

1 5285
RECORDATION NO. 5285 Filed 1425

KIRKPATRICK & LOCKHART

SOUTH LOBBY - 9TH FLOOR 1 5285
1800 M STREET, N.W. RECORDATION NO. 5285 Filed 1425
WASHINGTON, D.C. 20036-5891

EXCHANGE PLACE
53 STATE STREET
BOSTON, MA 02109
(617) 227-6000

JUL 14 1987 - 3 42 PM

INTERSTATE COMMERCE COMMISSION

JUL 14 1987 - 3 30 PM

428 BRICKELL AVENUE
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INTERSTATE COMMERCE COMMISSION

1500 OLIVER BUILDING
PITTSBURGH, PA 15222-5379
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WRITER'S DIRECT DIAL NUMBER

July 14, 1987

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7-195A060

Noreta R. McGee
Secretary INTERSTATE COMMERCE COMMISSION
Interstate Commerce Commission
Room 1324
12th & Constitution Avenue, N.W.
Washington, D. C. 20423

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RECORDATION NO. 5285 Filed 1425

JUL 14 1987 - 3 42 PM

No. _____
Date JUL 14 1987
Fee \$ 50.00

INTERSTATE COMMERCE COMMISSION

Re: Shawmut Bank, N.A./Springfield Terminal
Railway Company Equipment Lease

ICC Washington, D.C.

Dear Madam Secretary:

I have enclosed an original and one duplicate copy of the documents described below to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

The documents to be recorded are as follows:

- (1) A Master Equipment Lease Agreement No. 1 dated as of July 13, 1987 between Shawmut Bank, N.A. as lessor and Springfield Terminal Railway Company as lessee;
- (2) Rental Schedules No. A001 and A002 relating to the aforementioned Master Equipment Lease Agreement No. 1; and
- (3) A Guaranty Agreement by Boston and Maine Corporation and Maine Central Railroad Company guarantying the obligations of the lessee pursuant to the Master Equipment Lease Agreement No. 1.

The names and addresses of the parties to the documents are as follows:

(1) Lessor:

Shawmut Bank, N.A.
One Federal Street
Boston, MA 02211

Attention: Equipment Finance and
Leasing Division

MOTOR OPERATING UNIT
JUL 14 3 46 PM '87
TOP OFFICE OF THE SECRETARY

KIRKPATRICK & LOCKHART

Noreta R. McGee
July 14, 1987
Page 2

(2) Lessee:

Springfield Terminal Railway Company
P.O. Box 490
Sterling, MA 01545

(3) Guarantors:

Boston and Maine Corporation
Iron Horse Park
N. Billerica, MA 01862

and

Maine Central Railroad Company
Iron Horse Park
N. Billerica, MA 01862

The equipment subject to the lease constitute 35 General Motors SD-26 4600 class locomotives bearing lessee's serial numbers ST614 through 629 inclusive and ST631 through 649 inclusive. One TKO-710 one piece tie remover manufactured by Porteck, Inc. and one Kershaw on-track brush cutter model 32-8 serial no. 32-142-87.

A short summary of the document to appear in the index is as follows:

(1) Type of document; Lease between Shawmut Bank, N.A., One Federal Street, Boston, MA, as lessor, and Springfield Terminal Railway Company, P.O. Box 490, Sterling, MA, as lessee, dated as of July 13, 1987 and covering 35 General Motors SD-26 4600 class locomotives, one Kershaw on-track brush cutter and one Porteck tie remover.

(2) Guaranty Agreement by Boston and Maine Corporation, Iron Horse Park, N. Billerica, MA and Maine Central Railroad Company, Iron Horse Park, N. Billerica, MA guarantying lessee's obligations under said lease.

KIRKPATRICK & LOCKHART

Noreta R. McGee
July 14, 1987
Page 3

I also enclose requisite filing fee and request that recorded documents be returned to me as counsel for Lessee.

