



Norfolk Southern Corporation  
 Law Department  
 Three Commercial Place  
 Norfolk, Virginia 23510-2191

J. Gary Lane  
 Senior General Attorney

Writer's Direct Dial Number

(804) 629-2818

1-158A240

June 6, 1991

Mr. Sidney L. Strickland, Jr.  
 Secretary  
 Interstate Commerce Commission  
 12th and Constitution Avenue, N.W.  
 Washington, D. C. 20423

17374  
 JUN 7 1991 -2 00 PM  
 INTERSTATE COMMERCE COMMISSION  
 JUN 7 1991 1 51 PM '91

Dear Mr. Strickland:

In accordance with 49 U.S.C. § 11303 and the Commission's Rules, I submit herewith for recording with the Commission four (4) counterparts, properly executed and acknowledged, of the document described below.

This document is a Temporary User Agreement, a primary document, dated as of June 1, 1991.

The names and addresses of the parties to the primary document are as follows:

BAILOR: Trinity Industries, Inc.  
 2525 Stemmons Freeway  
 Dallas, Texas 75356

BAILEE: Norfolk Southern Railway Company  
 Three Commercial Place  
 Norfolk, VA 23510

The equipment covered by the document is generally described as follows:

<u>Number of Units</u>	<u>General Description</u>	<u>AAR Symbol</u>	<u>Railroad's Road Numbers (both inclusive)</u>
257	100-ton Aluminum Coal Gondola Cars	GT	NS 10000-10256
130	100-ton Centerbeam Flat Cars	FBC	NS 120000-120129

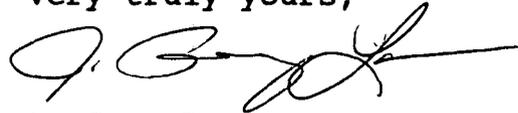
*Sammy M. Dawson*  
*Deputy*

A fee of \$15.00 is enclosed. Please return three of the original counterparts of the document, stamped with the Commission's recordation data, to J. Gary Lane, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510.

A short summary of the document to appear in the index follows:

Temporary User Agreement dated as of June 1, 1991, between Trinity Industries, Inc., 2525 Stemmons Freeway, Dallas, Texas 75356, Bailor, and Norfolk Southern Railway Company, Three Commercial Place, Norfolk, Virginia 23510, Bailee, and covering 257 aluminum coal gondola cars numbered NS 10000-10256, and 130 centerbeam flat cars numbered NS 120000-120129.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Gary Lane', with a long horizontal flourish extending to the right.

J. Gary Lane

JGL/jad

Enclosures

Interstate Commerce Commission  
Washington, D.C. 20423

6/7/91

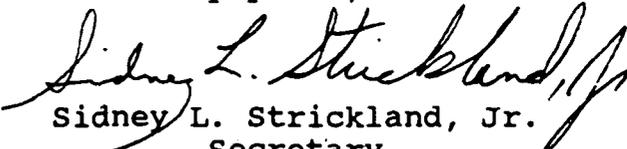
OFFICE OF THE SECRETARY

J. Gary Lane  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA. 23510

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 6/7/91 at 2:00pm, and assigned recordation number(s). 17374

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

TEMPORARY USER AGREEMENT

17374

REGISTRATION NO. ~~XXXXXXXXXX~~ FILED 103

JUN 7 1991 -2 00 PM

Dated as of June 1, 1991 INTERSTATE COMMERCE COMMISSION

between

TRINITY INDUSTRIES, INC.

and

NORFOLK SOUTHERN RAILWAY COMPANY

TEMPORARY USER AGREEMENT, dated as of June 1, 1991, between Trinity Industries, Inc., a Delaware corporation (the "Bailor"), and Norfolk Southern Railway Company, a Virginia corporation (the "Railroad")

RECITALS

WHEREAS, through financing arrangements ("Financing Arrangements") Railroad desires to acquire certain railroad rolling stock described in Schedule A hereto (the "Equipment");

