
AGREEMENT AND ASSIGNMENT

7267 - a

Dated as of December 11, 1973

RECORDATION NO. _____ Filed & Recorded

DEC 12 1973 - 10 10 AM

between

INTERSTATE COMMERCE COMMISSION

GENERAL MOTORS CORPORATION,

Builder

and

THE PROVIDENT BANK,

CORPORATE TRUST DEPARTMENT,

Agent

FEE OPERATION BR.

T.C.C.

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RECEIVED

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

AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of December 11, 1973, between GENERAL MOTORS CORPORATION (hereinafter called the Builder), and THE PROVIDENT BANK, CORPORATE TRUST DEPARTMENT, as Agent (hereinafter called the Assignee).

WHEREAS the Builder, THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, as trustee (hereinafter called the Vendee), under a trust agreement dated as of the date hereof (hereinafter called the Trust Agreement) with Commercial Credit Capital Corporation, as beneficiary (hereinafter called the Trustor), and Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of BOSTON AND MAINE CORPORATION, Debtor (hereinafter called the Debtor) (said Trustees together with their successors in interest being hereinafter called the Trustees or collectively called the Lessee) have entered into a Conditional Sale Agreement dated as of the date hereof, (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment); and the Vendee is leasing the Equipment to the Trustees pursuant to a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) the right, title and interest of Vendee in such Lease being concurrently herewith assigned to the Assignee pursuant to a Lease Assignment dated the date hereof;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called the Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. This Agreement is a part of arrangements for the purchase by Vendee from Builder of Equipment to be delivered prior to December 31, 1973, such Equipment to be financed pursuant to a Finance Agreement between the Vendee and the Investor (as defined in the Finance Agreement) dated as of the date hereof. Payment for such Equipment is to be made in accordance with the provisions of Article 4 of the Conditional Sale Agreement.

SECTION 2. The Builder hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the Security Title (as defined in the Conditional Sale Agreement) of the Builder in and to each unit of the Equipment;

(b) All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 4 thereof, in the last paragraph of Article 14 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Condi-

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tional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee or the Lessee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Article 13 of the Conditional Sale Agreement or relieve the Vendee or the Lessee from their respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee and the Lessee with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 3. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as defined in the Conditional Sale Agreement) and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to

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the delivery of such unit by the Builder under the Conditional Sale Agreement; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Vendee and the Lessee thereunder. The Builder will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee or from the Lessee that such filing and recordation have occurred).

SECTION 4. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee, the Debtor or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee, the Debtor or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee, the Debtor or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee, the Debtor or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee, the Debtor or the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts

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payable to it by the Vendee, the Debtor or the Lessee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 5. The Builder will cause to be plainly, distinctly, permanently and conspicuously marked on both sides of each unit of the Equipment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

Leased from THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY,
Trustee for COMMERCIAL CREDIT CAPITAL CORPORATION;
subject to a security interest of THE PROVIDENT BANK.

SECTION 6. The Assignee, on the Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to the Equipment, shall pay to the Builder an amount equal to the portion of the purchase price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 14 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment then being settled for under the Conditional Sale Agreement, warranting to the Assignee and to the Vendee (i) that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and (ii) that, at the time of delivery of such units under the Conditional Sale Agreement, title to such units is free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and a Certificate or Certificates of Delivery with respect to such units as contemplated by § 2 of the Lease;

(c) A certificate of an officer of the Debtor to the effect that none of the units of the Equipment was placed in the service of the Debtor or otherwise was used by the Debtor prior to delivery and acceptance of such units under the Conditional Sale Agreement and the Lease;

(d) An invoice of the Builder addressed to the Assignee for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Debtor as to the correctness of the prices of such units;

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(e) An opinion of counsel for the Vendee, dated as of the Closing Date, stating that the Conditional Sale Agreement, the Lease, the Lease Assignment and Trust Agreement have been duly authorized, executed and delivered by the Vendee and are legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their terms;

(f) An opinion of counsel for the Trustees, dated as of the Closing Date and addressed to the Vendee as well as the Assignee, to the effect that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Trustees and, assuming due authorization, execution and delivery thereof by the Builder and the Vendee, is a legal, valid and binding instrument enforceable against the Trustees in accordance with its terms, (ii) assuming that this assignment has been duly authorized, executed and delivered by Builder and is a legal and valid instrument binding upon the Builder, Security Title (as defined in the Conditional Sale Agreement) to the units of the Equipment is validly vested in the Assignee, and, as of the date of this opinion, such units are free from all claims, liens, security interests and other encumbrances arising at any time after the Lessee has accepted delivery of such units of the Equipment pursuant to § 2 of the Lease (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease), (iii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery by the Trustees of the Lease or the Conditional Sale Agreement, or if any such authority is necessary, it has been obtained, (iv) the Lease, the Lease Assignment, the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, (v) the Lease Assignment has been duly acknowledged by the Trustees, (vi) the Lease Assignment, assuming due authorization, execution and delivery by the Vendee and the Assignee has been duly authorized, executed and delivered and is a legal, valid and binding obligation of the Vendee, (vii) the Trustees have been duly appointed trustees of the property of the Debtor in proceedings for the reorganization of the Debtor under Section 77 of the Bankruptcy Act by the United States District Court for the District of Massachusetts, such appointment has not been rescinded, and the Trustees are properly empowered to operate the lines and manage the property in the Debtor's estate, (viii) the execution and delivery of the Conditional Sale Agreement and the Lease have been duly authorized by the United States District Court for the District of Massachusetts upon due notice and the orders of said Court have become final and non-appealable, (ix) the obligations of the Trustees under the Conditional Sale Agreement and the Lease have the preferences and priorities specified in the Conditional Sale Agreement and the Lease, including specifically the representations contained in the last paragraph of §3 of the Lease, and (x) the Trustees may not, unless so ordered by said court, disaffirm the Lease or its obligations thereunder.

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(g) An opinion of counsel for the Builder, dated as of the Closing Date, to the effect that (i) the Builder is a corporation duly organized and existing under the laws of its jurisdiction and has the power and authority to own its property and to carry on its business as presently conducted, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Builder and are legal and valid instruments binding upon the Builder and enforceable against the Builder in accordance with their respective terms, (iii) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment and (iv) Security Title to the Equipment is validly vested in the Assignee and the Equipment, at the time of delivery thereof under the Conditional Sale Agreement, was free of all claims, liens, security interests and other encumbrances except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(h) Certified copies of the petitions and orders of the United States District Court for the District of Massachusetts relating to the appointment of the Trustees and the execution and delivery of the Conditional Sale Agreement and the Lease;

(i) An opinion or opinions of counsel for Vendee or the Trustor, dated on or before the Closing Date, stating that the Trust Agreement has been duly authorized, executed and delivered by the Trustor and is a legal and valid instrument binding upon the Trustor and enforceable against the Trustor in accordance with its terms; and

(j) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on the Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

In giving the opinions specified in subparagraphs (e), (f), (g) and (i) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said paragraph (e), counsel may rely (i) as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder and (ii) to the extent appropriate, as to any matter governed by the law of any jurisdiction other than Massachusetts or the United States, on the opinion of counsel for the Builder, or the opinion of counsel for the Lessee as to such matter.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event

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which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, the Security Title (as defined in the Conditional Sale Agreement) of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee and the Lessee, the Conditional Sale Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 9. The terms of this Assignment 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 the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Agreement as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 10. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Interstate Commerce

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Commission for recording and subsequently redelivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment 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.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION

by 
Vice President

[CORPORATE SEAL]

Attest:

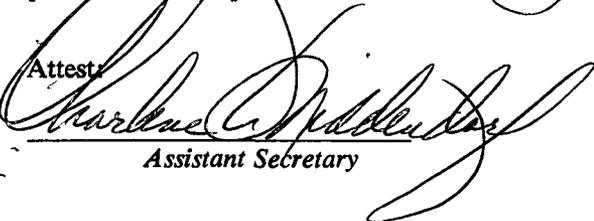

Secretary

**THE PROVIDENT BANK
CORPORATE TRUST DEPARTMENT**

by 
Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary

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STATE OF ~~ILLINOIS~~ Michigan }
COUNTY OF ~~COOK~~ Wayne } ss.:

On this 7th day of December, 1973, before me personally appeared R. B. Smith, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION, that one of the seals affixed to the foregoing instruments 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.

Audrey A. Eckelton acting in Wayne County
Notary Public

Notary Public,
My Commission Expires June 25, 1977

[NOTARIAL SEAL]

STATE OF OHIO }
COUNTY OF HAMILTON } ss.:

On this 7th day of December, 1973, before me personally appeared JAMES A. MARKLEY, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE PROVIDENT BANK, CORPORATE TRUST DEPARTMENT, 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
Notary Public, *Brett Hutchens*
My Commission Expires

[NOTARIAL SEAL]

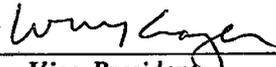
J. BRETT HUTCHENS
Notary Public, State of Ohio
My Commission has no Expiration date
Section 147.03 R. C.

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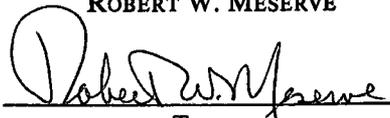
ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of December 11, 1973.

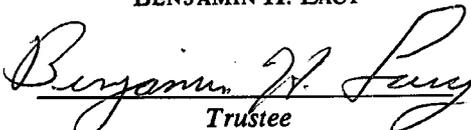
**THE FIRST PENNSYLVANIA
BANKING AND TRUST COMPANY,
as Trustee,**

by 
Vice President

ROBERT W. MESERVE


Trustee

BENJAMIN H. LACY


Trustee

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