

PURCHASE AND SALE AGREEMENT

March 18, 1976

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PURCHASE AND SALE AGREEMENT

AGREEMENT made this 18th day of March, 1976, by and between ROBERT W. MESERVE and BENJAMIN H. LACY, TRUSTEES OF THE PROPERTY OF BOSTON AND MAINE CORPORATION, (see In the Matter of Boston and Maine Corporation, Debtor, United States District Court for the District of Massachusetts, Docket No. 70-250-M) with an usual place of business in Boston, Suffolk County, Massachusetts 02114, and not individually, hereinafter referred to as "Sellers", which expression shall include the Trustees' successors and assigns where the context so requires or so admits, and the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts established under the provisions of General Laws, Chapter 161A, as amended, and having an usual place of business at 45 High Street, Boston, Massachusetts 02110, hereinafter referred to as "Buyer", which expression shall include the said Authority's successors and assigns where the context so requires or admits.

WHEREAS the parties have entered into a Memorandum Agreement, dated July 2, 1975, providing, among other things, for the execution of a Purchase and Sale Agreement between them for the sale

of certain real estate and personal property of the Sellers, subject to the reservation of an easement to conduct freight service in and upon the said real estate and to other terms and conditions as in said Memorandum Agreement provided.

NOW, THEREFORE, pursuant to the said Memorandum Agreement and with the intention of entering into the Purchase and Sale Agreement therein contemplated, the Sellers and the Buyer, in consideration each that the other joins herein, hereby covenant and agree as follows:

ARTICLE I

PROPERTY TO BE CONVEYED

The Sellers agree to sell and the Buyer agrees to buy at a total price of Thirty-nine Million Five Hundred Thousand Dollars (\$39,500,000), subject to and upon the terms, conditions and agreements herein set forth, all of the Sellers' right, title and interest in and to the following:

(1) The rail lines and other lands described in Exhibit A, Schedule of Real Estate and Improvements annexed hereto and hereby incorporated herein by reference (hereinafter referred to as the "Real Estate"), including all track, signals, bridges, buildings, shops, towers and other improvements affixed thereto, and all rights and easements appurtenant thereto, but excepting from the bridges agreed to be conveyed herein any and all bridges carrying public highways over the rights of way of Sellers but not the land thereunder (transfers of title to which the Commonwealth of Massachusetts,

acting through its Department of Public Works, is authorized and directed to accept from the Sellers--and title to all of which Sellers will use their best efforts to convey to the Commonwealth--under the provisions of Mass. Stat. 1971, Ch. 634) and subject to the easements appurtenant to any and all such transfers of title under the Agreement by and between the Sellers and said Department dated January 16, 1975, to the provisions of Section 6 of which Agreement Buyer agrees to be bound in the stead of Sellers; and

(2) The Sellers' fleet of eighty-four (84) Budd RDC passenger cars currently used in Boston commuter service, plus any inoperable Budd RDC passenger cars belonging to the Sellers, together with other items of personal property, spare engines, transmissions, other parts and components - all as described in the Schedule of Personal Property annexed hereto as Exhibit B and hereby incorporated herein by reference.

All of the Sellers' lands to be conveyed under this Article I are shown on the valuation plans listed in Exhibit A, there being excluded from said conveyance those lands indicated by cross hatching on said plans. Duplicate sets of said plans have been initialled for identification by the Sellers and by the Buyer, contemporaneously with the execution of this Purchase and Sale Agreement, and mutually delivered herewith.

The aforesaid Agreement, dated January 16, 1975, which has been duly recorded in the several registries of deeds in which documents of title to the lands agreed to be conveyed herein are recorded is incorporated herein by reference and hereby made a part hereof.

