

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: MONTREAL MAINE & ATLANTIC RAILWAY, LTD. Debtor.	Bk. No. 13-10670 Chapter 11
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**RESPONSE OF CENTER BEAM FLATCAR COMPANY TO
AMENDED OBJECTION TO PROOFS OF CLAIM FILED BY THE ESTATE
REPRESENTATIVE ON THE BASIS THAT (A) CLAIM 116-1 IS DUPLICATIVE OF
CLAIM 116-2 AND (B) CERTAIN OF THE AMOUNTS ASSERTED IN CLAIM 116-2
ARE UNENFORCEABLE UNDER THE BANKRUPTCY CODE**

Now comes Center Beam Flatcar Company (“Center Beam”), through its undersigned counsel, and for its response to the Estate Representative’s Amended Objection to Proofs Claim filed by Center Beam on the Basis that (A) Claim 116-1 is Duplicative of Claim 116-2 and (B) Certain of the Amounts Asserted in Claim 11602 are Unenforceable under the Bankruptcy Code (ECF No. 2025) (the “Objection”), respectfully states as follows:

1. On August 7, 2013 (the “Petition Date”), Debtor Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”) filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maine (the “Case”). Simultaneously, MMA Canada filed for protection under Canada’s Companies’ Creditors Arrangement Act (Court File No. 450-11-000167-134).

2. Prior to the Petition Date, the Debtor and Center Beam entered into a lease of railroad equipment dated as of January 13, 2003 (the “Lease”). A true and correct copy of the Lease is attached hereto as *Exhibit A*.

3. On November 1, 2013, this Court granted the Debtor’s motion to reject the Lease. *See* ECF No. 421.

4. On June 12, 2014, Center Bean timely filed a Proof of Claim, being designated as Claim No. 116-1 in this Court's claims register. *See* Claim No. 116-1.

5. On June 13, 2014, Bean timely filed a Proof of Claim, being designated as Claim No. 116-2 in this Court's claims register (the "Amended Claim"). *See* Claim No. 116-2.

6. The Amended Claim is duplicative of the Original Claim in all respects other than the signatory. *See* Claim Nos. 116-1, 116-2.

7. The Amended Claim, on its face, does not indicate that it amends a previously filed claim, but it is designated as an amended claim on this Court's claims register. *See* Claim No. 116-2.

8. Both the Original Claim and the Amended Claim list the amount of claim as of the Petition Date to be \$372,095.47. *See* Claim Nos. 116-1, 116-2.

9. Both the Original Claim and the Amended Claim state that Center Beam is entitled to a priority claim in the amount of \$83,403.23 pursuant to 11 U.S.C. § 507(a)(2). *See* Claim Nos. 116-1, 116-2.

10. Robert J. Keach, as estate representative (the "Estate Representative") of Debtor's post-effective date estate, filed the Objection on February 24, 2016 *See* ECF No. 2025.

11. Pursuant to the Objection, the Estate Representative objects to the Original Claim as being duplicative of the Amended Claim. *Id.*

12. Pursuant to the Objection, the Estate Representative further objects to the Amended Claim on the grounds that certain amounts asserted in the Amended Claim are unenforceable under the Bankruptcy Code. *Id.*

13. Specifically, the Estate Representative argues that (a) Center Beam has failed to carry its burden in establishing entitlement to administrative expense claim status and (b) the

portion of the Amended Claim in the amount of \$83,403.23 for which Center Beam claimed priority is wholly unenforceable (even as an unsecured claim) because post-rejection damages are only enforceable to the extent they confer a benefit upon the estate (in which case, they are entitled to administrative status). *Id.*

A. Claim 116-1 is Duplicative of Claim 116-2

14. Center Beam acknowledges and agrees that the Original Claim is duplicative of the Amended Claim and does not dispute that the Original Claim should be disallowed on the grounds that it has been amended by a subsequently filed proof of claim.

B. Center Beam is Entitled to Rejection Damages

15. Center Beam acknowledges and agrees that the estate did not derive benefit from the Lease and thus Center Beam is not entitled to a priority claim in the amount \$83,403.23.

16. Center Beam disputes the Estate Representative's claim that Center Beam is not entitled to an unsecured claim in the amount \$83,403.23 as lease rejection damages as part of its \$372,095.47 claim.

17. Under § 365, rejection does not terminate the lease, and thus rejection does not automatically abrogate its economic terms. *See In Re Flagstaff Realty Assocs.*, 60 F.3d 1031, 1034 (3d Cir. 1995) (“Rejection does not alter the substantive rights of the parties to the lease,’ and thus does not alter the continuing validity of terms affecting the amount of rent[.]”) (quoting *In re Chestnut Ridge Plaza Assocs. LP*, 156 B.R. 477, 483 (Bankr. W.D. Pa. 1993)).

18. Accordingly, between the time a lease is rejected and some future event terminating the lease entirely, the terms of the lease govern calculation of damages. *Flagstaff*, 60 F.3d at 1034.

19. Pursuant to § 365(g), “the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease . . . immediately before the date of the filing of the petition . . .” 11 U.S.C. § 365(g).

20. Here, the Lease provides that, upon a breach by the Debtor, “[t]he Owner shall be entitled to collect and receive any and all rents and other amounts that under the terms of this lease that may then be due **or that have accrued to the date of such delivery to Owner . . .**” *See* Ex. A (emphasis added).

21. Since the rejected Lease is deemed to have been breached immediately before the date of filing of the petition, Center Beam has an unsecured, prepetition claim for the amount due in lease payments until the time that the rail cars were returned to Center Beam, which amount totals \$83,403.23. *See* Claim No. 116-2.

22. The Estate Representative argues that this amount is wholly unenforceable, even as an unsecured claim. *See* ECF No. 2025.

23. If the Court were to accept this argument, it would mean that parties are precluded from recovering prepetition lease rejection damages, which is contrary to the Bankruptcy Code and case law. *See* 11 U.S.C. § 502(b)(6) (setting forth the calculation of a landlord’s claim resulting from a bankrupt tenant’s rejection of a nonresidential real property lease). *See also Texaco Inc. v. Louisiana Land and Exploration Co.*, 136 B.R. 658, 663 (M.D. La. 1992) (rejection of the prepetition contract does not cancel the contract; it constitutes a breach of the contract and grants the other party a claim against the estate as an unsecured creditor) (citing 2 *Collier on Bankruptcy* § 365.08 (15th ed. 1991)).

