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RECORDATION NO. 1 5112  
DEC 4 1986 10:45 AM  
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 1 5112  
DEC 4 1986 10:45 AM  
INTERSTATE COMMERCE COMMISSION  
6-338A030

RECEIVED  
DEC 4 10 40 AM '86  
HONORARY UNIT

James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

No.  
Date DEC 4 1986  
Fee \$ 20.00  
ICC Washington, D. C.

Dear Mr. Bayne:

Enclosed for recordation under the provisions of Section 11303 of Title 49 of the U.S. Code are the original and five counterparts of an Equipment Lease Agreement dated as of October 1, 1986 and a Rental Schedule and Certificate of Inspection and Acceptance dated as of October 1, 1986. The Equipment Lease Agreement is a primary document and the Rental Schedule is a secondary document.

A general description of the railroad rolling stock and locomotives covered by the enclosed documents and intended for use related to interstate commerce is set forth in Schedule 2 attached to this letter and made a part hereof.

The names and addresses of the parties to the Equipment Lease Agreement are as follows:

Lessor: The Connecticut National Bank, as Trustee  
under Maine Central-Boston and Maine Trust  
No. 86-1  
777 Main Street  
Hartford, Connecticut 06115  
Attention: Bond and Trustee Administration

Lessee: Maine Central Railroad Company  
Iron Horse Park  
North Billerica, Massachusetts 01862-1681  
Attention: Vice President-Finance

Boston and Maine Corporation  
Iron Horse Park  
North Billerica, Massachusetts 01862-1681  
Attention: Vice President-Finance

The undersigned acted as special counsel in connection with the preparation of the enclosed document and has knowledge of the matters set forth therein.

Please return the original and any extra copies of the Equipment Lease Agreement and the Rental Schedule not needed by the Commission for recordation to Kathleen M. Gruca, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$20.00 covering the required recording fee.

*Handwritten signature/initials on the left margin.*

A short summary of the enclosed primary document to appear in the Index is as follows:

The Equipment Lease Agreement between The Connecticut National Bank, as Trustee under Maine Central-Boston and Maine Trust No. 86-1, as Lessor, 777 Main Street, Hartford, Connecticut 06115, Attention: Bond and Trustee Administration and Maine Central Railroad Company and Boston and Maine Corporation, as joint and several co-lessees, Iron Horse Park, North Billerica, Massachusetts 01862-1681, Attention: Vice President-Finance.

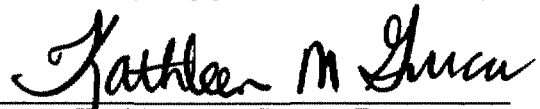
A short summary of the enclosed secondary document to appear in the Index is as follows:

The Rental Schedule and Certificate of Inspection and Acceptance between The Connecticut National Bank, as Trustee under Maine Central-Boston and Maine Trust No. 86-1, as Lessor, 777 Main Street, Hartford, Connecticut 06115, Attention: Bond and Trustee Administration and Maine Central Railroad Company and Boston and Maine Corporation, as joint and several co-lessees, Iron Horse Park, North Billerica, Massachusetts 01862-1681, Attention: Vice President-Finance.

Very truly yours,

CHAPMAN AND CUTLER

By

  
Kathleen M. Gruca, Esq.

Enclosures

**DESCRIPTION OF EQUIPMENT**

<u>Equipment Type</u>	<u>Series Numbers</u>	<u>Number Units</u>	<u>Unit Valuation and Unit Purchase Price</u>	<u>Total Valuation and Total Purchase Price</u>
EMD GP40 Locomotives (1968)	320-321 323-324 326-335 338-342	20	\$ 75,000	\$1,500,000
EMD GP38 Locomotives (1966)	251-259 261-263	12	\$125,000	\$1,500,000
EMD GP7 Locomotives (rebuilt 1983)	470	1	\$150,000	\$ 150,000
EMD GP9 Locomotives (rebuilt 1984)	471	1	\$200,000	\$ 200,000
100 ton 4460 cu. ft. Covered Hoppers (ACF, 1966)	3400-3401 3403-3428 3430-3440 3443-3451	48	\$ 6,500	\$ 312,000
100 ton 3300 cu. ft. Covered Hoppers (Pullman, 1967)	12101-12121 12123-12146 12148-12152 12154-12156 12158 12160-12171 12173-12192 12194 12196-12200	92	\$ 12,000	\$1,104,000
100 ton 1844 cu. ft. Open Hoppers (Beth. Steel, 1966)	237 240 241-243 245-248 251-257 259-269 271-281 284 286 288-289 293-295 297-308 310 312-320 322	103	\$ 11,000	\$1,133,000

<u>Equipment Type</u>	<u>Series Numbers</u>	<u>Number Units</u>	<u>Unit Valuation and Unit Purchase Price</u>	<u>Total Valuation and Total Purchase Price</u>
	325-335			
	337-344			
	346-351			
	353-357			
	359			
	361-362			
	364-365			
95 ton 3023 cu. ft. Open Hoppers (Beth. Steel, 1968)	1001-1005 1007-1008 1010-1011 1013-1023 1025-1049 1051-1052 1054 1056-1064 1066-1075 1077-1078 1080-1085 1087-1089 1091-1101 1103-1124 1126-1143 1145-1147 1149-1175 1177-1192 1194-1195 1197-1200	181	\$ 10,000	\$1,810,000
100 Ton 2244 cu. ft. Gondolas (Southern Iron, 1976)	9000-9099	100	\$ 22,000	\$2,200,000
77 ton 1995 cu. ft. Gondolas (Beth Steel, 1967)	14102-14112 14114-14122 14125-14137 14140-14143 14145-14147 14149-14151 14153-14165 14167-14189 14191-14215 14217-14221 14223-14244 14246-14249	135	\$ 1,500	\$ 202,500

<u>Equipment Type</u>	<u>Series Numbers</u>	<u>Number Units</u>	<u>Unit Valuation and Unit Purchase Price</u>	<u>Total Valuation and Total Purchase Price</u>
77 ton 1776 cu. ft. Gondolas (Greenville Steel, 1965)	14300-14301 14304-14310 14312-14336 14338-14339 14341-14349	45	\$ 1,500	\$ 67,500
			Total Valuation	\$10,179,000
			Purchase Price	<u>\$10,150,000</u>

Interstate Commerce Commission  
Washington, D.C. 20423

12/4/86

OFFICE OF THE SECRETARY

Kathleen M Gruca, Esq.  
Chapman & Cutler  
111 West Monroe St.  
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/4/86 at 10:45am, and assigned re-  
recording number(s). 15112 & 15113

Sincerely yours,

*Noreta R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

1 5112  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded

DEC 4 1986 10-45 AM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

Dated as of

October 1, 1986

Among

THE CONNECTICUT NATIONAL BANK,  
not individually but solely as Trustee  
under a Trust Agreement dated as of October 1, 1986  
(LESSOR)

AND

BOSTON AND MAINE CORPORATION  
(LESSEE)

AND

MAINE CENTRAL RAILROAD COMPANY  
(LESSEE)

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## EQUIPMENT LEASE AGREEMENT

EQUIPMENT LEASE AGREEMENT dated as of October 1, 1986 (this "Lease"), between BOSTON AND MAINE CORPORATION (hereinafter called "Boston and Maine"), a Delaware corporation having its principal place of business at Iron Horse Park, North Billerica, Massachusetts 01862-1681, and MAINE CENTRAL RAILROAD COMPANY (hereinafter called "Maine Central"), a Maine corporation, having its principal place of business at Iron Horse Park, North Billerica, Massachusetts 01862-1681 (Boston and Maine and Maine Central as joint and several Co-Lessees hereunder being hereinafter collectively referred to as the "Lessee"), and THE CONNECTICUT NATIONAL BANK, not in its individual capacity but solely as trustee ("Lessor") under the Trust Agreement dated as of October 1, 1986 (the "Trust Agreement") for the benefit of FIRST NH RESOURCES, INC., a New Hampshire corporation (the "Trustor"), having its principal office of business at 777 Main Street, Hartford, Connecticut 06115.

### RECITALS:

A. Pursuant to an Acquisition Agreement dated as of October 1, 1986 (the "Acquisition Agreement") between the Lessor, as buyer, and the Lessee, as sellers, Lessor has committed to purchase the Equipment as more fully described in Exhibit I attached hereto and made a part hereof (individually "Item" or "Item of Equipment" and collectively the "Equipment") and concurrently with the purchase of the Equipment will lease the same to Lessee pursuant to this Lease.

B. Concurrently with the execution of this Lease, Lessee and Lessor shall enter into a Participation Agreement dated as of October 1, 1986 (the "Participation Agreement") with Guilford Transportation Industries, Inc., a Delaware corporation (the "Guarantor"), the Trustor and the institutional investors named in Schedule 2 thereto (collectively the "Note Purchasers"), providing for the commitment of the Note Purchasers to purchase the 10% Secured Notes due January 1, 1995 (the "Notes") from the Lessor, the funds from which purchase, together with funds to be provided by the Trustor, will permit Lessor to purchase the Equipment. On the Closing Date (as defined in the Participation Agreement and hereinafter referred to as the "Closing Date") the Note Purchasers will purchase the Notes of Lessor in an amount equal to 77% of the purchase price set forth in Exhibit I hereto (the "Purchase Price") of the Equipment and the Trustor will advance an amount equal to the remainder thereof, all upon the terms and conditions set forth in the Participation Agreement.

C. Payment of the Notes will be secured by a collateral assignment of Lessor's right, title and interest in and to this Lease and the Basic Rent, Additional Rent, Stipulated Loss Value payments, Fair Market Value payments and Termination Value payments (as each such term is hereinafter defined) and certain other sums due and to become due under this Lease and by the grant of a first security interest in and to the Equipment pursuant to a Security Agreement dated as of October 1, 1986 (the "Security Agreement") from Lessor, as debtor, to New England Mutual Life Insurance Company, as agent for the Note Purchasers, as secured party (in such capacity, the "Secured Party").

D. The Guarantor will enter into a Guaranty Agreement No. 1 dated as of October 1, 1986 ("Guaranty No. 1") from the Guarantor to Lessor and the Trustor and will enter into a Guaranty Agreement No. 2 dated as of October 1, 1986 ("Guaranty No. 2") from the Guarantor to the Secured Party ("Guaranty No. 1 and Guaranty No. 2 being

hereinafter collectively referred to as the "Guaranty") under each of which the Guarantor will absolutely and unconditionally guarantee the payment of all Basic Rent, Additional Rent, Stipulated Loss Value payments, Fair Market Value payments, Termination Value payments and all other sums due and to become due under this Lease and the performance of all obligations of Lessee hereunder all upon the terms and conditions set forth in the Guaranty.

In consideration of the mutual covenants hereafter contained, Lessor and Lessee agree as follows:

1. **AGREEMENT FOR LEASE OF EQUIPMENT** -- Lessor shall lease to Lessee and Lessee shall lease from Lessor the Equipment upon the terms and conditions specified in this Lease and the Rental Schedule and Certificate of Inspection and Acceptance in the form attached hereto as Exhibit II and made a part hereof (the "Rental Schedule").

2. **DELIVERY AND ACCEPTANCE OF EQUIPMENT** -- Lessor and Lessee understand that the Lessee of the Equipment will deliver the Equipment to the location specified in the Rental Schedule. As between Lessor and Lessee, Lessee's acceptance for lease hereunder of any Equipment (as evidenced by its execution and delivery to Lessor of the Rental Schedule with respect to such Equipment) constitutes Lessee's acknowledgment that such Equipment in all respects conforms to the requirements of this Lease and is subject to all of the terms and conditions of this Lease, Lessor hereby authorizes Lessee, acting as Lessor's agent, to accept for Lessor, and in Lessor's name, the Equipment from the Lessee upon delivery.