WHEREAS, Railroad, by Purchase Orders numbered NNZEOO and NNOSOO (collectively the "Purchase Order"), has contracted with Bailor for the manufacture and purchase of the Equipment;

WHEREAS, Railroad has not yet consummated the Financing Arrangements for the acquisition of the Equipment, but anticipates that the Financing Arrangements will be consummated by the Termination Date specified in Section 2 hereof;

WHEREAS, Railroad, in order that it may take possession of and use the Equipment pending completion of the Financing Arrangements, has requested Bailor to grant Railroad temporary possession of and the right to use the Equipment pursuant to the terms of this Agreement; and

WHEREAS, Bailor is willing to grant such right to use the Equipment upon the terms and conditions hereinafter stated.

\* \* \* \* \*

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, Bailor and Railroad hereby agree as follows:

1. Bailor will deliver the Equipment to Railroad f.o.b. at the point or points in accordance with the delivery schedule set forth in Schedule A hereto. Bailor's obligation as to time of delivery is subject, however, to delays resulting from causes beyond Bailor's reasonable control. Upon delivery of each unit of the Equipment to Railroad, an authorized representative of Railroad will execute and deliver to Bailor a certificate of inspection in the form of Schedule B hereto certifying, if such be the case, that such unit appears to have been built in accordance with the specifications therefor and acknowledging receipt thereof under this Agreement, whereupon Railroad shall assume the responsibility and risk of loss with respect to such unit so accepted.

2. The rights of Railroad hereunder in respect of each unit of the Equipment shall commence on the date of acceptance of such unit hereunder and end on the earlier of (i) the date such unit is purchased from Bailor or (ii) September 1, 1991 (the earlier of such dates being herein called the "Termination

Date"). Title to and ownership of the Equipment shall remain in Bailor, and Railroad's right and interest therein is and shall be solely that of possession, custody, use and operation under this Agreement. Railroad shall do such acts as may be required by law, or reasonably requested by Bailor, for the protection of Bailor's title to and interest in the Units.

3. Railroad agrees that it will not permit any lien of any kind to attach to the Equipment and that it will pay promptly all taxes and assessments which may accrue or be imposed upon or in respect of the Equipment by reason of or in connection with the Railroad's possession, custody, use or operation thereof under this Agreement. Railroad's obligations contained in this paragraph shall survive the termination of this Agreement.

4. Railroad shall, at its own expense, keep and maintain the Equipment in good order and repair at all times. Railroad shall at its option replace or repair any component or part of any unit of the Equipment damaged or destroyed by any cause prior to the Termination Date or promptly pay to Bailor the full purchase price of each unit of the Equipment lost, destroyed or irreparably damaged prior to the Termination Date.

5. Prior to the delivery of any unit of the Equipment to Railroad, it will be numbered with the appropriate road number set forth in Schedule A hereto. In contemplation of subsequent delivery of the Equipment under the Financing Arrangements, Railroad will, throughout the term of this Agreement, keep and maintain plainly, distinctly, permanently, and conspicuously marked in stencil on each side of each unit of the Equipment, in letters not less than one inch in height, the following words:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED  
WITH THE INTERSTATE COMMERCE COMMISSION

In the event such lettering shall at any time during the term hereof be removed, defaced or destroyed on any unit of the Equipment, Railroad shall cause the same to be restored or replaced. Railroad may also cause the Equipment to be lettered "Norfolk Southern Railway Company," "Norfolk Southern" or in some other appropriate manner for convenience of identification of the possessory interest of the Railroad therein.

6. Railroad shall indemnify, protect and hold harmless Bailor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by Bailor of title to the Equipment or out of the possession, custody, use and operation thereof by Railroad during the period when title thereto remains in Bailor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price of the Equipment and the conveyance of the Equipment or the termination of this Agreement in any manner whatsoever.

7. Railroad will cause this Agreement, any assignment hereof, and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission and otherwise as may be required by law or reasonably requested by Bailor for the purpose of protecting its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement.

8. The parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

9. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute a single instrument.

