
LEASE OF RAILROAD EQUIPMENT

Dated as of December 11, 1973

between

ROBERT W. MESERVE

and

BENJAMIN H. LACY,

Trustees of the Property of

Boston and Maine Corporation, Debtor

and

**THE FIRST PENNSYLVANIA BANKING AND
TRUST COMPANY,**

as Trustee

7267 - 

RECORDED AND FILED
DEC 12 1973 - 10 10 AM
INTERSTATE COMMERCE COMMISSION

Filed and recorded with the Interstate Commerce Commission pursuant to
Section 20c of the Interstate Commerce Act on _____, 1973, at
_____.m., recordation number _____.

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LEASE OF RAILROAD EQUIPMENT dated as of December 11, 1973, between Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor (hereinafter called the Debtor) (such Trustees together with their successors and assigns being hereinafter called the Trustees or collectively called the Lessee), and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania banking corporation (hereinafter called the Lessor), as Trustee under a trust agreement dated as of the date hereof with COMMERCIAL CREDIT CAPITAL CORPORATION, as beneficiary (hereinafter called the Trustor).

WHEREAS, on the 12th day of March, 1970, a petition for reorganization of the Debtor was filed under Section 77 of the Bankruptcy Act in the United States District Court for the District of Massachusetts and such petition was duly approved as properly filed by order entered by said Court (the proceedings with respect thereto being hereinafter called the Reorganization Proceedings), and Robert W. Meserve and Benjamin H. Lacy were duly qualified as trustees of the property of the Debtor on May 11, 1970 and August 2, 1973 respectively.

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) with General Motors Corporation (hereinafter called the Builder), wherein the Builder has agreed to construct, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign its interest in the Conditional Sale Agreement to The Provident Bank, Corporate Trust Department, as agent (hereinafter, together with its successors and assigns, referred to as the Agent) pursuant to an Agreement and Assignment (hereinafter called the Assignment) dated as of the date hereof, between the Builder and the Agent, a copy of which has been delivered to the Lessor and the Lessee; and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted by it on or before December 31, 1973, and settled for under the Conditional Sale Agreement on or prior to December 31, 1973 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Conditional Sale Agreement, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. *Financing.* This Lease provides for the lease by Lessee from the Lessor of Units delivered to the Lessor prior to December 31, 1973, such Units to be financed pursuant to a Finance Agreement among The Provident Bank, Corporate Trust Department as Agent and The Provident Bank, an Ohio banking corporation (hereinafter called the Investor) dated

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as of the date hereof. Payment for such Units by Lessor is to be made in accordance with the provisions of Article 4 of the Conditional Sale Agreement.

§ 2. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be delivered to the Lessee at the Builder's EMD PLANT La Grange, Illinois. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with §5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease (i) a payment on the Closing Date (as defined in the Conditional Sale Agreement) in an amount equal to 2.588% of the Purchase Price (as defined in the Conditional Sale Agreement and hereinafter called the "Purchase Price") of each Unit settled for under the Conditional Sale Agreement, (ii) a payment on January 1, 1974 in an amount equal to .0288% of The Purchase Price of each Unit settled for under the Conditional Sale Agreement for each day elapsed from and including the Closing Date with respect to such Unit to and including December 31, 1973, and (iii) 59 consecutive quarterly payments, payable January 1, April 1, July 1, October 1 in each year commencing April 1, 1974. The first 11 of such 59 payments shall be in an amount equal to 2.588% of the Purchase Price of each Unit subject to the Lease on each such date and the last 48 quarterly payments shall be in an amount equal to 2.892% of the Purchase Price of each Unit subject to this Lease on each such date.

All payments provided for in this Lease shall be made for the account of the Lessor or the Lessor's assignees as the Lessor or said assignees shall designate.