3. **NO WARRANTIES BY LESSOR** -- LESSOR, NOT BEING THE VENDOR, LESSEE OR MANUFACTURER OF THE EQUIPMENT, HEREBY MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION, SELECTION, QUALITY, SUITABILITY OR OPERATION OF ANY EQUIPMENT, THE MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR PERFORMANCE OF ANY OF THE EQUIPMENT, AND THE LESSEE LEASES THE EQUIPMENT, "AS IS" AND "WHERE IS." In no event shall any defect in, or unfitness of, any Item of Equipment relieve Lessee of the obligation to pay rent or to make any other payments required hereunder or to perform any other obligations hereunder. Without limiting the generality of the foregoing, Lessor shall not be liable to Lessee for any (a) defects in any of the Equipment or for any direct or consequential damage therefrom; or (b) loss of use of any of the Equipment or for any interruption in Lessee's business occasioned by Lessee's inability to use any of the Equipment for any reason whatsoever. So long as no Event of Default shall have occurred hereunder, Lessor hereby transfers and assigns to Lessee during the Lease Term all its rights and interest in any dealer's, manufacturer's and subcontractor's warranties or servicing obligations, if any, with respect to any and all of the Equipment, including any rights to instructions and data, if any, with respect to the Equipment, which rights and interest were transferred to the Lessor pursuant to the Acquisition Agreement and the bills of sale transferring title to the Equipment from the Lessee, as sellers, to the Lessor, as buyer, and agrees to execute all documents reasonably necessary to effect such transfer and assignment. To the extent that any rights of Lessor with respect to the Equipment may not be assigned or otherwise be available to Lessee, Lessor will use reasonable efforts to enforce such rights against any such dealer, manufacturer or subcontractor.

4. **LEASE TERM** -- The Lease Term shall commence and expire on the dates set forth in the Rental Schedule.

5. **RENT**

(a) This Lease is a net lease and Lessee shall pay to Lessor as rent for the Equipment during the Lease Term, the amount set forth in the Rental Schedule ("Basic Rent") on the dates set forth therein ("Payment Dates") in the manner and at the locations set forth in Section 6 hereof.

(b) Lessee shall also pay to Lessor on demand, all amounts which Lessee is required to pay Lessor pursuant to this Lease (other than Basic Rent) together with every fine, interest and cost which may be added for non-payment or late payment thereof. Such amounts shall constitute additional rent ("Additional Rent"). If Lessee shall fail to pay any Additional Rent, Lessor shall have all rights, powers and remedies with respect thereto as are provided herein or by law in the case of nonpayment of Basic Rent. With respect to any amount of Basic Rent or Additional Rent not paid when due hereunder, Lessee shall pay to Lessor (or to whomever else may be entitled thereto) interest on such amount from the due date thereof until payment is received by such person at the lower of: (i) two percent (2%) above the Prime Rate but in no event less than 12% per annum or (ii) the highest rate of interest permitted by law ("Default Interest Rate"). Lessee shall perform all its obligations under this Lease at its sole cost and expense, and shall pay all Basic Rent and Additional Rent when due, without further notice or demand.

6. **PLACE AND MANNER OF RENT PAYMENT** -- The payments to be made by Lessee under this Lease shall be made as follows:

(a) Pursuant to Section 18 hereof Lessor has assigned to the Secured Party this Lease and, except as expressly provided in this Section 6, the right to receive Basic Rent, Additional Rent, Stipulated Loss Value payments, Fair Market Value payments and all other amounts required by and to the extent set forth herein. Accordingly each installment of Basic Rent and the entire amount of any payment of Stipulated Loss Value or Fair Market Value, as the case may be, pursuant to Section 12 hereof or the entire amount of any payment of Termination Value pursuant to Section 24 hereof and of any other Additional Rent or amount of any interest due in respect of the late payment of any rentals or other amounts payable pursuant to Section 5(b) hereof shall be paid to the Secured Party as provided in that certain Payment Instruction Letter dated the Closing Date from the Secured Party to the Lessor and the Lessee.

(b) The amount of any payment owing to Lessor or the Trustor for its own respective account pursuant to Section 8, 9 or 14 (with respect to public liability insurance only) shall be made directly to Lessor or the Trustor, as the case may be, without regard to the assignment of this Lease pursuant to Section 18 hereof;

(c) All payments other than those above specified shall be made by Lessee directly to the Secured Party.

7. **IDENTIFICATION MARKS** -- Lessee shall, at Lessee's expense, affix to each Item of Equipment a plate, sign, or other form of notice printed in contrasting

colors upon each side of each Item of Equipment in letters not less than one inch in height reading as follows:

"Leased and Subject to a Security Interest Recorded With the ICC"

and Lessee shall keep and maintain such sign or other form of notice affixed to each Item of Equipment throughout the Lease Term.

**8. FEES AND TAXES** -- Lessee agrees to pay promptly when due, and to indemnify and hold Lessor, the Trustor, the Secured Party, each Note Purchaser and each other from time to time holder of the Notes, and the respective successors and assigns of each of such parties (individually, "Indemnitee" and collectively, "Indemnitees") harmless from, all license, title and registration fees whatsoever, all taxes (including, without limitation, all sales, use, franchise, personal property and stamp taxes) and all other charges (together with any penalties, fines or interest thereon), which are assessed, levied or imposed by any governmental or taxing authority against any Indemnitee, with respect to any Equipment or the purchase, acquisition, ownership, delivery, leasing, possession, use, operation, control or return thereof, or the rents, receipts or earnings arising therefrom which accrue during the term of this Lease, excluding only, however, any taxes measured by the net income of the Indemnitee seeking indemnification hereunder. Unless and until Lessor notifies Lessee in writing to the contrary, Lessee will file and pay the personal property taxes levied or assessed thereon directly to the levying authority, unless they are being contested in good faith and by appropriate proceedings. Upon Lessor's written request, Lessee shall submit to Lessor a true and correct copy of its personal property tax return and its receipt evidencing payment of the tax. In the event Lessor elects to pay personal property taxes directly to a levying authority, Lessor shall submit to Lessee a copy of its personal property tax return and its receipt for the full amount of such personal property taxes so paid by Lessor. All of the obligations of Lessee under this Section 8 imposed or accrued during the Lease Term and until the Equipment shall be returned to Lessor pursuant to the provisions of this Lease or until the Equipment is purchased by Lessee pursuant to the provisions of Section 23 hereof or this Lease is terminated pursuant to Section 24 hereof, shall continue in full force and effect notwithstanding such termination of this Lease.

Nothing contained in this Section 8 shall obligate Lessee to pay or discharge any tax herein referred to so long as it shall, in good faith and by appropriate legal proceedings, contest the validity and amount thereof in any reasonable manner which will not affect or endanger the title and interest of Lessor or the security interest or other rights of the Secured Party in and to the Equipment.

Lessor shall obtain a sales tax exemption, where available with respect to its purchase of the Equipment.

## **9. SPECIAL TAX INDEMNITY; GENERAL INDEMNITY**

### **9.1. Special Tax Indemnity.**

(a) In entering into this Lease and the transactions contemplated hereby, Lessor has made certain assumptions relating to the computation of its United States federal and state income tax liability (the "Tax Assumptions"), including the following (of which each assumption is assumed to be applicable for both federal and state income tax purposes): (i) the Lease will be treated as a true lease of each Item of Equipment between

Lessor as owner and lessor thereof and Lessee as lessee thereof; (ii) any amount borrowed by Lessor to purchase an Item of Equipment will constitute indebtedness of Lessor; (iii) Lessor will be entitled, for federal and state income tax purposes respectively, to such deductions, credits and other benefits with respect to the Equipment as are provided to an owner of property under the Internal Revenue Code of 1954, as amended and in effect as of the date hereof (the "Code"), and under the taxing statutes of all relevant states, including, without limitation: (A) depreciation deductions under Section 167 of the Code ("Depreciation"); (B) interest deductions under Section 163 of the Code and under the corresponding provisions of the taxing statutes of all relevant states for interest paid or accrued on any borrowings described in clause (ii) above (the "Interest Deductions") and (C) amortization of such expenses paid or to be paid by Lessor in connection with the transaction contemplated by this Lease as may be amortized pursuant to, and to the extent permitted by, the Code (the "Amortization Deductions").

(b) If, because of Lessee's act or failure to act (or the act or failure to act of any sublessee, assignee, transferee or affiliate of Lessee or any employee, agent, servant or other Person acting on behalf of Lessee), whether or not permitted or required by this Lease, or its breach or the incorrectness of a representation, warranty or agreement in paragraph (g) of this Section 9.1, or if because there is a sale or disposition of the Equipment or the interest of Lessor therein after the occurrence of an Event of Default under this Lease, (i) Lessor shall fail to claim, after receiving an opinion from its counsel to the effect that there does not exist substantial authority in favor of making such claim, or shall lose the right to claim, or shall suffer a disallowance of, or shall be required to recapture or defer all or any portion of the Interest Deductions or Depreciation or (ii) the after-tax rate of return that Lessor realizes from its investment in the transactions contemplated hereby (determined without regard to any indemnity that may be payable under this Section 9.1(b)) is otherwise reduced below Lessor's Net Return, as defined in paragraph (c) below (any event described in clause (i) or in clause (ii) hereinafter being referred to as a "Loss"), then Lessee shall, after receipt of written notice of such Loss pay to Lessor as an indemnity in equal installments on each Payment Date subsequent to the Loss during the Primary Term, such amount (or amounts) as shall, in the reasonable opinion of Lessor, and after taking into account all taxes required to be paid by Lessor in respect of the receipt or accrual of such indemnity under the laws of any federal, state or local government or taxing authority, preserve Lessor's Net Return (as defined in paragraph (c) below). In the event that any such indemnity is payable under this Section 9.1(b), then appropriate increases shall be made in the applicable Stipulated Loss Values and Termination Values.

(c) For purposes of paragraph (b), the term "Lessor's Net Return" shall mean the after-tax rate of return that Lessor would have realized from its investment in the transactions contemplated hereby under the assumptions used by Lessor in originally evaluating such transactions, including without limitation: (X) the Tax Assumptions, and (Y) the assumption that the Depreciation, the Interest Deductions and the Amortization Deductions will benefit or (to the extent delayed or disallowed in connection with a Loss) would have benefited Lessor by offsetting income all of which will be subject to the maximum marginal federal tax rate for corporations then in effect and a state tax rate equal to the rate assumed by Lessor in entering into the transactions contemplated hereby.

(d) Notwithstanding anything to the contrary in this Section 9.1, the Lessee shall not be required to pay an indemnity under Section 9(b), to the extent that the Loss in question results solely from one or more of the following events or circumstances: (1) the application of Section 465 of the Code to the Lessor; (2) a Casualty Occurrence

with respect to an Item of Equipment for which Lessee has paid the amount required by Section 12 hereof; (3) a disposition by Lessor of any interest in an Item of Equipment if such disposition is not pursuant to or in connection with a sale or assignment under Section 18 hereof or the exercise of any remedy available to Lessor under Section 17 hereof or available to any person claiming any right through Lessor upon the occurrence of an Event of Default; or (4) the failure of Lessor, in its federal or in any state income tax return for the appropriate year or years, to claim in a timely and proper manner any of the deductions and credits described in this Section 9.1 unless such failure occurs under the circumstances described in clause (i) of Section 9.1(b) or is due to Lessee's failure (after a request by Lessor) to timely provide Lessor with the information reasonably necessary to make such claim.

