

January 17, 1980

NEW NUMBER ①

Secretary
Interstate Commerce Commission RECORDATION NO. 11397 Filed 1425
Washington, D.C.

0-021A085
JAN 21 1980
Date
Fee \$ 50.00
CC Washington, D.C.

Attn: Recordation Unit

JAN 21 1980 - 3 40 PM
INTERSTATE COMMERCE COMMISSION

Gentlemen:

(a) Request for recording document

In accordance with 49 CFR §1116.4, you are hereby requested to record the enclosed lease with option to purchase. The recordation fee of \$50, and two counterparts of the original document, are enclosed with this request.

(b) Parties to the transaction

Lessor: The Eveready Machinery Company
805 Housatonic Avenue
Bridgeport, Connecticut 06604

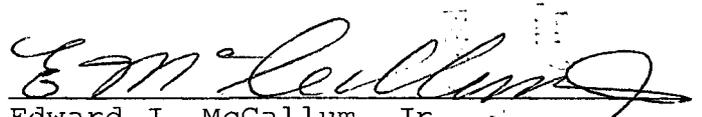
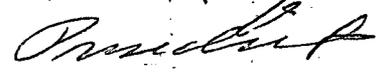
Lessee: Massachusetts Central Railroad Corporation
13 Railroad Street
Amherst, Massachusetts 01002

(c) Description

1 Surplus NW-5, EMD 1,000 H.P. Diesel Locomotive, formerly Souther Railway No. 2100.

- (d) No other property included
- (e) No prior recording

(f) This is to certify that the undersigned, as President of The Eveready Machinery Company, has knowledge of the matters set forth herein. Please return the original document to Douglas A. Strauss, Esq., Pullman, Comley, Bradley & Reeves, 855 Main Street, Bridgeport, Connecticut 06604.


Edward J. McCallum, Jr.


Handwritten notes:
C. J. Kappeler
C. J. Kappeler

January 17, 1980

Secretary
Interstate Commerce Commission
Washington, D.C.

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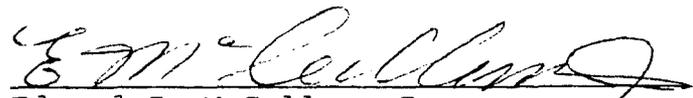
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Edward J. McCallum, Jr.
President

January 19, 1980

Secretary
Interstate Commerce Commission
Washington, D.C.

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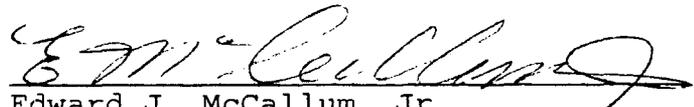
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Edward J. McCallum, Jr.
President

Interstate Commerce Commission
Washington, D.C. 20423

1/21/80

OFFICE OF THE SECRETARY

Douglas A. Strauss, Esq.
Pullman, Conroy, Bradley & Reeves
855 Main Street
Bridgeport, Connecticut

Dear
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/21/80 at 3:40pm, and assigned re-
recording number(s). 11397, 11398, 11399

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

LEASE

JAN 21 1980 - 3 40 PM

INTERSTATE COMMERCE COMMISSION

LEASE, dated January 18, 1980, between EVEREADY MACHINERY COMPANY, a corporation having its principal place of business at Bridgeport, CT (hereinafter called "Lessor"), and MASSACHUSETTS CENTRAL RAILROAD CORPORATION, a Massachusetts corporation having its principal place of business at 13 Railroad Street, Amherst, Massachusetts 01002 (hereinafter called "Lessee").

