

18172

ALVORD AND ALVORD

ATTORNEYS AT LAW

918 SIXTEENTH STREET, N.W.

SUITE 200

WASHINGTON, D.C.

20006-2973

(202) 393-2266

FAX (202) 393-2156

18172-A

MAR 22 1993 2:38 PM

INTERSTATE COMMERCE COMMISSION

OF COUNSEL  
URBAN A. LESTER

MAR 22 1993 2:38 PM

INTERSTATE COMMERCE COMMISSION

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

3-081A023

March 17, 1993

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

*New No. - A*

MAR 22 2 38 PM '93

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are one duly executed original and one certified copy of an Equipment Finance Lease dated March 8, 1993 and of a Non-Recourse Assignment, dated as of March 16, 1993, a primary and a secondary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed primary document are:

Lessor: Charter Financial, Inc.  
444 Madison Avenue  
New York, New York 10022

Lessee: RailAmerica, Inc.  
Huron and Eastern Railway Company  
Saginaw Valley Railway Company  
RailAmerica Services Corporation  
538 East Huron Avenue  
Vassar, Michigan 48768

*Counterparts - [Signature]*

Mr. Sidney L. Strickland, Jr.  
March 16, 1993  
Page 2

The names and addresses of the parties to the enclosed secondary document are:

Assignor: Charter Financial, Inc.  
444 Madison Avenue  
New York, New York 10022

Assignee: Sterling Bank & Trust  
28400 Northwestern Highway, Suite 400  
Southfield, Michigan 48034

A description of the railroad equipment covered by the enclosed document is:

two GP 38-2 locomotives bearing PLE road marks and numbered 2059 and 2060 and three open-top ballast hoppers bearing JCLX road marks and numbered 101, 102 and 103.

Also enclosed is a check in the amount of \$32.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of each of the enclosed documents to Robert W. Alvord, Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

Very truly yours,



Robert W. Alvord

RWA/bg  
Enclosures

EQUIPMENT FINANCE LEASE

18172

MAR 22 1993 - 2 41 PM

INTERSTATE COMMERCE COMMISSION

Lease Number: 1817

Date: March 8, 1993

Lessor: Charter Financial, Inc., a New York corporation  
444 Madison Avenue  
New York, New York 10022

Lessee: RailAmerica, Inc., a Delaware corporation, Huron and Eastern Railway Company, Inc., a Michigan Corporation; Saginaw Valley Railway Company, Inc., a Delaware corporation; RailAmerica Services Corporation, a Delaware corporation, jointly and severally (the foregoing entities are hereinafter individually and collectively referred to herein as "Lessee")

538 East Huron Avenue  
Vassar, MI 48768

Equipment: See Lease Schedule A attached hereto and made a part hereof

Original Cost of Equipment: \$464,100.00

Commencement Date: March 20, 1993

Rent: Upon Commencement Date and thereafter 59 payments of \$7,634.00 due the 20th day of every month during the term hereof and one balloon payment on 3/20/98 of \$166,001.00, totalling \$624,041.00 ("Total Rent"); the 60th Rent payment in the amount of \$7,634.00 has been paid in advance upon or before execution hereof

Term: A period of 61 consecutive months from and after the Commencement Date

Security Deposit: None

Purchase Option Price: At the end of the Lease Term, Lessee may purchase the equipment for \$1.00 provided no Event of Default shall have occurred and been left unremedied.

Other Provisions: Prepayment Rider annexed hereto

03/93/charfincov(6)

**Section 1. Definitions.**

For purposes of this Equipment Finance Lease, the following terms shall have the following meanings:

(a) "The Lease" shall mean this Equipment Finance Lease and any schedule, document, attachment or exhibit hereto or executed in connection herewith, together with any amendments or modifications thereof.

(b) "Equipment" shall mean the equipment which shall be subject to the terms of this Lease as identified above in Lease Schedule A or in any Schedule attached hereto or referenced herein or otherwise incorporated by reference, and when used to refer to an individual piece of Equipment, such items shall be referred to as "Item" or "Item of Equipment". Equipment shall also mean other equipment as may hereafter from time to time be acquired by Lessee and added to the Lease and/or described in any Schedule or additional Schedule to the Lease.

(c) "Collateral" shall mean the Equipment, including each and every Item or part thereof as well as any modifications thereof or revisions, attachments or additions, accessories, substitutions, replacements, repairs, improvements, betterments and appurtenances thereto of whatever description or nature now owned or hereafter acquired, and any proceeds thereof, and the Lease.

(d) "Indebtedness" shall mean all of the indebtedness of Lessee to Lessor outstanding from time to time as evidenced by the Lease, including without limitation any unpaid Rent or Additional Rent.

**Section 2. Declaration of Intent to Lease; Acceptance.**

(a) Lessor agrees to lease to the Lessee each Item of Equipment and Lessee agrees to lease each Item of Equipment from Lessor for the rent specified herein.

(b) The terms and provisions of this Lease shall be effective as of the date Lessee certifies in writing that the Equipment has been delivered to and accepted by Lessee ("Commencement Date"). Lessee shall furnish Lessor with a Delivery Receipt and Acceptance Certificate in Lessor's form. Lessee shall arrange for the delivery of the Equipment specified herein and shall pay all delivery charges unless otherwise specified. The parties agree that this Lease represents a financing arrangement referred to as a "Financing Lease Agreement" to which the relevant provisions of Article 9 of the Michigan Uniform Commercial Code (MCLA §440.9101 et. seq.) are applicable.