(e) Lessor agrees to promptly notify Lessee of any claim made by the Internal Revenue Service or by any state taxing authority that might result in the payment of an indemnity under Section 9.1(b). Upon request by Lessee, Lessor shall (at Lessee's expense) obtain an opinion of Lessor's counsel as to whether there exists a meritorious basis for contesting such claim. If such opinion is in the affirmative, Lessor shall, upon request by Lessee, and at Lessee's expense, contest such claim by appropriate proceedings.

(f) For purposes of this Section 9.1, the term "Lessor" shall include (i) any affiliated group (within the meaning of Section 1504 of the Code) of which Lessor is a member for any year in which a consolidated income tax return is filed for such affiliated group and (ii) any assignee of Lessor's ownership interest and its affiliated group.

(g) Lessee represents and warrants that (i) after the Equipment is delivered and accepted under the Lease, no Depreciation shall be claimed by Lessee, any of its affiliates, employees, servants or agents or any other Person acting on its behalf, with respect to the Equipment; (ii) Lessee shall not sublease the Equipment to any Person or entity if such sublease will result in a Loss; (iii) neither Lessee nor any of its affiliates, employees, servants or agents or any other Person acting on its behalf will claim that it is owner of the Equipment, nor file any returns or documents inconsistent with the receipt by Lessor of the tax benefits described in paragraph (a) of this Section and (iv) Lessee will not assign, sublease or otherwise transfer the Lease or the Equipment to a tax-exempt entity within the meaning of Section 168(j) of the Code.

## **9.2. General Indemnity.**

Lessee shall indemnify each Indemnatee against, and agrees to defend, protect, save and keep each of them harmless from any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including attorneys' fees and expenses, of whatsoever kind and nature asserted against any such Indemnatee (including, without limitation, by way of strict or absolute liability), in any way relating to or arising out of any transaction arising out of the Operative Agreements (as defined in the Participation Agreement and hereafter referred to as the "Operative Agreements") or arising out of the ordering, construction, installation, possession, use, maintenance, operation, control, condition, return, or other use of the Equipment during the Lease Term and until such time as the Equipment is returned to Lessor pursuant to the provisions hereof or until the Equipment is purchased by Lessee pursuant to the provisions of Section 23 hereof or this Lease is terminated pursuant to Section 24 hereof. In case any action, suit or proceeding is brought against any Indemnatee by reason of any of the foregoing, Lessee, at Lessee's expense, shall cause the claim upon which such action, suit or proceeding is based to be discharged, or shall cause such action, suit or proceeding to be

resisted or defended by counsel designated by Lessee and approved by such Indemnitee (which approval shall not be unreasonably withheld).

**9.3. Survival of Indemnities.**

The obligations of Lessee under this Section 9 shall survive the payment of all obligations under, and the termination of, this Lease.

**10. USE OF EQUIPMENT; LIENS, LOCATION** -- During the Lease Term, Lessee warrants and agrees that the Equipment will be operated and otherwise be in material compliance with all statutes, regulations and orders, including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and, to the extent applicable, the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time (the "Interchange Rules") of any governmental body having power to regulate the Equipment. Lessee shall not permit the Equipment to be used for any purpose for which the Equipment is not designed or suited.

During the Lease Term and until the Equipment has been returned to Lessor pursuant to the provisions of this Lease or until the Equipment is purchased by Lessee pursuant to the provisions of Section 23 hereof or this Lease is terminated pursuant to Section 24 hereof, Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, lien, or encumbrance on any Item of Equipment, Lessor's or the Secured Party's title thereto, or interest therein, except:

(a) the respective rights of Lessor (and the Secured Party) and Lessee as herein provided;

(b) liens or encumbrances granted or placed thereon by Lessor (or its assigns, if any);

(c) liens or encumbrances resulting from claims against Lessor but not against Lessee and unrelated to this Lease, and not resulting from any default, act or omission of Lessee;

(d) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings;

(e) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of business and not delinquent; and

(f) liens arising out of judgments against Lessee with respect to which an appeal or proceeding for review is being prosecuted in good faith and with respect to which there has been secured a stay of execution pending such appeal or proceeding for review; provided, however, that the liens referred to in clauses (d) and (e) of this Section 10 and this clause (f) may remain only so long as the existence thereof does not subject the Equipment in question to forfeiture, seizure or otherwise adversely affect the rights of Lessor or the Secured Party.



Lessee, at its own expense, will promptly take such action as may be necessary to keep each Item of Equipment free and clear of, and to duly discharge, any mortgage, security interest, lien, charge or encumbrance not expressly excepted above. Lessee agrees to procure and maintain in effect all licenses, permits and other approvals and consents required by applicable laws and regulations in connection with Lessee's possession, use, operation and maintenance of the Equipment. Lessee agrees that during the Lease Term, 100% of the use of the Equipment shall be "qualified business use" as that term is defined in Section 280F of the Code, which use shall be calculated in accordance with Regulations promulgated thereunder and shall be supported by records and maintained in accordance with Section 280F and the Regulations thereunder.

So long as the Lessee is not in default under this Lease, the Lessee shall be entitled to possession of the Equipment for normal freight operations upon lines of railroad owned or operated by Lessee or over which Lessee has trackage rights or rights for the operation of its trains and upon connecting and other carriers in or between the United States and Canada in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease; provided that, anything contained in this Lease to the contrary notwithstanding, Lessee shall at no time throughout the Lease Term assign or permit the assignment of any Item of Equipment to service (including, without limitation, the regular operation or maintenance thereof) outside the continental United States, and Lessee agrees that any use of any Item of Equipment outside the continental United States shall be de minimus. Without limiting the foregoing, Lessee shall take all necessary action to protect the right, title and interest of Lessor and the Secured Party in and to the Equipment under the laws of Canada and shall furnish to Lessor and the Secured Party an opinion of Canadian counsel, satisfactory to Lessor and the Secured Party to the effect that such action is all that is necessary to protect the right, title and interest of the Lessor and the Secured Party in and to the Equipment.

#### 11. EQUIPMENT MAINTENANCE, REPAIR, AND ADDITIONS

(a) During the Lease Term, Lessee, at Lessee's sole expense, will maintain the Equipment in good and efficient operating repair, appearance and condition except for ordinary wear and tear, to a standard at least equal to the standard and frequency of maintenance performed on other equipment owned or leased by it and to the extent applicable, suitable for use in interchange in accordance with the Interchange Rules. Without limiting the foregoing, Lessee will, at its own expense, make all adjustments, replacements, repairs, additions and improvements to each Item of Equipment in order to comply with all applicable laws, rules, regulations and requirements or required to satisfy the terms and conditions of this Lease. Any such adjustments, replacements, repairs, additions and improvements shall immediately and without further act become the property of Lessor. All maintenance and repairs to the Equipment shall be made by the manufacturer thereof or those of substantially equal skill or knowledge in maintaining and repairing the Equipment.

(b) Except as may be required pursuant to Subsection (a) hereof, Lessee shall not, without the prior written approval of Lessor and the Secured Party, which approval shall not be unreasonably withheld, make any addition or improvement to any Item which is not readily removable without causing material damage to such Item of Equipment, unless such addition or improvement constitutes an "Improvement" which Lessor may finance pursuant to the provisions of Revenue Procedure 79-48. Lessee shall be entitled from time to time during the term of this Lease to acquire and install, at

Lessee's expense, such additions or improvements to any Item of Equipment readily removable without causing material damage to such Item of Equipment and which do not impair the value or utility of such Item of Equipment as originally delivered hereunder to Lessee (ordinary wear and tear excepted).

(c) Provided that the value and utility of the Equipment or any Item thereof shall not be reduced thereby, Lessee shall have the right at any time to attach additional compatible equipment to the Equipment whether such compatible equipment is owned by Lessee or leased from a third party not otherwise required by Section 11(a) hereof. In each such case, Lessee shall disconnect or detach such equipment upon the expiration or earlier termination of this Lease within ten (10) days of such expiration or earlier termination, or such equipment shall automatically become the property of the Lessor. Lessee agrees to indemnify and hold each Indemnitee harmless from any loss or damage caused to the Equipment by the connection to, or disconnection from, any such compatible equipment.

(d) Should Lessee install, at its own expense, any addition or improvement on any Item of Equipment which is readily removable without causing material damage to such Item of Equipment and which does not impair the value or utility of such Item of Equipment as originally delivered hereunder to Lessee (ordinary wear and tear excepted), and provided that no Event of Default or event which but for the lapse of time or the giving of notice or both would be an Event of Default, shall have occurred and be continuing, Lessee may remove such addition or improvement within ten (10) days of the expiration or earlier termination of this Lease, and Lessee shall thereafter own such addition or improvement. Lessee shall repair all damage to such Item of Equipment resulting from such installation and removal so as to restore such Item of Equipment to the condition in which it existed prior to the installation of such addition or improvement (ordinary wear and tear excepted). Notwithstanding the foregoing and provided that Lessee has not exercised its option to purchase such Item of Equipment pursuant to Section 23 hereof or this Lease is terminated pursuant to Section 24 hereof or Lessee has not renewed this Lease with respect to such Item of Equipment pursuant to Section 19 hereof, at the end of the Primary Term or any Renewal Term of this Lease, Lessor shall be entitled to purchase from Lessee any such addition or improvement at its then Fair Market Value. Fair Market Value for purposes of this Section 11(d) shall mean and shall be determined on the basis of and shall be equal in amount to the value which should obtain in an arm's length transaction between an informed and willing buyer-user (other than (a) a lessee currently in possession or (b) a used equipment dealer) and an informed and willing seller under no compulsion to sell. Such Fair Market Value is to be determined by agreement between Lessor and Lessee, or if they cannot agree, by Appraisal as set forth in Section 19(c) of this Lease. If Lessor agrees, Lessee shall not be required to remove any such addition or improvement if the retention of such addition or improvement will not adversely affect the operating capabilities of such Item of Equipment in the possession of Lessor. Any addition or improvement not so removed shall become the property of Lessor upon return of such Item of Equipment to Lessor.

(e) Should Lessee make to any Item of Equipment any addition or improvement which is not readily removable without causing material damage to such Item of Equipment, such addition or improvement shall immediately and without further act become the property of Lessor.

**12. LOSS, DAMAGE OR DESTRUCTION OF EQUIPMENT** -- Lessee shall bear all risks of damage to, taking of, or loss or destruction of, any Item of Equipment

during the Lease Term thereof and until such Equipment has been returned to Lessor or purchased by Lessee pursuant to the applicable provisions of this Lease.

In the event that any Item of Equipment shall become lost, stolen, destroyed or irreparably damaged from any cause whatsoever, or if any Item of Equipment or Lessor's title thereto shall be requisitioned or seized by any governmental authority (each such occurrence being hereafter called a "Casualty Occurrence") during the Lease Term and until it has been returned to Lessor pursuant to the provisions of this Lease or until the Equipment is purchased by Lessee pursuant to the provisions of Section 23 hereof or this Lease is terminated pursuant to Section 24 hereof, Lessee shall promptly notify Lessor and the Secured Party in writing of such fact, fully informing Lessor and the Secured Party of all details of the Casualty Occurrence in question, and shall pay the Secured Party in cash the greater of (a) the Fair Market Value of the Item of Equipment in question as of the date of the Casualty Occurrence or (b) the "Stipulated Loss Value" of such Item as set forth in the Rental Schedule calculated as of the Payment Date immediately preceding the date of the Casualty Occurrence or, if the Casualty Occurrence occurs on a Payment Date, calculated as of the date of the Casualty Occurrence. This payment shall be made on the next succeeding Payment Date following the Casualty Occurrence with respect to such Item (or, if there is no succeeding Payment Date, then within thirty (30) days following the final Payment Date) together with the Basic Rent accrued and unpaid with respect to such Item of Equipment on such succeeding Payment Date plus all other Additional Rent or other amounts owing with respect to such Item of Equipment on such succeeding Payment Date.