WHEREAS, Lessee contemplates the purchase from Lessor of the diesel locomotive which is the subject of this Lease (the "Equipment") on or before ninety (90) days from the date hereof but has not obtained the permanent bank financing therefor and will need all or part of said ninety (90) days to effect such financing and whereas Lessor and Lessee acknowledge that time is of the essence in consummating such purchase; and

WHEREAS, Lessee requires the immediate use of the Equipment in its business and Lessor has agreed to lease same to Lessee under the terms hereof with an option to purchase the Equipment being granted to Lessee to be exercised at any time prior to April 18, 1980, under the terms hereof; and

WHEREAS, Lessee has paid over to Lessor on the date of this Lease, the sum of One Hundred Thousand and 00/100 (\$100,000) Dollars as the nonrefundable option price for the Equipment, Seventy Thousand and 00/100 (\$70,000) Dollars of which sum was borrowed by Lessee from The Connecticut National Bank which bank would not have lent such funds to Lessee except upon the security, in part, of the Lessor's guaranty (the Guaranty), and Lessee, in order to exercise the option to purchase the Equipment must effect the release of Lessor from the Guaranty; and,

WHEREAS, The Connecticut National Bank has required that Lessor and Lessee assign to it all of their respective right, title and interest in and to the Equipment and this Lease to secure the Guaranty and Lessee's borrowing, in accordance with the Guaranty, and the two Security Agreement and Assignment documents attached hereto and made a part hereof as Exhibits I, II and III; and

4. Use of Equipment, Compliance, Licenses, etc.

Lessee shall be entitled to the absolute right to possession and control of the Equipment and the use thereof during the term of this Lease so long as no event of default, specified in Paragraph 11 hereof, has occurred. The Equipment, as of the commencement of the Term is located at the Tennessee Valley Railroad Museum in Chattanooga, Tennessee, and Lessee's accepts possession of the Equipment at such location with all subsequent expenditure and effort of removal to be that of Lessee. Lessee shall comply with all laws, regulations, and ordinances applicable to the physical possession, operation and use of the Equipment and agrees to save Lessor harmless against any actual or asserted violations thereof. Lessee agrees to obtain all permits and licenses necessary for the transportation and operation of the Equipment. The Equipment shall be used only by Lessee or its employees and Lessee agrees not to permit any other person, firm, or corporation to use the same.

5. Maintenance, Inspection and Use. Lessee shall maintain the equipment in good working order and make all necessary adjustments and repairs to the same. Lessee shall use the Equipment in the regular course of business only, within its normal capacity and within the limits of its design, construction and condition as of the date of this Lease, without abuse. Lessee shall not make any modification, alteration, or addition to the Equipment without Lessor's consent, and any such additions, when added to the Equipment, shall become the property of the Lessor. Lessee shall preserve and keep the Equipment in good working order and condition, reasonable wear and tear excepted all in accordance with Paragraph 20 hereof. Lessee will permit Lessor access to the Equipment for the purpose of inspection and examination on 24 hours notice except where an emergency requires a shorter notice period.

6. Removal. Lessee shall, with all deliberate speed after the commencement hereof transport the Equipment to the Commonwealth of Massachusetts at its sole expense and effort, and Lessee will not remove the Equipment from the Commonwealth of Massachusetts, without the consent of the Lessor. Lessee shall, upon the request of Lessor, inform Lessor of the location of the Equipment at any and all times during the term of this Lease.

7. Transfers, Encumbrances, etc. Except in connection with Lessee's borrowing from The Connecticut National Bank occurring simultaneously with the execution of this Lease, Lessee agrees not to attempt to sell, mortgage, encumber, pledge, hypothecate, or sublet the Equipment to any other person, firm, association, or corporation except as same may pertain to Lessee's rights to the Equipment to be acquired after exercise of the Option to Purchase contained in Paragraph 21. Lessee agrees promptly to pay or satisfy and otherwise keep the Equipment free and clear of all liens, charges, and encumbrances and all taxes and assessments and other governmental charges levied or assessed upon the interest of Lessee in the Equipment or any of it or upon the use or operation thereof, and on request of Lessor to deliver appropriate satisfactions, waivers, or evidence of payment. Lessee agrees to reimburse Lessor, by prompt payment on demand, for such sum or sums as Lessor may be required to pay to release, satisfy, or otherwise discharge any such liens, encumbrances, charges, or assessments which, unless paid, would have adversely affected the property rights of Lessor in the Equipment and for which Lessee is obligated hereunder.