On or before the date upon which payments to the Agent under the Conditional Sale Agreement and the Assignment are due and owing, the Agent is hereby authorized to apply funds received hereunder to satisfy the obligations of the Lessor under the Conditional Sale Agreement and the Builder's Agreement due and payable at the time (or within 15 days thereafter) such payments are due hereunder and, so long as no event of default under the Conditional Sale Agreement shall have occurred and be continuing, the payments to be made on the Closing Date and on January 1, 1974 and any balance thereafter shall be promptly paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the

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Lessor under this Lease or under the Conditional Sale Agreement, or the Builder or the Agent or otherwise, provided that nothing herein shall be deemed to impair the Lessee's right to assert and sue upon such claims in separate actions; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

The obligations to make rental and other payments under this Lease will constitute expenses of administration of the Lessee, and will rank equally and ratably in priority of payment with all other expenses of administration of the Lessee, except trustees' certificates heretofore or hereafter issued by the Lessee.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on January 1, 1989.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Conditional Sale Agreement, are subject to the rights of the Vendor under the Conditional Sale Agreement. If any event of default should occur under the Conditional Sale Agreement, the Agent may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Conditional Sale Agreement.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, per-

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manently and conspicuously marked on both sides of each Unit, in letters not less than one inch in height, the following: "Leased from THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, Trustee for COMMERCIAL CREDIT CAPITAL CORPORATION; subject to a security interest of THE PROVIDENT BANK", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Agent's Security Title (as defined in The Conditional Sale Agreement) to such Unit and the rights of the Lessor under this Lease and of the Agent under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Agent and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereinafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sales Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such

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Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sales Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to Article 6 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

In the event any reports with respect to impositions involving any Units are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Agent in such Units or notify the Lessor and the Agent of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Agent.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 7. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Agent with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor with respect to such unit the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and the Lessee shall be vested with title to such Unit.

The Casualty Value of each Unit as of any quarterly rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date (such numbers commencing with the payment due on the Closing Date and excluding the payment due on January 1, 1974.)

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	114.1253%	5	114.2537%
2	115.1026	6	113.8702
3	114.8728	7	113.4389
4	114.5900	8	112.9593

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<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
9	112.4307%	35	68.4511%
10	111.8570	36	66.8758
11	111.2377	37	65.2604
12	110.5721	38	63.6175
13	105.4617	39	61.9467
14	104.6160	40	60.2475
15	103.7255	41	58.5196
16	102.7897	42	56.7648
17	101.8082	43	54.9827
18	100.7847	44	53.1730
19	99.7189	45	51.3353
20	98.6102	46	49.4690
21	92.9710	47	47.5738
22	91.7797	48	45.6492
23	90.5486	49	43.6948
24	89.2774	50	41.7101
25	87.9656	51	39.6946
26	86.6173	52	37.6479
27	85.2321	53	35.5695
28	83.8096	54	33.4589
29	77.8624	55	31.3156
30	76.3689	56	29.1391
31	74.8417	57	26.9290
32	73.2804	58	24.6846
33	71.6848	59	22.4060
34	69.9869	60	17.5346
		After 60	15.0000

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee hereby assigns any and all rights to receive payment in settlement for destruction of any Unit by another carrier (hereinafter called the Settlement) to the Lessor. The Lessor hereby directs the Lessee to collect and receive such Settlement in trust for and for the benefit of the Lessor, and, to the extent such Settlement does not exceed the payments due to the Lessor in respect of a Casualty Occurrence of such Unit or Units for which the Settlement is made, to pay such Settlement over to the Lessor. The Lessor agrees to apply such Settlement, to the extent received, towards the satisfaction of Lessee's obligation to make payment to the Lessor in respect of a Casualty Occurrence of the Unit or Units for which Settlement is made, and the Lessee shall be entitled to any excess of such Settlement over such obligation.

§ 8. *Annual Reports.* On or before March 31 in each year, commencing March 31, 1975, the Lessee will furnish to the Lessor and the Agent an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement, the amount, de-

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scription and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Agent may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and Article 10 of the Conditional Sale Agreement have been preserved or replaced. The Lessor shall have the right, by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have under the provisions of Article 13 of the Conditional Sale Agreement. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.**

The Lessee agrees, for the benefit of the Lessor and the Agent, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Agent, adversely affect the property or rights of the Lessor or the Agent under this Lease or under the Conditional Sale Agreement.