(c) Lessee acknowledges that Lessee has reviewed and approved the Purchase Order, Supply Contract or Purchase Agreement covering the Equipment purchased from the Seller or Supplier for Lease to Lessee.

LESSEE'S  
INITIALS



### **Section 3. Term and Rent; Lessee's Obligation Absolute.**

The Term of the Lease with respect to any Item shall commence on the Commencement Date and shall expire at the end of the term specified herein unless sooner terminated in accordance with the terms and conditions hereof. Lessee covenants to pay the Total Rent and Additional Rent set forth herein, payable in the amounts, at the times, and in the manner set forth herein. "Additional Rent" shall mean all sums payable or which may become payable by Lessee herein other than Rent, including, but not limited to, the sums identified in Sections 3, 5, 10, 12 and 16 hereof. All rental payments shall be due as specified herein. All Rent shall be paid to Lessor at the address specified herein or as otherwise specified by Lessor in writing. The Lease is a net lease. Lessee's obligation to pay all Rent, Additional Rent and any other amounts required to be paid by Lessee shall be absolute and unconditional, and Lessee shall not be entitled to an abatement, reduction, recoupment or setoff of Rent for any reason, whatsoever, whether by reason of any defect in, damage to or loss or destruction of an Item, or by reason of any interruption from any cause whatsoever in the use, operation or possession of any Item, or by reason of any present or future claims of Lessee against Lessor or any assignee under this Lease, any misrepresentation, breach of warranty, neglect or failure by the supplier of the Equipment, or for any other reason. If any installment of Rent or other amount payable under the Lease is not paid within ten (10) days of the due date, Lessee shall pay to Lessor as Additional Rent late charges in an amount equal to the lesser of five percent (5%) of such overdue payment, or the maximum amount allowed by law.

### **Section 4. Grant of Security Interest.**

Lessee hereby assigns, pledges and grants to Lessor a continuing first priority security interest in the Collateral to secure the payment of any Indebtedness of Lessee to Lessor from time to time outstanding (including all renewals, modifications and extensions thereof) and to secure Lessee's prompt, full and faithful performance and observance of all the provisions to be kept, observed or performed by Lessee under the Lease, under any other leases, notes, or agreements executed by Lessee and delivered to Lessor, or under any assignment or other document or instrument executed by Lessee and delivered to Lessor in connection with the Lease or otherwise. The security interest granted hereby shall also cover the proceeds of the Collateral, including the proceeds of any hazzard or casualty insurance relating thereto. The extension of the security interest to proceeds does not authorize Lessee to sell, encumber, or sublease the Equipment or any Item thereof.

### **Section 5. Perfection of Security Interest.**

In order to perfect and maintain Lessor's first priority security interest in the Collateral and all interests of any nature whatsoever arising therefrom and as further assurance to Lessor, Lessee shall execute and deliver to Lessor, concurrently with Lessee's execution of the Lease, and promptly at any time or times thereafter at the request of Lessor, all financing statements, continuation financing statements, assignments, (including any assignment of lease), certificates of title, applications for vehicle or other titles, affidavits, reports, financial statements and all other documents which Lessor may reasonably request, in a form satisfactory to Lessor; and Lessee shall promptly pay as Additional Rent all costs associated therewith, including, but not limited to, the cost of filing and recording same in all public offices as deemed necessary by Lessor.

## Section 6. Title.

The Lessee, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment. Lessee acknowledges that the Equipment is and will at all times remain personal property regardless of how installed or attached to the premises.

## Section 7. Warranties, Representations and Covenants of Lessee.

Each Lessee warrants, represents and covenants to Lessor as follows:

(a) Lessee has selected the type, quantity, quality, and supplier of each Item of Equipment to achieve Lessee's intended results. Lessee shall be solely responsible for the selection and use of, and results obtained from, the Equipment. Lessee acknowledges and agrees that Lessor is not a manufacturer of the Equipment, nor a manufacturer's agent, nor a dealer in property of such kind as the Equipment. Lessor shall not be liable for specific performance or for damages if for any reason the supplier fails to or delays in filling any order for any Item or meeting the conditions thereof. Lessee hereby authorizes Lessor to insert in the Lease the serial number and any descriptive matter necessary to properly identify each Item leased pursuant to the Lease;

(b) Lessee has accepted delivery of, is in possession of and is the owner of the Equipment, free and clear of all liens, security interests or encumbrances whatsoever, except Lessor's security interest;

(c) Lessee will not suffer the Equipment or any part thereof to become subject to any liens, claims, adverse interests or encumbrances (other than Lessor's security interest) and will promptly and at its sole expense, take such action as may be necessary to discharge the same;

(d) Lessee will not sell or offer to sell or rent, lend, assign, relinquish possession of, or otherwise transfer or encumber or dispose of the Equipment, or any part thereof or any interest therein, without prior written consent of Lessor except that the Equipment may be used on rail lines owned and controlled by Lessee within the Continental United States.

(e) Lessee shall, at all times, keep, repair and maintain the Equipment, at its sole expense, so as to keep it in as good condition, repair, operating order, value and utility as when acquired by the Lessee, ordinary wear and tear excepted, according to the Lessee's standards for similar units owned or leased by the Lessee and in compliance with all applicable laws and regulations for Class I Railroads and in accordance with all manufacturers' suggested guidelines and insurance requirements, and Lessee shall at all times maintain all records, logs, and other materials required by the Association of American Railroads or the Department of Transportation, or any other governmental authority having jurisdiction over the Lessee or the Equipment; and any replacement part or accessory added or affixed to any Item shall become collateral subject to the security interest of Lessor granted herein and shall not be removed therefrom if such removal shall reduce the value or utility of the Item or prevent or impair its originally intended use or result in a breach of Lessee's obligations hereunder.

(f) Lessee shall not make any alterations, additions or improvements to the Equipment or any Item which would adversely affect the Equipment's value, utility or useful life without the prior written consent of Lessor, and any such alterations or improvements so made shall immediately become the property of Lessor and subject to the terms of the Lease;

(g) Lessee shall use the Equipment exclusively for business purposes and shall use each and every Item, in a careful and proper manner and only for the purposes contemplated by the manufacturer and shall comply with all laws, ordinances and regulations relating to the use, operation or maintenance of the Equipment or any Item thereof, including, but not limited to, all applicable governmental rules and regulations and laws pursuant to the standards in effect under the Interchange Rules of the Association of American Railroads or other governmental or organizational authorities with jurisdiction with respect to the Equipment, and shall not use or permit the use of any Item for any unlawful purpose whatsoever.

(h) The Equipment, and each and every Item and part thereof, is and will remain during the term of the Lease "personal property" and will not become real property, fixtures or inventory;

(i) The address of Lessee's principal office is as set forth above and the Equipment and each and every Item thereof shall be located at Lessee's principal office as set forth above in the Lease or at such other location as Lessee shall notify Lessor in writing when not in use on rail lines owned and controlled by Lessee within the Continental United States, it being understood that the location of such Equipment is to be identified in the Lease and shall not be changed by Lessee without the prior written consent of Lessor;

(j) Lessee will not change its name, form of business entity, or address of its principal office without giving written notice thereof to Lessor at least ten (10) days prior to the effective date of such change; and Lessee agrees that all documents, instruments and agreements requested by Lessor in response to such change shall be prepared, filed and recorded at Lessee's expense prior to the effective date of such change;

(k) Lessee warrants that it has full power and authority to enter into the Lease; that the transactions contemplated hereby and the signatories hereto are duly authorized to bind the Lessee; that Lessee will, upon request of Lessor, supply Lessor with evidence thereof; and that, upon execution of the Lease and any other documents contemplated herein, the Lease and such documents will represent legal, valid and binding obligations of Lessee and shall be enforceable by Lessor pursuant to their terms;

(l) The execution and delivery of the Lease and any other instrument evidencing or securing the indebtedness of Lessee to Lessor will not violate or constitute a breach of Lessee's Articles of Incorporation, By-laws, or any agreement or restriction of any type whatsoever to which Lessee is a party or is subject;

(m) All financial statements and information relating to Lessee and the Equipment and each and every Item, including the Original Cost of Equipment delivered or to be delivered by Lessee to Lessor, are and will be true and correct in all material respects and prepared in accordance with generally accepted accounting principles; there has been no material adverse change in the financial condition of Lessee since the submission of any such financial information to Lessor; and Lessee will promptly deliver to Lessor such of its financial statements and other information as Lessor shall reasonably request from time to time during the term of the Lease;

(n) Lessee, if a corporation, is duly qualified and in good standing in its state of incorporation and in each state in which it is doing business;

(o) There are no actions or proceedings which are threatened or pending against Lessee which might result in any material adverse change in Lessee's financial condition or operation or which might materially and adversely affect any of Lessee's assets, financial condition or business operations ("Adverse Actions"), and that during the Term, Lessee shall promptly advise Lessor, in writing, of the commencement or threatened commencement of any such Adverse Actions;

(p) The Lease delivered to Lessor is in the form of an original lease, is so designated on its face, is the sole operative document, and as such constitutes "chattel paper" as defined in the Michigan Uniform Commercial Code; all other Lease counterparts shall be designated as "duplicate" copies;

(q) Lessee has duly filed all federal, state and other governmental tax returns which Lessee is required by law to file and will continue to file the same during such time as any of the Indebtedness remains outstanding and unpaid, and all such taxes required to be paid have been paid in full and Lessee will continue to timely pay the same;

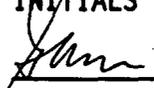
(r) Lessee is now and shall be at all times hereafter solvent and able to pay its debts as they mature.

**Section 8. Opinion Letter.**

Lessee shall, at the request of Lessor, furnish an opinion letter from Lessee's counsel in form satisfactory to Lessor confirming the warranties contained in Section 7(b)(k)(1) and (n) and stating that the Lease has been duly executed and is binding upon the parties thereto pursuant to its terms. Such opinion letter shall be dated as of the date hereof.

**Section 9. Disclaimer of Warranties or Representations by Lessor.**

Lessor shall not, by virtue of having leased or delivered any bill or bills of sale pursuant to the Lease, or for any other reason, be deemed to have made any warranties or representations whether written or oral; and LESSOR MAKES NO WARRANTY, EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE DESIGN, PERFORMANCE, SPECIFICATIONS, OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO; OR AS (EXCEPT AS SPECIFICALLY SET FORTH HEREIN) TO LESSOR'S TITLE THERETO OR LESSEE'S RIGHT TO QUIET ENJOYMENT OF THE SAME.

LESSEE'S  
INITIALS  


**Section 10. Taxes.**

Lessee shall obtain such licensing and registration of the Equipment or of any Item thereof as shall be at any time required by law, ordinance or regulation; and Lessee shall pay or cause to be paid when due any and all license and registration fees, levies, judgments, assessments, and any and all sales, use, property and other taxes or charges of

any kind now or hereafter imposed upon or relating to the Equipment or any Item thereof, or relating to Lessee's business or to Lessee's ownership or use of any of its assets, income or gross receipts (excluding only taxes based solely on Lessor's net income), together with any interest or penalties in connection therewith. The parties agree that the Lessee shall include the Items of Equipment in the ad valorem tax returns to be filed by the Lessee in the applicable states or localities and that the Lessor shall not include the Items of Equipment in any ad valorem tax returns filed by them in such states or localities. Lessee agrees to comply with all state and local laws requiring the filing of any tax returns or any reports relating to the Equipment and promptly furnish to Lessor evidence of such filings and payment of the taxes.

### Section 11. Insurance.

Lessee, consistent with prudent industry practice, shall, at its own expense, acquire and maintain, during the term hereof, insurance from insurers of recognized responsibility in providing insurance for the United States Rail Industry, in such form and under such policies as shall be satisfactory to Lessor. Such insurance shall include: (a) all risk property insurance in an amount and under coverages to provide for rebuilding, repairing or replacing the Equipment in the event of damage or destruction; and, (b) comprehensive general liability insurance including at least coverage for any bodily injury, personal injury or property damage which may be caused by or related to the Equipment, and also including but not limited to contractual liability coverage recognizing Lessee's obligations hereunder all in amounts that shall be satisfactory to Lessor. All of the above-mentioned insurance shall name Lessor as an additional insured, and shall expressly provide that any loss thereunder shall be payable to Lessor as Lessor's interest shall appear and that all losses shall be adjusted directly with Lessor. Lessee shall furnish to Lessor certificates of insurance indicating that such insurance coverages are in effect at the time the Equipment is delivered and shall indicate that such insurance cannot be cancelled or altered without at least 30 days prior written notice to Lessor and that the interest of Lessor will at all times be insured regardless of any breach or violation by Lessee of any warranties, declarations or conditions contained in such policy. The insurance shall cover damages or injuries to property or any person or persons arising out of a release of any hazardous substance or petroleum product in violation of any federal or state environmental laws or regulations. Lessor shall have a security interest in the proceeds of any and all such insurance and may apply any such proceeds received by it toward payment of any part of the Indebtedness whether or not due and in such order of application as Lessor alone determines. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make any claim for, to receive payment for, and to execute and endorse any documents, checks or other instruments in payment for loss, theft or damage under any such insurance.

### Section 12. Payments by Lessor.

If, at any time hereafter, Lessee shall fail to obtain or maintain any of the insurance required by the Lease, or fail to pay any premium in whole or in part relating thereto, or fail to pay any tax assessment, levy or charge, or fail to discharge any such lien, claim or encumbrance, or fail to perform any of its obligations under the Lease, then Lessor without waiving or releasing any obligation or default of Lessee hereunder may at any time thereafter upon 15 days notice to Lessee, provided that giving such notice shall not cause, in Lessor's sole discretion, substantial harm or risk to Lessor's security interest in the Equipment (but shall be under no obligation to do so) make any

payment or obtain any discharge or obtain and maintain any policies of insurance and pay any premiums, or perform any obligation, or take any action with respect thereto as Lessor deems advisable. All sums so disbursed by Lessor, including actual reasonable attorney fees, court costs, expenses and other charges relating thereto shall be payable as Additional Rent and shall be deemed to be part of the Indebtedness, to be secured hereby, and to be payable upon demand plus interest thereon at the highest lawful rate not to exceed twelve percent (12%) per annum.

### Section 13. Risk of Loss and Damage.

Lessee hereby assumes and shall bear the entire risk of loss, theft and damage, partial or complete, to the Equipment or any Item or any part thereof from any and every cause whatsoever, whether or not covered by insurance, and no such loss, theft or damage to the Equipment or any Item or any part thereof shall impair Lessee's obligation to pay Rent or to pay or perform any other obligation of the Lease, which shall continue in full force and effect.

### Section 14. Loss or Destruction.

In the event that all or substantially all the Equipment shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for its intended use, Lessee will promptly notify Lessor of the facts pertaining thereto; the Lease shall forthwith terminate, and Lessee shall forthwith pay to Lessor a sum computed in accordance with the provisions of Section 18(b)(1) hereof.

In the event any Item of Equipment, less than all or substantially all the Equipment shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever ("Loss"), Lessee shall (i) promptly notify Lessor of the facts pertaining thereto; and (ii) immediately assign to Lessor all rights to receive any insurance proceeds due as a result of such Loss. Until such date as Lessor shall receive that portion of the sum computed in accordance with the provisions of Section 18(b)(1) as to the Item(s) of Equipment which is the subject of the Loss, Lessee shall pay to Lessor all rental payments in full without adjustment. The Rent payment shall thereafter be adjusted by Lessor to take into consideration the payment made with respect to the Loss.

### Section 15. Inspection; Marking.

At any reasonable time upon 24 hours prior notice, Lessee shall promptly permit and facilitate the inspection of the Equipment, and the inspection and copying of Lessee's records pertaining thereto, by Lessor and/or its designated representatives or agents. The Lessee, so long as this Lease shall remain in effect, will cause each Item of Equipment to be kept numbered with the Read Number set forth in Lease Schedule A hereto and if requested by Lessor, Lessee shall affix to or place on the Equipment such labels, plates or other markings indicating Lessor's security interest as may reasonably be directed and supplied by Lessor. The Lessee will not change the road number of any Item unless and until (i) a statement of new numbers to be substituted therefor shall have been filed with the Lessor and filed by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited; and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to that effect and to the further effect that such filing, recordation and deposit will protect the Lessor's interest in such Item and that no

filing, recording, depositing or giving of notice with or to any other federal, state or local government or agency thereof is necessary to protect the interests of the Lessor in such Items.

Except as above provided, the Lessee, so long as this Lease shall remain in effect, will not allow the name of any person, association or corporation to be placed on the Items as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Items to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or similar type for convenience of identification of their rights to use the Items as permitted under this Lease.

#### Section 16. Indemnity.

Lessee hereby assumes liability for and agrees to indemnify, protect and hold harmless Lessor, its agents, successors and assigns, from and against any and all loss, damage, injury, liens, claims, actions, obligations, demands, liability or expense (including actual reasonable attorney fees), of any kind and nature incurred by or asserted against Lessor, arising out of the manufacture, purchase, acceptance or rejection, ownership, delivery, lease, use, possession, sale, return, repair, maintenance, condition, or other disposition of the Equipment or any Item, including without limitation, latent or other defects, and whether or not discernible by Lessor, or resulting from the use or operation of the Equipment or any Item or any part thereof, and by whomsoever used or operated, whether or not any of the foregoing may be caused by Lessor's negligence.

This Section 16 is effective immediately upon execution hereof even though the Equipment or any Item thereof is not yet accepted by or in the possession of Lessee, and shall continue in full force and effect notwithstanding the termination of this Lease, whether by expiration of time, by operation of law, or otherwise.

#### Section 17. Assignment By Lessor.

Lessor may assign all or any portion of its rights or interest in this Lease without notice to Lessee and without the assumption of any obligation by the assignee, and any subsequent assignee shall be deemed to be the Lessor for all purposes hereunder.

After written notice of such assignment given by Lessor or such assignee to Lessee, all sums payable by Lessee shall be paid by Lessee to such assignee. No such assignee shall be obligated to perform any duty, covenant or condition required to be observed or performed by Lessor. Lessee agrees to acknowledge such assignment in writing within fifteen (15) days after receiving written notice thereof from the assignee or Lessor. In the event of any such assignment, Lessee agrees that Lessee will not assert against any such assignee any claims by way of abatement, defense, setoff, counterclaim, recoupment or otherwise which Lessee may have by reason of any default of Lessor hereunder or under any other agreement, and no covenant, warranty or representation of Lessor as to the Equipment or any other matter shall in any way affect Lessee's duty to pay the Rent and perform its other obligations exactly as set forth in this lease.

**Section 18. Default.**

(a) The occurrence of any one of the following events shall constitute an "Event of Default".

(1) The nonpayment of any Rent, Additional Rent or other sum required to be paid under the Lease, or under any extension, modification or renewal thereof, within fifteen (15) days after the due date thereof;

(2) The nonpayment when due, of any amount payable on the Indebtedness or any extension, modification or renewal thereof, which shall continue unremedied for more than ten (10) days;

(3) Lessee fails to procure or maintain insurance on the Equipment as required herein.

(4) The failure to perform any obligation of Lessee contained in the Lease or in any other instrument relating thereto, or the violation of any of the covenants or representations made by Lessee herein, which shall continue unremedied for more than ten (10) days after notice of such failure;

(5) Any statement, representation or warranty of the Lessee herein or in any other writing at any time furnished by the Lessee to Lessor is untrue in any material respect as of the date made;

(6) Any Obligor (which term as used herein, shall mean each Lessee and any other party primarily or secondarily liable on any portion of the Indebtedness) becomes insolvent or unable to pay debts as they mature or makes an assignment for the benefit of creditors, conveys any assets to a trustee for the benefit of Obligor's creditors, conveys substantially all of its assets or any proceeding is instituted by or against any Obligor alleging that such Obligor is insolvent or unable to pay debts as they mature or a petition of any kind is filed or action taken by or against such Obligor under the Federal Bankruptcy Act or any insolvency or moratorium law or any other law for the relief of or relating to debtors and all the obligations of Obligor under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such Trustee, within sixty (60) days after such petition shall have been filed and otherwise in accordance with Section 1168 of the Federal Bankruptcy Code, or any successor provision as the same may hereafter be amended.

(7) Entry of any judgment against such Obligor, or any order of attachment, execution, sequestration or other order in the nature of a writ is levied on the Equipment or any Item;

(8) Lessee creates, incurs, assumes, or suffers to exist any mortgage, lien, pledge, or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Equipment or this Lease or any of Lessor's interests thereunder.

(9) Dissolution, merger or consolidation or transfer of a substantial part of the property of any Obligor without the prior written consent of Lessor.

(10) Lessee's failure to pay the full amount of any tax, fee or assessment due and owing to any federal, state or local governmental authority.

(11) Death or judicial declaration of incompetency of Lessee if Lessee is an individual.

(12) Termination of the existence of Lessee by merger, by sale of substantially all of the assets of Lessee or otherwise, or the business failure of Lessee.

(b) Whenever an Event of Default exists, Lessor may, in its sole discretion, at its sole option, without any prior notice to Lessee, exercise one or more of the following remedies:

(1) To accelerate the Lease and declare immediately due and payable the unpaid principal balance amount which is the sum of the Total Rent plus any Additional Rent due and unpaid plus the Purchase Option Price minus the rental payments made by Lessee minus unearned finance charges calculated at Lessor's rate of interest, utilizing the actuarial method, which sum shall become immediately due and payable without presentment or demand or any notice to Lessee or any other persons obligated on the Lease, interest to accrue on said sum at a default rate of the highest lawful rate not to exceed twelve (12%) percent per annum from the date of acceleration until paid.

(2) To terminate or accelerate any lease or other agreement between Lessor and Lessee.

(3) To bring legal action to recover any amounts due, including any Rents, Additional Rents, late charges or other expenses, or to enforce any rights under the Lease.

(4) Upon 15 days prior notice to Lessee, sell the Collateral or any part thereof at public or private sale or sales, or otherwise dispose of, lease or utilize the Equipment or any part or parts thereof in any manner authorized or permitted by the Uniform Commercial Code as adopted and amended in the State of Michigan, and to apply the proceeds thereof toward payment of any costs and expenses and actual reasonable attorneys fees incurred by Lessor hereunder and toward payment of the Indebtedness in such order and manner as Lessor in its ~~sole~~ <sup>reasonable</sup> discretion may elect;

(5) If the proceeds of any sale, after permitted deductions, are less than the amount computed in accordance with the provisions of Section 18(b)(1) above, to sue for and collect the difference from Lessee.

(6) To take possession of the Equipment, or any part thereof, without notice or application to any Court, and for such purpose, to enter upon any premises where the Equipment or any part thereof shall be located, without being deemed guilty of trespass and without liability for any direct or consequential damages occasioned thereby;

(7) To take any action deemed necessary or appropriate or desirable by Lessor, at its option and in its discretion, to repair, refurbish or otherwise prepare the Equipment for sale, lease or other use or disposition as herein authorized, such costs to be considered expenses incurred by Lessor hereunder.

(c) Lessor shall have and may exercise with reference to the Equipment and Indebtedness any and all of the rights and remedies provided by any statute or otherwise available at law or in equity including those of a secured party under the Uniform Commercial Code as adopted and as amended in the State of Michigan, and as otherwise granted herein or under any other applicable law or under any other agreement executed by Lessee.

(d) Lessee agrees in case of an Event of Default to assemble at its expense all the Equipment at a convenient place acceptable to Lessor and to pay all reasonable costs of Lessor of collection and enforcement of Lessor's rights hereunder, and all Indebtedness, including actual reasonable attorney fees and legal expenses and including participation in bankruptcy proceedings and expense of locating the Collateral and expenses of any repairs to any realty or other property to which any of the Equipment or any Item may be affixed or be a part.

(e) If any notification of intended disposition of any of the Equipment is required by law, such notification, if mailed, shall be deemed commercially reasonable and properly given if sent at least seven (7) days before such disposition, postage prepaid, addressed to the Lessee as provided herein.

(f) LESSEE AGREES THAT LESSOR SHALL, IN THE EVENT OF ANY DEFAULT HAVE THE RIGHT TO PEACEFULLY RETAKE POSSESSION OF THE COLLATERAL. TO THE EXTENT PERMITTED BY LAW, LESSEE WAIVES ANY RIGHT IT MAY HAVE IN SUCH INSTANCE TO A JUDICIAL HEARING AND NOTICE PRIOR TO SUCH RETAKING.

In an Event of Default, Lessee will pay to Lessor all costs and expenses, including any expenses of recovery, repair, storage and actual reasonable attorney fees, expended by Lessor in the enforcement of any and all of its rights or remedies hereunder related to all collection efforts, negotiations, documentation preparation and examination of Lessor's rights and remedies.

**Section 19. Lessee's Waivers.** To the extent permitted by applicable law, Lessee hereby waives any and all rights including but not limited to Lessee's rights to: (i) cancel this Lease; (ii) repudiate this Lease; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breaches of warranty or for any other reason; (vi) a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under this Lease; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease Equipment in substitution for those due from Lessor; (x) recover any general, special, incidental or consequential damages, for any reason whatsoever; and (xi) specific performance, replevin, detinue, sequestration, claim and delivery or the like for any Equipment identified to this Lease. To the extent permitted by applicable law, Lessee also hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use any Equipment in mitigation of Lessor's damages as set forth in Paragraph 18 of this Lease or which may otherwise limit or modify any of Lessor's rights or remedies under Paragraph 18.

**Section 20. Security Deposit.**

Lessee acknowledges that it has paid Lessor as a security deposit, and not as advance rent, the amounts, if any, shown above as "Security Deposit." Lessor agrees to return to Lessee the full amount of such Security Deposit upon termination of this Lease provided no Event of Default shall then be existing. If an Event of Default shall exist, Lessor may apply all or any portion of such Security Deposit, in whatever manner and at whatever time it may choose, to cure such default or to reduce the Indebtedness. Lessee agrees that Lessor's retention of such Security Deposit shall not excuse, by setoff or otherwise, Lessee's non-performance of any of its obligations under the Lease.

**Section 21. Termination of Lessor's Interest Upon Payment.**

Upon payment of the Total Rent and any Purchase Option Price, plus any other Indebtedness or amounts due Lessor hereunder, the Lease and all of Lessor's interest and rights in the Equipment shall terminate.

**Section 22. Further Assurances.** Lessee hereby makes, constitutes and appoints Lessor its true and lawful attorney-in-fact with full power of substitution to take any action in furtherance of this Lease, including, without limitation, the signing of financing statements, endorsing of instruments, and the execution and delivery of all documents and agreements necessary to obtain or accomplish any protection for or collection or disposition of any part of the Equipment. Such appointment shall be deemed irrevocable and coupled with an interest. Lessee also agrees to furnish Lessor: (1) an audit report containing a balance sheet, income statement and statement of sources and uses of funds prepared by independent certified public accountants, or other accountants acceptable by Lessor within one hundred twenty (120) days after the close of each fiscal year of Lessee occurring after the date of Lease; (2) balance sheets as of the end of each quarterly period of Lessee's fiscal years, income statement and statement of sources and uses of funds certified as accurate by an officer of Lessee within forty-five (45) days after the close of each such quarterly period, unless more frequent reports are requested by Lessor in its sole discretion; and (3) prompt written notice of any material adverse change in Lessee's financial condition or business operations, whether pending or threatened.

**Section 23. Acts of God, Etc.** Lessor shall not be liable or in default for any delay or failure of performance hereunder resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labor disputes, shortages of parts, materials, labor on transportation or any cause beyond Lessor's control.

**Section 24. General Provisions.**

(a) The Lease shall be deemed to have been executed in Southfield, Michigan, and shall be governed by and construed according to the laws of the State of Michigan.

(b) Time shall be deemed the very essence of the Lease.

(c) Any delay on the part of Lessor in exercising any power, privilege or right hereunder, or under any other instrument executed by Lessee and delivered to Lessor in connection herewith shall not operate as a waiver thereof, and no single or partial exercise thereof or the exercise of any other power, privilege or right shall preclude other or further exercise thereof or the exercise of any other power, privilege or right.

(d) No term or provision of the Lease may be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, modification, waiver, discharge or termination is sought. The waiver by Lessor of any Event of Default by Lessee shall not be effective unless in writing and shall not constitute a waiver of any subsequent Event of Default, and shall be restricted to the Event of Default so waived. This Lease and all Schedules and Exhibits hereto constitute the entire agreement between the parties hereto with respect to the Equipment.

(e) All notices required under the terms and provisions of the Lease shall be in writing, and any such notice shall become effective when deposited in the United States mail, with proper postage for certified mail, return receipt requested, prepaid, correctly addressed to the address shown herein or to such other address as such party shall from time to time designate for itself in writing to the other party.

(f) Any provision of the Lease which may be determined by competent authority to be 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 provisions hereof, and 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, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(g) All rights, remedies and powers of Lessor hereunder are irrevocable and cumulative and not alternative or exclusive and shall be in addition to all rights, remedies and powers given hereunder or in or by any other instruments or by the Michigan Uniform Commercial Code or any laws now existing or hereafter enacted.

(h) The rights and privileges of Lessor hereunder shall inure to the benefit of its successors and assigns, and the Lease shall be binding on all heirs, executors, administrators, assigns and successors of Lessee.

(i) All representations and warranties herein shall survive the execution hereof and the payment of any and all amounts due hereunder.

(j) The Lease may be executed in one or more duplicate copies, only one of which shall be deemed an original.

(k) In all cases where more than one party executes the Lease as Lessee, all words used herein in the singular shall be deemed to have been used in the plural where the context and construction so require, and the word "Lessee" herein shall include the plural, whereupon the obligations and agreements of Lessee hereunder shall be joint and several. Words phrased in one gender shall include all genders.

(l) The paragraph headings herein are inserted only for convenience and are in no way to be construed as part of the Lease or as a limitation of the scope of the particular paragraph to which they refer.

(m) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF MICHIGAN. LESSEE AGREES TO SUBMIT TO THE JURISDICTION OF THE STATE AND/OR FEDERAL COURTS IN THE STATE OF MICHIGAN. THE VENUE FOR ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE DEEMED PROPER IF SUCH PROCEEDING IS BROUGHT IN A FEDERAL OR STATE COURT IN MICHIGAN SELECTED SOLELY BY LESSOR.

The undersigned agree to all the terms and conditions set forth above, and in witness thereof, they hereby execute the Lease on the day and date first above written.

"LESSOR"

CHARTER FINANCIAL INC.,  
a New York Corporation

By: \_\_\_\_\_

Its: Vice President

"LESSEE"

RAILAMERICA SERVICES CORPORATION,  
a Delaware corporation

By: Gary D. Marino

Its: Vice - President

RAILAMERICA, INC., a Delaware  
corporation

By: Gary D. Marino

Its: Vice - President

HURON AND EASTERN RAILWAY COMPANY, INC.,  
a Michigan corporation

By: Gary D. Marino

Its: Vice - President

SAGINAW VALLEY RAILWAY COMPANY, INC.,  
a Delaware corporation

By: Gary D. Marino

Its: Vice - President

CHARTER FINANCIAL, INC.  
LEASE SCHEDULE "A"

Lessee: RailAmerica, Inc.  
RailAmerica Services Corporation  
Saginaw Valley Railway Company, Inc.  
Huron and Eastern Railway Company, Inc.  
538 East Huron Avenue, Vassar, MI 48768

Lessor: Charter Financial, Inc.  
444 Madison Avenue  
New York, New York 10022

1. Description of Equipment:

P.O. #220

GP38-2 Locomotives (Pittsburgh and Lake Erie Railroad Locomotives Road Numbers 2059 and 2060) equipped with the following:

GP-38-2 Locomotive (P&LE 2059)

- \* AAR Control Systems, Benelex flooring, Verticool water coolers and Electric cab heat
- \* Low nose compartments and retention-type toilets
- \* Cab glazing
- \* Wiring
- \* Sparks arrester exhaust manifolds for engine
- \* WBO air compressors
- \* Standard Blomberg trucks with clasp brakes
- \* Cobra composition brake shoes
- \* 6½ x 12 Hyatt journal boxes
- \* 2,700 gallons capacity fuel tank with sight glass guages on both sides and dial guage on right side
- \* Wheels: #1 - 2-1/16, 2-1/16; #2 - 1-5/8 and 1-5/8
- \* Barco speed indicator
- \* Engine serial #76-K2-1035

GP-38-2 Locomotive (P&LE 2060)

- \* AAR Control Systems, Benelex flooring, Verticool water coolers and Electric cab heat

and all additions, attachments, accessories, substitutions, replacements, repairs, improvements, betterments and appurtenances of whatever description or nature whether now owned or hereafter acquired, and all proceeds, including without limitation, insurance proceeds.