8. Taxes. Lessee agrees to pay promptly when due all taxes, assessments and other governmental charges levied upon or assessed on the use of the Equipment (including all sales taxes assessed in connection with the Lease and the exercise of the Option to Purchase contained herein but excluding franchise or other taxes measured by the value of the Equipment, and any income taxes payable by Lessor on the rentals herein provided. Lessee hereby agrees to reimburse Lessor, by prompt payment on written demand, for such sums as Lessor may have been required to pay to release, satisfy or otherwise discharge any such taxes, assessments, and charges which, unless paid, would have adversely affected the property rights of Lessor in and to the Equipment and for which Lessee is obligated hereunder.

9. Indemnification. Lessee agrees to indemnify, protect, defend and save harmless Lessor from and against any and all claims and demands for damages, direct or indirect, to property and injury or death to persons including payments under any workmen's compensation law or under any plan for employees' disability and death benefits which may arise out of or be caused by the maintenance, use or existence of the Equipment covered by this Lease; pro-

vided, however, that Lessee shall not be required to indemnify Lessor or its successors, or assigns, for loss or liability with respect to the Equipment, resulting from the acts or omissions of the Lessor's employees or agents.

10. Assignment. Except to the extent related to Lessee's borrowing from The Connecticut National Bank of even date herewith or as may be otherwise permitted in this Lease, Lessee shall not assign this Lease or any interest herein without the prior written consent of Lessor. Lessor's right, title, and interest in and to this Lease and the Equipment is being transferred and assigned by the Lessor to The Connecticut National Bank (the "Bank") to secure Lessor's Guaranty of Lessee's \$70,000 Promissory Note of even date herewith, and accordingly, the Bank shall have all the rights, powers, privileges, and remedies of Lessor hereunder, but shall not be obligated to perform any of the obligations of Lessor. To induce the Bank to extend credit on the security of the rights so assigned, Lessee agrees unconditionally, to perform its obligations hereunder for the benefit of the Bank and to pay to such Bank all sums due hereunder, at the times specified herein. Lessee further agrees to hold the Equipment and the possession thereof for and on behalf of such Bank to the extent of such Bank's rights under any assignment subject to and without impairment of Lessee's rights hereunder. A copy of such assignment by Lessor is attached hereto and made a part hereof as Exhibit II.

11. Events of Lessee's Default. In the event that: (a) Lessee shall default in the payment of any installment of rent or other sums payable hereunder for fifteen (15) days after the same is due; (b) Lessee shall default in the observance or performance of any other covenant or agreement in this Lease and such default shall continue for a period of thirty (30) days after notice thereof to Lessee from Lessor, or (c) Lessee shall dissolve or become insolvent (however evidenced) or make a general assignment for the benefit of creditors, or any proceeding under any bankruptcy or insolvency statute or any laws relating to the relief of debtors be commenced by or against Lessee, or a receiver, trustee or liquidator shall be appointed of Lessee or of all or a substantial part of Lessee's assets, or an order, judgment or decree shall be entered by a court of competent jurisdiction and such order, judgment or decree shall continue in effect for any period of sixty (60) consecutive days

without a stay of execution, or any execution or writ or process shall be issued under any action or proceeding against Lessee whereby the Equipment may be taken or restrained; then and in any such event, Lessor may, without notice or demand, (i) immediately terminate this Lease and Lessee's rights hereunder, (ii) require Lessee to make the Equipment available to Lessor for repossession under the terms of Article 12. hereof, provided that the cost of repossession shall be charged to the Lessee and become a sum due under the Lease; (iii) declare immediately due and payable all the rental installments and other sums forthwith due and payable, if any, as liquidated damages and not as a penalty, (iv) proceed by appropriate action to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, which action may include any and all remedies permitted by law, provided that all reasonable attorneys fees, court costs, appraisers' fees and the like shall become a sum due under the Lease.

