

Comerica Bank-Detroit
211 West Fort Street
Detroit, Michigan 48226

RECORDATION NO. 4001-E
6-036A058

RECORDATION NO. 40012
FILED 1425

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Comerica

Bank-Detroit

FEB 5 1986

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION
January 1986

Fee \$

20.00

Secretary ICC Washington, D.C.
Interstate Commerce Commission
Constitution Avenue 12th Street North
Washington, D.C. 20023

2/5/86
20.00
ICE Washington, D.C.
FEB 5 1986 3 55 PM

Secretary:

This letter shall serve as notification of the intent of Comerica Bank-Detroit (formerly The Detroit Bank and Trust Co.) to assign all the terms, conditions, and obligations of the Detroit and Mackinac Railway Company under the Conditional Sale Agreements dated July 25, 1975 and June 21, 1982 entered into with The Detroit Bank and Trust Co. to D.M. Leasing. D.M. Leasing is a wholly owned subsidiary of the Railway created to lease fixed assets to the Railway.

The assets financed in the above Conditional Sale Agreements are among those now being leased from D.M. Leasing by the Detroit and Mackinac Railway. Specifically, the Conditional Sale Agreement dated July 25, 1975 (I.C.C. recordation #8001) covered 50 boxcars, Serial Numbers 2200 through 2249. The Conditional Sale Agreement dated June 21, 1982 (I.C.C. recordation #13671) covered ~~214~~ boxcars, Serial Numbers 2130 through 2199 (excluding 2153, 2175, and 2185), ~~2200 through 2249~~, and 2400 through 2499 (excluding 2420, 2447, and 2470).

The attached Assignment of Lease and Security Agreement describe the appropriate assets in detail and shall serve to amend the referenced Conditional Sale Agreements assigning the Railway's interest in that Agreement to its subsidiary, D.M. Leasing.

Should you have any questions, do not hesitate to contact me.

Very truly yours

Robert C. Robinson, Vice President

LEASE #1985

8001-12
 FEB 05 1985
 INTERSTATE COMMERCE COMMISSION

Agreement of Lease dated the 1st day of January, 1985, by and between D. M. L., Inc., a Michigan corporation, located at 120 Oak Street, Tawas City, Michigan (hereinafter sometimes referred to as "Lessor") and Detroit and Mackinac Railway Company, a corporation organized under the laws of the State of Michigan (hereinafter sometimes referred to as "Lessee").

WHEREAS, Lessee desires to lease from Lessor and Lessor desires to lease to Lessee a certain item of railroad equipment, ("Property"), hereinafter more specifically described, pursuant to the terms and conditions set forth in this lease.

THEREFORE, it is agreed as follows:

1. Lease of Property. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the following described railway equipment:

See Description Attached

2. Delivery of Equipment. Lessor shall deliver Property to Lessee at its railway yard in Tawas City, Michigan. All freight charges incurred in delivery of said Property shall be paid by Lessor.

3. Inspection and Acceptance. Inspection shall be made by Lessee within five (5) days from the time of delivery of Property at Tawas City, and Lessee shall have the right to accept or reject the Property as to condition within said five (5) day period. If not so rejected, the Property is deemed accepted as to condition by Lessee.

4. Use and Possession. Throughout the continuance of this lease, so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of Property and may use such Property:

(a) on its own line of railroad; and

(b) upon the lines of other railroads in the usual interchange of traffic for such compensation as Lessee may determine, but at all times subject to the terms and conditions of this lease;

provided, however, that the Property shall be used in a careful and prudent manner solely for the use for which it is designed.

5. Term. This lease will extend the availability of the specified equipment for one (1) month at a time at a rental rate as shown in paragraph 7. This lease will be automatically continued on a month-to-month basis at the specified rate without further action by either party. This lease will terminate:

- (a) By written notice from Lessee to Lessor on or before the last day of any month during the lease term stating that the Lease is cancelled as to such property as of the last day of the next contract month; or
- (b) By Lessor on account of default by the Lessee; or
- (c) By expiration of fifteen (15) years from the date of this lease.

6. Option to Extend. Not Applicable

7. Rental. Lessee shall pay to Lessor as rental for the Property during the term of this lease or any extension thereof, the following rental:

\$60,000 payable monthly on the first day of each month in advance.

8. Payment. All rental payments, as well as any other payments required to be made by Lessee to Lessor shall be made to Lessor at its office located at 120 Oak Street, Tawas City, Michigan or such other place as Lessor may direct. Rental payments for each calendar or partial calendar month shall be made on or before the first day of each month.