24. Center Beam has a valid unsecured claim in the amount of \$372,095.47, which includes the \$83,403.23 amount previously designated as a priority claim.

WHEREFORE, Center Beam requests that this Honorable Court deny the Estate Representative's Objection to deny the Amended Claim, determine that Center Beam has a valid unsecured claim in the amount of \$372,095.47, and grant such other and further relief this Court may deem just and fair.

Dated: March 24, 2016

/s/ Curtis E. Kimball, Esq.

CURTIS E. KIMBALL, ESQ. ~ Bar #6852

Rudman Winchell

Attorney for Movant

84 Harlow St. – P.O. Box 1401

Bangor, Me 04402-1401

CERTIFICATE OF SERVICE

I, Curtis E. Kimball, hereby certify that on March 24, 2016, I filed the Response of Center Beam Flatcar Company to Amended Objection to Proofs of Claim with the Clerk of the United States Bankruptcy Court using the CM/ECF System, which will send notification electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Curtis E. Kimball, Esq.

CURTIS E. KIMBALL, ESQ. ~ Bar #6852

Rudman Winchell

Attorney for Movant

84 Harlow St. – P.O. Box 1401

Bangor, Me 04402-1401

LEASE OF RAILROAD EQUIPMENT

THIS LEASE, is made and entered into as of January 13, 2003 among CENTER BEAM FLAT CAR COMPANY, INC., a Delaware corporation (hereinafter called "Owner"), MM&A ROLLING STOCK CORPORATION, a Delaware corporation (hereinafter called "Lessee"), and MONTREAL, MAINE & ATLANTIC RAILWAY LTD., a Delaware corporation (hereinafter called "Guarantor").

WITNESSETH:

THAT WHEREAS, Lessee desires to lease from the Owner certain railroad cars hereinafter specifically designated, all upon the rents, terms and conditions set forth in this Lease of Railroad Equipment (the "Lease"), and the parties desire and intend to reduce their understandings and agreements to writing by and through the execution of this Lease:

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the Owner and Lessee do hereby agree and covenant with and unto one another as follows, to wit:

1. **LEASE.** The Owner agrees to furnish and lease to the Lessee, and the Lessee agrees to accept and use upon the terms and conditions set forth herein, the railroad cars (hereinafter called the "Cars" or if one the "Car") more particularly identified in SCHEDULE I attached hereto and by this reference made a part hereof.
2. **DELIVERY.** The Owner will deliver the eighty-two (82) Cars bearing the reporting mark and numbers from within the series CAGY 8200-8299 at either the interchange point located on the lines of the Montreal, Maine & Atlantic Railway Ltd. ("MM&A") and the Canadian National Railway Company at St. Jean, Quebec, Canada or at another mutually agreed to interchange point located on the lines of MM&A. The Owner agrees to use its best efforts to have the thirteen (13) Cars bearing the reporting mark and numbers AM 1370-1382 ("13 Cars") initially routed to an interchange point located on the lines of MM&A (each location a "Delivery Point"). To the extent that the 13 Cars cannot be so routed, the Owner and Lessee shall cooperate to have the 13 Cars delivered to Lessee at the Delivery Point at the expense of the Owner. Owner's delivery obligations shall be subject to all delays resulting from causes beyond Owner's control, and Lessee's acceptance of the Cars shall be subject to the provisions of Section 3 herein.
3. **INSPECTION, ACCEPTANCE AND REMARK OF CARS.**
 - (a) **Inspection and Acceptance.** On the date Owner at its expense delivers the Cars to Lessee at the Delivery Point ("Delivery Date"), each Car shall be subject to Lessee's inspection and, if found to be free of defects and fit for interchange service under the Interchange Rules of the Association of American Railroads (hereafter "AAR"), Lessee shall execute a Certificate of Acceptance in the form set forth in Exhibit A hereto. Any Car found to be defective or unfit or unsuitable for interchange service under AAR Interchange Rules shall be rejected by Lessee unless Owner agrees in writing to bear the cost of necessary repairs. Lessee will not be responsible for any transportation charges for any Car rejected by Lessee. Should tie down cables and/or brackets be bent, broken, missing or defective the same will be repaired or replaced at the expense of the Owner or its agent, and the cost thereof shall not be borne by Lessee. The loading of any Car by Lessee or at its direction, or the failure of Lessee to report to Owner any defect within fifteen (15) days from the Delivery Date of any Car shall constitute acceptance thereof by Lessee, and shall be conclusive evidence of the fit and suitable condition thereof for purposes of this Lease.
 - (b) **Remark of Cars.** Subsequent to the Delivery Date for each accepted Car and prior to any Car being moved off the lines of MM&A ("Interchange"), Lessee shall, at its expense, have each Car marked with Lessee's reporting mark and number and will install appropriate A.E.I. transponders on the Cars ("Remark"). Promptly following the Remark of the last Car, Lessee shall complete and provide to Owner a Remark Report in the form as set forth in Exhibit B attached hereto. Lessee acknowledges and agrees that Owner makes no representations, warranties or agreement of any kind with respect to the "CAGY" mark or the "AM" mark and use by Lessee of such marks. Lessee further acknowledges and agrees that any arrangement with respect to Lessee's use of the "CAGY" mark shall be between Lessee and

the Columbus and Greenville Railway Company and with respect to Lessee's use of the "AM" mark shall be between Lessee and the Arkansas & Missouri Railroad Company. Lessee shall defend and indemnify Owner from and against any and all costs, expenses and liabilities associated with or relating to Lessee's failure to remark the Cars prior to Interchange, including, but not limited to, any fees for use of mark and performance of car hire accounting, repair, switching, transportation and freight charges. Lessee shall be responsible for the prompt filing of all documents relating to registration and documentation of the Cars with Lessee's reporting mark and numbers with the AAR and in the Uniform Machine Language Equipment Register ("UMLER"). Lessee will maintain and preserve the New Mark and Numbers as provided in the Remark Report and the transponders on the Cars for the duration of the Lease. Lessee will not change such mark or number without the prior written consent of Owner.