Upon (but not until) the payment of the greater of the Stipulated Loss Value or Fair Market Value of such Item of Equipment in accordance with the terms of this Section 12, and the payment of all Basic Rent and all other sums then due hereunder, this Lease shall terminate with respect to such Item of Equipment and all Lessor's rights and title to such Item shall pass to Lessee, "as is" and "where is" without warranty or recourse, as evidenced by a duly executed bill of sale naming Lessor as the seller and Lessee as the buyer of such Item of Equipment, but Lessee shall continue to pay rent for all other Items of Equipment.

13. **REPORTS** -- Lessee will cause to be furnished to Lessor and the Secured Party, if requested by either such party, a statement showing the location, condition and such other information regarding the Equipment as Lessor or the Secured Party may reasonably request.

Lessor and the Secured Party, shall have the right, upon reasonable notice to Lessee, to inspect the Equipment and Lessee's records with respect thereto.

14. **INSURANCE** -- During the Lease Term and until all Equipment has been returned to Lessor pursuant to the provisions of this Lease or until the Equipment is purchased by Lessee pursuant to the provisions of Section 23 hereof or this Lease is terminated pursuant to Section 24 hereof, Lessee will procure and maintain at its expense "all risk" insurance on all Equipment for the full Lease Term at the higher of the Equipment's Stipulated Loss Value or Fair Market Value and comprehensive public liability and property damage insurance in the amount of at least \$5,000,000 insuring Lessor (in its individual and fiduciary capacity), the Trustor, the Secured Party, the Note Purchasers and any other from time to time holder of the Notes, as their interests may appear, against liability for death, bodily injury and property damage resulting from ownership, maintenance, use or operation of the Equipment. All public liability insurance shall name Lessor (in its

individual and fiduciary capacity), the Trustor, the Secured Party, the Note Purchasers and any other from time to time holder of the Notes as additional insureds and such property damage insurance shall be payable to the Secured Party as sole loss payee under a mortgage loss payable clause in form and substance reasonably satisfactory to the Secured Party, and shall be in such amounts and with such self insurance or deductible levels as are reasonably satisfactory to Lessor and Secured Party. All policies of insurance maintained pursuant to this Section shall provide that 30 days' prior written notice of cancellation shall be given to Lessor, the Trustor, the Secured Party and the Note Purchasers, shall provide that in respect of the interest of Lessor and the Secured Party in such policies the insurance shall not be invalidated by any action or inaction of Lessee, its agents or any other person or persons acting on behalf of Lessee (other than of Lessor or the Secured Party, as the case may be, and then only as against such person) and shall insure Lessor, the Trustor and the Secured Party regardless of any breach or violation of any warranties, declarations or conditions contained in such policies by Lessee, its agents or any other person or persons acting on behalf of Lessee (other than by Lessor or the Secured Party, as the case may be, and then only as against such person), shall provide that the insurers shall waive all rights of subrogation against Lessor, the Trustor and the Secured Party, and shall provide that Lessor and the Secured party shall have no obligation or liability for premiums, commissions, assessments or calls in connection with such insurance. Lessee shall deliver to Lessor and the Secured Party, prior to the beginning of the Lease Term with respect to the Equipment or prior to the effective date of any cancellation or expiration of such insurance, as the case may be, a certificate or other evidence satisfactory to Lessor, the Trustor and the Secured Party of the maintenance of such insurance. Neither Lessor nor the Secured Party shall be under any duty to examine such policies, certificates or other evidence of insurance or to advise Lessee in the event that its insurance is not in compliance with this Lease. In the event of failure on the part of the Lessee to provide such insurance, Lessor or the Secured Party may, at its option, but without obligation, provide such insurance and add the amount of the premiums to the rents due hereunder, and Lessee shall, upon Lessor's or the Secured Party's demand, as the case may be, pay the same as Additional Rent. Lessee may self insure some or all of its obligations under this Section 14 with the prior written consent of Lessor and the Secured Party, such consent not to be unreasonably withheld.

#### 15. RETURN OF EQUIPMENT

(a) Upon the Termination Date with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding three months and transport the same at any time within such three-month period to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than thirty days' written notice to Lessee. All movement of each such Item is to be at the risk and expense of the Lessee. All storage of each such Item is to be at the risk of the Lessor and at the expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same.

(b) Lessee shall give Lessor not more than 180 days' prior written notice of its intention to return the Equipment to Lessor on the Termination Date. In the event Lessee shall fail to give Lessor at least 90 days' notice in writing, this Lease, at the sole discretion of Lessor, shall be extended and continue at the same rental as the rental in

effect on the Payment Date immediately preceding the Termination Date, until 90 days after Lessor receives such notice in writing from Lessee.

(c) In the event that Lessee fails to return the Equipment at the end of the Lease Term, this Lease, at the sole discretion of Lessor, shall be extended and continue, at the same rental as the rental in effect on the last Payment Date of the Lease Term, until the Equipment has been returned to Lessor pursuant to the provisions of this Lease or until the Equipment is purchased by Lessee pursuant to the provisions of Section 23 hereof.

**16. LESSOR'S OWNERSHIP; EQUIPMENT TO BE AND REMAIN PERSONAL PROPERTY** -- Lessee acknowledges and agrees it does not have or obtain any title to the Equipment, nor any property right or interest therein, except its rights as Lessee hereunder and subject to the terms hereof. All of the Equipment shall be and remain personal property.

If Lessee is unable to return, or is prevented from returning, any Equipment to Lessor upon the termination of the Lease Term, for any reason whatsoever (excepting only a purchase of the Equipment by Lessee pursuant to Section 23 hereof or this Lease is terminated pursuant to Section 24 hereof), including, but not limited to, the assertion by any third party of any claim against such Equipment, or of any right with respect thereto, which right or claim does not arise by, through, under or on account of Lessor or the Secured Party or their successors or assigns, but excluding the assertion of any claim or right of any person claiming by, through, under or on account of Lessor, the Secured Party or their successors or assigns, such Equipment shall, for all purposes of this Lease, be deemed to have been the subject of a Casualty Occurrence, and Lessee shall pay to Lessor the amounts provided in Section 12 hereof, with respect to such Equipment, at the time, in the manner, and with the consequences provided in such Section.

**17. EVENTS OF DEFAULT**

(a) If, during the continuance of this Lease, one or more of the following events (hereinafter called "Events of Default" or an "Event of Default") shall occur:

(1) default shall be made in the payment of any Basic Rent, Stipulated Loss Value, Fair Market Value, Termination Value or other Additional Rent due hereunder, and any such default shall continue for more than ten (10) days after the due date thereof;

(2) Lessee shall default in the observance and/or performance of any other covenant, condition or agreement on the part of Lessee to be observed and/or performed under this Lease, the Participation Agreement or the Acquisition Agreement and such default shall continue for thirty (30) days after written notice from Lessor, the Trustor, the Secured Party or any Note Purchaser to Lessee specifying the default and demanding the same to be remedied;

(3) any representation or warranty on the part of Boston and Maine or Maine Central made herein or in the Participation Agreement or in any document or certificate furnished to Lessor, the Trustor, the Secured Party or any Note Purchaser in connection herewith or with the Participation Agreement or in connection with the transactions herein or therein contem-

plated shall at any time prove to be incorrect, false or misleading in any material respect when made;

(4) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of any of Lessee's rights and obligations hereunder, or Lessee shall make or permit any unauthorized sublease or transfer of any Equipment, or the possession of same;

(5) any warranty or representation made by the Guarantor contained in any instrument furnished in compliance with or in reference to this Lease, the Participation Agreement or the Guaranty is incorrect, false or misleading in any material respect when made;

(6) Maine Central, Boston and Maine or the Guarantor, as the case may be, fails to make any payment in respect of any indebtedness for borrowed money (including any lease required to be capitalized on the books of such corporation in accordance with generally accepted accounting principles) or on any other Security aggregating \$500,000 or more or in respect of any lease under which Maine Central, Boston and Maine or the Guarantor is a lessee or any event shall occur (other than the mere passage of time) or any condition shall exist in respect of any such indebtedness for borrowed money, other Security or lease of Maine Central, Boston and Maine or the Guarantor, or under any agreement securing or relating to such indebtedness or other Security or lease, the effect of which is (i) to cause such indebtedness, other Security or lease, or a portion thereof, to become due prior to its due date or prior to its regularly scheduled dates of payment, or (ii) to permit a trustee or the holder of any Security to elect a majority of the directors on the Board of Directors of such corporation, and any such failure, occurrence or condition is not immediately waived in writing by such holders or such trustee, as the case may be;

(7) the Guaranty shall cease to be in full force and effect for any reason whatsoever, including, without limitation, a determination by any governmental body or court that such agreement is invalid, void or unenforceable or the Guarantor shall contest or deny in writing the validity or enforceability of any of its obligations under the Guaranty;

(8) the Guarantor shall fail to perform any of its obligations under the Guaranty and such failure shall continue for more than ten days after written notice thereof to the Guarantor from the Lessor, the Trustor, the Secured Party or any Note Purchaser;

(9) Boston and Maine, Maine Central or the Guarantor becomes insolvent or fails generally to pay its debts as such debts become due, or causes an order for relief to be entered against such corporation or Boston and Maine, Maine Central or the Guarantor acquiesces in the entering of such an order against it, under applicable federal or state bankruptcy law, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a custodian, trustee or receiver for such corporation or for the major part of its property;

(10) a custodian, trustee or receiver is appointed for Boston and Maine, Maine Central or the Guarantor or for the major part of the property of any such corporation and is not discharged within 60 days after such appointment;

(11) a petition for reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978, as now constituted or as hereafter amended, shall be filed by or against Boston and Maine or Maine Central and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), the trustee or trustees appointed in such proceedings shall not have agreed, pursuant to a court order or decree, as a cost of administration, to perform all the obligations of Boston and Maine or Maine Central, as the case may be, hereunder, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

(12) any other proceedings shall be commenced by or against Boston and Maine, Maine Central or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of either of them in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(13) the revocation, alteration, or impairment of any permit or license which would in any way limit the ability of Lessee to operate its railroad business substantially in the manner as conducted at the date hereof; or

(14) if pursuant to the merger of Lessee into another corporation where Lessee is not the surviving corporation, or the consolidation of Lessee with one or more other corporations or the sale or other disposition of all or substantially all the assets of Lessee to one or more other entities, the surviving entity or transferee of assets, as the case may be, shall not deliver to Lessor and to the Secured Party an acknowledged instrument in recordable form, assuming all obligations, covenants and responsibilities of Lessee hereunder and under any instrument executed by Lessee, and acknowledging the assignment of Lessor's interest in this Lease as security for indebtedness;

(b) then, in any such case, Lessor or, as long as this Lease has been assigned to the Secured Party and the Lessee has received no written acknowledgment

from the Secured Party to the contrary, the Secured Party, at its option, may do any one or more of the following:

(1) declare this Lease in default upon written notice to Lessee, and proceed by appropriate court action to enforce performance by Lessee of the covenants and terms of this Lease and/or to recover damages for the breach thereof;

(2) terminate this Lease upon written notice to Lessee whereupon all rights of Lessee to use the Equipment shall immediately terminate;

(3) whether or not this Lease be terminated, repossess the Equipment, wherever found, with legal process, and for this purpose Lessor and/or its agents may enter upon any premises of or under the control or jurisdiction of Lessee or any agent of Lessee, and remove the Equipment therefrom;

(4) with respect to any Equipment returned to or repossessed by Lessor or the Secured Party, as the case may be, hold or use such Equipment for any purpose whatsoever, including selling the same at a private or public, cash or credit sale, or Lessor may re-lease such Equipment, in all the foregoing events free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction;

(5) whether or not Lessor or the Secured Party, as the case may be, shall have exercised, or shall thereafter at any time exercise, any of its rights set forth above in this Section 17(b) with respect to any Item of Equipment, and upon written notice to the Lessee specifying a payment date, demand that the Lessee pay to the Lessor or the Secured Party, as the case may be, and the Lessee shall pay to the Lessor or the Secured Party, as the case may be, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent for such Equipment due after the payment date specified in such notice), whichever of the following amounts Lessor or the Secured Party, as the case may be, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the Lease Term over the then present worth of the then fair market rental value (determined as hereafter provided in this Section 17(b)) of such Item for such period computed by discounting from the end of such Term to the date of such termination rentals which Lessor or the Secured Party, as the case may be, reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of a 7% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess of 100% of the Stipulated Loss Value for each Item of Equipment computed as of the Payment Date next preceding the payment date specified in such notice or if such payment date occurs on a Payment Date then computed as of such Payment Date over whichever of the following three (3) amounts the Lessor or the Secured Party, as the case may be, in its sole discretion, shall specify in such notice:



(i) the present value of the fair market rental value (determined as hereafter provided in this Section 17(b)) of each Item of Equipment for the remainder of the Lease Term as of the date of such notice, such present value to be computed on the basis of a 7% per annum rate of discount from the respective dates upon which such rent would be paid;

(ii) the fair market sales value (determined as hereafter provided in this Section 17(b)) of each Item of Equipment as of the date of such notice; or

(iii) if the Lessor or the Secured Party, as the case may be, shall have sold the Item of Equipment pursuant to paragraph (4) above, the net proceeds of such sale; and

in addition to the foregoing, an amount equal to the "Make Whole Premium Amount" provided for in Section 6.2(a) of the Security Agreement; and

(6) whether or not any Equipment is returned to, or repossessed by Lessor or the Secured Party, as the case may be, as aforesaid, Lessee shall also be liable for, and Lessor or Secured Party, as the case may be, may forthwith recover from Lessee, all Basic Rent and Additional Rent that accrued prior to the date of Lessee's default and payment of the sum payable pursuant to clause (5) hereof.

In addition to the foregoing, Lessor or the Secured Party, as the case may be, may also recover from Lessee all costs and expenses arising out of Lessee's default, including, without limitation, expenses of repossession of the Equipment and the storage, repairs, reconditioning, sale and re-leasing thereof, and reasonable attorneys' fees incurred by Lessor in exercising any of its rights or remedies hereunder. For the purposes of this Section 17 only, "fair market rental value" and "fair market sales value" shall be determined by an appraisal of an independent appraiser chosen by the Lessor or the Secured Party, as the case may be, and the cost of any such appraisal shall be borne by Lessee.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with the lease of the Equipment.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish to the Lessor and the Secured Party, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 17(b) a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### **18. ASSIGNMENT AND TRANSFER BY LESSOR**

(a) The Secured Party shall not be obligated to perform any duty, covenant or condition required to be performed by Lessor under this Lease or any of the other Operative Agreements to which the Lessee is a party.

(b) Lessee agrees that notwithstanding the assignment to the Secured Party, each and every covenant, agreement, representation and warranty of Lessor under this Lease shall be and remain the sole liability of the Lessor and of every successor in interest of Lessor. Lessee further acknowledges and agrees that Lessee shall comply with the directions or demands given in writing by the Secured Party and the Secured Party shall have the right to exercise (either in its own name or in the name of the Lessor) all rights, privileges, and remedies of Lessor provided for herein. Lessee shall not assert against the Secured Party any defense, counterclaim, set-off, abatement, reduction or recoupment that Lessee may have against Lessor for any reason whatsoever, including without limitation for any sum or sums due and owing to Lessee under or pursuant to the terms and provisions of Section 24 hereof. This Lease may not be amended or modified without the prior written consent of the Secured Party. Lessee agrees to execute and Lessor or the Secured Party may, at the Lessee's expense, record any instruments relating to such assignment, mortgage or security interest desired by the Lessor or the Secured Party and the Lessee shall promptly provide such documents as may be reasonably requested by the Lessor or the Secured Party.

#### **19. OPTION TO RENEW**

(a) Upon the expiration of the Primary Term of this Lease, and provided that no Event of Default, and no event which with the giving of notice or lapse of time, or both, would constitute an Event of Default, has occurred and then remains unremedied to Lessor's satisfaction, Lessee shall have the option, exercisable on at least 90 days' prior written notice to Lessor to renew the Lease Term with respect to all, but not less than all of the Equipment then subject to this Lease (except for Items that have been destroyed and for which Lessor has received payment of the Stipulated Loss Value or Fair Market Value, as the case may be, with respect thereto), either:

(1) on a month-to-month renewal basis, terminable by either Lessor or Lessee upon thirty (30) days' written notice, at the same rate, terms and conditions as described herein; or

(2) up to three (3) successive additional terms (each of which being herein called a "Renewal Term") for one (1) year each at a rental for each such Renewal Term at a rate that would be obtained in an arms' length transaction between an informed and willing prospective lessee and an informed

and willing lessor under no compulsion to lease (said rate being herein called the "Fair Rental Rate").

(b) If, on or before a date 45 days prior to the expiration of the Lease Term, and notice of Renewal has been given, Lessor and Lessee are unable to agree upon a determination of the Fair Rental Rate for the Equipment, Lessee shall have no obligation to renew this Lease. However, if Lessee wishes to proceed with its option, Lessee shall give written notice to Lessor to that effect and the Equipment shall be leased during the Renewal Term at the Fair Rental Rate determined in accordance with the procedure for Appraisal below, provided that the total term of the Lease, including any Renewal Term(s) entered into pursuant to this Section 19 hereof, shall not exceed 75% of the useful life of the Item of Equipment in question.

(c) "Appraisal" shall mean a procedure whereby two recognized independent equipment appraisers, one chosen by Lessee and one by Lessor shall mutually agree upon the amount in question. Lessor or Lessee, as the case may be, shall deliver a written notice to the other party appointing its appraiser within 15 days after receipt from the other party of a notice appointing that party's appraiser. If within 15 days after appointment of the two appraisers as described above, the two appraisers are unable to agree upon the amount in question, a third recognized independent appraiser shall be chosen within five days thereafter by the mutual agreement of such first two appraisers, or if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American Arbitration Association, and the appraisal of the third appraiser so appointed and chosen shall be given within a period of ten (10) days after the selection of such third appraiser. The average of the three appraisals arrived at by said three appraisers shall be binding and conclusive on Lessor and Lessee. Lessor and Lessee shall pay the fees of the respective appraisers appointed by them and shall share equally the fees and expenses of the third appraiser, if any, and those of the American Arbitration Association, if applicable.

(d) After a determination of the Fair Rental Rate of the Equipment has been made in accordance with the procedure described above, Lessee's exercise of its option shall be effective upon the expiration of the Primary Term or Renewal Term, as the case may be.

**20. ADDITIONAL RIGHTS OF LESSOR** -- Receipt by Lessor of any Basic Rent or Additional Rent with knowledge of the breach of any provision hereof shall not constitute a waiver of such breach and no waiver by Lessor of any provision hereof shall be deemed to have been made unless made in writing. Lessor shall be entitled to injunctive relief in case of the violation or attempted or threatened violation, of any of the provisions hereof, or to a decree compelling performance of any of the provisions hereof or to any other remedy allowed to Lessor by law.

**21. NET LEASE; NONTERMINABILITY** -- This Lease is an absolute net lease and, except as expressly provided in Sections 12, 17, 23 and 24, shall not terminate, nor shall Lessee be entitled to any abatement, reduction, set-off, counterclaim, defense or deduction with respect to any Basic Rent, Stipulated Loss Value payments, Fair Market Value payments, Termination Value payments or Additional Rent whether on account of the failure of Lessor or the Trustor to pay any sum or sums due and owing to Lessee pursuant to Section 24 hereof, any violation of Lessee's right of quiet enjoyment pursuant to Section 25 hereof or otherwise); nor, except as expressly provided in Sections 12, 17, 23 and 24, shall this Lease terminate, or the respective obligations of Lessor or Lessee be

otherwise affected, by reason of any defect in or damage to or loss or destruction of or requisitioning of the Equipment by condemnation or otherwise, the prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of Lessor enter into this Lease, the failure of Lessor or the Trustor to make any payment of any sum or sums due and owing to Lessee pursuant to Section 24 hereof, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 12 hereof, the Equipment is purchased pursuant to Section 23 hereof or this Lease is terminated pursuant to Section 24 hereof (and Lessee has paid any sums then due and owing under said Section 12, 23 or 24) or until, pursuant to Section 15 hereof, the Equipment has been returned to the possession of Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to Lessor's possession until all of Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from Lessor or the Secured Party for any reason whatsoever.

Nothing contained in this Section 21 shall prevent Lessee from exercising such other legal rights and remedies as it may have against Lessor or the Trustor on account of any failure of either such party to perform its respective obligations hereunder.

**22. LESSEE'S RIGHT TO SUBLEASE** -- Provided that no Event of Default nor any event which with the giving of notice or lapse of time, or both, would constitute an Event of Default, has occurred and then remains unremedied to Lessor's satisfaction, Lessee shall have the right to sublease the Equipment for a term or terms expiring no later than the day prior to the Termination Date of this Lease subject in any case to the prior written approval of the Lessor and the Secured Party, which approval shall not be unreasonably withheld; provided, however, that no such consent shall be required if the sublease is to the Guarantor or a wholly-owned subsidiary or affiliate of Lessee or the Guarantor. Any such sublease shall be in writing and in a form reasonably satisfactory to Lessor and the Secured Party and shall contain a provision expressly providing that the sublease is subject and subordinate in all respects to this Lease and the rights of Lessor and the Secured Party therein. No sublease of the Equipment by Lessee shall relieve Lessee of any of its obligations hereunder which shall be and remain those of a principal and not a surety.