ARTICLE II

TITLE TO BE CONVEYED

The Real Estate referred to in Section (1) of Article 1 above shall be conveyed by delivery to the Buyer of a deed conveying all of Sellers' right, title and interest therein, free and clear of all taxes and claims of all creditors, lien holders and stockholders of Boston and Maine Corporation and all claims against the Sellers except:

- (1) provisions of existing zoning, subdivision control and other regulatory laws; and
- (2) all presently existing leases, licenses and easements; and
- (3) the freight easement hereinafter described and hereby reserved to the Sellers;

together with all plans referred to therein necessary to be recorded therewith in form adequate for recording or registration. In addition to the foregoing, if and to the extent that title to any portions of said Real Estate is registered with the Massachusetts Land Court, said deed shall be in form sufficient to convey said portions, and the Sellers shall deliver with said deed all instruments, if any, necessary to enable the Buyer to obtain new Certificates of Title with respect thereto.

Said personal property shall be conveyed by a bill or bills of sale conveying to the Buyer all of the Sellers' right, title and interest in all of the personal property described in Exhibit B, free and clear of all claims of all creditors, lien holders and stockholders of Boston and Maine Corporation and all claims against the Sellers.

At, or prior to, the date of the conveyance Sellers shall provide, in recordable form, an order from the United States District Court for the District of Massachusetts authorizing the conveyance of all of said Real Estate and other property to the Buyer free and clear of all liens and claims of all creditors and stockholders of Boston and Maine Corporation, and all claims against the Sellers, except as otherwise herein provided. The acceptance of a deed or bill or bills of sale by the Buyer from the Sellers, and receipt of the purchase price by the Sellers, shall be deemed to be a full performance and discharge of every agreement and obligation of the parties herein contained or expressed, except such as are, by their terms, to be performed after the delivery of said deed or bill or bills of sale and payment and except for the representations contained in the next following paragraph.

The Sellers hereby represent and warrant to the Buyer - subject always to the provisions of Article XVIII below - that by the execution and delivery of their said deed they will convey to the Buyer, with respect solely to all of the rail line rights of way and the Boston Engine Terminal Area hereby agreed to be conveyed - right, title and interest sufficient to permit the Buyer to operate a passenger and freight rail service over said lines and within said area, provided that the Buyer hereby agrees that it will expeditiously following the delivery to it of the aforesaid deed, file an Order of Taking of all of the said line rights of way and

Sellers have in writing declined, or after notice and reasonable opportunity failed, to make

and shall so notify the Sellers,

provided that, at such time, the Sellers are neither using such Area or Facility nor have any then reasonably foreseeable need for the same. The aforesaid release shall be recorded only upon the conveyance or long-term lease of the Area or Facility in question. If such sale or lease does not occur as intended - or such improvement or repair is not accomplished within six (6) months after the Buyer's notice of its intention to make such improvement or repair has been given to the Sellers - the said release shall be returned and the parties' rights shall return to the status quo prior to notice of Buyer's said intention.

(d) Sellers' right to continue to use machinery which is included among the Non-Line Areas and Facilities shall not include the right to move the same without prior approval of the Buyer and shall impose no obligation upon the Buyer or the Sellers to maintain, repair or replace such machinery.

2. Non-Line Facilities Within the Boston Engine Terminal Area.

Except as hereinafter provided, the right of the Buyer to use and control Non-Line Areas and Facilities within the said Boston Engine Terminal Area shall be exclusive and the right of the Sellers to continue to use Non-Line Areas and Facilities shall not extend to or include those lands, tracks, buildings and facilities situated within the Boston Engine Terminal Area, except as follows:

(a) The Sellers shall have the continued right to use in conjunction with the Buyer through-line and necessary access tracks in the Boston Engine Terminal Area in order to serve freight facilities.

(b) The Sellers shall have the right to use in conjunction with the Buyer sanding, fueling and minor locomotive repair facilities within said Boston Engine Terminal Area as they currently exist or as they may be suitably replaced or altered.