4. **OWNER'S WARRANTY AND DISCLAIMER.** So long as no Event of Default has occurred and is continuing, Owner warrants that neither Owner nor its successors and assigns will interfere with Lessee's quiet enjoyment and use of the Cars during the Term. Notwithstanding anything in this Lease to the contrary, **OWNER HAS NOT MADE, AND SHALL NOT BE DEEMED TO HAVE MADE, AND HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE OPERATION, DESIGN OR CONDITION OF THE CARS, THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THEIR MATERIAL OR WORKMANSHIP OR CONFORMITY TO ANY SPECIFICATIONS, THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, OR THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE OWNER AND LESSEE ONLY ARE ASSUME AND ARE TO BE BORNE BY THE LESSEE. OWNER SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

5. **CAR HIRE EARNINGS.** Provided Lessee is not in default hereunder, Lessee may retain all car hire earnings attributable to the Cars (per diem and/or mileage) received by Lessee, if any, until the expiration or earlier termination of this Lease. Owner shall have no responsibility for any car hire earnings, including without limitation, collection and payment thereof, and such responsibility shall lie solely with Lessee.

6. **TERM OF LEASE; FORCE MAJEURE.**

(a) **Term.** This term of this Lease for each accepted Car shall commence on the Delivery Date and shall continue for a period of one hundred twenty (120) months after either (a) the first day of the month following the Delivery Date for the last Car or (b) March 1, 2003, whichever is earlier ("Term").

(b) **Force Majeure.** Neither party to this Lease shall be liable for nonperformance or delay in performance hereunder as a result of an act beyond its control including, but not limited to, an Act of God, act of the public enemy, insurrection, riot or other civil disturbance, labor dispute, boycott, explosion, fire, flood, embargo, act of governmental authority, act of judicial or military authority, breakdowns of or damage to major components of equipment, unavailability of transportation, or other causes of a similar or dissimilar nature (any such event "Force Majeure"). The party affected by any Force Majeure event shall, within five (5) days following such Force Majeure event, provide written notice to the other party, which notice shall include a description and expected duration of such Force Majeure. If either party is prevented from carrying out any of its obligations under this Lease, then the obligations of such party shall be suspended to the extent made necessary by such Force Majeure and the term and the obligations of both parties be extended for a period equivalent to the duration of the Force Majeure. The party affected by any Force Majeure event shall exercise all reasonable efforts to remedy such Force Majeure event as promptly as possible. If the Force Majeure period continues for ninety (90) continuous days, Owner has the right, at its option, to terminate this Lease. Notwithstanding the foregoing, no Force Majeure shall terminate, excuse, suspend or otherwise delay Lessee's monetary obligations under this Lease, including, without limitation, the obligations to pay Rent or to pay for insurance as required under Section 13.

7. **RENT.** Upon the Delivery Date for each Car, Lessee shall pay to Owner on the first day of each month in advance rent for each Car in the amount of two hundred seventy-five dollars (\$275.00) per Car per month ("**Rent**"). Rent shall continue in effect for each Car, until such Car is returned to Owner in accordance with the terms of this Lease. Rent shall be pro-rated on a daily basis if the Delivery Date or return date for any Car is other than on the first day of any month. All payment of Rent shall be made directly to Owner at its address for notices hereunder. Rent will cease for each Car upon the Termination Date (as defined in Section 14 hereof) or as outlined in Section 9(c) hereof. Lessee's obligation to pay all Rent and other sums when due and to otherwise perform its obligations under this Lease is absolute and unconditional, and shall not be subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment. Each Rent or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from Owner. The Rent and other sums payable by Lessee hereunder shall be paid without notice or demand. So long as Lessee is not in default hereunder, if Owner or anyone lawfully claiming under or through Owner in an action, suit or proceeding before a court of competent jurisdiction, shall interfere with Lessee's possession and use of any Car, Lessee's obligation to pay Rent with respect to such Car shall abate for so long as such interference continues; provided, however, Lessee shall have notified Owner in writing within forty-eight (48) hours of any such interference.

8. **RECORDING.** Owner may record this Lease and file or refile such evidence as may be required with the Surface Transportation Board ("**STB**") pursuant to Section 11301 of Title 49 of the United States Code to protect and preserve Owner's interest in the Cars. Lessee shall cooperate and shall furnish to the Owner such evidence, which it may have related thereto as may be reasonably requested.

9. **REPAIRS AND CASUALTIES.**

(a) **Repairs.** Commencing on the Delivery Date, Lessee shall pay for all repairs, maintenance and replacement of parts as are necessary to keep each Car in good working order and repair, and suitable for loading and interchange in accordance with all applicable Laws (as defined hereinafter) as when it first became subject to this Lease. Upon request Lessee shall provide Owner with copies of all maintenance cargo and transportation records in its possession pertaining to the Cars. "**Laws**" as used herein shall mean all laws, rules, regulations, decrees, or orders which apply to the operation or use of any Cars, including, but not limited to, the AAR, the Federal Railroad Administration ("**FRA**"), the STB or any other legislative, executive, regulatory, administrative or judicial body exercising any power or jurisdiction over the Cars.

(b) **Certain Equipment & Accessories.** Owner or its agent shall be responsible for repair or replacement of any and all cable and winch tie-down systems on the Cars which are missing or in need of repair upon initial delivery of the Cars to the Lessee, but thereafter repair, replacement, and maintenance of the same shall be Lessee's responsibility. Without the Owner's prior written consent, Lessee shall not affix or install any accessory, part, equipment or device on any Car, if such addition will impair the intended use or function of such Car. All additions, repairs, parts, accessories, equipment furnished, attached or affixed to any Car shall thereupon become the property of Owner, except for such as may be removed without any way affecting or impairing the intended function or diminishing the value of the Car or the use thereof, or materially damaging the Car, and provided further, that any damage caused by such removal is repaired by Lessee forthwith.

(c) **Loss or Destruction.** If any Car shall be lost, destroyed or damaged while on the lines of MM&A to the extent that the physical condition is such that it cannot be economically repaired and operated in railroad service, Lessee shall pay to Owner an amount equal to the AAR Settlement Value, determined and computed according to the applicable AAR Interchange Rules, and the Car so destroyed or damaged shall be disposed of according to such Rules. Settlement for any loss, destruction or severe damage of Cars while on lines of other railroads shall be made by the Lessee for the account of the Owner with the handling line at the time the loss, damage or destruction occurred according to the applicable AAR Interchange Rules. The Owner will assist the Lessee in preparation of claims and effecting settlement with such other railroads. When any Car is so lost, destroyed, or damaged beyond repair, rental payments on such Car shall cease as of the day following the occurrence, provided the Owner shall have been given appropriate notice required by the AAR Interchange Rules.