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The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit (except communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessor and the Agent as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Agent from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Conditional Sale Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Agent of the Units or the leasing thereof to the Lessee.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur and be continuing:

A. default shall be made in payment of any part of the rental provided in § 3 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

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D. a decree or order is entered in the Reorganization Proceedings preventing or disabling the Trustees from performing any of their obligations under this Agreement; or

E. if the obligations of the Trustees hereunder are assumed by a corporation or by the Debtor's successor pursuant to a plan of reorganization for the Debtor approved in the Reorganization Proceedings or by an assignee under Section 12 hereof, as provided herein (such corporation, successor or assignee, being hereinafter called the Successor) and either

(i) A petition for reorganization under Section 77 of the Bankruptcy Act as now constituted or as said Section 77 may be hereafter amended shall be filed by or against the Successor, 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 assumed obligations of the Successor under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees, within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(ii) Any proceedings shall be commenced by or against the Successor for any relief which includes, or might result in, modification of the assumed obligations of the Successor under this Lease under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, 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 Successor 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 Successor or for the property of the Successor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

(a) proceed, by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the

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Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) that percentage of the Purchase Price of the Equipment (as defined in the Conditional Sale Agreement) as set forth on Schedule I hereto opposite the last quarterly period with respect to which the lease rental was paid by Lessee under this Lease, plus any interest which has accrued pursuant to the provisions of Article 16 of the Conditional Sale Agreement subsequent to the Declaration of Default, said total to be reduced by the total net proceeds, if any, paid to Vendor and Vendee following any sale of the Equipment under the Conditional Sale Agreement or, if there is no sale, the fair market value of the Equipment on the date of the Declaration of Default (as defined in the Conditional Sale Agreement) said fair market value to be determined by agreement of the parties, including any assignee of this Lease, or, in the event agreement cannot be reached, in the same manner as set forth in § 13 hereof; provided, however, that in the event that sale of the Equipment is prevented by the order of a court of competent jurisdiction or by any other governmental action, no reduction in the amount owing shall be made until such time as the Vendor receives any "income or proceeds of the Equipment" as that term is defined in the Conditional Sale Agreement; plus (ii) any damages, expenses, including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any

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Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. *Assignment; Prohibition Against Liens; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder, except the provisions of § 17 hereof and the rights to enforce said provisions under the remedies provided in § 10 hereof, shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall include the assignees of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreement, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Conditional Sale Agreement but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as hereinafter provided in this § 12. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Agent not

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related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by this Section 12.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreement or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

The rights of Lessee under this Lease may not be assigned by the Lessee, except that, with the prior written consent of the Lessor and the Investor (which consent shall not be unreasonably withheld), the Lessee may assign all of its rights under this Lease to a third party of reliable standing with the financial community which shall have duly assumed Lessee's obligations hereunder.

Nothing in this Section 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad or federal corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreement) into or with which the Debtor shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines or railroad of the Debtor.

The Reorganization Proceedings shall not be dismissed or terminated nor shall the property of the Debtor be surrendered by the Trustees or their successor or successors, unless, (a) as a condition of such dismissal or termination or such surrender, all of the obligations then existing or to accrue of the Trustees under this Lease shall be assumed as a general obligation by the Debtor's successor pursuant to a plan of reorganization

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approved in the Reorganization Proceedings or by any other railroad corporation acquiring all or substantially all of the lines of railroad of the Debtor or as an obligation, having the same status and priorities as those of the Trustees under this Lease, by any receiver or receivers in equity, or trustee or trustees, that shall succeed the Trustees, or (b) payment in full in cash (or provision therefor satisfactory to the Lessor and the Agent) is made to the Agent of the Casualty Value of the Equipment and all damages, claims, or any other moneys payable to or in favor of the Lessor and/or the Agent pursuant to this Lease or the Conditional Sale Agreement, together with interest thereon as herein provided to the date of payment thereof.

In case of any sale or conveyance of all or substantially all of the lines of railroad of the Debtor, provided that the sale of any or all of the lines within Interstate Route 495 shall not be deemed to be a sale of substantially all of the lines of railroad of the Debtor, the purchaser, or transferee of the purchaser, shall not be at liberty to refuse to accept performance of this Lease or to disaffirm it and any such purchaser and any such transferee shall assume and agree to perform each and all of the obligations of the Trustees hereunder, unless provision is made for the payment to the Agent as provided above in clause (b) of the next preceding paragraph.

Whenever used in this Lease, the term "Trustees" shall be deemed to mean any corporation (including the Debtor), receiver or receivers in equity, trustee or trustees, purchaser or transferee of any purchaser which shall have assumed and agreed to perform each and all of the obligations and covenants of the Trustees hereunder.