(c) The Sellers shall have the right to use in conjunction with the Buyer the existing diesel house, storage facilities, wheel truing machine, drop-pit and associated facilities in the "track 40 area" all as defined on Exhibit C, together with space for a wrecker and snow plow, and the freight car repair facility adjacent to said diesel house. The right of the Sellers to continue the uses in this subparagraph contained shall terminate upon the expiration of one year after receipt of written notice of such termination from the Buyer, but no such notice shall be effective if given prior to the expiration of two years from the Closing Date. Such termination shall not give the Sellers any right to substitute facilities or economic damages.

(d) For such use as they may make of the facilities described in subparagraphs (b) and (c) of this Paragraph 2, the Sellers shall pay to the Buyer a sum equal to their proportionate share of the maintenance costs of such facilities, as their use relates to the total use of such facilities.

B. Perimeter Lines

The following lines included in the Real Estate are hereinafter referred to as "Perimeter Lines":

The West Route Main Line from the New Hampshire/Massachusetts border (Val. Sec. 2, Map 34, Sta. 1921+14.73) to Lowell Junction, Massachusetts (Val. Sec. 2, Map 17, Sta. 1037+00); the New Hampshire Main Line from Lowell, Massachusetts (Val. Sec. 13.1, Map 23, Sta. 1299+00), to the New Hampshire/Massachusetts border (Val. Sec. 15, Map 9, Sta. 1818+41.0); and the Fitchburg Route Main Line from the Willows (Ayer), Massachusetts (Val. Sec. 36.1, Map 33, Sta. 1778+38.2), to Fitchburg, Massachusetts (Val. Sec. 36.1, Map 49, Sta. 2619+12.44).

Sellers shall have the continuing right and easement to use, in the conduct of their freight service, the Perimeter Lines, which term shall include all related trackage, freight service buildings and signal facilities.

With respect to Perimeter Lines, the general right of the Buyer to terminate Sellers' use, conditioned upon the provision of substitute facilities or the payment of economic damages, shall not obtain and the Sellers' right to continue to use the Perimeter Lines shall last until such time as Sellers have neither any current use nor any then reasonably foreseeable use for the Perimeter Lines.

When there is no such reasonably foreseeable use for a Perimeter Line, Sellers will execute a release of their rights therein. In the event of a dispute as to such foreseeable use, such dispute shall be resolved in accordance with Article IX hereof.

As of the date of this Agreement, there is no rail passenger service conducted on the Perimeter Lines except on the West Route Main Line between Lowell Junction and Haverhill, Massachusetts, and except on the New Hampshire Main Line between Lowell and Bleachery, Massachusetts, and, as long as the Buyer is conducting no passenger rail service

on or over a Perimeter Line, all aspects of operation, maintenance and repair of such Perimeter Line shall be in the exclusive control of and at the expense of the Sellers.

The Buyer shall have the right to use said Perimeter Lines at any time upon the same terms and conditions as are set forth in this Article relating to Jointly Used Lines, provided that such use shall not interfere with the ability of freight trains to enter, pass through or work upon said Perimeter Lines without material delays.

C. Other Lines

All of the rail lines included in the Real Estate other than the Perimeter Lines are herein referred to as the "Other Lines", which term shall include all related trackage, freight service buildings and signal facilities. Sellers shall have the continuing right and easement to use the Other Lines in the conduct of their freight service, subject to the following provisions of this Article IV:

1. Freight Only Lines. Of the Other Lines, the following shall, as of the Closing Date, be used only by the Sellers, in the conduct of their railroad service:

EASTERN ROUTE MAIN LINE
NEWBURYPORT TO STATE LINE

SAUGUS BRANCH
EVERETT JCT TO WEST LYNN

E. BOSTON BRANCH
REVERE TO E. BOSTON

SALEM AND DANVERS BRANCH
SALEM TO DANVERS
WEST PEABODY TO SO. MIDDLETON

WESTERN ROUTE MAIN LINE
HAVERHILL TO STATE LINE

NEWBURYPORT BRANCH
WAKEFIELD JCT TO TOPSFIELD

M AND L BRANCH
LAWRENCE TO STATE LINE

NEW HAMPSHIRE ROUTE MAIN LINE
LOWELL TO STATE LINE

STONEHAM BRANCH
MONTVALE TO STONEHAM

BILLERICA BRANCH
NO. BILLERICA TO BILLERICA

FITCHBURG ROUTE MAIN LINE
SO. ACTON TO FITCHBURG

Use by 1/80

FRT. CUT OFF
SOMERVILLE JCT TO HILL CROSSING

CENTRAL MASS BRANCH
CLEMATIS BROOK TO MARLBORO

BERLIN BRANCH
GLEASON JCT TO BERLIN

MAYNARD BRANCH
SO. ACTON TO MAYNARD

GREENVILLE BRANCH
AYER TO STATE LINE

*See Stoneham Branch
Lowell Branch
Part of State*

Said Lines - less any and all lines converted pursuant to subsection (3) below and plus any and all lines converted pursuant to subsection (4) below - are hereinafter referred to as the "Freight Only Lines". The Freight Only Lines shall be subject to the pro-

visions of Section D.1. of this Article IV.

2. Jointly Used Lines

The following rail lines included in the Real Estate shall as of the Closing Date be used jointly for both railroad freight service conducted by the Sellers and railroad or transit passenger services conducted by the Buyer or on the Buyer's behalf:

EASTERN ROUTE MAIN LINE
BOSTON TO NEWBURYPORT

GLOUCESTER BRANCH
BEVERLY JCT TO ROCKPORT

WESTERN ROUTE MAIN LINE
WILMINGTON JCT TO HAVERHILL

NEW HAMPSHIRE ROUTE MAIN LINE
BOSTON TO LOWELL

WILMINGTON JCT BRANCH
WILMINGTON TO WILMINGTON JCT

WOBURN BRANCH
WINCHESTER TO WOBURN

FITCHBURG ROUTE MAIN LINE
BOSTON TO SO. ACTON

LEXINGTON BRANCH
W. CAMBRIDGE TO BEDFORD

Said Lines - plus any and all lines converted pursuant to subsection (3) below and less any and all lines converted pursuant to subsection (4) below - are hereinafter referred to as the "Jointly Used Lines". The Jointly Used Lines shall be subject to the provisions of Section D.2. of this Article IV.

3. Buyer's Right to Convert Freight Only Lines to Jointly Used Lines

Buyer shall have the right to determine from time to time which line or lines originally used only for railroad freight purposes shall thenceforth, and until further notice from the Buyer to the Sellers, be used for Seller's railroad freight purposes jointly with the railroad or transit passenger services of the Buyer as if they had been originally described in subparagraph C. 2 above. Such right shall in each instance be exercised by at least 30 days prior notice in writing given by the Buyer to the Sellers.

4. Conversion of Joint to Freight Only

Subject to the giving of at least 30 days prior written notice by the Buyer to the Sellers of the Buyer's intention to cease, cessation of operation of passenger service, other than a temporary cessation, on a line or lines formerly used jointly, shall cause such line or lines to become "Freight Only Lines" as if they had been described in subparagraph 1. above and so to remain until passenger service is reinstated by notice duly given as provided in paragraph C. 3 of this Article.

D. Control and Maintenance of On-Line Easement Properties

1. Freight Only Lines

Sellers shall have sole operating and maintenance control over all "Freight Only" rights of way and related on-line facilities, including but not limited to tracks, track materials, appurtenances, buildings, structures, and railroad equipment as long, in each instance, as such rights of way are not being used in

Buyer's passenger operations. The Sellers will, at their cost and expense, maintain the same in proper and safe condition for the freight use to which they are put, in each instance, and repair, replace and renew the same when and as it appears to be reasonably necessary and desirable to do so.

2. "Jointly Used Lines"

(a) Control.

Buyer shall have the control over the use, scheduling (of passenger trains) and operation of "Jointly Used Lines" but may from time to time under agreement with the Sellers delegate the actual day to day operating control, dispatching and scheduling to Sellers. In the exercise of its control over the Jointly Used Lines, Buyer will make all reasonable efforts to expedite the movement of freight trains, including expediting repairs to lines and the removal of obstructions and scheduling regular maintenance and repair programs at hours which will not unreasonably interfere with such movement.