(d) **Removal from Service, Substitution of Cars.** In the event any Car is lost, damaged, or destroyed or its physical condition shall become such that the Car cannot be operated in railroad interchange service, or if for any reason the Owner may wish to replace any Car and substitute another therefor, the Owner, with the written consent of Lessee, may elect, but shall not be required, to replace any Car and substitute therefor a replacement railroad car of the same type which shall thereafter be treated in the same manner as if the replacement had been the Car originally furnished. If any Car is removed from service and Owner elects not to replace such Car, rental payments shall cease for such removed Car pursuant to Section 9(c) hereof.

10. **SUBLEASE AND ASSIGNMENT.** Lessee shall not sublease any of the Cars to any party other than its affiliate MM&A and shall make no transfer or assignment, of the Cars or its interest in this Lease without the prior written consent of Owner; provided, however, such consent shall not be unreasonably withheld. If the Owner refuses to grant its consent to a request by Lessee to an assignment or transfer of Lessee's rights respecting some or all of the Cars, Lessee shall have the right to terminate this Lease as to such Cars on thirty (30) days written notice. Owner shall have the right to assign this Lease and/or any of Owner's rights hereunder, including the right to receive rentals, and Lessee agrees to consent to and accept any such assignment upon receipt of written notice thereof.

11. **LIENS.** Lessee shall keep the Cars free from any liens or encumbrances in favor of anyone claiming by, through or under the Lessee, other than those that arise out of repairs performed in accordance with the AAR Interchange Rules for the account of the Owner, including, but not limited to, liens or encumbrances that arise out of any suit involving Lessee, any act or omission of Lessee, or Lessee's failure to comply with the provisions of this Lease, and, should any such lien or encumbrance attach to the Cars, Lessee shall promptly take such action as may be necessary to discharge any such lien or encumbrance.

12. **TAXES.** Subject to the Supplemental Tax Indemnification Agreement attached hereto as Exhibit C, Lessee shall pay when due (or reimburse to Owner), and on a net after-tax basis shall indemnify and defend Owner from and against any and all fees, taxes and governmental charges of any nature including, without limitation, liens, encumbrances, interest, penalties, fines and assessments (collectively "Taxes") which may now or hereafter be imposed or levied by any foreign, federal, state, provincial or local authority upon this Lease or the Cars (including, without limitation, relating to or arising from the transportation, delivery, installation, leasing, possession, use, operation, storage and return of such Cars during the Term). Lessee shall have no responsibility for any Taxes on or measured by Owner's income. Lessee will pay promptly all Taxes which may be imposed upon Lessee's income and earnings arising from or connected with this Lease or the Cars.

13. **INSURANCE AND INDEMNITY.**

(a) **Insurance.** During the Term and so long as Lessee retains possession of a Car, Lessee shall maintain: (i) all risk, physical loss or damage insurance for each Car in a minimum amount equal to the aggregate Settlement Value; and (ii) public liability insurance in a minimum amount of five million dollars (\$5,000,000.00) per occurrence for personal or bodily injury, wrongful death and property damage, in each case for such risks and with such insurance companies as are reasonably satisfactory to Owner. All insurance policies shall be in the name of Lessee and shall name Owner as loss payee for all risk insurance and as additional insured for liability insurance, and provide Owner with thirty (30) days' prior written notice before coverage lapses, is canceled or materially changes. If Lessee fails to obtain insurance, or if said insurance lapses or is canceled, Owner has the right to purchase the insurance described above and Lessee shall pay the cost thereof. Lessee's insurance policies shall be primary to any insurance of Owner, and Lessee shall require its insurers to specifically waive subrogation, claim and recovery against Owner's insurance. Any deductibles in the above described policies shall be paid by Lessee. Lessee shall furnish to Owner upon execution of this Lease and thereafter at Owner's request, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Owner a certified copy of each insurance policy upon written request.

(b) **Indemnity.** Lessee agrees to indemnify and hold Owner harmless from and against all losses, damages, injuries, liabilities, claims and demands whatsoever (whether as a result of damage to the Cars or injury to third parties or their property) and any expense in connection therewith (including legal fees), arising out of its use or operation of the Cars during the Term of this Lease unless such claim for loss or damage was caused solely by the Owner's negligence or intentional misconduct.

(c) **Commodities.** Owner shall not be liable for any loss or damage arising as a result of any commodities loaded or shipped on the Cars. Lessee agrees to assume responsibility for, to indemnify Owner against and to hold Owner harmless from any claim in respect of such loss or damage and to assume responsibility for any damage caused to any Car by such commodities.

14. **RETURN OF CARS.**

(a) **Condition.** Upon the expiration or termination of this Lease with respect to the Cars or as to any Car, the same shall be free of liens arising from and through the Lessee, shall be (i) in as good condition, order and repair as when delivered to Lessee, ordinary wear and tear excepted, (ii) in condition suitable for movement in the interchange system free from all FRA defects and in conformity with all applicable laws, rules and regulations, (iii) free of AAR Rule 95 damage, and (iv) free from all accumulations from commodities transported in or on it while in the service of Lessee.

(b) **Remark.** Prior to the return of any Car to Owner, Lessee will, at its sole expense, reprogram the AEI transponders on the Cars and remark the Cars as directed by Owner ("**Return Remark**"). Such Return Remark shall include: (i) removal of existing reporting marks and any company logos of Lessee; (ii) complete cleaning of the area where new marks are to be placed as designated by Owner; (iii) application of new mandatory reporting marks; and (iv) any transportation involved in moving each Car to and from the remarking facility.

(c) **Return.** At Owner's direction Lessee will, at its expense, return the Cars to Owner at any interchange point located on the lines of MM&A ("**Return Point**"). Lessee agrees to use its best efforts to obtain a loaded movement or a Car Service Rule Five movement for the Cars, provided that Owner provides written instructions for the remarking and disposition of the Cars. Rent shall cease for each Car upon the date such Car is returned to Owner at the Return Point ("**Termination Date**"). Owner shall pay any charges that are assessed on the movement of the Cars after the Termination Date.