Very truly yours,

Joseph C. Kennedy by foy
Joseph C. Kennedy, Jr.

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

July 15, 1987

Joseph C. Kennedy, Jr.
Kirkpatrick & Lockhart
South Lobby-9th Floor
1800 M. Street, N. W.
Washington, D. C. 200;6-5891

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/14/87 at 3:50 PM, and assigned re-
recording number(s).

Sincerely yours,

Noreta K. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

JUL 14 1987 -3 50 PM

INTERSTATE COMMERCE COMMISSION

GUARANTEE AGREEMENT dated as of July 13, 1987 from BOSTON AND MAINE CORPORATION, a Delaware corporation, and MAINE CENTRAL RAILROAD COMPANY, a Maine corporation ("Guarantors") to the Owner identified below.

RECITALS

A. WHEREAS, Shawmut Bank, N.A. ("Owner") and Springfield Terminal Railway Company ("Company") have entered into a certain Master Equipment Lease Agreement No. 1 dated as of the date hereof (as at any time amended, supplemented and modified including the execution and delivery of any Rental Schedule in respect thereof, the "Lease Agreement"), providing for, among other things, the lease of certain locomotives and other railroad equipment (the "Equipment") to the Company;

B. WHEREAS, Guilford Transportation Industries, Inc., (the parent company), is the owner of all the issued and outstanding shares of capital stock of the Company and the Guarantors;

C. WHEREAS, Owner, the Company and the Guarantors, or certain of them, have entered into or will enter into certain additional agreements in connection with the leasing of the Equipment under the Lease Agreement ("Operative Documents") relating to the acquisition of the Equipment by the Owner and the lease of the Equipment to the Company and the subsequent sublease of the Equipment to the Guarantors as to which the Guarantors will use and operate the Equipment under such subleases.

D. WHEREAS, it is a condition precedent to the acquisition and lease of the Equipment that the Guarantors enter into this Guarantee Agreement (as at any time amended, supplemented and modified, the "Guarantee");

NOW THEREFORE, the parties hereto agree as follows:

1. Definitions. Unless otherwise defined herein or otherwise required by context, terms used herein (including in the above recitals) which are defined in the Lease shall, when used herein, have the meaning specified herein.

2. Guarantee. To enter into the Lease and the Operative Documents, the Guarantors do jointly and severally, hereby absolutely, unconditionally and irrevocably guarantee to the Owner the due and punctual payment, performance and observance by the Company of each and every covenant and agreement to be performed or observed by the Company under the Lease and the Operative Documents, including, without limitation, (i) the due and punctual payment by the Company of all Rent (including Basic Rent and Additional Rent) all payments of Stipulated Loss Value, all indemnity payments and each and every amount which the Company is or at any time may become obligated to pay under the Lease and the Operative Documents, and (ii) the due and punctual

payment, performance and observance of each and every other indemnity, obligation or liability of the Company under the Lease and the Operative Documents, including any Operative Document to which the Company may become a party after the date hereof (all such covenants, agreements, payments and other obligations referred to in this Section (including without limitation all such covenants, agreements, payments and other obligations which survive the termination or expiration of the Lease Agreement and/or any Operative Document) are hereinafter referred to as the "Obligations").

3. Absolute Guarantee. This Guarantee shall be an absolute, continuing, unconditional and irrevocable guarantee and shall remain in full force and effect as to the Guarantors until such time as all of the Obligations are paid, performed and observed in full and no Obligations remain outstanding.