(b) Maintenance of Jointly Used Lines.

The party to whose standards a given line is being maintained, as hereinbelow provided, is herein referred to as the "Maintaining Party". (The Buyer shall be considered to be the "Maintaining Party" of any Jointly Used Line being maintained to

Buyer's standards notwithstanding the fact that actual maintenance may be performed by Sellers under contract with Buyer).

The "Maintaining Party" shall perform the maintenance work necessary or desirable to maintain the Jointly Used Lines and related on-line facilities in a proper and safe condition and repair, replace and renew the same when and as it appears necessary and desirable to do so in order to maintain them in a proper and safe condition in accordance with applicable Federal and state standards and regulations. Such maintenance shall be in compliance with standards to be set from time to time by the Buyer as evidenced by a written notice given by the Buyer to the Sellers setting forth objective criteria including the applicable F.R.A. standard, except that where the Sellers desire to maintain a Jointly Used Line and related on-line facilities in compliance with standards that are higher than those so set by the Buyer, they may do so upon giving similar written notice to the Buyer and thereafter, until the giving of further notice (which may be given by either party) reestablishing the Buyer's standard as the governing standard of maintenance, such line and related on-line facilities shall be maintained to Sellers' standards. Immediately after the Closing Date, and until further notice, the following lines shall be maintained to Buyer's standards: Eastern Route Main Line, Boston to Newburyport; Gloucester Branch, Beverly Jct. to Rockport; New Hampshire Route Main Line, Boston to Lowell; Woburn Branch, Winchester to Woburn; Fitchburg Route Main Line, Boston to South Acton.

(c) Cost of Maintenance of Jointly Used Lines.

All maintenance costs and expenses relating to the Jointly Used Lines shall be borne in the first instance by the "Maintaining Party". The other party, hereinafter referred to as the "Contributing Party", shall pay to the Maintaining Party an amount determined according to the formula contained in subparagraph (d) below toward the maintenance costs and expenses borne by the Maintaining Party during such calendar year. Such payments shall be made, on account, quarterly, according to reasonable estimates and there shall be an adjustment annually, within 90 days following the close of each year.

The Maintaining Party shall expend in each calendar year subsequent to the year in which the Closing Date falls, in connection with the maintenance of all Jointly Used Lines, not less than the amount of the Contributing Party's contribution to the maintenance costs and expenses relating to Jointly Used Lines for the prior year.

(d) Calculation of Contribution to Maintenance Costs.

(i) Signals and Crossing Protection Devices.

To calculate the Contributing Party's obligation to contribute toward the costs of installing, maintaining, repairing and operating signals and grade crossing protection devices on Jointly Used Lines, the Sellers' average system-wide signalling and grade crossing protection cost per train mile on signalled Main Track lines which are under the operating and maintenance control of the Sellers will be calculated for each calendar year, using relevant ICC Accounts, as shown on Exhibit D annexed hereto. The average cost per train mile thus obtained shall be

multiplied by the number of train miles run by or for the account of the contributing party in such year over Jointly Used Lines.

(ii) Other Line Maintenance Expenses.

For all other line maintenance expenses (including, without limitation, the costs of installing, repairing and maintaining tracks, ties, ballast, embankments, abutments, bridges and other right-of-way structures) on Jointly Used Lines, the Sellers' average system-wide cost per gross ton mile on all Main Track lines which are under the operating and maintenance control of the Sellers will be calculated for each calendar year using relevant ICC accounts maintained in accordance with the procedures existing on the date of this Agreement, as shown on Exhibit E annexed hereto, and the share of such costs incurred with respect to Jointly Used Lines which shall be payable by the Contributing Party will be equal to the number of gross ton miles run by or for the account of such party in that year over such Jointly Used Lines multiplied by such average cost per gross ton mile.