(d) **Free Storage.** Upon Owner's request and at Lessee's sole expense, Lessee shall store the Cars on the tracks of MM&A for a period not exceeding ninety (90) days ("**Free Storage Period**") after such expiration and shall transport the same to any reasonable place on the lines of MM&A or to any connecting carrier for shipment, all as reasonably directed by Owner. The movement and storage of such Cars shall be at the expense and risk of Lessee if Owner has given movement and storage instructions within the Free Storage Period; provided, however, that if Owner requests Lessee to store any Car for a period beyond the Free Storage Period, such additional storage shall be at the expense of Owner. During any storage period MM&A will permit Owner or Owner's agent, to inspect the same at such times as Owner shall reasonably request. If Lessee shall for any reason fail to deliver any Car to Owner within ninety (90) days of the expiration of the Term, Owner shall have the option to declare that such Car has been destroyed, pursuant to Section 9(c) hereof.

15. **DEFAULT.** If Lessee defaults in the payment, when due, of any rental or other payment becoming due under the provisions of this Lease, and such default continues for five (5) days after written notice is provided by Owner to Lessee, or if Lessee fails to perform any other covenant or conditions required of the Lessee hereunder, and such failure is not remedied within thirty (30) days after receipt by Lessee of written notice from the Owner of such default specifying action required to remedy or remove the default or if a proceeding shall be, commenced by or against the Lessee under any Federal or State bankruptcy laws, or for appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events the Owner may at its election terminate this Lease by written notice.

If this Lease is terminated, Lessee shall immediately surrender possession of the Cars and give prompt notice to all railroads having possession of the Cars to return the same promptly to the Lessee, and Lessee shall store such Cars at the direction of the Owner as provided in Section 14(d) above, but without charge to Owner, and deliver the same to such interchange location on Lessee's rail line as shall be specified from time to time by the Owner. Owner may, by its agents, enter the premises where the Cars may be located, take possession of the Cars, and thenceforth hold, possess, and enjoy the same free of any right of Lessee.

The Owner shall be entitled to collect and receive any and all rents and other amounts that under the terms of this Lease may then be due or that have accrued to the date of such delivery to Owner, and in the name and as agent for the Lessee, may collect and receive any of such amounts from other railroads, and, in addition, shall be entitled to any remedy available pursuant to the Uniform Commercial Code or otherwise at law or equity.

16. REPRESENTATIONS OF LESSEE. Lessee represents to Owner as follows:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of Delaware, and has corporate power and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;

(b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Cars subject to the Lease are and shall be held by Lessee under and subject to the provisions of this Lease prior to any lien, charge, or encumbrance in favor of anyone claiming by, through, or under the Lessee; and

(d) no governmental, administrative, or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this Lease or any action contemplated on it part hereunder.

17. NOTICE. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing to the addresses set forth below or at such other address as the parties shall have specified in writing:

If to Owner:

Center Beam Flat Car Company, Inc.
c/o Helm Financial Corporation
One Embarcadero Center, Suite 3700
San Francisco, CA 94111
Attn: Vice President Operations
FAX: (415) 398-4816

If to Lessee:

MM&A Rolling Stock Corporation
15 Iron Road
Hermon, ME 04401-9602
Attn: President
FAX: (207) 848-4232

If to Guarantor:

Montreal, Maine & Atlantic Railway Ltd.
15 Iron Road
Hermon, ME 04401-9602
Attn: President
FAX: (207) 848-4232

18. GUARANTY. Guarantor hereby acknowledges that is has read and reviewed this Lease. Guarantor agrees to execute and deliver to Owner the Unconditional Continuing Guaranty attached hereto as Exhibit D.

19. **AMENDMENT.** This Lease incorporates all understandings and agreements between the parties respecting the Cars, and the terms of this Lease and the rights and obligations of the parties under this Lease may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

20. **COUNTERPARTS.** This Lease may be executed in several counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

21. **SEVERABILITY, WAIVER.** If any term or provision of this Lease, or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of the Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of the Owner to exercise any rights under this Lease shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise, to such right.

22. **TERMINOLOGY.** In construing any language contained in this Lease, no references shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context requires, the singular shall include the plural and vice versa, and the statement of one gender shall, where necessary for proper construction, include the opposite or neuter gender.

23. **DEFINITIONS.** For all purposes of this Lease, the term "AAR Interchange Rules" or "Interchange Rules" shall mean all codes, rules, interpretations, laws or orders governing the hire, use, condition, repair and other matters pertaining to the interchange of freight traffic among railroads reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time during the lease term by the AAR and any other organization, association, agency or governmental authority, including the Surface Transportation Board and the United States Department of Transportation, that may be responsible for or have authority to impose such codes, rules, interpretations, laws or orders, and any successor system of rules applicable to the Cars and their use, condition and interchange between railroads, from time to time in effect.

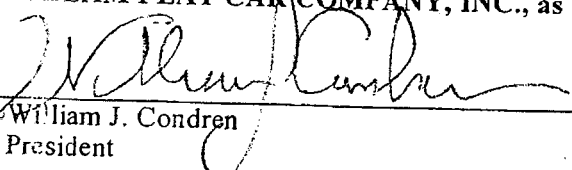
24. **LAW GOVERNING; WAIVER OF JURY TRIAL.** This Lease shall be construed and enforced, in accordance with the laws of the State of New York, without reference to its choice of law provisions; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11301. **THE PARTIES EACH IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH ANY MATTER RELATING DIRECTLY OR INDIRECTLY TO THIS LEASE OR THE UNITS WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS LEASE.**

25. **SUCCESSORS.** Except as otherwise expressly provided for in this Lease, the covenants, conditions, and agreements contained in this Lease shall inure to the benefit of, and shall obligate and be binding upon, the parties and, to the extent permitted, their respective successors, heirs, personal representatives, and/or assigns.

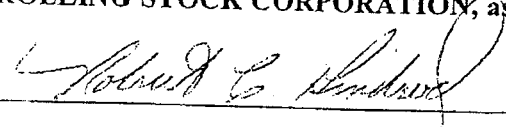
26. **OWNERSHIP AND USE.** Owner represents to Lessee that Owner has owned the Cars subject to this Lease for a minimum period of twelve (12) months prior to entering into this Lease and that during such twelve (12) month period the Cars have not been leased, assigned, operated, or maintained by any entity headquartered in the State of Maine.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of the day and year first set forth above.

