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INTERSTATE COMMERCE COMMISSION
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INTERSTATE COMMERCE COMMISSION
12139-B
AUG 28 1980 - 11 30 AM
INTERSTATE COMMERCE COMMISSION

BERNARD D. ATWOOD
JAMES M. ESTABROOK
EDWARD H. MAHLA
JOHN C. MOORE
MacDONALD DEMING
GORDON W. PAULSEN
M. E. DeORCHIS
DAVID P. H. WATSON
RICHARD G. ASHWORTH
EDWARD L. JOHNSON
RICHARD B. BARNETT
MAURICE L. NOYER
SANFORD C. MILLER
FRANCIS X. BYRN
THOMAS R. H. HOWARTH
STEPHEN K. CARR
WALTER E. RUTHERFORD
R. GLENN BAUER
THEODORE M. SYSOL
CARROLL E. DUBUC
THOMAS F. MOLANPHY
LENNARD G. RAMBUSCH
JAMES J. SENTNER, JR.*
RANDAL R. CRAFT, JR.
WILLIAM J. HONAN III
CHESTER D. HOOPER
EMIL A. KRATOVIL, JR.
JOHN J. REILLY
BARTON T. JONES
RICHARD D. BELFORD
BRIAN D. STARER
ROBERT B. HASEROT
JOHN K. WEIR
JUAN A. ANDUIZA
DONALD J. KENNEDY
RICHARD L. JARASHOW
WILLIAM F. PAN

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RCA TELEX: 222974
WUI TELEX: 620362
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CARROLL E. DUBUC
RESIDENT PARTNER WASHINGTON

RALPH E. CASEY
JOHN W. McCONNELL, JR.
OF COUNSEL WASHINGTON

*ALSO ADMITTED TO PRACTICE IN NEW JERSEY

RECEIVED
Aug 28 11 31 AM '80
I.C.C.
FEE OPERATION BR.

August 28, 1980

No. 0-241A060
Date AUG 28 1980
Fee $ 100.00
ICC Washington, D. C.

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FEE OPERATION BR.

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

GENERAL ELECTRIC CREDIT CORPORATION
FINANCING OF RAIL EQUIPMENT
LEASED TO BOSTON AND MAINE CORPORATION
Our file 4184-64

Dear Sir:

We are special counsel for General Electric Credit Corporation ("GECC"), and we enclose for filing (i) four counterparts of a Purchase Agreement dated as of January 15, 1980 (the "Purchase Agreement") between Robert W. Meserve, Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor (the "Lessee") and Portec, Inc. (Railcar Division) (the "Builder"); (ii) four counterparts of an Agreement and Assignment dated as of January 15, 1980 relating to the Purchase Agreement among the Builder, First Security Bank of Utah, N.A., not in its individual capacity but solely as Owner Trustee (the "Owner Trustee") under a Trust Agreement dated as of January 15, 1980 and the Lessee; and (iii) four counterparts of an Equipment Lease dated as of January 15, 1980 between the Lessee and the Owner Trustee. Each of these documents relates to the following equipment:

100, 3,000 cubic foot, 100-ton covered hopper cars, Portec Specifications No. H-100-780626, bearing identifying numbers BM 5200 through BM 5299, both inclusive.

Counterpart W. Berry

The relevant addresses for each of the parties to the transaction are as follows:

Builder:

Portec, Inc. (Railcar Division)
1800 Century Boulevard
Atlanta, Georgia 30345

Owner Trustee:

First Security Bank of Utah, N.A.,
as Owner Trustee
79 South Main Street
Salt Lake City, Utah 84111
Attention: Trust Department,
Corporate Trust Division

GECC:

General Electric Credit Corporation
P.O. Box 8300
Stamford, Connecticut 06904
Attention: Manager, Operations
Leasing & Industrial Loans

Lessee:

Boston and Maine Corporation
Iron Horse Park - High Street North
Billerica, Massachusetts 01862
Attention: Vice President - Equipment

Also enclosed is our check in the amount of $100, payable to the Interstate Commerce Commission to cover the prescribed filing fee.

Please return all additional copies of the enclosed counterparts not required for filing by the Interstate Commerce Commission to Mr. Schneider of our Washington Office.