12. Removal of Equipment, Repossession. Upon termination of this Lease on April 18, 1980 (Lessee having failed to exercise the Option contained in Paragraph 2 hereof, or sooner termination of this Lease, for default or any reason), Lessee agrees, at Lessee's expense, to make arrangements with the owner/operator of any premises upon which the Equipment is then located to remove the Equipment to Lessee's premises leased by Lessee from Boston and Maine Corporation, which leased trackage is located approximately at Route 32 and Knox Avenue, Ware, Massachusetts, and grant access to its said premises to Lessor to remove the same, all of the foregoing to be effected so as to provide Lessor with access to such Equipment by the close of business on April 18, 1980 or the date of any sooner termination of this Lease. From and after April 18, 1980 or such sooner termination of this Lease, as the case may be, Lessor, its agents and employees, shall have the right and permission to enter upon Lessee's premises to remove and repossess the Equipment upon Lessee's notification to Lessor that the Equipment is available for removal, and Lessee shall have no further rights or interest in same. Lessee's rights shall be governed entirely by the terms hereof and Lessee shall not be entitled to any notice to quit, rights of redemption or otherwise unless set forth herein. Upon Lessee's notification, Lessor shall promptly obtain any requisite approval of the applicable railroad

mechanical department for reshipment over interchange and promptly remove the Equipment. Notwithstanding the termination of the Term of this Lease, Lessee shall pay Lessor \$500 per day as additional rental hereunder for each and every day or part thereof after April 18, 1980, during which the Lessor is prevented or unable (through no fault of Lessor) from removing the Equipment from Lessee's premises at the aforesaid location and Lessee, in such case, shall be responsible for the entire cost of removal of the Equipment.

13. Expenses Upon Lessee's Default. Should any legal proceedings be instituted, as a result of default by the Lessee, to recover any monies due or to become due hereunder and/or for possession of the Equipment, the Lessee shall pay all reasonable costs (including reasonable attorney's fees) incurred in exercising or attempting to exercise rights, powers, and remedies herein conferred or now or hereafter existing at law or equity.

14. Lessor's Representations and Warranties. As to the Equipment to be leased hereunder, Lessor warrants that (a) it is either the sole and absolute owner thereof or it has the right to lease the Equipment to Lessee, and no other person has any right to possess the Equipment; (b) the Equipment is free of all encumbrances at the time of delivery to the Lessee except as to the financing transaction with The Connecticut National Bank described herein; (c) Lessor will keep the Equipment free of all other liens, security interests, and encumbrances except as to the financing transaction with The Connecticut National Bank described herein; (d) so long as Lessee is not in default under the Lease, Lessor will do nothing to disturb Lessee's full rights of possession and quiet enjoyment with respect thereto as provided by this agreement.

15. Risk of Loss. The Lessee hereby assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever until such time as the Equipment is available to Lessor to remove same in accordance with the terms hereof upon the termination of the Lease, except that in any event Lessee shall be responsible for loss or damage caused by or attributable to Lessee. No loss or damage to the Equipment or any part thereof shall

impair or discharge any obligation of the Lessee under this Lease which shall continue in full force and effect.

If the Equipment is determined by the Lessor to be lost, stolen, destroyed or damaged beyond repair, the Lessee shall, upon Lessor's notification to Lessee of such determination, secure the immediate release of Lessor from its Guaranty to The Connecticut National Bank of any obligation of Lessee or, if Lessee shall fail to accomplish such release within thirty (30) days after the date of Lessor's notification, pay over to the Lessor the stipulated loss value of the Equipment which shall be Fifty Thousand and 00/100 (\$50,000) Dollars minus any salvage value of the Equipment, which sum shall be immediately payable to Lessor in cash. In the event Lessor shall be so released, this Lease shall terminate and the Equipment shall become the sole property of the Lessee. In the event Lessee shall fail to obtain such release as aforesaid, upon such payment this Lease shall terminate and the Equipment shall be and remain the sole and exclusive property of the Lessor.