**23. PURCHASE OPTION AT EXPIRATION OF LEASE TERM**

(a) If (i) no Event of Default, and no event which with the giving of notice or lapse of time, or both, would constitute an Event of Default, has occurred and then remains unremedied to Lessor's satisfaction, and (ii) this Lease shall not have been earlier terminated, Lessee shall be entitled, at its option, upon written notice to Lessor, as hereinafter provided, to purchase all, but not less than all, Items of Equipment then subject to this Lease, at the expiration of the Primary Term or, as the case may be, at the

expiration of the then Renewal Term for an amount, with respect to each Item of Equipment, payable in immediately available funds, equal to the Fair Market Value thereof, plus any applicable sales, excise or other taxes imposed as a result of such sale (other than gross or net income taxes attributable to such sale). Lessor's sale of each Item of Equipment shall be on an "as-is," "where-is" basis, without any representation by, or recourse or warranty to, Lessor. In connection with such sale, Lessor shall transfer and assign to Lessee all its rights and interest in any dealer's, manufacturer's and subcontractor's warranties or servicing obligations, if any, with respect to any and all of the Equipment, including any rights to instructions and data, if any, with respect to the Equipment, which rights and interest, if any, were transferred to the Lessor pursuant to the Acquisition Agreement and the bills of sale transferring title to the Equipment from the Lessee, as sellers, to the Lessor, as buyer, and agrees to execute all documents reasonably necessary to effect such transfer and assignment. If Lessee intends to exercise said purchase option, Lessee shall give written notice to Lessor to such effect at least 90 days prior to the expiration of the Primary Term, or, if Lessee has renewed this Lease pursuant to Section 19 hereof, then at least 90 days prior to the expiration of the then current Renewal Term. If Lessee fails to give such written notice to Lessor as aforesaid, it shall be conclusively presumed that Lessee has elected not to exercise said purchase option.

(b) If Lessee has elected to exercise its purchase option, as provided in this Section 23, then as soon as practicable following Lessor's receipt of the written notice from Lessee of Lessee's intent to exercise such option, Lessor and Lessee shall consult for the purpose of determining the Fair Market Value of each Item of Equipment as of the end of the Primary Term thereof, or, if this Lease has been renewed pursuant to Section 19 hereof, then as of the end of the then current Renewal Term thereof, and any values agreed upon in writing shall constitute such Fair Market Value of each such Item of Equipment for the purposes of this Section 23. In so consulting, Lessor and Lessee may refer to books containing indexes of standard values for used equipment of relevant type and age. If Lessor and Lessee fail to agree upon such values prior to forty-five (45) days before the expiration of the Primary Term, or, if this Lease has been so renewed, the then current Renewal Term, of the Item(s) of Equipment whose Primary Term first expires hereunder, either party may request that such values be determined by Appraisal. "Appraisal" shall have the meaning and be determined as provided in Section 19(c) of this Lease.

#### **24. Early Termination.**

(a) Lessee shall have the right to terminate this Lease with respect to all (but not less than all) of the Equipment on any Payment Date occurring on or after October 1, 1990 (the "Early Termination Date") provided that (i) Lessee shall have given Lessor and Secured Party written notice (the "Termination Notice") of its exercise of such right at least 120 days before the Early Termination Date; (ii) no Event of Default, and no event which with the giving of notice or lapse of time, or both, would constitute an Event of Default, has occurred and is continuing on the Early Termination Date; (iii) no Casualty Occurrence shall have occurred with respect to the Equipment; and (iv) Lessee pays to Lessor on the Termination Date the applicable Termination Value.

The Termination Notice shall specify the Early Termination Date and whether the termination is to be effected based upon a re-letting (the "Re-Let Option") or sale (the "Sale Option") of the Equipment. The period of time from the date of the Termination Notice to the Early Termination Date shall be called the "Notice Period."

(b) If Lessee chooses the Re-Let Option, during the Notice Period Lessee shall use its best efforts to solicit bona fide firm, written offers from Persons who are not affiliates of Lessee for the re-letting of all, but not less than all, of the Equipment for a term expiring no later than the expiration date of the Lease Term. An offer for such re-letting which meets the requirements set forth below shall be deemed to be a qualified offer to re-let (a "Qualified Offer to Re-Let"):

(i) Lessor and Lessee, in the exercise of their respective reasonable discretion, shall have approved, in writing, the proposed offeror and the terms of the offer; and

(ii) Lessor and such proposed offeror shall have executed and delivered all documentation reasonably required by Lessor for such re-letting, including, without limitation, a lease in substantially the form of this Lease, other than the term thereof and rental payments to be made thereunder.

(c) If Lessee chooses the Re-Let Option, Lessee shall pay directly to Lessor on the Early Termination Date an amount (the "Re-Let Termination Value") equal to the total Purchase Price of the Equipment multiplied by the respective applicable percentage set forth next to the Payment Date corresponding to such Early Termination Date in the Rental Schedule to this Lease plus any installment of Base Rent due and owing on such Early Termination Date and any prepayment premium and interest due under the terms of Section 4.1(c) of the Security Agreement in respect of the Notes.

Lessee understands and agrees that its obligation to pay the sums due and owing under this clause (c), should Lessee choose the Re-Let Option, is absolute and unconditional whether or not Lessor makes any payment of any sum or sums due and owing to Lessee pursuant to any other clause of this Section 24.

(d) If Lessee chooses the Re-Let Option, Lessor hereby agrees to pay directly to Lessee an amount ("Lessor's Re-Let Payment") on the Early Termination Date determined in the following manner:

(i) The amount of the Qualified Offer to Re-Let shall be calculated by determining the present value of the unpaid monthly rental payments, or their equivalent, as the case may be, payable under the Qualified Offer to Re-Let, as of the dates such payments would have been due and payable, from the commencement of the Lease Term (not including any extensions or renewals thereof), discounted at a rate equal to the rate obtainable by Lessor from any Person reasonably acceptable to Lessor which is willing to actually finance the lease to be obtained in connection with the Qualified Offer to Re-Let, less Lessor's reasonable out-of-pocket expenses, if any, in connection with the re-letting.

(ii) If the amount of the Qualified Offer to Re-Let is equal to or greater than the Re-Let Termination Value, then Lessor's Re-Let Payment shall be in the amount of the Re-Let Termination Value.

(iii) If the amount of the Qualified Offer to Re-let is less than the Re-Let Termination Value, then Lessor's Re-Let Payment shall be in an amount equal to the amount of the Qualified Offer to Re-Let.

(iv) If there is no Qualified Offer to Re-Let, then Lessor's Re-Let Payment shall be zero.

(e) If Lessee chooses the Sale Option, during the Notice Period Lessee shall use its best efforts to solicit bona fide firm, written offers from Persons who are not affiliates of Lessee for the purchase of not less than all of the Equipment.

(f) If Lessee chooses the Sale Option, Lessee shall pay directly to Lessor on the Early Termination Date an amount (the "Sale Termination Value") equal to the total Purchase Price of the Equipment multiplied by the respective applicable percentage set forth next to the Payment Date corresponding to such Early Termination Date in the Rental Schedule to this Lease plus any installment of Base Rent due and owing on such Early Termination Date and any prepayment premium and interest due under the terms of Section 4.1(c) of the Security Agreement in respect of the Notes.

Lessee understands and agrees that its obligation to pay the sums due and owing under this clause (f), should Lessee choose the Sale Option, is absolute and unconditional whether or not Lessor makes any payment of any sum or sums due and owing to Lessee pursuant to any other clause of this Section 24.

(g) If Lessee chooses the Sale Option, Lessor hereby agrees to pay directly to Lessee on the Early Termination Date an amount ("Lessor's Sale Payment") equal to the net proceeds received from the sale of the Equipment up to the amount of the Sale Termination Value. In no event will the Lessee be entitled to payments in excess of the Sale Termination Value. If there is no successful sale of the Equipment, then the Lessor's Sale Payment shall be zero.

(h) Upon but not before payment of Lessee's applicable Termination Value (together with all Basic Rent which is due but unpaid on such Early Termination Date and all other Additional Rent that is due but unpaid on the Termination Date and any prepayment premium and interest due under the terms of Section 4.1(C) of the Security Agreement in respect of the Notes), Lessee shall be released and discharged from all of Lessee's other obligations with respect to the Equipment which shall be required to be performed by Lessee after the Early Termination Date, but not released and discharged with respect to obligations and liabilities of Lessee under this Lease, actual or contingent, which have arisen on or prior to the Early Termination Date or which survive termination of this Lease.

(i) Any Termination Notice given by Lessee pursuant to clause (a) of this Section 24 is revocable only if made in writing and delivered to Lessor and the Secured Party at least thirty (30) days prior to the Early Termination Date. Lessee shall promptly reimburse Lessor for all actual costs and expenses of Lessor and the Secured Party made in connection with the attempted re-letting or sale of the Equipment subsequent to the date of the Notice of Termination which is being revoked hereunder.

(j) It is the understanding of the parties that the obligations set forth herein to be performed by Lessor are the sole responsibility of the Lessor, and neither the Secured Party nor any from time to time holder of the Notes shall have any obligations whatsoever hereunder.

(k) The Re-Let Termination Value and the Sale Termination Value are herein sometimes collectively referred to as the "Termination Value".

(l) In no event shall Lessee or any member of the Lessee Group, as defined in Revenue Procedure 75-21, be the purchaser or new lessee of any Equipment under this Section 24. Notwithstanding anything contained in this Section 24 to the contrary, Lessor shall not have any obligation to sell or re-let any of the Equipment to any Person presented by Lessee under the Re-Let Option or the Sale Option pursuant to this Section 24 if Lessor shall pay to Lessee an amount equal to the lesser of (i) the Qualified Offer to Re-Let (computed without including any out-of-pocket expenses of Lessor) or the amount of the highest offer to purchase the Equipment presented by Lessee under the Sale Option, as the case may be and (ii) the applicable Re-Let Termination Value or Sale Termination Value, as the case may be provided that nothing herein contained shall relieve Lessee of its obligations to pay the sums due and owing pursuant to clause (h) of this Section 24. Under such circumstances, the provisions of clause (h) of this Section 24 shall apply.

25. **QUIET ENJOYMENT** -- So long as no Event of Default or event with which the lapse of time or giving of notice, or both, would constitute an Event of Default has occurred and in continuing hereunder, Lessee shall have peaceful and quiet use and enjoyment of the Equipment against acts of Lessor or anyone claiming solely by, through, or under Lessor.

26. **NOTICES** -- Any notice required or permitted to be given under this Lease shall be deemed to have been given upon its receipt, in writing, by the receiving party at its address set forth below, or to such other address as either party shall hereafter furnish to the other in writing.

1. If to Boston and Maine: Boston and Maine Corporation  
Iron Horse Park  
North Billerica, Massachusetts 01862-1681  
Attention: Vice President-Finance
2. If to Maine Central: Maine Central Railroad Company  
Iron Horse Park  
North Billerica, Massachusetts 01862-1681  
Attention: Vice President-Finance
3. If to Lessor: The Connecticut National Bank, as  
Trustee under Maine Central-Boston and  
Maine Trust No. 86-1  
77 Main Street  
Hartford, Connecticut 06115  
Attention: Bond and Trustee Administration
4. If to the Trustor: First NH Resources, Inc.  
One Financial Center  
Boston, Massachusetts 02111  
Attn: President



5. If to the Secured Party:

New England Mutual Life  
Insurance Company  
501 Boylston Street  
Boston, Massachusetts 02117  
Attention: Private Placements Department

**27. ENTIRE AGREEMENT, SEVERABILITY, EFFECT AND MODIFICATION OF LEASE** -- This Lease and Operative Agreements and agreements and instruments referred to therein constitute the entire agreement between the parties with respect to the leasing of the Equipment. Any provision of this Lease which is unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by a duly authorized representative of the party against whom enforcement is sought.

**28. GOVERNING LAW** -- Lessor and Lessee agree that this Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts (other than the conflicts of laws provisions).

**29. CONSENT TO JURISDICTION AND SERVICE** -- The Lessee agrees that any legal action or proceeding against it arising out of this Lease may be brought in any state or federal court sitting in the City of Boston in the Commonwealth of Massachusetts and it hereby irrevocably consents and submits to the nonexclusive in personam jurisdiction of the said courts and irrevocably agrees that all claims in any such action or proceeding may be heard, determined in and enforced by any such court. Lessee irrevocably consents to the service of summons, notice, or other process relating to any such action or proceeding by delivery thereof to it by hand or by mail in the manner set forth in Section 26 hereof.