E. Other Provisions Relating to Freight Easement

1. Rights of Parties to Make Alterations

In the event that the Buyer shall alter or increase (which terms shall not include termination or diminution of passenger service) its use of Freight Only Lines, Jointly Used Lines or Perimeter Lines and related facilities, to the extent that or in such a manner that Buyer's use unduly interferes with the ability of the Sellers to provide freight service at present or reasonably foreseeable levels of volume and activity as presently conducted, Buyer shall provide substitute or additional facilities (on the same right of way in the case of Perimeter

Lines) adequate to permit such freight service or, with respect to lines other than Perimeter Lines, pay damages as appropriate under the circumstances. In implementation and not in limitation of the foregoing sentence, it is agreed that:

(a) The Buyer shall, at all times, make available to the Sellers rail access to all of their present freight service locations, so long as, in each instance, there are shippers or receivers actively using, or reasonably in prospect to use, such locations.

(b) Buyer shall not move any of Sellers' public delivery tracks unless it moves them (in compliance with all applicable laws and regulations) to new locations nearby their present locations, with substantially equivalent work space and highway access, at no cost to Sellers. Any such new location shall be suitably connected with either the same line as the original connection or a line approved by the Sellers, whose approval shall not be unreasonably withheld.

(c) The Sellers, at their expense, may install switches and sidings including any associated signalling to serve new locations. Such expense may include grade separation from rapid transit lines, if such separation is deemed necessary by the Buyer. All such installations shall be subject to the approval of the Buyer, whose approval shall not be unreasonably withheld.

(d) In the event of an alteration in the existing trackage or yard facilities desired or required by Buyer, Buyer will provide, at no cost to Sellers, such substitute trackage or yard facilities as may be necessary to move freight trains between points now served by Sellers on alignments capable of elapsed times no greater than the average time in which Sellers can, as of the Closing Date, move freight trains between such points at speeds authorized, as of the Closing Date, using equivalent motive power. In the event that operations of the Buyer require signalling on certain trackage or in certain yards more extensive than that presently existing, Buyer shall equip such trackage, yard facilities and necessary freight rolling stock with all reasonably necessary signalling devices.

(e) Buyer shall provide and maintain clearance and load carrying capacity on each Jointly Used Line or Perimeter Line under the control of the Buyer at least equal to the physical minimum existing thereon as of the date of this Agreement. In the event of any new construction performed or permitted by the Buyer, there will be erected no structure nor will any invasion of the air space over such line be permitted which will in any way obstruct the operation of trains thereon with equipment or cargoes extending to a height above the top of the rail up to the minimum clearance on such line existing on the date of this Agreement; nor will Buyer erect or permit to be erected any obstruction within 8 feet 6 inches of

the centerline of straight track or within 8 feet 6 inches plus 1 inch for each degree of curvature of curved track. The Buyer shall not install any new track nor relocate any existing track less than 13 feet (not less than 14 feet wherever reasonably feasible) centerline to centerline from any other track if either track is being used by the Sellers in its freight service. Where existing track is being reconstructed or former trackage is being reinstalled, Buyer shall have the option of reconstructing or reinstalling such track to clearances and alignments no more restrictive than those existing on the date of this Agreement. For the purposes hereof the minimum clearance on any line other than a Perimeter Line existing on the date of this Agreement shall be the actual minimum clearance or 22 feet above the rail, whichever is less, and on a Perimeter Line shall be 22 feet above the rail.

(f) Sellers may, at their own expense, alter or improve any part of the Real Estate other than the areas of Buyer's exclusive use referred to in Part 2 of Section A of this Article IV and provided for in Part 2 of Section E of this Article IV; provided that such alteration does not detract from the value of the Real Estate or materially interfere with Buyer's then current

or then reasonably foreseeable use of the Real Estate. The plans and specifications for each such alteration or improvement involving an expenditure of more than \$100,000 shall be subject to Buyer's written approval prior to the commencement of construction.