16. Miscellaneous. No failure on the part of Lessor to exercise and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by Lessor of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. Any notice, request, or demand given under this Lease, whether required or not, shall be deemed effectively given when mailed if sent by regular mail, postage prepaid, addressed to the party for whom intended at the address stated above or at such other address as either party may hereafter designate for itself by similar notice, or when actually received if given in any other manner. Any provision of this Lease prohibited by law in any state shall, as to such state, be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Lease. This Lease shall be governed by and construed in accordance with the laws of the State of Connecticut and, as to recorda-

tion and notification of the rights herein, the laws of the United State of America. Lessee hereby authorizes Lessor or any assignee hereof to file a financing statement signed only by Lessor or such assignee in all places where necessary to perfect a security interest in the Equipment in all jurisdictions where such authorization is permitted by the Uniform Commercial Code and the laws of the United States of America.

17. Jurisdiction and Service. As part of the consideration for Lessor's executing this Lease, Lessee hereby agrees that, at the option of Lessor or any assignee hereof, all actions or proceedings arising directly or indirectly from this Lease may be litigated in courts having situs within the State of Connecticut, and Lessee hereby consents to the jurisdiction of any local, state, or federal court located within the State of Connecticut, and waives the personal service of any and all process upon the Lessee herein, and consents that all such service of process may be made by certified or registered mail, return receipt requested, directed to the Lessee at the address hereinabove stated; and service so made shall be complete three (3) days after the day on which same shall have been posted as aforesaid.

18. Insurance. The Lessee shall keep the Equipment insured against all risks of loss or damage from every cause whatsoever for not less than \$100,000; and shall carry third party liability, and property damage insurance covering the Equipment, its operation and use. All said insurance shall be in form and amount and with companies approved by the Lessor, with an endorsement in favor of the Connecticut National Bank and the Lessor, as their respective interests may appear. The Lessee shall pay the premium therefor and deliver said policies or duplicates thereof to the Lessor. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to the Lessor, that it will give the Lessor 30 days' written

written notice before the policy in question shall be altered or cancelled. The proceeds of such insurance which may be available after satisfaction of the interest of the Bank, at the option of the Lessor, shall be applied:

(a) toward the replacement, restoration, or repair of the Equipment, or

(b) toward payment of the obligations of the Lessee hereunder.

If, within ten days following notice by the Lessor to the Lessee, the Lessor has failed to receive policies or certificates of insurance in accordance with the paragraph, the Lessor shall, at the Lessor's option, have the right to procure such insurance and any sums so expended by the Lessor shall thereafter be reimbursed by the Lessee to the Lessor and shall become additional rent under this Lease and shall be immediately payable in its entirety.

19. Alterations. Without the prior written consent of the Lessor, the Lessee shall not make any alterations, changes, additions or improvements to the Equipment except when said changes are initiated and recommended by the manufacturer of the Equipment to improve performance or for modernization. All additions and improvements of whatsoever kind or nature made to the Equipment shall belong to and become the property of the Lessor upon the expiration or earlier termination of this Lease.

20. Repairs. The Lessee, at its own cost and expense, shall keep the Equipment in good repair, condition, and working order and shall furnish any and all parts, mechanisms, and devices required to keep the Equipment in good mechanical and working order.