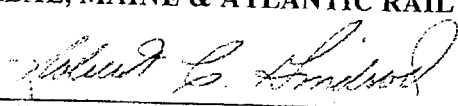
CENTER BEAM FLAT CAR COMPANY, INC., as Owner

By: 
Name: William J. Condren
Title: President

MM&A ROLLING STOCK CORPORATION, as Lessee

By: 
Name: ROBERT C. GRINDROD
Title: PRESIDENT

MONTREAL, MAINE & ATLANTIC RAILWAY LTD, as Guarantor

By: 
Name: Robert C. Grindrod
Title: President and Chief Executive Officer

STATE OF New York)
COUNTY OF New York) S.S.

This day personally appeared before me, the undersigned authority of law in and for said State and County, William J. Condren known to me, or proved to me on the basis of satisfactory evidence, to be the President of **CENTER BEAM FLAT CAR COMPANY, INC.**, who acknowledged that he/she signed, sealed, and delivered the foregoing Lease on the day and year therein mentioned, for the purpose therein expressed, as and for the act and deed of said corporation, being duly and legally authorized so to do.

Given under my hand and seal of office on this 30th day of January 2003.

Margaret K. Tringle
Notary Public

SEAL
My Commission Expires:
11/18/2006

STATE OF MAINE)
COUNTY OF PENOBSCOT) S.S.

This day personally appeared before me, the undersigned authority of law in and for said State and County, ROBERT C. GRINDROD known to me, or proved to me on the basis of satisfactory evidence, to be the PRESIDENT of **MM&A ROLLING STOCK CORPORATION**, who acknowledged that he/she signed, sealed, and delivered the foregoing Lease on the day and year therein mentioned, for the purpose therein expressed, as and for the act and deed of said corporation, being duly and legally authorized so to do.

Given under my hand and seal of office on this 17th day of JANUARY 2003.

Norma J. Griffiths
Notary Public

SEAL
My Commission Expires:
5/13/2007

STATE OF MAINE)
) S.S.
COUNTY OF PENOBSCOT)

This day personally appeared before me, the undersigned authority of law in and for said State and County, ROBERT C. GRINDRAD known to me, or proved to me on the basis of satisfactory evidence, to be the PRESIDENT of **MONTREAL, MAINE & ATLANTIC RAILWAY LTD**, who acknowledged that he/she signed, sealed, and delivered the foregoing Lease on the day and year therein mentioned, for the purpose therein expressed, as and for the act and deed of said corporation, being duly and legally authorized so to do.

Given under my hand and seal of office on this 17th day of JANUARY 2003.

Norma J. Moffitts
Notary Public

SEAL

My Commission Expires:

5/13/2007

SCHEDULE I

The "Cars": Ninety-five (95), 73-foot, 100-ton centerbeam flatcars, manufactured by Thrall Car, AAR mechanical designation FBC.

	Mark	Number
1	AM	1370
2	AM	1371
3	AM	1372
4	AM	1373
5	AM	1374
6	AM	1375
7	AM	1376
8	AM	1377
9	AM	1378
10	AM	1379
11	AM	1380
12	AM	1381
13	AM	1382
14	CAGY	8200
15	CAGY	8202
16	CAGY	8203
17	CAGY	8204
18	CAGY	8206
19	CAGY	8207
20	CAGY	8208
21	CAGY	8209
22	CAGY	8210
23	CAGY	8211
24	CAGY	8212
25	CAGY	8213
26	CAGY	8214
27	CAGY	8215
28	CAGY	8216
29	CAGY	8217
30	CAGY	8220
31	CAGY	8221
32	CAGY	8225
33	CAGY	8226
34	CAGY	8227
35	CAGY	8228
36	CAGY	8229
37	CAGY	8230
38	CAGY	8231
39	CAGY	8232
40	CAGY	8233
41	CAGY	8234
42	CAGY	8236
43	CAGY	8237
44	CAGY	8239
45	CAGY	8240
46	CAGY	8241
47	CAGY	8242
48	CAGY	8246

	Mark	Number
49	CAGY	8247
50	CAGY	8250
51	CAGY	8251
52	CAGY	8252
53	CAGY	8253
54	CAGY	8255
55	CAGY	8256
56	CAGY	8257
57	CAGY	8258
58	CAGY	8259
59	CAGY	8260
60	CAGY	8261
61	CAGY	8262
62	CAGY	8263
63	CAGY	8264
64	CAGY	8265
65	CAGY	8266
66	CAGY	8267
67	CAGY	8269
68	CAGY	8270
69	CAGY	8271
70	CAGY	8272
71	CAGY	8273
72	CAGY	8274
73	CAGY	8275
74	CAGY	8276
75	CAGY	8277
76	CAGY	8279
77	CAGY	8280
78	CAGY	8282
79	CAGY	8283
80	CAGY	8284
81	CAGY	8285
82	CAGY	8286
83	CAGY	8287
84	CAGY	8288
85	CAGY	8289
86	CAGY	8290
87	CAGY	8291
88	CAGY	8292
89	CAGY	8293
90	CAGY	8294
91	CAGY	8295
92	CAGY	8296
93	CAGY	8297
94	CAGY	8298
95	CAGY	8299

EXHIBIT A

CERTIFICATE OF ACCEPTANCE, pursuant to Lease of Railroad Equipment dated as of January 13, 2003, among **CENTER BEAM FLAT CAR COMPANY, INC. ("Owner")**, **MM&A ROLLING STOCK CORPORATION ("Lessee")** and **MONTREAL, MAINE & ATLANTIC RAILWAY LTD ("Guarantor")**.

This Certificate is related to the railroad cars listed below leased by Center Beam Flat Car Company, Inc. to Lessee under a Lease of Railroad Equipment dated as of January 13, 2003 (the "**Lease**"), onto which this Certificate is to be attached and incorporated by Section 3 of the Lease.

DESCRIPTION OF CARS: Ninety-five (95), (263K), 73' centerbeam flatcars (lightweight version) built by Thrall in 1987. AAR mechanical designation: FBC

REPORTING ROAD
MARK NUMBERS

Mark and numbers to be provided

Lessee hereby certifies the fitness and suitability and its acceptance of the Cars listed above as of the date of this Certificate, and hereby acknowledges that such Cars are subject to the provisions of the Lease as of this date.