4. Strict Observance. The Guarantors hereby jointly and severally agree that the Obligations will be paid, performed and observed strictly in accordance with their terms and strictly in accordance with the terms and provisions of the Lease and the Operative Documents, regardless of the enforceability thereof against the Company, the Owner or any other party thereto, and regardless of any law, regulation or decree now or hereafter in effect which might in any manner affect the Obligations, or the rights of the Company with respect thereto as against the Owner. The obligations of the Guarantors under this Guarantee are absolute, irrevocable and unconditional, without regard to the obligations of any other Person, and shall not in any manner be affected by reason of any action taken or not taken by the Owner, which action or inaction is herein consented and agreed to, or of any lack of prior enforcement or retention of any rights against the Company, the Guarantors or any other Person or any property, or of the partial or complete illegality, unenforceability or invalidity of the Obligations or the Lease or the Operative Documents, any other guarantee or surety agreement, pledge, assignment or other security for any of the Obligations, or any other circumstance or condition (whether or not the Guarantors or the Company shall have any knowledge or notice thereof), including without limitation: (a) any termination, amendment or modification of, or deletion from, or addition or supplement to, or other change in the Lease or any of the Operative Documents, or any other instrument or agreement applicable to any of the parties to such agreements, or to the Equipment or any part thereof, or any assignment, mortgage or transfer of any thereof, or of any interest therein, or any leasing or subleasing of the Equipment, or any furnishing or acceptance of additional security, or any release of any security, for the obligations of the Company under the Lease and the Operative Documents, or the failure of any security or the failure of any Person to perfect any interest in any collateral security; (b) any failure, omission or delay on the part of the Company, or any sublessee of the Equipment, or any other Person to conform or comply with any term of the Lease or any Operative Documents, including without

limitation failure to give notice to the Guarantors of the occurrence of a default, or an Event of Default or any event or occurrence which with the passage of time or notice or both would constitute an Event of Default under the Lease or any Operative Document; (c) any waiver of the payment, performance or observance of any of the obligations, conditions, covenants or agreements contained in the Lease or any Operative Document, or any other waiver, consent, extension, indulgence, compromise, settlement, release or other action or inaction under or in respect of the Lease or any Operative Document, or any obligation or liability of the Company or the Owner, or any exercise or nonexercise of any right, remedy, power or privilege under or in respect of the Lease or any Operative Document or any such obligation or liability; (d) any extension of time for payment of Rent, or any other Obligation, or of the time for performance of any other obligations, covenants or agreements under or arising out of the Lease or any Operative Document, or the extension or the renewal of any thereof; (e) the exchange, surrender, substitution or modification of any collateral security for any of the Obligations; (f) any failure, omission or delay on the part of the Owner to enforce, assert or exercise any right, power or remedy conferred on it in this Guarantee, or any such failure, omission or delay on the part of the Owner in connection with the Lease or any Operative Document, or any other action on the part of the Owner; (g) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, conservatorship, custodianship, liquidation, marshalling of assets and liabilities or similar proceedings with respect to the Company, any of the Guarantors, any sublessee, any other Person or any of their respective properties or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding; (h) any limitation on the liability or obligations of the Company, any sublessee, or any other Person under the Lease or any of the Operative Documents, or any discharge, termination, cancellation, frustration, irregularity, invalidity or unenforceability, in whole or in part, of any of the Lease or the Operative Documents; (i) any defect in the title, compliance with specifications, condition, design, operation or fitness for use of, or any damage to or loss of, or destruction of, the Equipment, or any interruption or cessation in the use of the Equipment or any portion thereof by the Company, any sublessee, or any other Person for any reason whatsoever (including without limitation any governmental prohibition or restriction, condemnation, requisition, seizure or any other act on the part of any governmental or military authority, or any act of God or of the public enemy) regardless of the duration thereof (even though such duration would otherwise constitute a frustration of the Lease), whether or not resulting from accident and whether or not without fault on the part of the Company or any other Person; (j) any merger or consolidation of the Company or any of the Guarantors into or with any other corporation, or any sale, lease or transfer of any of the assets of the Company or any of the Guarantors to any other Person, or any dissolution of the

