a Car, earlier termination or an event of default without obtaining Lessor's prior consent thereto. Any notice required hereunder, if given in writing, shall be sent by registered or certified mail, postage prepaid, return receipt requested, to that address set forth beneath the appropriate party's signature. Either party may change such address by written notice to the other.

(b) Within three (3) business days of its receipt of written instruction to do so from Lessor, Lessee shall take appropriate action (i) to exercise any option, make any election, or grant any consent which Lessee, under the BN Agreement, has the power to exercise, make or grant, or (ii) to enforce any rights possessed by Lessee under the BN Agreement.

(c) In the event that any proceeding is instituted by Lessee to enforce its rights under the BN Agreement, such proceedings shall be conducted at Lessor's expense by counsel satisfactory to Lessor and in accordance in all respects with the reasonable instructions of Lessor.

(d) Lessee shall have no obligation to institute or maintain any proceeding to enforce its rights under the BN Agreement, if Lessee has previously assigned to Lessor, by means of a valid, binding, and enforceable assignment, all of its rights to institute and maintain such proceeding.

15. Arbitration. Should any arbitration arise under the BN Agreement, Lessee shall promptly advise Lessor thereof and shall follow any reasonable instructions received from Lessor in regard thereto. Lessee agrees it shall undertake no settlement or appoint any arbiter thereunder without Lessor's prior consent. Lessee shall not be liable for any damage or liability sustained or incurred by Lessor relating to Lessor's failure to promptly appoint an arbiter or otherwise comply with or instruct Lessee to so comply with the terms of any arbitration provisions contained in the BN Agreement.

16. Compliance with Laws and Regulations This Lease is subject to all federal, state and other laws, rules, regulations, and ordinances which may now or hereafter affect, change or modify the terms or conditions hereof or render unlawful the performance of any of its provisions. Lessor shall comply with all governmental law, regulations and requirements and with the Code of Rules of the Association of American Railroads with respect to the use, maintenance and operation of such Cars subject to this Lease, and will file and record the same with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act.

17. Prior Understandings. Prior understandings and agreements between the parties with respect to the Cars are merged herein, and all rights of the parties in respect of such Cars shall be governed by this Lease.

18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States Certified mails, first class, postage prepaid, addressed to the address set forth with respect to such party in the first paragraph of this Lease or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

19. Assignments by Lessor; Payments to Manager. Lessor shall have the right to assign this Lease, and all its

interests herein, to any entity without the prior consent of Lessee. Lessor has appointed Emons Industries, Inc. (the "Manager") as its Manager with respect to the Cars. Payments due Lessor hereunder shall be made to Manager; provided, however, that Lessee shall make payments hereunder directly to Lessor (i) upon Lessee's receipt of written notice from Lessor that (a) an Event of Default by Manager has occurred and is continuing under the Management Agreement between Lessor and Manager or (b) the Management Agreement has for any reason terminated with respect to the Cars; or (ii) automatically, without notice or other action by Lessor, upon Lessee's receipt of notice of any kind of any filing after the date hereof of a petition under any bankruptcy, insolvency or moratorium law by or against Manager.

20. Severability, Effect and Modifications of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

21. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have duly executed this Lease the day and year first above written.

ATTEST:

E. T. RAILCAR CORPORATION

BY: Mary A. Leppa

BY: Howard Leppa  
PRESIDENT

ATTEST:

THE MARYLAND AND PENNSYLVANIA  
RAILROAD COMPANY

BY: Joseph W. White  
Secretary

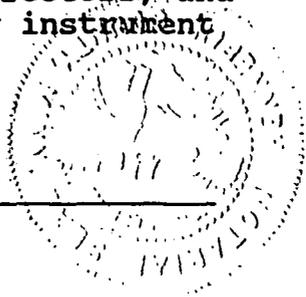
BY: John E. Moore  
VICE PRESIDENT

STATE OF Minnesota )  
 )  
COUNTY OF Hennepin ) ss.:

On the 29th day of December, 1987 before me personally appeared Howard C. Leppla, to me personally known, who being by me duly sworn, says that he is the President of E. T. RAILCAR CORPORATION, Lessor in the foregoing Lease of Railroad Equipment, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

■~~~~~■  
MARY A. LEPPLA  
NOTARY PUBLIC—MINNESOTA  
HENNEPIN COUNTY  
My Commission Expires 3-17-94  
■~~~~~■

Mary A. Leppla  
Notary Public



COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF YORK ) ss.:

On the 8th day of January, 1988 before me personally appeared Richard F. Meyers, to me personally known, who being by me duly sworn, says that he is the Vice President of the Maryland and Pennsylvania Railroad Company, Lessee in the foregoing Lease of Railroad Equipment, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Annmarie Wileczek  
Notary Public