21. Option to Purchase. In consideration of the sum of Ninety Nine Thousand Nine Hundred and Ten and 00/100 (\$99,910) Dollars, the receipt of which is hereby acknowledged, Lessor grants unto Lessee an option to purchase the Equipment at anytime from and after the date hereof until April 18 , 1980 under the terms hereof. The Option shall

be exercised solely by obtaining the full and unconditional release of Lessor from its Guaranty of Lessee's promissory note date January 18, 1980 in the amount of \$70,000 payable to the Connecticut National Bank. The payment of Ninety Nine Thousand Nine Hundred and Ten and 00/100 (\$99,910) Dollars upon the execution hereof as aforesaid, is agreed to be payment for the granting of this Option and is not refundable in any part in the event Lessee declines to exercise its Option herein, as the parties recognize Lessor's obligation under said Guaranty and the release of same as the essential element to the valid exercise of the Option. In order to exercise this option, Lessee shall present to Lessor by delivery as hereinafter set forth, on or before 12:00 noon on April 18, 1980, a full and unconditional release of Lessor's Guaranty duly executed by the Connecticut National Bank in the form attached hereto as Exhibit IV, in exchange for an "as is" bill of sale executed by Lessor in the form attached hereto as Exhibit V. Time is of the essence of this option and Lessee acknowledges and accepts the fact that the failure to exercise same by the aforesaid time shall terminate any and all right, title, claim, interest or equity of redemption, if any, as Lessee may have or claim to have with respect to the Equipment. Delivery as used herein shall mean the delivery to Douglas A. Strauss or Michael N. LaVelle of Pullman, Comley, Bradley & Reeves at 855 Main Street, Bridgeport, Connecticut on any weekday when Pullman, Comley, Bradley & Reeves is open during the hours of 9:00 A.M. to 5:00 P.M., but Lessee shall give 2 days written notice to Douglas A. Strauss prior to the date of such delivery. Upon delivery of such release Douglas A. Strauss or Michael N. LaVelle shall deliver said executed bill of sale to Arden Clarke as the designated representative of Lessee if he is present at the delivery of the release to Douglas A. Strauss.

22. Surrender. Upon the expiration or earlier termination of this Lease, the Lessee shall return the Equipment over to the Lessor or make same available in accordance with the terms elsewhere set forth in this Lease. Upon such return the Equipment shall be in the same repair, condition, and working order as it was when Lessee had the right to obtain possession of it at the commencement of the Lease, ordinary wear and tear resulting from proper use thereof alone excepted.

23. Commercial Transaction. LESSEE ACKNOWLEDGES THAT THIS LEASE AND THE TRANSACTIONS TO BE EFFECTED UNDER IT ARE PART OF A COMMERCIAL TRANSACTION, AND LESSEE HEREBY WAIVES ITS RIGHT TO NOTICE AND HEARING UNDER CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, OR AS OTHERWISE ALLOWED BY ANY STATE OR FEDERAL LAW WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH THE LESSOR OR ITS SUCCESSOR OR ASSIGNS MAY DESIRE TO USE.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their duly authorized representatives the day and year first above written.

EVEREADY MACHINERY COMPANY, LESSOR

Attest:

Albert A. Smith Jr.
Michael Lavelle

BY

Ed M. Cullum
President

Address: 805 Housatonic Avenue

Bridgeport, Connecticut 06604

MASSACHUSETTS CENTRAL RAILROAD CORPORATION, LESSEE

Attest:

Douglas A. Strauss
Michael Lavelle
Michael LaVelle

BY

Peter M. Dearness
Peter M. Dearness

Address: 13 Railroad Street

Amherst, Massachusetts 01002

SCHEDULE A

1 Surplus NW-5, EMD 1,000 H.P. Diesel Locomotive,
formerly designated Southern Railway No. 2100.

EXHIBIT IV

RELEASE OF THE EVEREADY MACHINERY COMPANY

The undersigned, the Connecticut National Bank, hereby releases and discharges Eveready Machinery Company from its Guaranty dated January 18, 1980 of the Note of Massachusetts Central Railroad Corporation dated January 18, 1980.

THE CONNECTICUT NATIONAL BANK

By _____