Company; (k) any change in the ownership of any shares of capital stock of the Company, or any change in the corporate relationship between the Company and, any of the Guarantors, or any termination of such relationship; (l) to the extent permitted by law, any release or discharge, by operation of law, of any of the Guarantors from the performance or observance of any obligation, covenant or agreement contained in this Guarantee; or (m) any other condition or circumstance which might otherwise constitute a legal or equitable discharge, release or defense of a surety or guarantor, or which might otherwise limit recourse against any of the Guarantors, it being agreed that the obligations of any of the Guarantors hereunder shall not be discharged except by payment or performance as herein provided. No delay in making demand on the Guarantors for satisfaction of the obligations of the Guarantors hereunder shall prejudice the right of the Owner to enforce the obligations of the Guarantors hereunder. The Guarantors further agree not to cause or permit any alteration in the time, amount, currency or manner of payment, performance of observance by the Company of any of or all the Obligations.

5. Waivers of Notice, Etc. The Guarantors hereby waive diligence, presentment, demand, protest or notice of any kind whatsoever with respect to this Guarantee or the Obligations, including without limitation (a) notice of acceptance of this Guarantee, notice of nonpayment or nonperformance of any of the Obligations, notice of an Event of Default, any event or occurrence which, with the passage of time or notice or both, would constitute an Event of Default, or other default under the Lease Agreement or any of the Operative Documents and Notice of any of the matters described in Paragraph 4, (b) any right to the enforcement, assertion or exercise against the Company or any other Person or the Equipment or any other collateral security for the Obligations of any right, power, privilege or remedy conferred in the Lease or any Operative Document or otherwise, (c) any requirement to exhaust any remedies or to mitigate the damages resulting from a default under the Lease or any Operative Document, (d) any notice of any sale, transfer or other disposition of any right, title to or interest in the Lease or any Operative Document, the Equipment or any collateral security, or any part thereof, (e) any exoneration or release from any of the Obligations hereunder resulting from any loss by the Guarantors of their rights of subrogation hereunder, (f) any requirement of promptness in commencing suit against any Person who may be or become liable thereon and the giving of notice to or making any claim or demand on the Guarantors, the Company or any other Person, or (g) any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge, release or defense of a guarantor or surety or which might otherwise limit recourse against the Guarantors. The Guarantors agree that they shall not be required or have the right to consent to, or to receive any modification of, the terms of or any of the Lease or the Operative Documents. No notice to or demand on the Guarantors shall entitle the Guarantors to any

other or further notice or demand in the same, similar of any other circumstances.

6. Extensions, Etc.

(a) The Guarantors consent and agree that the Owner may in its sole discretion, at any time or from time to time, (i) renew, extend, change or modify the time, manner, place, or terms of payment, performance or observance of any or all of the Obligations, (ii) apply payments by the Company or the Guarantors to any of the Obligations, (iii) exchange, release or surrender any security or property which may at any time be held by or on behalf of it, (iv) release any surety or guarantor for or of any of the Obligations, (v) settle or compromise any or all of the Obligations with the Company or any other Person liable thereon or (vi) subordinate the payment, performance or observance of all or any part of the Obligations to the payment, performance or observance of any other debts or obligations which may be due or owing to it or any such Person, all in such manner and upon such terms as the Owner may deem proper, without notice to or further assent from the Guarantors, who agree to remain bound under this Guarantee notwithstanding any such extension, change, modification, amendment, release, surrender, settlement, compromise or subordination.

(b) The Owner may at any time terminate this Guarantee and the obligations of the Guarantors hereunder by giving written notice thereof to the Guarantors signed by the Owner, whereupon this Guarantee shall no longer be in effect.

7. No Waiver. No failure on the part of the Owner, or delay by the Owner in exercising, any right under or with respect to this Guarantee shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right of the Owner, under or with respect to this Guarantee or the Lease or any of the Operative Documents.