ANNMARIE WILECZEK, Notary Public  
York, York County, Pennsylvania  
My Commission Expires April 16, 1990

**EXHIBIT A**

**MPA-37730  
MPA-37735  
MPA-37776  
MPA-37902  
MPA-37933  
MPA-37944  
MPA-37954  
MPA-37964  
MPA-37968  
MPA-37983  
MPA-37986**

**11 Boxcars**

**EXHIBIT B**

**SECURITY AGREEMENT**

SECURITY AGREEMENT dated as of December \_\_\_\_, 1987, between E. T. RAILCAR CORPORATION, a Delaware corporation with an office at 3224 Skycroft Drive, Minneapolis, Minnesota 55418 ("ET") and the MARYLAND AND PENNSYLVANIA RAILROAD COMPANY, a Maryland and Pennsylvania corporation with an office at One West Market Street, York, PA 17401 (the "Company").

**W I T N E S S E T H:**

Pursuant to an Agreement (the "BN Agreement") dated as of the date hereof between Burlington Northern Railroad Company ("BN") and the Company, the Company is providing to BN eleven (11) boxcars (the "Cars").

Pursuant to a Lease of Railroad Equipment (the "Lease") dated as of the date hereof between ET, as lessor, and the Company, as lessee, the Company has agreed to hire the Cars from ET with the understanding that the Cars will be subleased to BN pursuant to the BN Agreement.

NOW, THEREFORE, the parties hereto agree:

(1) As an inducement to ET to execute the Lease and to consent to, among other things, the use of the Cars under the BN Agreement (and in consideration thereof), the Company hereby

(i) sells, assigns, transfers, pledges and sets over unto ET, all of the Company's right, title and interest in and to the BN Agreement and in and to revenue to become due and payable from time to time under the BN Agreement, and the proceeds thereof, and

(ii) grants to ET a security interest in all accounts of the Company arising from the use of the Cars in the BN Agreement,

in each case as collateral security for the payment and performance of all obligations and duties of the Company to ET arising under or by virtue of the Lease.

(2) Upon the occurrence of any Event of Default (as such term is defined in the Lease) by the Company, unless such Event of Default shall have been waived by ET, ET shall have the right, upon giving BN notice of such default, but without notice to or consent of the Company:

(i) to instruct BN to pay to ET any amounts payable by BN to the Company pursuant to the BN Agreement;

(ii) to instruct the Company to segregate and pay immediately to ET any Net Car Hire Revenues (as such term is defined below) received by the Company pursuant to the BN Agreement; and

(iii) to deal with BN with respect to the BN Agreement to the exclusion of any contrary or concurrent instructions from the Company.

For purposes hereof, the term "Net Car Hire Revenues" means Gross Car Hire Revenues (as such term is defined in the BN Agreement) minus the aggregate cost of any expenses relating to the Cars paid by the Company pursuant to the Lease or the BN Agreement.

(3) This Security Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have duly executed this Security Agreement the day and year first above written.

ATTEST:

E. T. RAILCAR CORPORATION

Mary A. Leppla

By:

[Signature]  
PRESIDENT

ATTEST:

THE MARYLAND AND PENNSYLVANIA  
RAILROAD COMPANY

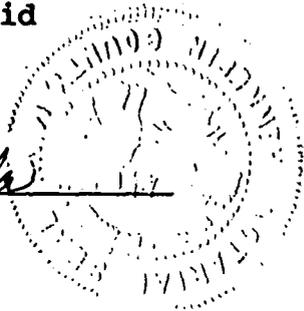
By: \_\_\_\_\_

STATE OF *Minnesota* :  
:SS.:  
COUNTY OF *Hennepin* :

On the *29th* day of *December*, 1987, before me personally appeared *Howard C. Leppla* to me personally known, who, being by me duly sworn, says that he/she is the *President* of E. T. Railcar Corporation, one of the corporations in the foregoing Security Agreement, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

■~~~~~■  
MARY A. LEPPLA  
NOTARY PUBLIC—MINNESOTA  
HENNEPIN COUNTY  
My Commission Expires 3-17-94  
■~~~~~■

*Mary A. Leppla*  
\_\_\_\_\_  
Notary Public



COMMONWEALTH OF PENNSYLVANIA:  
:SS.:  
COUNTY OF :

On the \_\_\_ day of \_\_\_\_\_, 1987, before me personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, says that he is the \_\_\_\_\_ of The Maryland and Pennsylvania Railroad Company, the Company in the foregoing Security Agreement, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public