Very truly yours,

HAIGHT, GARDNER, POOR & HAVENS

By Thomas J. Whalen

Thomas J. Whalen

TJW:rb
Enclosures

RECORDATION NO. 12139-A FILED 1425

AUG 28 1980 - 11 25 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of January 15, 1980

among

PORTEC INC. (RAILCAR DIVISION)

and

FIRST SECURITY BANK OF UTAH, N.A.,
Not in its Individual Capacity
but Solely as Owner-Trustee

and

ROBERT W. MESERVE and BENJAMIN H. LACY,
Trustees of the Property of
Boston and Maine Corporation

AGREEMENT AND ASSIGNMENT dated as of January 15, 1980 by and among PORTEC INC. (RAILCAR DIVISION) (hereinafter called the Builder) and FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Owner-Trustee (hereinafter called the Assignee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with GENERAL ELECTRIC CREDIT CORPORATION, as beneficial owner (hereinafter called the Beneficiary) and ROBERT W. MESERVE and BENJAMIN H. LACY, TRUSTEES OF THE PROPERTY OF BOSTON AND MAINE CORPORATION, DEBTOR (hereinafter called the Purchaser).

WHEREAS, the Builder and the Purchaser have entered into a Purchase Agreement dated as of the date hereof (hereinafter called the Purchase Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Purchaser of the railroad equipment described in Annex B to the Purchase Agreement (said equipment being hereinafter called the Equipment); and

WHEREAS, the Assignee, as lessor, and the Purchaser, as lessee, have entered into an Equipment Lease dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Purchaser of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this 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 Purchaser, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1.

The Purchaser hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Purchaser in and to each unit of the Equipment when and as severally delivered to and accepted under the

Purchase Agreement, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to the Purchase Agreement;

(b) all the right, title and interest of the Purchaser in and to the Purchase Agreement;

without any recourse hereunder, however, against the Assignee for or on account of any of the obligations of the Purchaser under the Purchase Agreement, except that upon the conditions set forth herein, Assignee shall be obligated to pay the Purchase Price (as such term is defined in the Purchase Agreement) of the Equipment and this Assignment shall not (except with respect to the payment of the Purchase Price by the Assignee) subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Purchaser under the Purchase Agreement or the Builder's warranties and agreements under the Agreement nor shall it relieve the Purchaser or the Builder from their respective obligations contained in the Purchase Agreement. Notwithstanding the foregoing assignment, all warranties and indemnities of the Builder contained in Article 7 thereof in favor of the Purchaser shall continue to be enforceable by the Purchaser.

SECTION 2.

The Builder agrees that it shall construct the Equipment in full accordance with the Purchase Agreement and will deliver the same upon completion to the Assignee in accordance with the provisions of the Purchase Agreement, it being agreed that an employee of Purchaser may accept the Equipment pursuant to the Purchase Agreement on behalf of the Assignee; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Purchase Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee that at the time of delivery of each unit of the Equipment under the Purchase Agreement, it had good and marketable title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests

and other encumbrances of any nature except only the rights of the Purchaser, as lessee, under the Lease and as purchaser under the Purchase Agreement, and the security interest retained by the Builder under Article 4 of the Purchase 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 the delivery of such unit by the Builder under the Purchase Agreement. The Builder will not deliver any of the Equipment to the Assignee under the Purchase Agreement (i) until the Lease and related documents have been filed and recorded in accordance with the provisions of the Lease, (ii) until the Builder shall have been notified in writing by or on behalf of the Assignee that the conditions contained in Section 6 hereof have been met, (iii) if the Builder has been notified in writing by the Assignee of the occurrence of any Event of Default (as described in said Section 10 of the Lease) or event which, with the lapse of time and/or demand, could constitute such an Event of Default, (iv) if the Builder has been notified in writing by the Assignee that the Maximum Purchase Price specified in Item 4 of Annex A to the Purchase Agreement would be exceeded by any subsequent delivery of a Unit or (v) if the Builder has been notified in writing by the Assignee of its determination that there has been a material adverse change in the business, prospects or financial condition of the Purchaser since the date of the most recent financial statements referred to in Section 19(h) of the Lease.

SECTION 3.

Except in cases of articles or materials specified by the Purchaser and not manufactured by the Builder and in cases of design, processes, formulae, or combinations specified by the Purchaser and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Article 7 of the Purchase Agreement, to indemnify, protect and hold harmless the Assignee and the Beneficiary 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, formulae, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder on 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 defend against such claim.

SECTION 4.

The Assignee, on each Closing Date fixed as provided in Article 3 of the Purchase Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Builder an amount equal to the Purchase Price, provided that there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to special counsel to the Beneficiary, Haight, Gardner, Poor & Havens, 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 good and marketable title in such units, warranting to the Assignee that, at the time of delivery of such units under the Purchase Agreement, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Assignee under this Assignment and the rights of the Purchaser, as lessee, under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Purchase Agreement by, from, through and under the Builder;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 2 of the Purchase Agreement and Section 2 of the Lease;

(c) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Assignee and the Purchaser as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Assignee, to the effect that the aforesaid instrument or instruments and invoice have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee title to the units of the Equipment in such Group, free from all claims, liens, security interests and other encumbrances (other than the rights of the Purchaser under the Lease) arising from, through or under the Builder and to the effect that good and lawful title to such units of Equipment has been passed to the Assignee; and

(e) releases of any security interests retained by the Builder suitable for recording with the Interstate Commerce Commission and any other public registries where evidence of such security interests may have been recorded relating to the units of Equipment for which payment is to be made on such Closing Date.