**30. LESSOR'S RIGHT TO PERFORM FOR LESSEE** -- If Lessee fails to duly and promptly perform any of its obligations under this Lease or fails to comply with any of the covenants or agreements contained herein, Lessor, the Trustor, the Secured Party or any Note Purchaser may itself perform such obligations or comply with such covenants or agreements, for the account of Lessee without thereby waiving any default, and any amount paid or expense (including, without limitation, reasonable attorneys' fees) reasonably incurred by Lessor, the Trustor, the Secured Party or any Note Purchaser, as the case may be, in connection with such performance or compliance shall, together with interest thereon at the Default Interest Rate, be payable by Lessee to Lessor, the Trustor, the Secured Party or any Note Purchaser, as the case may be, on demand.

**31. AGREEMENT FOR LEASE ONLY** -- Lessor and Lessee agree that this Lease is and is intended to be a true lease (and not a lease in the nature of a security interest) and further agree to treat this Lease as a true lease for all purposes, including, without limitation, tax purposes.

**32. CONCERNING LESSOR** -- It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of Lessor, while in form purporting to be the representations, covenants, undertakings and agreements of The Connecticut National Bank, are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and

agreements of The Connecticut National Bank or for the purpose or with the intention of binding The Connecticut National Bank, personally but are made and intended for the purpose of binding only the Trust Estate (as such term is defined in the Trust Agreement); and this Lease is executed and delivered by The Connecticut National Bank, not in its own right but solely in the exercise of the powers conferred upon it as trustee; and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against it on account of this Lease or on account of any representation, covenant, undertaking or agreement in this Lease contained, either express or implied, all such personal liability, if any, being expressly waived and released by Lessee herein and by all persons claiming by, through or under Lessee; excepting, however, that Lessee or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

**33. MERGER, CONSOLIDATION OR ACQUISITION OF LESSEE --**

Nothing in this Lease shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of Lessee, provided that: (a) such assignee, successor or transferee shall be, effective upon such assignment or transfer, a corporation incorporated in any state of the United States or the District of Columbia which shall have all necessary authorizations, and approvals to operate such assets as an interstate rail carrier, (b) shall have duly assumed in writing the obligations of Lessee hereunder, (c) shall not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease, (d) shall have a net worth not less than that of Lessee measured with respect to Lessee immediately prior to the consolidation, merger or acquisition, and (e) Lessee shall notify Lessor and the Secured Party in writing at least 10 business days before the merger, consolidation or acquisition.

**34. FILING --** Prior to the delivery and acceptance of the first Item of Equipment hereunder, Lessee will cause this Lease and the Security Agreement to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and shall cause this Lease to be deposited with the Registrar General of Canada (with notice of such deposit to be given forth in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada and will cause this Lease and the Security Agreement to be otherwise duly filed, registered or recorded in such other places within or without the United States as Lessor or the Secured Party may reasonably request and will furnish Lessor and the Secured Party proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor or the Secured Party for the purpose of protecting Lessor's title to, or the Secured Party's security interest in, the Lease or any Item of Equipment to the satisfaction of Lessor's or the Secured Party's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor and the Secured Party proof of such filings and an opinion of Lessee's counsel reasonably satisfactory to Lessor and the Secured Party that such action has been properly taken. Lessee will pay all costs, charges and expenses incident to any such filing, refile, recording and rerecording or depositing and repositing of any such instruments or incident to the taking of such action.

**35. MISCELLANEOUS --** The captions in this Lease are for convenience of reference only. This Lease may be executed in separate counterparts, all of which

together shall constitute one instrument (but only one set of counterparts shall be required to prove the existence of this Lease). Lessor and Lessee agree that to the extent that this Lease constitutes chattel paper under the Uniform Commercial Code, no security interest in this Lease may be created through the transfer or possession of any counterpart of this Lease other than only through transfer and possession of that counterpart of this Lease marked "Lender's Original."

36. **DEFINITIONS** -- The following terms shall have the following meanings for all purposes of this Lease:

"**Acquisition Agreement**" shall have the meaning specified in Recital A hereof.

"**Additional Rent**" shall have the meaning specified in Section 5(b) hereof.

"**Amortization Deductions**" shall have the meaning specified in Section 9.1(a) hereof.

"**Appraisal**" shall have the meaning specified in Section 19(c) hereof.

"**Basic Rent**" shall have the meaning specified in Section 5(a) hereof.

"**Casualty Occurrence**" shall have the meaning specified in Section 12 hereof.

"**Closing Date**" shall have the meaning specified in Recital B hereof.

"**Code**" shall mean the Internal Revenue Code of 1954, as amended, or any comparable successor law.

"**Default Interest Rate**" shall mean the rate of interest set forth in Section 5 hereof.

"**Depreciation**" shall have the meaning specified in Section 9.1(a) hereof.

"**Early Termination Date**" shall have the meaning specified in Section 24(a) hereof.

"**Equipment**" shall have the meaning specified in Recital A hereof and shall include any attachments, accessories, or additions thereto or substitutions therefor.

"**Event of Default**" shall have the meaning specified in Section 17(a) hereof.

"**Fair Market Value**" means the fair market value of the Equipment in question determined by the procedure for Appraisal as specified in Section 19(c), and, in the case of Section 23 hereof, subject to the provisions therein set forth. For all purposes of this Lease, Fair Market Value shall be determined on the basis of, and shall equal in value, the amount which would obtain in an arms' length transaction between an informed and willing buyer (other than a used equipment or scrap dealer) and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value, and it shall be assumed (whether or not the same be true) that the Equipment has been maintained in accordance with the requirements of this Lease and would have been returned to Lessor in compliance with the requirements of this Lease.

**"Fair Rental Rate"** shall have the meaning specified in Section 19(a) hereof.

**"Guarantor"** shall have the meaning specified in Recital B hereof.

**"Guaranty"** shall have the meaning specified in Recital D hereof.

**"Interest Deductions"** shall have the meaning specified in Section 9.1(a) hereof.

**"Interim Term"** for this Lease shall commence upon the commencement date set forth in the applicable Rental Schedule and shall end on the commencement date of the Primary Term.

**"Lease Commencement Date"** with respect to an Item of Equipment means the date of the commencement of the Lease Term of such Item and shall be the date such Item is accepted by Lessee for lease hereunder, which dates shall be set forth in the Rental Schedule.

**"Lease Term"** with respect to an Item of Equipment shall mean the "Interim Term" plus the "Primary Term," including any period of renewal provided for herein.

**"Lessee"** shall have the meaning specified in the introduction to this Lease.

**"Lessor"** shall have the meaning specified in the introduction to this Lease.

**"Lessor's Re-Let Payment"** shall have the meaning specified in Section 24(d) hereof.

**"Lessor's Sale Payment"** shall have the meaning specified in Section 24(g) hereof.

**"Loss"** shall have the meaning specified in Section 9.1(b) hereof.

**"Note Purchasers"** shall have the meaning specified in Recital B hereof.

**"Notes"** shall have the meaning specified in Recital B hereof.

**"Notice"** shall have the meaning specified in Section 24(a) hereof.

**"Operative Agreements"** shall have the meaning specified in Section 9.2 hereof.

**"Participation Agreement"** shall have the meaning specified in Recital B hereof.

**"Payment Dates"** shall have the meaning specified in Section 5(a) hereof.

**"Person"** shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an estate, any incorporated organization or similar association or a government or political subdivision.

**"Primary Term"** for this Lease shall commence and shall end on the respective dates set forth in the Rental Schedule.

**"Prime Rate"** shall mean the rate of interest per annum announced from time to time at its "Prime Rate" by the lending institution providing the permanent debt financing in connection with this Lease or if the lending institution in question has no Prime Rate or there is no permanent debt financing, then Lessor and Lessee agree that the Prime Rate announced from time to time by Morgan Guaranty Trust Company of New York, in New York City, shall apply hereunder.

**"Purchase Price"** shall have the meaning set forth in Recital B hereof.

**"Qualified Offer To Re-Let"** shall have the meaning specified in Section 24(b) hereof.

**"Re-Let Option"** shall have the meaning specified in Section 24(b) hereof.

**"Re-Let Termination Value"** shall have the meaning specified in Section 24(c) hereof.

**"Renewal Term"** shall have the meaning specified in Section 19(a)(2) hereof.

**"Rental Schedule"** shall have the meaning specified in Section 1 hereof.

**"Sale Option"** shall have the meaning specified in Section 24(a) hereof.

**"Sale Termination Value"** shall have the meaning specified in Section 24(f) hereof.

**"Secured Party"** shall have the meaning specified in Recital C hereof.

**"Security Agreement"** shall have the meaning specified in Recital C hereof.

**"Stipulated Loss Value"** shall have the meaning specified in Section 12(a) hereof.

**"Tax Assumptions"** shall have the meaning specified in Section 9.1(a) hereof.

**"Termination Date"** means the expiration or termination of the Primary Term or Renewal Term of any Item of Equipment, whether by the passage of time or otherwise.

**"Termination Notice"** shall have the meaning specified in Section 24(a) hereof.

**"Termination Value"** shall have the meaning specified in Section 24(k) hereof.

**"Trustor"** shall have the meaning specified in the introduction to this Lease.

IN WITNESS WHEREOF, the duly authorized representatives of Lessor and Lessee have executed this Lease as of the date first above written.

LESSOR:

LESSEE:

THE CONNECTICUT NATIONAL BANK,  
not individually but solely  
as Trustee

BOSTON AND MAINE CORPORATION

By [Signature]  
Title VP

By P W Can  
Title VP - FINANCE

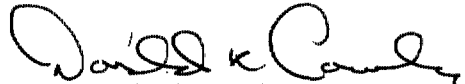
LESSEE:

MAINE CENTRAL RAILROAD COMPANY

By P W Can  
Title VP - FINANCE

STATE OF CT )  
 )  
COUNTY OF HFD. ) SS

~~LAURA CROWLEY~~ this <sup>NOVEMBER</sup> 25TH day of ~~December~~, 1986, before me personally appeared  
VICE PRESIDENT to me personally known, who being by me duly sworn, says that he is a  
of THE CONNECTICUT NATIONAL BANK, 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.