IN WITNESS WHEREOF, Bailor and Railroad have caused this instrument to be signed and acknowledged by their proper officials as of the day and year first above written.

Trinity Industries, Inc.

By: *F. Dean Phelps*  
Name: F. Dean Phelps  
Title: Vice President

Attest:

*Neil D. Shoops*  
Assistant Secretary

Norfolk Southern Railway Company

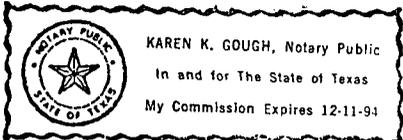
By: *T. H. Kerwin*  
Name: T. H. KERWIN  
Title: VICE PRESIDENT

Attest:

*Orahel W. Edwards*  
Secretary

STATE OF TEXAS            )  
                                  ) ss:  
COUNTY OF DALLAS        )

On this 3<sup>rd</sup> day of June, 1991, before me personally appeared F. Dean Phelps, to me personally known, who, being by me duly sworn, says that he is Vice President of Trinity Industries, Inc., 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 by him on this date was the free act and deed of said corporation.



Karen K. Gough  
Notary Public

My commission expires: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA )  
                                  ) ss:  
CITY OF NORFOLK            )

On this 6<sup>th</sup> day of June, 1991, before me personally appeared S. S. Kerevian, to me personally known, who, being by me duly sworn, says that he is Vice President of Norfolk Southern Railway Company, 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 by him on this date was the free act and deed of said corporation.

David G. Whitson  
Notary Public

My commission expires: AUGUST 31, 1994

SCHEDULE A

<u>Type of Equipment</u>	<u>Quantity</u>	<u>Railroad Road Numbers (both inclusive)</u>
1. 100-ton aluminum coal gondolas	257	NS 10000-10256

Estimated Delivery:

<u>Week Ending:</u>	<u>Number of Cars:</u>
June 7, 1991	1
June 14, 1991	5
June 21, 1991	10
June 28, 1991	20
July 5, 1991	24
July 12, 1991	40
July 19, 1991	40
July 26, 1991	40
August 2, 1991	40
August 9, 1991	37

Manufacturing Plant: Greenville, PA

<u>Type of Equipment</u>	<u>Quantity</u>	<u>Railroad Road Numbers (both inclusive)</u>
2. 100-ton centerbeam flat cars	130	NS 120000-120129

Estimated Delivery:

<u>Week Ending:</u>	<u>Number of Cars:</u>
July 26, 1991	1
August 2, 1991	3
August 9, 1991	6
August 16, 1991	9
August 23, 1991	12
August 30, 1991	15
September 6, 1991	12
September 13, 1991	15
September 20, 1991	15
September 27, 1991	15
October 4, 1991	15
October 11, 1991	12

Manufacturing Plant: Greenville, PA

SCHEDULE B

CERTIFICATE OF INSPECTION AND ACCEPTANCE

The undersigned, a duly authorized representative of Norfolk Southern Railway Company (the "Railroad"), for the purpose of inspecting equipment that is to become subject to a Temporary User Agreement dated June 1, 1991, between the Railroad and Trinity Industries, Inc. (the "Equipment Agreement"), hereby certifies that the following described unit or units of railroad equipment (the "Equipment"):

Description:

Manufacturer: Trinity Industries, Inc.

Quantity:

Road Numbers:

Delivered at:

appear to be in good order and condition and to conform to the requirements and provisions of the Equipment Agreement, and have been delivered to and have been inspected and accepted on behalf of the Railroad pursuant to the Equipment Agreement as of the date indicated below.

The undersigned further certifies that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment the following legend, in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED WITH THE INTERSTATE COMMERCE COMMISSION

The execution of this certificate shall not in any way reduce, limit, alter or affect the Railroad's right to pursue any claim, in warranty or otherwise, against the Manufacturer of the Equipment for any defect, whether latent or patent, nor does it abrogate the Manufacturer's obligation to cure any nonconforming equipment which is either knowingly or unknowingly accepted hereby.

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Authorized Representative of  
Norfolk Southern Railway Company

Dated: