

CRAVATH, SWAINE & MOORE

10056

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NEW YORK, N. Y. 10005

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RECORDATION NO. Filed 1425

OCT 29 1979 - 12 40 PM

INTERSTATE COMMERCE COMMISSION

9-302A060

OCT 29 1979

Date ICC, CC

CC Washington, D. C.

RECORDATION NO. Filed 1425

OCT 29 1979 - 12 40 PM

INTERSTATE COMMERCE COMMISSION

October 29, 1979

Boston and Maine Corporation
Lease Financing Dated as of August 15, 1979
[CS&M Ref.: 4255-305]

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Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose here-
with on behalf of Boston and Maine Corporation, for filing
and recordation counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of
August 15, 1979, between Merrill Lynch Leasing Inc.,
as Owner, and FMC Corporation, as Builder; and

(b) Agreement and Assignment dated as of August 15,
1979, between FMC Corporation, as Builder, and MLL Leasing
Corp., as Assignee.

2. (a) Lease of Railroad Equipment dated as of
August 15, 1979, between Robert W. Meserve and Benjamin H.
Lacy, Trustees of the Property of Boston and Maine
Corporation, as Lessee, and Merrill Lynch Leasing Inc.,
as Lessor; and

MAURICE T. MOORE
BRUCE BROMLEY
WILLIAM B. MARSHALL
RALPH L. MCAFEE
ROYALL VICTOR
ALLEN H. MERRILL
HENRY W. DEKOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA

JOHN E. YOUNG
JAMES M. EDWARDS
DAVID O. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
FREDERICK A. O. SCHWARZ, JR.
CHRISTINE BESHAR
ROBERT S. BISHOP
DAVID BOIES
DAVID O. BROWNWOOD
PAUL M. DOOY
RICHARD M. GALE
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT
ALLEN F. NELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON
RICHARD L. HOFFMAN
JOSEPH A. MULLINS
MAX R. SHULMAN

COUNSEL
W. LYLE E. MAW
FRANK R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER
ROSWELL L. GILPATRICK
L. R. BRESLIN, JR.
GEORGE B. TURNER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON

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CABLE ADDRESSES
CRAVATH, N. Y.
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CRAVATH, LONDON E. C. 2

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INTERSTATE COMMERCE COMMISSION

Countersigned Joseph P. M. Moran

(b) Assignment of Lease and Agreement dated as of August 15, 1979, between Merrill Lynch Leasing Inc., as Lessor, and MLL Leasing Corp., as Vendor.

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

(1) Vendor-Assignee:

MLL Leasing Corp.
165 Broadway
New York, N.Y. 10080

(2) Owner-Lessor:

Merrill Lynch Leasing Inc.
165 Broadway
New York, N. Y. 10080

(3) Builder-Vendor:

FMC Corporation
200 East Randolph Drive
Chicago, Illinois 60601

(4) Lessee:

Robert W. Meserve and
Benjamin H. Lacy, Trustees
of the Property of Boston
and Maine Corporation
Iron Horse Park
North Billerica, Massachusetts 01862

Please file and record the documents referred to in this letter and cross-index them under the names of the Vendor-Assignee, the Owner-Lessor, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of 25 50' 6" 100-ton, class XP box car bearing identifying numbers BM 80000-80024, inclusive.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agree-

ment and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
As Agent for
Boston and Maine Corporation

Interstate Commerce Commission,
Washington, D. C. 20423

Attention of Ms. Agatha L. Mergenovich,
Secretary.

Encls.

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RECORDATION NO. Filed 1425

OCT 29 1979 -12 40 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of August 15, 1979

between

MERRILL LYNCH LEASING INC.

and

MLL LEASING CORP.

ASSIGNMENT OF LEASE AND AGREEMENT
dated as of August 15, 1979, between MERRILL
LYNCH LEASING INC. (the "Lessor"), and MLL
LEASING CORP. (hereinafter with its successors
and assigns called the "Vendor").

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "Security Document") with FMC Corporation (the "Builder"), providing for the sale from the Builder to the Lessor of such units of railroad equipment (the "Units") described in the Annex B thereto as are delivered to and accepted by the Lessor thereunder; and the Security Document is being assigned to the Vendor by the Builder.

The Lessor and the Trustees of the Property of the Boston and Maine Corporation, Debtor (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing by the Lessor to the Lessee of the Units.

In order to provide security for the obligations of the Lessor under the Security Document and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness as defined in the Security Document, the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor.

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the Lessor's obligations under the Security Document, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise, except (i) any indemnity payable to the Lessor pursuant to § 6 or

§ 9 of the Lease which is not required to be paid over under the CSA to the Vendor, (ii) any liability insurance proceeds payable to the Lessor pursuant to § 7 of the Lease and (iii) any increases in rental and casualty payments and any other payments which may be required by the Indemnity Agreement (as defined in the Lease) (all such rights, title, interests, powers, privileges and other benefits being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept for the account of the Lessor any Payments made by the Lessee pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Document, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Document could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Vendor on the same date such Payment is applied to satisfy such obligations of the Lessor by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any Payment when due or if the Vendor shall have actual notice of an Event of Default under the Lease, the Vendor shall promptly notify the Lessor by telephone and confirm such notice in writing to the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Document.

2. This Assignment is executed only as security for the obligations of the Lessor under the Security Document and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in

any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor under the Lease shall be and remain enforceable by the Lessee and its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. To protect the security afforded by this Assignment, the Lessor agrees as follows:

(a) The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee which are intended to satisfy the obligations of the Lessor under the Security Document, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement so amending, modifying or terminating the Lease and the Lessor agrees that any such amendment, modification or termination thereof without such consent shall be void.

(b) Should the Lessor fail to make any payment or to do any act which this Assignment requires the Lessor to make or do, then the Vendor, but without obligation so to do, after first making written demand upon the Lessor and affording the Lessor a reasonable period of time within which to make such payment or do such act, but without releasing the Lessor from any obligation hereunder, may make or do the same in such manner and to such extent as the Vendor may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Vendor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessor contained in the Lease; and in exercising any such powers, the Vendor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessor will reimburse the Vendor for such costs, expenses and fees; provided, however, that the obligations of the Lessor to make reimbursements under this Paragraph 3 are subject to the last

paragraph of Article 4 of the Security Document.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Vendor may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Document, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Lessor without further act or deed, but the Agent shall execute and deliver such documents as the Lessor may reasonably request in order to confirm, or make clear upon public records, such termination and/or reversion. Promptly following such full discharge and satisfaction, the Vendor will advise the Lessee in writing that all sums due from the Lessor under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interests of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder. The Vendor will give written notice to the Lessor and the Lessee of any such assignment.

8. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

9. The Lessor shall cause copies of all notices received in connection with the Lease and all payments thereunder to be promptly delivered or made to the Vendor at its address set forth in the attached Lessee's Consent and Agreement, or at such other address as the Vendor shall designate.

10. The Vendor hereby agrees with the Lessor that (i) so long as no event of default, or any event which with lapse of time or notice or both would constitute such an event of default, under the Security Document has occurred and is then continuing, the Vendor will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that (ii) subject to the terms of the Lease, and the Security Document, the Lessor may, so long as no event of default or event which with notice or lapse of time or both would constitute such an event of default under the Security Document has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of subparagraph (a) of the first paragraph of § 10 of the Lease; provided, however, the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of subparagraph (b) of said § 10.

11. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names, by officers thereunto duly authorized, and their

respective corporate seals to be affixed and duly attested,
all as of the date first above written.

MERRILL LYNCH LEASING INC.,

by John L. Murphy
Vice President

[CORPORATE SEAL]

Attest:

Donald J. Crosby
Assistant Secretary

MLL LEASING CORP.,

by Lester Schoepfle
Vice President

[SEAL]

Attest:


Frederick C. Butler
Assistant Secretary



STATE OF NEW YORK ,)
) ss.:
COUNTY OF NEW YORK,)

On this 26TH day of October 1979, before me personally appeared JOHN C. MURPHY, to me personally known, who, being by me duly sworn, says that he is a VICE PRESIDENT of MERRILL LYNCH LEASING INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

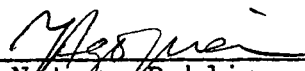
[NOTARIAL SEAL]


Notary Public
YOLANDA AGOPIAN
Notary Public, State of New York
No. 41-4685317
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1981

STATE OF NEW YORK ,)
) ss.:
COUNTY OF NEW YORK ,)

On this 26TH day of October 1979, before me personally appeared LESTER SCHOENFELD, to me personally known, who, being by me duly sworn, says that he is a EXECUTIVE VICE PRESIDENT of MLL LEASING CORP., that one of the seals affixed to the foregoing instrument is the seal of said national banking association, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]


Notary Public
YOLANDA AGOPIAN
Notary Public, State of New York
No. 41-4685317
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1981

LESSEE'S CONSENT AND AGREEMENT

The undersigned, THE TRUSTEES OF THE PROPERTY OF BOSTON AND MAINE CORPORATION, DEBTOR, the Lessee named in the Lease (the "Lease" referred to in the foregoing Assignment of Lease (the "Assignment"), hereby acknowledges receipt of a copy of the Assignment, consents to all the terms and conditions of the Assignment and agrees:

(1) subject to the terms and conditions of the Assignment, to pay all Payments (as defined in the Assignment) due and to become due to Merrill Lynch Leasing Inc. (the "Lessor") under the Lease in respect of the Units leased thereunder, without any setoff, abatement, counterclaim, deduction or defense whatsoever, directly to MLL Leasing Corp., or its successors and assigns (the "Vendor") to its address at 165 Broadway, New York, New York 10006, attention of President (or to such other address as may be furnished in writing to the undersigned by the Vendor);

(2) subject to the terms and conditions of the Assignment, that the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Vendor were named therein as the Lessor;

(3) that the Vendor shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise and so long as no Event of Default exists under the Lease and the Vendor is entitled to apply the Payments in accordance with the Assignment the Lessee shall be entitled to the rights of possession, use and assignment as provided in the Lease (otherwise all rights of the Lessee shall be subject to the rights and remedies of the Vendor under the Security Document);

(4) the Lease shall not, without the prior written consent of the Vendor, be amended, terminated or modified, or any action be taken or omitted by the undersigned, the taking or omission of which might result in any alteration or impairment of the obligations of Lessor under the Lease which are intended to satisfy the obligations of the Lessor under the Security Document, the obligations of the Lessor under the Assignment or

the obligations of the Lessee under this Consent and Agreement or of any of the rights created by any thereof; and

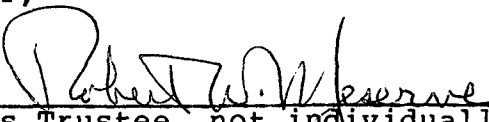
(5) that it will execute, deliver and/or furnish to the Vendor all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the provisions of the Lease.

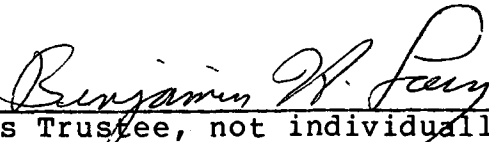
This Consent and Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

This Consent and Agreement shall be deemed to be a contract under the laws of the Commonwealth of Massachusetts and, for all purposes, shall be construed in accordance with the laws of said Commonwealth.

Dated as of August 15, 1979

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

by 
as Trustee, not individually

by 
as Trustee, not individually