9. Title. Lessor has or will have title to the Property and it shall at all times remain and be the sole and exclusive property of Lessor. Lessee shall have no right or title in the Property except the rights herein expressly granted to it as Lessee.

10. Maintenance. The Property shall be maintained in good working order and repair by Lessee according to the Code of Rules governing the condition of such equipment adopted by the Association of American Railroads, Operations and Maintenance Department, Mechanical Division (hereinafter referred to as "AAR-Interchange Rules"), current as of the date such maintenance or repairs are performed, and to comply with any acts of Congress and/or the rules of any body promulgating rules pertaining thereto now or thereafter in force during the duration of this lease.

Lessee shall pay all bills for any maintenance or repair work performed to the Property by the Lessee.

Lessee shall have the right to return the Property if it is in need of repairs, replacement or maintenance, and Lessee, in its sole opinion, deems it uneconomical to repair or continue the Property under this lease. Lessor may, if it elects, replace the Property withdrawn from this lease as permitted herein (or which is destroyed, damaged or lost as

provided in Paragraph 15 hereof) with Property of like or similar specifications and said replacement shall be deemed to be Property subject to all terms and conditions of this lease as if the same had been originally delivered to Lessee at the time and in the place of the Property for which same is substituted. The parties agree to execute and file for record such other or further documents as may be necessary to include any such substituted Property within the terms and provisions of this lease and of any other document under the terms of which Lessor has assigned its rights hereunder as permitted in Paragraph 19 hereof.

11. Taxes and Other Levies. Lessee shall, during the continuance of this lease, promptly pay all taxes, assessment and other governmental charges, including sales, use or ad valorem taxes levied or assessed upon the Property or the interest of the Lessee herein or any thereof, or upon the use or operation thereof or the earnings arising therefrom, and if any levy or assessment is made against Lessor on account of any of the foregoing matters, exclusive, however, of any taxes on the rentals herein provided, (except any such tax on rentals 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 hereinbefore provided). Lessee will promptly pay or reimburse Lessor for same, but the lessee shall not be required to pay the same so long as it shall be in good faith and by appropriate legal or administrative proceeding contest the validity or amount thereof unless thereby, in the judgment of Lessor, the rights or interest of Lessor will be materially endangered. In the event that any tax reports are required to be made on the basis of Property, the Lessee will either make such reports in such manner as to show the ownership of such Property by Lessor or will notify Lessor of such requirements and will make such reports in such manner as shall be satisfactory to Lessor.

12. Liens. Lessee shall, during the continuance of this lease, keep the Property free from any encumbrances or liens which may be a cloud upon or otherwise affect Lessor's title and shall promptly discharge any legal process which may be levied upon the Property in any action provided such encumbrance, lien or action shall arise out of any act or omission of Lessee or its failure to comply with the provisions of this lease, and provided further, that the Lessee need not discharge any such legal process against Lessor except as may be required by Paragraph 13 hereof.

13. Indemnity. Lessee agrees to indemnify and save harmless Lessor against any charge or claim made against Lessor and against any expense or liability which Lessor may incur by reason of its ownership of any Property while it is subject to this lease, in any manner arising out of or as a result of the use or operation of such Property, and to indemnify and save harmless Lessor against any claim or suit on account of any accident in connection with the operation of such Property

resulting in damage to property or injury to any person, including specifically but not exclusively, (a) the condition (including without limitation, latent and other defects and whether or not discoverable by Lessor) or operation of Property regardless of by whom used or operated; and (b) any act or occurrence arising out of the repair or maintenance of any Property. The indemnities and assumptions of liability herein contained shall survive the termination of this lease. Lessor shall, upon learning of same, give the Lessee prompt notice of any claim or liability hereby indemnified against.

14. Inspection-Inventory. During the continuance of this lease, Lessor shall have the right at its own cost and expense to inspect the Property at any reasonable time, or times, whether on Lessee's line or elsewhere. Lessee shall at least once every year, furnish to Lessor two (2) copies of an accurate inventory of Property in service.

¹⁵ 15. Loss or Destruction of Property. In the event Property¹ lost, stolen, destroyed or damaged beyond economical cost of repair whether or not on Lessee's line or on any handling line, Lessor shall receive from Lessee payment on account of such Property in the amount and in the manner provided in the AAR-Property Rules.

16. Return of Property. Upon the expiration or termination of this lease with respect to Property (except as otherwise provided in Paragraph 15 hereof), the Lessee shall forthwith deliver possession of such Property to Lessor in condition satisfactory for service under Association of American Railroads Rules, at the Tawas City station of Lessee. Until surrender or taking possession of Property as provided in this paragraph, the Lessee shall continue to pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall with respect to such Property, make all other payments and keep all obligations and undertakings required of Lessee under Paragraphs 4, 7, 8, 10, 11, 12, 13, 14, 15, and 16 hereof.

17. Default. Upon the happening of any of the following events, the Lessee shall be in default of the terms and provisions of this lease:

(a) nonpayment by the Lessee within thirty (30) days after the same becomes due of any installment of rental hereunder.

(b) making or permitting any unauthorized assignment of transfer of this lease or of possession of the Property, or any thereof, and failure or refusal to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Property within thirty (30) days after written notice from Lessor to Lessee demanding such cancellation and recovery of possession.

(c) failure of Lessee to comply with or perform any of the other terms and conditions of this lease within thirty (30) days after written notice from Lessor to Lessee demanding compliance therewith and performance thereof.

(d) a decree or order by a court having jurisdiction in the premises shall have been entered.

(i) adjudging Lessee a bankrupt or insolvent, or;

(ii) approving as properly filed a petition seeking reorganization of Lessee under the Bankruptcy or insolvency, or;

(iii) for the appointment of a receiver or trustee in bankruptcy or insolvency of Lessee or of its property or any substantial portion of its property, and within sixty (60) days thereafter (or in case, prior to the end of such sixty (60) day period, a temporary or permanent receiver or trustee shall have been appointed in such proceedings then within sixty (60) days after Lessor shall have demanded in writing that such receiver or trustee take action to assume or reject this lease), the obligations of Lessee under this lease shall not have been assumed by the receiver or trustee in such proceedings, pursuant to an order or decree of such court or otherwise, in such manner that they shall have been given a status comparable to that of those obligations incurred by a receiver or trustee in bankruptcy or insolvency proceedings which cannot later be rejected by a plan of reorganization.

18. Remedies. Lessor shall have all rights and remedies now or hereafter provided by law for the repossession of the Property and for the recovery of damage occasioned by Lessee's default. Without in any way limiting the generality of the foregoing, Lessor shall, in the event of a default by Lessee, have the following additional rights and remedies, which rights and remedies or any of them shall not be deemed exclusive. Lessor may at its option:

(a) elect only to terminate the Lessee's right of possession (but not to terminate the lease), without releasing Lessee in whole or in part from its obligations hereunder for the remaining term of the lease, and thereupon, to take possession of any or all of the Property wherever same may be found, and relet the same or any part thereof to others for such rent and upon such terms as it may see fit. The proceeds of any such reletting shall first be applied to the expense of retaking and reletting of the Property and delivery to the new lessee, and then to the payment of rent due under this lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Lessor shall not be required to accept or receive any lessee offered by Lessee. The election by Lessee to relet the Property and the acceptance of a new

lessee, shall not operate to release Lessee from liability for any existing or future default in any covenant or promise herein contained.

(b) seek to recover from Lessee any and all damages or expenses including reasonable attorney's fees, which Lessor shall have sustained by reason of Lessee's default in any covenants of this lease other than for payment of rental or on account of Lessor's enforcement of its remedies hereunder.

(c) seek to recover or take possession of any or all of the Property wherever same may be found.

(d) seek to recover from the Lessee any and all amounts which under the terms of this lease may be then due or which may become due and unpaid, including rentals accruing hereunder after the date of default, for the use of the Property and also to recover the date of default, for the use of the Property and also to recover forthwith from the Lessee if the term has not expired, as damages for loss of the bargain and not as a penalty, a sum, with respect to Property then subject to this lease which represents the excess of the present worth, at the time of such termination of all rentals for Property which would otherwise have accrued hereunder from the date of such termination to the end of the term as to such Property for such period over the then present worth of the fair rental value of such Property for such period, such present worth to be computed in each case on the basis of five (5%) percent per annum discount, compounded monthly, from the respective dates upon which rentals would have been payable hereunder had this lease not been terminated.

19. Assignment.

(a) All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee, but subject to Lessee's rights under this lease. If Lessor shall give written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rental and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee. The rights of any assignee or any party or parties on behalf of whom such assignee is acting shall not be subject to any defense, set off, counterclaim or recoupment whatsoever whether arising out of any breach of any obligation of Lessor hereunder or by reason of any other indebtedness or liability at any time owing by Lessor to the Lessee.

(b) Lessee shall not assign this lease without the written consent of Lessor, provided, however, that Lessee may assign all of its rights under this lease to another railroad corporation which succeeds to all or substantially all of the business of the Lessee provided that such successor assumed all of the obligations of the Lessee hereunder. Lessee

shall have the right to sublease any of the Property subject to the terms hereof. No assignment or subleasing by Lessee shall serve to relieve Lessee of its obligations hereunder.

20. Opinion of Counsel. Upon the request of Lessor or its assignee at any time or times, Lessee will deliver to Lessor an opinion of counsel for Lessee addressed to Lessor or its assignee in form and substance satisfactory to counsel for Lessor, or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has corporate power to enter into this lease and carry out its obligation thereunder;

(b) this lease constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms, and

(c) the Property which is the subject of such opinion is held by Lessee under and subject to the provisions of this lease, prior to any lien, charge, or encumbrance in favor of anyone claiming by, through or under Lessee; and

(d) no recording, filing or depositing of this lease, other than with the Interstate Commerce Commission, in accordance with Section 20 (c) of the Interstate Commerce Act, is necessary; and

(e) no governmental authorization or approval is necessary in connection with the lease or any other action contemplated hereunder.

21. Notice. Any notice required or permitted to be given pursuant to the terms of this lease shall be properly given when forwarding registered United States mail, return receipt requested, postage prepaid, addressed to:

Lessor: D. M. L., Inc.
120 Oak Street
Tawas City, Michigan 48763

or at such other address as Lessor may from time to time designate by notice in writing.

and

Lessee: Detroit and Mackinac Railway Company
120 Oak Street
Tawas City, Michigan 48763

or at such other address as Lessee may from time to time designate by notice in writing.

22. Recording of Lease. Prior to the delivery and acceptance of the Property, Lessor intends, without expense to Lessee, to cause this lease and any assignment thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20 (c) of the Interstate Commerce Act. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of proper protection to the satisfaction of counsel for Lessor, of its title to the Property, or for the purpose of carrying out the intention of this lease. Except as hereinbefore provided, Lessee will pay all cost, charges and expenses incident to the filing, refiling, registering, reregistering, recording and rerecording of any such further instrument or incident to the taking of any such other action, and will furnish to Lessor certificates or other evidence of any such action.

23. Governing Law-writing. The terms of the lease and all rights and obligations hereunder shall be governed by the laws of the State of Michigan. The terms of this lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. Counterparts. This lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

25. Severability-Waiver. If any term or provision of this lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this lease or the application of such term or provision, to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this lease shall be valid and be enforced to the fullest extent permitted by law. Failure of Lessor to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of this situation or contingency giving rise to such right.

26. Terminology. In construing any language contained in this lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so required, the singular shall include the plural and vice versa.

27. Past Due Rental. Anything to the contrary herein contained notwithstanding, any nonpayment of rental due hereunder, whether during the thirty (30) day period within which a default may be cured or for a longer period and whether

or not deemed a default or violation of this lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to six percent (6%) per annum (or, if such rate may not be lawfully charged, then the highest rate which may lawfully be charged) of the overdue rentals for the period of time during which they are overdue.

28. Benefit. The covenants, conditions and agreements shall bind and inure to the benefit of the parties, their successors and assigns (to the extent permitted in Paragraph 19 hereof) and the term Lessor and the term Lessee shall mean, respectively, all of the foregoing persons who are at any time bound by the terms hereof, or who are entitled to claim the benefit of the terms hereof, without limiting the generality of the foregoing, and the indemnities of the Lessee contained in Paragraph 13 hereof shall apply to and inure to the benefit of any assignee of Lessor and, if such assignee is the Trustee under an indenture under which Notes of Lessor have been issued in connection with the financing of the cars, then to any holder of such notes.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this lease as of the day and year first above written.

D. M. L., Inc.
a Michigan Corporation

ATTEST

Mary J. Wilson

By

Charles C. Roberts
Its President

DETROIT AND MACKINAC RAILWAY CO.
a corporation organized under
the laws of the State of
Michigan

ATTEST

Shirley R. Luedtke

By

Bennett J. Bissan
Its Vice Pres. - Gen. Mgr.

D. M. L., Inc.
 Fixed Assets at
 January 1, 1985

	I. D. Number	Year of Purchase
Locomotives (3.84)	646	1946
	469	1946
	10	1958
	1077	1977
	977	1978
Rolling Stock (4.09)	B2100 (67)	1972
	B2200 (50)	1975
	B2400 (97)	1977
	H5100 (21)	1983
	H5400 (63)	1974
	H9600 (8)	1976
	H5800 (25)	1980
Passenger Equip. (4.09)	#3	1975
	4	1975
	5	1975
	6	1976
	7	1976
Work Equipment	#2	1955
	CR 508	1950
	SP 2	1978
Track Equipment (5.0)	T373	1973
	TI445-2	1979
	TI445-1	1979
	BR 455	1980