DATED this _____ day of _____, 2003.

MM&A ROLLING STOCK CORPORATION, as Lessee

BY: _____

TITLE: _____

EXHIBIT C

To the Lease of Railroad Equipment dated as of January 13, 2003 among Center Beam Flat Car Company, Inc., MM&A Rolling Stock Corporation and Montreal, Maine & Atlantic Railway Ltd.

SUPPLEMENTAL TAX INDEMNIFICATION AGREEMENT

Notwithstanding anything to the contrary contained in Section 12 of the Lease of Railroad Equipment dated January 13, 2003 ("Lease") among Center Beam Flat Car Company, Inc. ("Owner"), MM&A Rolling Stock Corporation ("Lessee") and Montreal, Maine & Atlantic Railway Ltd. ("Guarantor"), the following additional provision shall govern the tax indemnification contained in Section 12 of the Lease:

Lessee's obligation to indemnify Owner pursuant to Section 12 of the Lease shall be conditioned upon (i) Owner providing Lessee with written notice of any tax assessment, fee, charge, or withholding proposed, levied, claimed, asserted or assessed against Owner for which Owner seeks to be indemnified by Lessee pursuant to the provisions of Section 12 of the Lease, and (ii) Owner providing Lessee with said notice promptly upon Owner's receipt of the notice and in sufficient time to permit Lessee to timely protest, defend or appeal such tax, claim, assessment, fee, charge, or withholding. Owner further agrees that Lessee may, at Lessee's expense, prosecute such protest, defense or appeal in the name of the Owner and that Lessee shall have sole control over the conduct of any such protest, defense, or appeal. Owner further agrees (notwithstanding Section 11 of the Lease) that Lessee may prosecute such protest, defense or appeal regardless of whether there is a danger of a lien attaching to any Car or whether such proceeding may otherwise jeopardize Owner's rights to any Car, so long as Lessee is responsible for indemnifying Owner for any losses with respect to said Car pursuant to Section 12 of the Lease.

This agreement applies to the Lease and to any supplement issued thereunder, shall be considered part thereof, and survives the termination of the Lease and any supplement issued thereunder. Capitalized terms not defined in this agreement shall have the meanings ascribed to them in the Lease.

OWNER:

CENTER BEAM FLAT CAR COMPANY, INC.

By: _____
Name: William J. Condren
Title: President

LESSEE:

MM&A ROLLING STOCK CORPORATION

By: *Robert C. Condren*
Name: *Robert C. Condren*
Title: *PRESIDENT & CEO*

EXHIBIT D

To the Lease of Railroad Equipment dated as of January 13, 2003 among Center Beam Flat Car Company, Inc., MM&A Rolling Stock Corporation and Montreal, Maine & Atlantic Railway Ltd.

UNCONDITIONAL CONTINUING GUARANTY

This UNCONDITIONAL CONTINUING GUARANTY ("Guaranty") is dated as of _____ by and between CENTER BEAM FLAT CAR COMPANY, INC., a Delaware corporation ("Owner") and MONTREAL, MAINE & ATLANTIC RAILWAY LTD., a Delaware corporation ("Guarantor") whose address is 15 Iron Road, Hermon, ME 04401-9602.

1. **Guaranty.** For valuable considerations the receipt and adequacy of which is hereby acknowledged by Guarantor, and in order to induce Owner to enter into the Lease of Railroad Equipment dated as of January 13, 2003 ("Lease") with MM&A ROLLING STOCK CORPORATION, a Delaware corporation ("Lessee"), Guarantor unconditionally, absolutely and irrevocably guarantees and promises to Owner to pay, perform and discharge, any and all present and future indebtedness, liabilities and obligations (collectively, "Obligations") of Lessee to Owner, including, but not limited to, the repayment to Owner all sums presently due and owing, and of all sums that shall in the future become due and owing, from Lessee to Owner, whether arising under the Lease or otherwise. The Obligations of Lessee include, but are not limited to, Lessee acting on behalf of itself or any estate created by the commencement of a case under Title 11 of the United States Code or any successor statute thereto ("Bankruptcy Code") or any other insolvency, bankruptcy, reorganization or liquidation proceeding, or by any trustee under the Bankruptcy Code, liquidator, sequestrator or receiver of Lessee or Lessee's property or similar person duly-appointed pursuant to any law generally governing any insolvency, bankruptcy, reorganization, liquidation, receivership or like proceeding.
2. **Obligations.** The Obligations include any and all rent, loans, advances, indebtedness, and other obligations owed by Lessee to Owner of every description, whether now existing or hereafter arising including interest, late charges, default interest and any interest that would have accrued but for the commencement of a case under the Bankruptcy Code, as well as all of Owner's costs or expenses, including without limitation (i) taxes and insurance premiums required to be paid by Lessee under the Lease that are paid or advanced by Owner, (ii) costs and expenses incurred by Owner to correct any default or enforce any provision of the Lease, or in gaining possession of, maintaining, handling, preserving, storing, shipping, selling or releasing the Units under the Lease, and (iii) costs and expenses of suit incurred by Owner in enforcing or defending the Lease or any portion thereof.
3. **Attorneys Fees.** If Owner incurs attorney's fees relating to any actions or claims arising out of this Guaranty, Guarantor agrees to pay Owner such attorney's fees plus all reasonable costs and expenses of prosecuting and/or defending any such actions or claims.
4. **Waivers.**
 - (a) **Scope of Risk Defenses.** Owner may at any time and from time to time, without notice to or the consent of Guarantor, and without affecting or impairing the liability of Guarantor hereunder, do any of the following: (i) renew, modify or extend (including extensions beyond the original term) any Obligations of Lessee or of any other party at any time directly or contingently liable for the payment of any said Obligations; (ii) accept partial payments of said Obligations; (iii) settle, discharge, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of said Obligations; or (iv) change the terms of the Obligations, including increases or decreases in installment or rental payments or any interest rate adjustments.
 - (b) **Primary Obligation Defenses.** Guarantor waives any rights to require Owner to (i) proceed against Lessee or any other party; (ii) proceed against or exhaust any security held from Lessee or any other party; or (iii) pursue any other remedy in Owner's power whatsoever. Guarantor waives any defense based on or arising out of any defense of Lessee, whether such defense arises by operation of law, bankruptcy of Lessee or otherwise, including without limitation, any defense based on or arising out of any disability of Lessee or the unenforceability of the Obligations or any part thereof from any cause or the cessation from any cause of the

liability of Lessee. Guarantor waives any defense based on any applicable statute of limitations or statute of frauds.