In the event that the Assignee shall not make any such payment, the Assignee shall, at the request of the Builder, assign to the Builder, all right, title and interest of the Assignee (if any) in and to the units of the Equipment with respect to which payment has not been made by the Assignee, without recourse to the Assignee unless the Assignee shall have failed to make such payment notwithstanding its receipt of the documents specified in this Section 4 and compliance by the Builder with the provisions of Section 2 hereof in satisfactory form as aforesaid, and in such event the Purchaser agrees, upon request of the Builder, to lease such units from the Builder pursuant to a lease having substantially similar terms as the Lease. Assignee agrees to provide such documents confirming such assignments as may reasonably be requested by the Builder and shall not, prior to the final Closing Date, assign any interest in this Agreement, the Purchase Agreement or the Lease.

Any unit of Equipment (i) not delivered and accepted on or before October 31, 1980 or (ii) with respect to which there has been a failure of the conditions set forth in Section 2 and Section 4 hereof, shall be excluded from this Assignment and the Assignee shall be relieved of its obligation to purchase and pay for such Equipment under the terms of the Purchase Agreement. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Assignment to the Equipment not so excluded herefrom.

SECTION 5.

The Builder hereby:

(a) represents and warrants to the Purchaser and the Assignee, that this Assignment and the Purchase Agreement were duly authorized by it and lawfully executed and delivered by it for valid consideration, that, assuming due authorization, execution and delivery by the Assignee and the Purchaser, this Assignment and the Purchase Agreement are, insofar as the Builder is concerned, legal, valid and existing agreements binding upon the Builder in accordance with their terms and that, insofar as the Builder is concerned, they are now in force without amendment thereto; and

(b) agrees it will from time to time, 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 all 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.

SECTION 6.

The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall

be entitled to all the rights arising out of the filing, recording or depositing of the Lease or this Assignment and any financing statements related thereto as shall be conferred by the laws of the several jurisdictions in which the Lease or this Assignment or any financing statements related thereto shall be filed, recorded or deposited, or in which the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

The Assignee has entered into this Assignment on the assumption that it and the Beneficiary will receive, and its obligations hereunder shall be conditioned upon, receiving on or before the first delivery date (hereinafter called the First Delivery Date) of any unit of the Equipment:

(a) an opinion of counsel for the Purchaser, to the effect set forth in subparagraphs (a), (b), (c), (e) and (f) of Section 19 of the Lease and to the further effect that (i) no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Purchaser, now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Assignee therein; (ii) the Lease has been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and such filing with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 will protect the Assignee's rights therein and in the Equipment, and no other filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency thereof is necessary in order to protect the rights of Assignee or the Beneficiary in the Lease or in the Equipment in any state of the United States of America or the District of Columbia; and (iii) as to such other matters incident to the transactions contemplated by this Assignment as the Assignee may reasonably request;

(b) an opinion of counsel for the Builder to the effect that (i) the Builder is a duly organized and validly existing corporation in good standing under the

laws of the jurisdiction of its incorporation and has the power and authority to carry on its business as now conducted and (ii) the Purchase Agreement and this Assignment have each been duly authorized, executed and delivered by the Builder and are legal, valid and binding instruments, enforceable against the Builder in accordance with their terms;

(c) a certificate of the Purchaser to the effect that:

(i) the Purchaser is not in default under the Lease, the Purchase Agreement or this Assignment;

(ii) The representations and warranties of the Lessee in Section 19 of the Lease are true and correct as of the First Delivery Date as if made on and as of such date;

(iii) there has not been any material adverse change in the business prospects or financial condition of the Debtor since the date of the most recent financial statements referred to in Section 18(h) of the Lease; and

(iv) attached thereto is a full, true and complete copy of the Order (as such term is defined in the Lease) to which no appeal has been taken and which remains in full force and effect on the First Delivery Date;

(d) an opinion satisfactory to the Beneficiary of its special tax counsel Sullivan and Cromwell concerning the tax consequences of its investment in the transactions contemplated by this Agreement;

(e) from BRAE CORPORATION, a useful life representation letter, satisfactory to the Assignee, to the effect that each unit of the Equipment will have a useful life of at least twenty-three years and a residual value of at least 20% of its Purchase Price at the end of the eighteen year term of the Lease;