§ 13. *Purchase and Renewal Options.* 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 term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for one or two additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, at a rental payable in 20 quarterly payments, each in an amount equal to the "Fair Market Rental"; such quarterly payments to be made on January 1, April 1, July 1 and October 1 in each year of the applicable extended term or (b) to purchase all, but not fewer than all, the Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value or Fair Market Rental 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 buyer-user or lessee, as the case may be (other than (i) a lessee currently in possession and (ii) a used equipment dealer), and an informed and willing seller or lessor, as the case may be, under no compulsion to sell or 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 four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market

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Rental, as the case may be, of the Units, such value shall be determined in accordance with the foregoing definition 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.

In the event the Lessee elects to purchase the Equipment, upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of

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any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* On the Closing Date (as defined in the Conditional Sale Agreement), the Trustees will deliver to the Lessor a counterpart of the written opinion of counsel for the Trustees, addressed to the Lessor and the Agent, in scope and substance satisfactory to the Lessor, to the effect set forth in Section 6(f) of the Assignment and to the further effect that:

A. the Lease has been duly authorized by the Court upon due notice and duly executed and delivered by the Trustees and constitutes a valid, legal and binding agreement of the Trustees, enforceable in accordance with its terms;

B. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units; and

C. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease by the Trustees.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Conditional Sale Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Agent for the purpose of proper protection, to their satisfaction, of the Agent's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the assignment thereof to the Agent; and the Lessee will promptly furnish to the Agent and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Lessor. This Lease and the Conditional Sale Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

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The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§ 17. *Federal Income Taxes.* It is the intent of the parties to this Lease that for federal income tax purposes, the Trust will constitute a "Grantor Trust", the Trustor is the owner of the Trust, and, in determining its federal income tax, the Trustor shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof or subsequently (hereinafter called the Code), to an owner of property, including (without limitation) any investment tax credit with respect to the Units. It is agreed by the parties that this Section 17 is for the benefit of the Trustor and that either the Lessor or the Trustor, or both, is vested with all the right, power and authority to enforce this Section 17. As of the Closing Date, it is contemplated that the Trustor will join in the filing of a consolidated federal income tax return. Nevertheless, this Section 17 shall be operative whether Trustor files a separate return or is a member of an affiliated group which files a consolidated income tax return.

Lessee agrees that it will not at any time take any action or file any returns or other documents inconsistent with the foregoing. Lessee agrees to keep and make available for inspection and copying by Trustor such records as will enable Trustor to determine whether it is entitled to the benefit of any amortization or depreciation deduction or tax credit which may be available from time to time with respect to the Units.

If (other than for the reasons set forth in the fourth paragraph of this § 17) the Trustor shall lose, or shall not have or shall lose the right to claim, or if (other than for such reasons) there shall be disallowed with respect to the Trustor, all or any portion of the tax credits or amortization or depreciation deductions based on a depreciable life of not more than ~~18~~ years with respect to any Unit and based on the original use of such Unit having commenced with the Lessor, the rental rate set forth in § 3 and the Casualty Values set forth in § 7 of this Lease applicable to such Unit shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such credits or amortization or depreciation deductions have not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Trustor, will cause the Trustor's net return [after all income taxes, calculated on the assumption that the Trustor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective Federal tax rate and the highest effective state and local income tax and/or excess profit tax rates generally applicable to the Trustor, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting (to the extent at that time permitted by Federal Law) from any such Federal tax 48% of the amount of any such state and local tax, (such rates as so calculated being hereinafter in this Lease called the Assumed Rates), including any penalties thereon] in respect of such Unit under this Lease to equal the net

Wm. J. P. M.
B. H. P.

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return (after all income taxes at the Assumed Rates, including any penalties thereon) that would have been available if the Trustor had been entitled to utilization of all or such portion of such credits or amortization or depreciation deductions which were not claimed or were disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Trustor attributable to the loss of all or any portion of such credits or amortization or depreciation deductions. "Trustor's net return", as used herein, shall be determined on the basis of, and consistent with, the after-tax yield calculations in fact utilized by the Trustor in determining the acceptability to it of the rental rate set forth in § 3 hereof.