GP-38-2 Locomotive (P&LE 2060) (cont'd)

- \* Low nose compartments and retention-type toilets
- \* Cab glazing
- \* Wiring
- \* Sparks arrester exhaust manifolds for engine
- \* WBO air compressors
- \* Standard Blomberg trucks with clasp brakes
- \* Cobra composition brake shoes
- \* 6½ x 12 Hyatt journal boxes
- \* 2,700 gallons capacity fuel tank with sight glass gauges on both sides and dial gauge on right side
- \* Wheels: #1 - 2-7/16, 2-9/16; #2 - 1-13/16 and 1-9/16
- \* Barco speed indicator
- \* Snow plow on front
- \* Engine serial #76-K2-1052

Mid Am Equipment, Inc.

Railway Open-Top Ballast Hoppers  
JC1X 101, JC1X 102, JC1X 103

and all additions, attachments, accessories, substitutions, replacements, repairs, improvements, betterments and appurtenances of whatever description or nature whether now owned or hereafter acquired, and all proceeds, including without limitation, insurance proceeds.

**2. Location:**

The Equipment described above shall be located ~~at~~ on rail lines owned or controlled by Lessee within the Continental United States

The foregoing is hereby approved and agreed by the undersigned as Lease Schedule A to and part of that certain Equipment Finance Lease dated March 8, 1993 by and among Lessor and Lessee, the provisions of which are hereby incorporated herein by reference.

RAILAMERICA SERVICES CORPORATION,  
a Delaware Corporation

By: [Signature]

Its: Vice-President

HURON AND EASTERN RAILWAY COMPANY, INC.  
a Michigan Corporation

By: [Signature]

Its: Vice-President

SAGINAW VALLEY RAILWAY COMPANY, INC.,  
a Delaware Corporation

By: [Signature]

Its: Vice-President

CHARTER FINANCIAL, INC.,  
a New York corporation

By: [Signature]

Its: Vice President

RAILAMERICA, INC., a Delaware Corporation

By: [Signature]

Its: Vice-President

State of New York )  
 )  
County of Now York )

On this, <sup>as of the 8<sup>th</sup></sup> ~~the~~ \_\_\_\_\_ day of MARCH, 1993, before me personally appeared STEWART ABRAMSON, to me personally known, who being duly sworn, did say that he is VICE PRESIDENT of CHARTER FINANCIAL, INC., that the foregoing instrument was signed on behalf of such 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 such corporation.

CLAUDE CASTRO  
Notary Public, State of New York  
No. 31476221  
Qualified in New York County  
Commission Expires 10/31/93

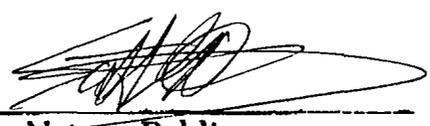
  
Notary Public

My commission expires: 10/31/93

State of FLORIDA )

County of PALM BEACH )

On this, the 8th day of March, 1993, before me personally appeared GARY O. MARINO, to me personally known, who being duly sworn, did say that he is Vice President of RAILAMERICA SERVICES CORPORATION, HURON AND EASTERN RAILWAY COMPANY, INC., SAGINAW VALLEY RAILWAY COMPANY, INC. and RAILAMERICA, INC., that the foregoing instrument was signed on behalf of each of such corporations by authority of the Board of Directors of each of such corporations, and he acknowledged that the execution of the foregoing instrument was the free act and deed of each of such corporations.



Notary Public

Scott G. Williams

Print Name

My commission expires: \_\_\_\_\_

NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: APRIL 23, 1993.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

18172

District of Columbia : SS

MAR 22 1993 -2 55 PM

INTERSTATE COMMERCE COMMISSION

I, ROBERT W. ALVORD, being duly sworn do hereby certify that the attached "EQUIPMENT FINANCE LEASE" dated March 8, 1993, between Charter Financial, Inc. and RailAmerica, Inc. consisting of eighteen pages, is a true and complete copy of the original thereof.



ROBERT W. ALVORD

Subscribed and sworn to before me this 17<sup>th</sup> day of March, 1993.

  
NOTARY PUBLIC

My Commission expires: August 14, 1997

.. 18172 A

MAR 22 1993 - 2 32 PM

INTERSTATE COMMERCE COMMISSION

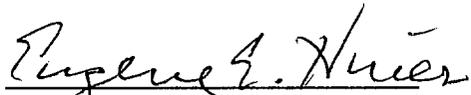
District of Columbia : SS

I, Robert W. Alvord, being duly sworn do hereby certify that the attached "NON-RECOURSE ASSIGNMENT" dated March 16, 1993 between Charter Financial, Inc. and Sterling Bank & Trust consisting of four pages is a true and complete copy of the original thereof.



ROBERT W. ALVORD

Subscribed and sworn to before me this 18th day of March, 1993.

  
NOTARY PUBLIC

My Commission expires: August 14, 1997