(c) **Commercially Reasonable Sale and Anti-Deficiency Laws.** Owner may, at Owner's election, foreclose on any security held by Owner by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, or exercise any other right or remedy Owner may have against Lessee, or any security, without affecting or impairing in any way the liability of Guarantor except to the extent the Obligations have been paid. Guarantor waives any defense arising out of any such election by Owner, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of Owner against Lessee or any security. Guarantor also expressly waives any defense or benefit that may be derived from any "one form of action" rule or anti-deficiency statute and all suretyship defenses it would otherwise have under the laws of any state.

(d) **Disclosure Defenses.** Guarantor expressly waives all set-offs and counterclaims and waives all notices, protests and demands including, without limitation, notice of default in the payment of rents or in the performance or in the observance of any of the terms, provisions, covenants or conditions contained in any agreement between Owner and Lessee.

(e) **Impairment of Collateral Defense.** Guarantor expressly agrees that the validity of this Guaranty and the obligations of Guarantor shall not be terminated, affected or impaired by reason of the waiving, delaying, exercising or non-exercising of any of Owner's rights against Lessee pursuant to the aforementioned Lease, or against Guarantor by reason of this Guaranty or as a result of the substitution, release, repossession, sale, disposition or destruction of any collateral or of the items leased or to be leased to Lessee. Guarantor shall not be released or discharged, either in whole or in part, by Owner's failure or delay (i) to perfect or continue the perfection of any security interest in any property which secures the Obligations of Lessee or Guarantor to Owner or (ii) to protect the property covered by such security interest.

(f) **Guarantor's Right To Revoke.** Guarantor expressly waives the right to revoke or terminate this Guaranty, including any statutory right of revocation under the laws of any state.

5. **Financial Condition of Lessee.** Guarantor (a) assumes all responsibility for being and keeping informed of Lessee's financial condition and assets and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks which Guarantor assumes and incurs hereunder and (b) agrees that Owner shall have no duty to advise Guarantor of information known to it regarding such circumstances or risks.

6. **Guarantor Not Entitled To Subrogation; Subordination.** No payment by Guarantor hereunder shall entitle Guarantor, by subrogation, indemnity, reimbursement or contribution out of the property of Lessee. Any and all present and future debts and obligations of Lessee to Guarantor are hereby postponed in favor of and subordinated to the full payment and performance of all present and future Obligations of Lessee to Owner. Upon the liquidation, bankruptcy or distribution of any of Lessee's assets, Guarantor shall assign to Owner all of Guarantor's claims on account of such indebtedness so that Owner shall receive all dividends and payments on such indebtedness until payment in full of the Obligations. This Section 6 shall constitute such an assignment if Guarantor fails to execute and deliver such an assignment.

7. **Recovery of Preferences.** If (a) a claim is made upon Owner at any time for repayment or recovery of any amount(s) or other value received by Owner, from any source, in payment of or on account of any of the Obligations guaranteed hereunder and (b) Owner repays or otherwise becomes liable for all or any part of such claim by reason of (i) any judgment, decree or order of any court or administrative body having competent jurisdiction or (ii) any settlement or compromise of any such claim, Guarantor shall remain liable to Owner hereunder for the amount so repaid or for which Owner is otherwise liable to the same extent as if such amount(s) had never been received by Owner, notwithstanding any termination hereof or the termination of any leases or other agreements evidencing any of the Obligations. Guarantor shall also be liable for the full amount of attorney's fees, costs and interest which Owner pays or incurs in connection with defending any preference or fraudulent transfer claim.

8. **Events of Default.** The occurrence of any one of the following events shall constitute an event of default under this Guaranty and, upon the occurrence thereof and at Owner's election without notice or demand, Guarantor's obligations hereunder shall become due, payable, and enforceable against Guarantor, whether or not the Obligations are then due and payable:

- (a) The occurrence of an Event of Default under and as defined in the Lease;
- (b) The commencement of any bankruptcy, insolvency, receivership or similar proceeding by or against Guarantor or Lessee;
- (c) The attempt by Guarantor or Lessee to effect an assignment for the benefit of creditors or a composition with creditors;
- (d) The insolvency of Guarantor or Lessee;
- (e) The dissolution of Guarantor or Lessee;
- (f) The inaccuracy or incompleteness in any material respect, when made, of any representations or warranties made by Lessee; or
- (g) The breach by Guarantor of any covenant of this Guaranty or any other agreement between Owner and Guarantor.

9. **Binding On Successors and Assigns.** This Guaranty shall bind Guarantor's respective heirs, administrators, personal representatives, successors and assigns, and shall inure to the benefit of Owner's successors and assigns, including, without limitation, any party to whom Owner may assign the Lease or any other agreements; and Guarantor hereby waives notice of any such assignment. All of Owner's rights are cumulative and not alternative.

10. **Miscellaneous.** This Guaranty contains the entire agreement of the parties hereto and no other oral or written agreement exists. This Guaranty may not be amended or modified except by a writing signed by Owner and Guarantor. This Guaranty is a valid and subsisting legal instrument and no provision which may be deemed unenforceable shall in any way invalidate any other provision or provisions, all of which shall remain in full force and effect. No invalidity, irregularity or unenforceability of all or any part of the Obligations nor any other circumstance which might be a legal defense of a guarantor shall affect, impair, or be a defense of this Guaranty.

11. **Choice of Law and Forum.** THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, AND GUARANTOR AGREES TO SUBMIT TO THE JURISDICTION OF THE STATE AND/OR FEDERAL COURTS IN THE STATE OF NEW YORK. GUARANTOR HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS GUARANTY OR THE CONDUCT OF THE RELATIONSHIP BETWEEN OWNER AND GUARANTOR.

WITNESS:

"GUARANTOR"

MONTREAL, MAINE & ATLANTIC RAILWAY LTD.

By: _____

By: *Robert C. Bendis*

Name: _____

Name: *Robert C. Bendis*

Title: _____

Title: *Att. Coun. & Secy*