The rental rate and Casualty Values shall not be increased as hereinabove provided in this § 17 to the extent that the Trustor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Trustor, all or any portion of such credits or amortization or depreciation deductions with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer by the Lessor of legal title to such Unit, the disposition by the Lessor or Trustor of any interest in such Unit or the reduction by the Lessor or Trustor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Conditional Sale Agreement prior to an event of default hereunder without the prior written consent of the Lessee;

(iv) the failure of the Trustor to claim the same in its income tax return for the appropriate year or the failure of the Trustor to follow proper procedure in claiming the same; or

(v) the failure of the affiliated group of which the Trustor is a member upon the filing of a consolidated federal income tax return, to have sufficient income or income tax to benefit from such credits or depreciation.

If, in the opinion of Trustor's tax counsel (herein referred to as Counsel), a bona fide claim as set forth in a Revenue Agent's Report or Issue Memorandum to all or a portion of such credits or amortization or depreciation deductions on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Trustor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Trustor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, the Lessee shall advance to the Trustor, without interest, sufficient funds to make such payment. The Lessor or Trustor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be incurred therein and shall have furnished the Lessor or Trustor with such reasonable security therefor as may be requested. Trustor

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shall have the right to direct Counsel not to take, or to cease taking, any legal or other action deemed reasonable by Counsel in order to sustain any bona fide claim made hereunder; and such action by Trustor shall relieve Lessee of its obligations under this Section 17 in respect to such claim not so contested.

Upon receipt by Trustor and/or Lessee of any Issue Memorandum or Revenue Agent's Report raising any questions or issues with respect to any credits, deductions or other benefits as provided by the Code with regard to this Lease and/or Equipment leased hereunder, Trustor or Lessee, as the case may be, shall give the other prompt notice of the questions or issues so raised and shall keep the other informed as to the status and progress of any proceedings regarding such questions or issues.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease, and there shall be made all necessary retroactive adjustments in the rentals and Casualty Values theretofore paid in order to carry out the intent of this § 17, which adjustments shall, forthwith following the determination of the amounts thereof, be paid by the Lessee by means of one lump sum payment.

§18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 12% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *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 as follows:

(a) if to the Lessor, at 1500 Chestnut Street, Philadelphia, Pennsylvania 19102, attention of Corporate Trust Department, a copy to Commercial Credit Capital Corporation, 301 North Charles Street, Baltimore, Maryland, 21201, attention President; and

(b) if to the Lessee, at 150 Causeway Street, Boston, Mass. 02114, attention of Treasurer, or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification 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 provision in any other jurisdiction.

This lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and of the Lessee or its duly authorized representative.

§ 21. *Insurance.* The Lessee will maintain, at its sole cost and expense, at all times during the term of this Lease (and thereafter during the

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first three (3) month period in which the Units are being assembled and delivered to the locations specified in Section § 14 hereof), with reputable insurers acceptable to the Lessor or its assignees, insurance in an amount not less than the Casualty Value of each Unit leased hereunder, insuring against loss and destruction of, and damage to, such Unit arising out of fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by Lessee with a deductible amount not in excess of \$25,000. All such insurance policies shall (i) name the Lessor as an additional insured, with losses to be payable to the Lessor and the Lessee (and also to any assignee of the Lessor, if requested by such assignee) as their respective interests may appear, (ii) provide that the policies will not be invalidated as against the Lessor (or as against any assignee of the Lessor) because of any violation of a condition or warranty of the policy or application therefor by Lessee, and (iii) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Lessor and to any assignee of the Lessor. The Lessee shall deliver to the Lessor, prior to the commencement of the lease term for any Unit (or at such other time or times as the Lessor may request) a certificate or other evidence of the maintenance of all such insurance satisfactory to the Lessor, provided, however, that the Lessor shall be under no duty to examine such certificate or other evidence of insurance, or to advise the Lessee in the event that its insurance is not in compliance with this Lease. In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor may procure such insurance and the Lessee shall, upon demand, reimburse the Lessor for all expenditures made by the Lessor for such insurance, together with interest thereon computed at the maximum rate of interest permitted by law, but not more than 12%, from the date of the Lessor's payment until reimbursed by the Lessee. The insurance policies shall also provide that upon receipt by the insurer from the Lessor of any written notice of the occurrence of an Event of Default hereunder, any proceeds payable by said insurer with respect to any loss or destruction of, or damage to, any Unit, shall be payable solely to the Lessor (and to any assignee of the Lessor, if requested by such assignee) from the date of said insurer's receipt of such written notice, up to the date said insurer receives written notice from the Lessor that said Event of Default is no longer continuing hereunder.