The preceding sentence shall not have the effect of limiting the Sellers' duties to obtain prior approval of plans for switches and sidetracks pursuant to Section 1. (c) above.

2. Termination of Sellers' Right to Use

The Buyer may give written notice to the Sellers of its desire to use exclusively a line or lines of railroad property other than Perimeter Lines. Upon receipt of such notice, the Sellers shall immediately prepare and file all such applications for governmental approval as may then be necessary as a prior condition to the Sellers' abandonment of service on such line, diligently prosecute the same and, when such approval becomes final, cease operation on such line or lines. Buyer shall reimburse Sellers for all reasonable expenses including attorneys' fees incurred in connection with the obtaining of such approvals. In the event that compliance with the obligations contained in this subparagraph causes Sellers to discontinue service to a revenue-producing customer or customers, Buyer shall pay to Sellers, no later than seven days prior to actual discontinuance of service over any line so abandoned economic damages determined as follows:

(a) Determine Sellers' total railway operating revenue from traffic originated by or destined to such customer

or customers to whom service has been or will be discontinued (including only Sellers' share of the total revenues derived from the movement) during the last full calendar year prior to the notice from the Buyer with respect to the line serving such customer called for by the first sentence of this subsection 2.

(b) Determine the Sellers' avoidable costs of originating or terminating such movement by adding the following elements as they relate to the subject traffic:

i. Costs relating to Sellers' use of line or a portion of a line to be terminated:

Maintenance of way (Sellers' share);
Maintenance of equipment (Sellers' share);
Transportation (Sellers' share);
Car Hire or Car Cost (Sellers' share);
Other costs, if applicable (Sellers' share);

ii. Costs relating to use of Sellers' lines other than the line to be terminated:

Beyond line costs, according to "Fifty percent (50%) formula". (The formula multiplies the line's pro rata mileage (ratio of number of miles traveled on the line to total number of miles travelled on the system) by the gross revenue generated, subtracts the product (gross revenue credited to the line) from the total gross revenue, and takes 50 percent of the resulting sum as the beyond line cost).

(c) Subtract total of (b) from (a) and multiply the result by ten.

In the event freight service is eliminated over a through line by action of the Buyer, in addition to the economic damages relating to the discontinuance of service to revenue-producing customers, the Buyer will provide an alternate route with the clearances at least equal to those provided for in subparagraph E 1. (e) above, with load carrying capacity equal to those existing on the eliminated line, at no cost to Sellers and without interruption in Sellers' ability to render its through service efficiently.

Once freight service has been legally abandoned, pursuant to a final order or orders of the Interstate Commerce Commission and any other Federal or State regulatory bodies having, at the time, jurisdiction over the matter of continuance of rail freight service on such line, the easement hereby provided for shall terminate with respect to such line and the Sellers shall have no right to reinstate rail freight service thereon without prior written approval of the Buyer, regardless of whether such abandonment was at the request of the Buyer or whether it was upon the Sellers' own motion.

3. Access.

With respect to the properties retained by the Sellers lying between Somerville Avenue, Cambridge and the Real Estate as shown on Exhibit C, the Sellers shall have the right to grant to parties to whom they may convey or lease any of said retained properties, the right, in common with the Buyer and others, to

use the existing Private Way defined on Exhibit C for egress and ingress on foot or in vehicles.

Sellers shall by their deed retain an easement to construct an access road up to four (4) lanes in width through the area lying between Washington Street, Somerville and the High Line, so called, defined as the "Yard 8 Access" on Exhibit C, for the purpose of providing vehicular and pedestrian ingress and egress between Yard 8 and said Washington Street. Said road shall be constructed so as to provide grade separation from the High Line until such time as Buyer shall operate a rail connection between the New Hampshire Route Main Line and the Fitchburg Route Main Line or any other route alternative to the High Line. At any time thereafter Sellers shall have the option to require the Buyer to convey to the Sellers the whole or any part of that portion of the High Line defined as the "High Line Segment" on Exhibit C, without payment of additional consideration; and thereafter the said access road may be constructed at grade. The layout of the said access road shall not interfere with the functioning of Tower X or the New Hampshire Route Main Line, as then located or laid out, and shall be subject to the Buyer's prior approval, which shall not be unreasonably withheld.