(f) an opinion of counsel for the Assignee to the effect that (i) the Assignee is a national banking association duly incorporated, validly existing and in good standing under the laws of the United States of America; (ii) the Assignee has full power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver the Trust Agreement, the Lease and this Agreement and to fulfill and comply with the terms, conditions and provisions hereof and thereof; and (iii) this Agreement, the Lease and the Trust Agreement have been duly authorized, executed and delivered by the Assignee and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute valid, legal and binding agreements, enforceable against the Assignee in accordance with their terms;

(g) an opinion from McCarthy and McCarthy, special Canadian counsel, to the effect that the Lease has been duly deposited with the Register General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada, and no further filing, recording or deposit (or giving of notice) with any other federal, provincial or local government or agency thereof is necessary in order to protect the rights of the Assignee under the Lease in and to the Equipment under the Lease in Canada or any Province thereof;

(h) a certificate of an officer of the Purchaser to the effect that none of the units of Equipment have been or will be placed in service by the Purchaser or any other person prior to delivery and acceptance of such units under the Lease;

(i) a certificate of an officer of Fairfield & Ellis, Inc. or other independent insurance broker acceptable to the Beneficiary evidencing the maintenance of the insurance required by Section 7 of the Lease on all of the Equipment except to the extent such Equipment in self-insured, as allowed therein.

In giving the opinion specified in subparagraphs (a), (b) and (f) of this Section 6, counsel may qualify its opinion to the effect that any agreement is enforceable in

accordance with its terms by a general reference to limitations as to enforceability imposed by rules of equity or by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, other than the Reorganization Proceedings (as such term is defined in the Lease). In giving the opinion specified in subparagraph (a)(ii) of this Section 6 as to the due filing of the Lease with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, counsel may rely on an opinion to such effect by Messrs. Haight, Gardner, Poor & Havens.

Upon satisfaction or waiver of the above conditions on or before the First Delivery Date the Beneficiary shall give written notice thereof to the Builder.

SECTION 7.

This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart marked "ORIGINAL COUNTERPART" delivered to the Assignee shall be deemed to be the original counterpart and all other counterparts shall be deemed to be duplicates thereof. Although for convenience this Assignment is dated as of the date first above written, 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 names by duly authorized officials, and their respective seals to be hereunto affixed and duly attested, all as of the date first above written.

PORTEC INC. (RAILCAR DIVISION),

By: S. G. Kovar

Title: Vice President

(CORPORATE SEAL)

ATTEST:

J. C. Horton
Vice President and Secretary

FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Owner-Trustee

By: [signature]

Title: ASSISTANT TRUST OFFICER

(CORPORATE SEAL)

ATTEST:

[signature]

ROBERT W. MESERVE AND BENJAMIN H. LACY, TRUSTEES OF THE PROPERTY OF BOSTON AND MAINE CORPORATION, DEBTOR

Robert W. Meserve
As trustee and not individually

Benjamin H. Lacy
As trustee and not individually

STATE OF ILLINOIS)
) ss.:
COUNTY OF DU PAGE)

On this 25th day of August, 1980, before me personally appeared S. A. Kovach, to me personally known, who, being by me duly sworn, says that he is a Vice President of PORTEC INC. (RAILCAR DIVISION), 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.

Carol S. Stuckmann
NOTARY PUBLIC

My Commission Expires:

(NOTARIAL SEAL)

MY COMMISSION EXPIRES SEPT. 10, 1983

COMMONWEALTH OF MASSACHUSETTS,)
) ss.:
COUNTY OF SUFFOLK,)

On this 26th day of August, 1980, before me personally appeared ROBERT W. MESERVE, to me personally known, who, being by me duly sworn, says that he is a Trustee of the Property of Boston and Maine Corporation, Debtor, and that said instrument was signed on behalf of said Debtor by authority of the United States District Court for the District of Massachusetts, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Trustee.

Katherine M. McCarte
NOTARY PUBLIC

My Commission Expires: Jan. 26, 1984.

(NOTARIAL SEAL)

COMMONWEALTH OF MASSACHUSETTS,)
) ss.:
COUNTY OF SUFFOLK,)

On this 26th day of August, 1980, before me personally appeared BENJAMIN H. LACY, to me personally known, who, being by me duly sworn, says that he is a Trustee of the Property of Boston and Maine Corporation, Debtor, and that said instrument was signed on behalf of said Debtor by authority of the United States District Court for the District of Massachusetts, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Trustee.

Katherine M. McCarte
NOTARY PUBLIC

My Commission Expires: Jan. 26, 1984.

(NOTARIAL SEAL)

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this 22nd day of August, 1980, before me personally appeared John R. Sager, to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the seal of said national bank, that said instrument was signed and sealed on behalf of said national bank 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 national bank.

Casey H Knobel
NOTARY PUBLIC

My Commission Expires: 7/17/82

(NOTARIAL SEAL)