8. Guarantee of Performance. This Guarantee is a guarantee of payment and performance and not of collection, and the Guarantors waive any right to require that any action against the Company or any other Person be taken or exhausted prior to action being taken against the Guarantors. The Guarantors shall pay to the Owner, on demand all reasonable attorneys' fees and other reasonable expenses incurred by the Owner in protecting its interest hereunder or in exercising its rights hereunder or with respect hereto, together with interest on such sums at the Default Interest Rate, from the date when such expenses are so incurred.

9. Bankruptcy, Etc. The Guarantors agree that if at any time all or any part of any payment or performance theretofore applied by the Owner to any of the Obligations is or must be rescinded or returned by the Owner for any reason whatsoever

(including without limitation the insolvency, bankruptcy or reorganization of the Company), such Obligations shall, for the purposes of this Guarantee, to the extent that such payment or performance is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by the Owner, and this Guarantee shall continue to be effective or be reinstated, as the case may be, as to such Obligations, all as though such application by the Owner had not been made. If any event permitting the declaration of default under the Lease or any Operative Document shall at any time have occurred and be continuing, and such declaration of default shall at such time be prevented by reason of the pendency against the Company or any other Person of a case of proceeding under a bankruptcy or insolvency law, the Guarantors agree that, for purposes of this Guarantee and their obligations hereunder, such Lease or Operative Document shall be deemed to have been declared in default with the same effect as if such Lease or Operative Document had been enforceable in accordance with the terms thereof, and the Guarantors shall forthwith pay the amounts specified by the Owner to be paid thereunder, any interest thereon and any other amounts guaranteed hereunder without further notice or demand.

10. Assignment. The Owner may at any time sell, assign, transfer or otherwise dispose of its interest in all or any part of the Lease, this Guarantee and the other Operative Documents. The Guarantors shall not without the prior written consent of the Owner assign any of their rights or delegate any of their obligations hereunder, including any claim arising by subrogation.

11. Guarantors' Obligations; No Setoff. The Guarantors' obligation to make all payments due hereunder, and to perform their other obligations hereunder shall be absolute and unconditional and shall in no event be subject to any right of setoff, recoupment, deduction or counterclaim or any other defense which any of the Guarantors, the Company or any other Person may now or hereafter have against the Owner or any other Person, which the Guarantors hereby waive; all such payment so made shall be final, and the Guarantors will not seek to recover for any reason whatsoever any payments so made.

12. Limitations on Subrogation. Any subrogation rights to which the Guarantors become entitled by reason of performance of any of their obligations hereunder shall be subject and subordinate to the rights of the Owner against the Company under the Lease and the Operative Documents, and the exercise of any such subrogation rights of the Guarantors shall be deferred until all Obligations have been fully paid, performed and observed. No payment or performance hereunder by the Guarantors shall give rise to any claim of the Guarantors against the Owner.

13. Governing Law. This Guarantee, including all matters of construction, validity and performance, shall in all respects

be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts applicable to contracts made in such state by residents thereof and to be performed entirely within such state without reference to any rules governing conflicts of law.

14. Severability of Provisions. Any provision of this Guarantee which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof, any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Guarantors hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

15. Amendments. This Guarantee and any provision hereof may, with respect to the Owner, be terminated, waived, amended, modified or supplemented only by an agreement or instrument in writing, specifying the provision (or, if applicable, the whole of this Guarantee) intended to be terminated, waived, amended, modified or supplemented, and executed by the Guarantors and the Owner; and neither this Guarantee nor any provision hereof shall be varied, contradicted or explained by any oral agreement, course of dealing or performance, usage of trade or any other matter not set forth in any agreement or instrument in writing and executed as specified above.

16. Headings. Paragraph headings used herein are for convenience only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

17. Entire Agreement. This Guarantee constitutes, on and as of the date hereof, the entire agreement of the Guarantors and the Owner with respect to the subject matter hereto, and all prior or contemporaneous understandings or agreements, whether written or oral, between the Guarantors and the Owner with respect to the subject matter hereof are hereby superseded in their entireties.