§ 22. *Other Obligations.* Lessee agrees that, during the term of this Lease, Lessee will not assume or enter into any other leases of equipment, equipment trust agreements, conditional sale agreements or other liabilities or obligations in connection with the leasing or financing of the future acquisition of equipment or other tangible personal property, (i) if such liabilities or obligations would be entitled, directly or indirectly, to any priority in right of payment over the obligations of the Lessee under this Lease, or (ii) if such liabilities or obligations would be secured, directly or indirectly, by any mortgage, lien or other security interest in property of the Debtor or Lessee (except the equipment or other property involved in the particular transaction) unless the obligations of the Lessee under this

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Lease are equally and ratably secured thereby, provided that nothing herein shall restrict the right of the Trustees to issue and sell trustees' certificates for any proper purpose.

§ 23. Execution. This Lease may be executed in several counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent shall be deemed the original counterpart. Although this Lease is dated as of ^{December 11,} 1973, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

wmt
per
B.H.L.

§ 24. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Massachusetts, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY,
as Trustee,

by *Wm M. Kray*
Vice President
W. M. KRAYER

[CORPORATE SEAL]

Attest:

D. P. Dorrian
Assistant Secretary
D. P. DORRIAN

Witness: *J. Mee*

ROBERT W. MESERVE [SEAL]
Robert W. Meserve
Trustee

Witness: *J. Mee*

BENJAMIN H. LACY [SEAL]
Benjamin H. Lacy
Trustee

*As Trustees of the Property
of Boston and Maine
Corporation, Debtor
and not individually.*

LEASE OF RAILROAD EQUIPMENT

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this *11th* day of *December* 1973, before me personally appeared *A.M. Kroyer*, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that the seal 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.

Elizabeth J. Sabedra
Notary Public

Notary Public, *Phila. Co.*
My Commission Expires *March 1, 1976*

[NOTARIAL SEAL]

COMMONWEALTH OF MASSACHUSETTS }
COUNTY OF *Suffolk* } ss.:

On this *6th* day of *December*, 1973, before me personally appeared Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor, signers and sealers of the foregoing instrument, and they acknowledged the same to be their free act and deed, as such Trustees, before me.

Eleanor M. Johnson
Notary Public

Notary Public,
My Commission Expires *Dec. 16, 1977*

[NOTARIAL SEAL]

SCHEDULE A

Type	Builder's Specifications	Quantity	Debtor's Road Numbers (Inclusive)	Average Unit Base Price	Total Base Price	Delivery
GP-38-2 2000 h.p. Diesel Electric Locomotives	No. 8090 dated January 3, 1972	12	201- 212	\$251,824 F.O.B. EMD Plant, LaGrange, Illinois	\$3,021,888	EMD Plant, LaGrange, Illinois
Total					<u><u>\$3,021,888</u></u>	

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SCHEDULE I

<u>Last Lease Payment Month/Year</u>	<u>Percent of Purchase Price</u>
01/74	104.3750
04/74	101.4660
07/74	101.0905
10/74	100.6606
01/75	100.1754
04/75	99.6419
07/75	99.0589
10/75	98.4259
01/76	97.7424
04/76	97.0121
07/76	95.7579
10/76	94.4092
01/77	89.8328
04/77	88.6088
07/77	87.3382
10/77	86.0206
01/78	84.6553
04/78	83.2462
07/78	81.7929
10/78	80.2949
01/79	74.2644
04/79	72.6798
07/79	71.0534
10/79	69.3848
01/80	67.6736
04/80	65.9238
07/80	64.1349
10/80	62.3067
01/81	55.9515
04/81	54.0477
07/81	52.1080
10/81	50.1319
01/82	48.1191
04/82	48.5819
07/82	46.5585
10/82	44.4932
01/83	42.3856
04/83	40.2481
07/83	38.0803
10/83	35.8817
01/84	33.6518
04/84	31.3926
07/84	29.1036
10/84	26.7844
01/85	24.4345
04/85	22.0534
07/85	19.6407

LEASE OF RAILROAD EQUIPMENT

SCHEDULE I (Continued)

<u>Last Lease Payment Month/Year</u>	<u>Percent of Purchase Price</u>
10/85	17.1959
01/86	14.7184
04/86	12.2078
07/86	9.6636
10/86	7.0853
01/87	4.4723
04/87	1.8241
07/87 and After	—0—