Notary Public

(SEAL)

My commission expires:

My Commission Expires Mar. 31, 1989

COMMONWEALTH OF MASSACHUSETTS)            ss.  
COUNTY OF SUFFOLK                            )

On this 24th day of November, 1986, before me personally appeared Peter W. Carr, to me personally known, who being by me duly sworn, says that he is the Vice President, Finance of BOSTON AND MAINE CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 9/25/92



COMMONWEALTH OF MASSACHUSETTS)            ss.  
COUNTY OF SUFFOLK                            )

On this 24th day of November, 1986, before me personally appeared Peter W. Carr, to me personally known, who being by me duly sworn, says that he is the Vice President, Finance of MAINE CENTRAL RAILROAD COMPANY, 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.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 9/25/92

**EXHIBIT I**

**DESCRIPTION OF EQUIPMENT**

<u>Equipment Type</u>	<u>Series Numbers</u>	<u>Number Units</u>	<u>Unit Valuation</u>	<u>Total Valuation</u>
EMD GP40 Locomotives (1968)	320-321 323-324 326-335 338-342	20	\$ 75,000	\$1,500,000
EMD GP38 Locomotives (1966)	251-259 261-263	12	\$125,000	\$1,500,000
EMD GP7 Locomotives (rebuilt 1983)	470	1	\$150,000	\$ 150,000
EMD GP9 Locomotives (rebuilt 1984)	471	1	\$200,000	\$ 200,000
100 ton 4460 cu. ft. Covered Hoppers (ACF, 1966)	3400-3401 3403-3428 3430-3440 3443-3451	48	\$ 6,500	\$ 312,000
100 ton 3300 cu. ft. Covered Hoppers (Pullman, 1967)	12101-12121 12123-12146 12148-12152 12154-12156 12158 12160-12171 12173-12192 12194 12196-12200	92	\$ 12,000	\$1,104,000
100 ton 1844 cu. ft. Open Hoppers (Beth. Steel, 1966)	237 240 241-243 245-248 251-257 259-269 271-281 284 286 288-289 293-295 297-308 310 312-320 322	103	\$ 11,000	\$1,133,000

<u>Equipment Type</u>	<u>Series Numbers</u>	<u>Number Units</u>	<u>Unit Valuation</u>	<u>Total Valuation</u>
	325-335			
	337-344			
	346-351			
	353-357			
	359			
	361-362			
	364-365			
95 ton 3023 cu. ft. Open Hoppers (Beth. Steel, 1968)	1001-1005 1007-1008 1010-1011 1013-1023 1025-1049 1051-1052 1054 1056-1064 1066-1075 1077-1078 1080-1085 1087-1089 1091-1101 1103-1124 1126-1143 1145-1147 1149-1175 1177-1192 1194-1195 1197-1200	181	\$ 10,000	\$1,810,000
100 Ton 2244 cu. ft. Gondolas (Southern Iron, 1976)	9000-9099	100	\$ 22,000	\$2,200,000
77 ton 1995 cu. ft. Gondolas (Beth Steel, 1967)	14102-14112 14114-14122 14125-14137 14140-14143 14145-14147 14149-14151 14153-14165 14167-14189 14191-14215 14217-14221 14223-14244 14246-14249	135	\$ 1,500	\$ 202,500

<u>Equipment Type</u>	<u>Series Numbers</u>	<u>Number Units</u>	<u>Unit Valuation</u>	<u>Total Valuation</u>
77 ton 1776 cu. ft. Gondolas (Greenville Steel, 1965)	14300-14301 14304-14310 14312-14336 14338-14339 14341-14349	45	\$ 1,500	\$ 67,500
			<b>Total Valuation</b>	<b>\$10,179,000</b>
			<b>Purchase Price</b>	<b><u>\$10,150,000</u></b>

**EXHIBIT II**  
**RENTAL SCHEDULE**  
**AND**  
**CERTIFICATE OF INSPECTION AND ACCEPTANCE**

RENTAL SCHEDULE and CERTIFICATE OF INSPECTION AND ACCEPTANCE to Equipment Lease dated as of October 1, 1986 (the "Lease") by and between the undersigned, the terms, conditions and definitions of which are hereby incorporated herein by reference. Lessee hereby agrees to lease the Equipment from Lessor effective the Lease Commencement Date thereof and for the Lease Term specified below, and agrees to pay Lessor the rent, in the amounts and at the times specified below, for each Item of Equipment. All of the terms used herein which are defined in the Lease shall have the same meaning as so defined.

**EQUIPMENT DESCRIPTION:**

<u>Item</u> <u>No.</u>	<u>Serial</u> <u>No.</u>	<u>Unit No.</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>Purchase</u> <u>Price</u>
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See Exhibit A attached hereto and incorporated herein by reference.

TOTAL PURCHASE PRICE: \$10,150,000.00

EQUIPMENT LOCATED AT: Nashua, New Hampshire

**LEASE TERM:**

Interim Term:

Commencement Date: December 4, 1986

Expiration Date: December 31, 1986

Primary Term:

Commencement Date: January 1, 1987

Expiration Date: December 31, 1994

LEASE COMMENCEMENT DATE: January 1, 1987

PAYMENT DATES: The Interim Term rent payment is due and payable January 1, 1987. The remaining rentals commence February 1, 1987 and continue monthly in arrears through and including January 1, 1995.

**BASIC RENT:**

Basic Rent Per Day:	\$ 4,942.64	(See Note 1)
Basic Rent Per Period:	\$148,279.32	(See Note 2)

NOTE: 1: Basic Rent Per Day is applicable during the Interim Term and is payable on the first Payment Date.

NOTE 2: Basic Rent Per Period and Basic Rent Per Day is computed by multiplying the Purchase Price as set forth above by:

Periodic Lease Rate Factor:	1.46088%
Per Diem Lease Rate Factor:	.04870%

The undersigned, being duly authorized representatives of the Lessor and the Lessee hereby CERTIFY that the Items of Equipment described above have been duly delivered to Lessee in good order and duly inspected and accepted by the Lessee as of the Lease Commencement Date reflected above on behalf of the Lessee as conforming in all respects with the requirements and provisions of the Lease.

LESSOR:

THE CONNECTICUT NATIONAL BANK,  
not individually but solely  
as Trustee

By \_\_\_\_\_  
Title \_\_\_\_\_

LESSEE:

BOSTON AND MAINE CORPORATION

By \_\_\_\_\_  
Title \_\_\_\_\_

LESSEE:

MAINE CENTRAL RAILROAD COMPANY

By \_\_\_\_\_  
Title \_\_\_\_\_









**EXHIBIT A  
TO  
RENTAL SCHEDULE  
CERTIFICATE OF INSPECTION AND ACCEPTANCE**

**DESCRIPTION OF EQUIPMENT**

<u>Equipment Type</u>	<u>Series Numbers</u>	<u>Number Units</u>	<u>Unit Valuation</u>	<u>Total Valuation</u>
EMD GP40 Locomotives (1968)	320-321 323-324 326-335 338-342	20	\$ 75,000	\$1,500,000
EMD GP38 Locomotives (1966)	251-259 261-263	12	\$125,000	\$1,500,000
EMD GP7 Locomotives (rebuilt 1983)	470	1	\$150,000	\$ 150,000
EMD GP9 Locomotives (rebuilt 1984)	471	1	\$200,000	\$ 200,000
100 ton 4460 cu. ft. Covered Hoppers (ACF, 1966)	3400-3401 3403-3428 3430-3440 3443-3451	48	\$ 6,500	\$ 312,000
100 ton 3300 cu. ft. Covered Hoppers (Pullman, 1967)	12101-12121 12123-12146 12148-12152 12154-12156 12158 12160-12171 12173-12192 12194 12196-12200	92	\$ 12,000	\$1,104,000
100 ton 1844 cu. ft. Open Hoppers (Beth. Steel, 1966)	237 240 241-243 245-248 251-257 259-269 271-281 284 286 288-289 293-295 297-308 310	103	\$ 11,000	\$1,133,000

<u>Equipment Type</u>	<u>Series Numbers</u>	<u>Number Units</u>	<u>Unit Valuation</u>	<u>Total Valuation</u>
	312-320			
	322			
	325-335			
	337-344			
	346-351			
	353-357			
	359			
	361-362			
	364-365			
95 ton 3023 cu. ft. Open Hoppers (Beth. Steel, 1968)	1001-1005 1007-1008 1010-1011 1013-1023 1025-1049 1051-1052 1054 1056-1064 1066-1075 1077-1078 1080-1085 1087-1089 1091-1101 1103-1124 1126-1143 1145-1147 1149-1175 1177-1192 1194-1195 1197-1200	181	\$ 10,000	\$1,810,000
100 Ton 2244 cu. ft. Gondolas (Southern Iron, 1976)	9000-9099	100	\$ 22,000	\$2,200,000
77 ton 1995 cu. ft. Gondolas (Beth Steel, 1967)	14102-14112 14114-14122 14125-14137 14140-14143 14145-14147 14149-14151 14153-14165 14167-14189 14191-14215 14217-14221 14223-14244 14246-14249	135	\$ 1,500	\$ 202,500

<u>Equipment Type</u>	<u>Series Numbers</u>	<u>Number Units</u>	<u>Unit Valuation</u>	<u>Total Valuation</u>
77 ton 1776 cu. ft. Gondolas (Greenville Steel, 1965)	14300-14301 14304-14310 14312-14336 14338-14339 14341-14349	45	\$ 1,500	\$ 67,500
				<hr/>
			Total Valuation	\$10,179,000
			Purchase Price	<u>\$10,150,000</u>

**EXHIBIT B  
TO  
RENTAL SCHEDULE  
AND  
CERTIFICATE OF INSPECTION AND ACCEPTANCE  
STIPULATED LOSS VALUES**

(Stated as Percentage of Purchase Price per Item)

If Casualty Occurrence Occurs On Or After Payment Date No.	<u>Stipulated Loss Value</u>	If Casualty Occurrence Occurs On Or After Payment Date No.	<u>Stipulated Loss Value</u>
Lease Commencement Date	106.5%	31	88.9%
1	105.6	32	88.3
2	105.2	33	87.7
3	104.7	34	87.0
4	104.3	35	86.4
5	103.9	36	85.8
6	103.4	37	85.1
7	103.0	38	84.4
8	102.5	39	83.8
9	102.0	40	83.1
10	101.6	41	82.5
11	101.1	42	81.8
12	100.6	43	81.1
13	99.2	44	80.4
14	98.7	45	79.7
15	98.2	46	79.0
16	97.6	47	78.3
17	97.1	48	77.6
18	96.5	49	76.9
19	96.0	50	76.2
20	95.4	51	75.5
21	94.9	52	74.8
22	94.3	53	74.0
23	93.7	54	73.3
24	93.1	55	72.6
25	92.6	56	71.8
26	92.0	57	71.1
27	91.4	58	70.3
28	90.8	59	69.6
29	90.0	60	68.8
30	89.5	61	68.1

<u>If Casualty Occurrence Occurs On Or After Payment Date No.</u>	<u>Stipulated Loss Value</u>	<u>If Casualty Occurrence Occurs On Or After Payment Date No.</u>	<u>Stipulated Loss Value</u>
62	67.3%	79	53.6%
63	66.5	80	52.7
64	65.7	81	51.9
65	64.9	82	51.0
66	64.2	83	50.1
67	63.4	84	49.3
68	62.6	85	48.4
69	61.8	86	47.6
70	61.0	87	46.7
71	60.2	88	45.8
72	59.4	89	44.9
73	58.5	90	44.0
74	57.7	91	43.1
75	56.9	92	42.2
76	56.1	93	41.3
77	55.2	94	38.2
78	54.4	95	36.4
		96 and thereafter	-0-

**EXHIBIT III**  
**TO**  
**RENTAL SCHEDULE NO. 1**  
**AND**  
**CERTIFICATE OF INSPECTION AND ACCEPTANCE**  
  
**TERMINATION VALUES**

<u>Payment Date No.</u>	<u>Sale Termination Value</u>	<u>Payment Date No.</u>	<u>Re-Let Termination Value</u>
25		25	
26		26	
27		27	
28		28	
29		29	
30		30	
31		31	
32		32	
33		33	
34		34	
35		35	
36		36	
37		37	
38		38	
39		39	
40		40	
41		41	
42		42	
43		43	
44		44	
45		45	
46		46	
47		47	
48	76.6%	48	48.1%
49	75.9	49	47.3
50	75.2	50	46.5
51	74.5	51	45.7
52	73.8	52	44.9
53	73.0	53	44.1
54	72.3	54	43.3
55	71.6	55	42.5
56	70.8	56	41.7
57	70.1	57	40.8
58	69.3	58	40.0
59	68.6	59	39.1
60	67.8	60	38.3