4. Right to Provide Freight Service to be Exclusive.

The Sellers' right to continue to provide freight service as hereinabove provided shall be exclusive in that no other carrier

shall have the right to provide freight service over and upon any of the lines to be conveyed hereunder, except as follows:

(a) To the extent that the Sellers have entered into joint operating agreements granting rights to operate over said lines to other carriers, the operation or operations of such other carriers, pursuant to such arrangements, shall be treated as operations of the Sellers for all purposes hereunder. No such joint operating agreements with other carriers shall be entered into after the date hereof without the prior written approval of the Buyer (which shall not be unreasonably withheld) provided that no such approval of the Buyer shall be necessary for run-through agreements where trains are operated by the Sellers' crews.

(b) The Buyer shall, after the Closing Date, have the right to transport baggage and its own materiel over and on such lines and such transportation shall not be considered freight service.

F. General Principal of Cost Allocation.

It is the general intention of the parties that, except as more specifically provided hereinabove or in the Operating Agreement, all direct costs and expenses resulting solely from or attributable solely to freight operations will be borne solely by Sellers and all direct costs and expenses resulting from passenger operations will be borne solely by Buyer. Overhead or joint expenses will be apportioned between the Sellers and Buyer on the

basis of relative use of the facility or department in question. The use of a facility or department by any person claiming by, through or under either party hereto shall, for the purposes of cost allocation, be deemed to be such party's use. In the event of a fundamental change in the underlying concepts upon which provisions hercof relating to allocation of costs and expenses are premised (such as might be caused by inclusion of Sellers in ConRail, a federal or state consolidated facilities program or other government ownership of facilities) by which any specific provisions for the allocation of costs and expenses are rendered inequitable, such provisions shall, at the request of either Buyer or Sellers, be renegotiated in good faith so as to provide for an equitable allocation under the changed conditions.

Electrical and Water Easements

A. Electrical Easement.

The Sellers' deed shall reserve to them the right to an easement for the location of electrical lines and equipment in that area of the Real Estate defined on Exhibit F annexed hereto entitled "Sellers' Electrical System - Boston Yards, December 31, 1975". Such reservation shall include the right to flow electricity through said electrical system to serve the freight easement and for any other use, now or in the future. The said easement shall include the right to install, inspect and maintain, repair, operate or remove electrical lines and equipment within the said area and the right to use said reserved area and electrical system in conjunction with the sale of electricity by the Sellers to other parties, including but not limited to the Buyer and new customers, insofar as they lawfully may, provided that Sellers' exercise of such rights shall not substantially interfere with the operations or the electrical needs of the Buyer. Such sale of electricity by the Sellers to other parties shall be with the right to profit therefrom without any obligation of the Sellers either to account to or to pay to the Buyer any portion of the revenues arising therefrom or any other consideration. All of the electrical lines and equipment located within said area at the Closing Date, and all such lines and equipment hereafter installed therein by the Sellers, shall be and remain the sole property of the Sellers and the existence of this easement shall in no way be considered as establishing either a joint facility or a joint enterprise with the Buyer.

The easement reserved in the next preceding paragraph may be assigned by the Sellers to Cambridge Electric Company (CE) or any other comparable public utility at any time within ten years after the Closing Date.

With respect to the Boston Engine Terminal Area, defined on Exhibit C, Sellers shall retain the right and easement to use and maintain the electrical lines and facilities existing therein as of the Closing Date, as long as such use and maintenance does not interfere with Buyer's operations or use of the Real Estate, together with the easement to install and maintain electrical lines and equipment as required for electrical service to Yard 8 and those properties retained by Sellers lying between Somerville Avenue and the Real Estate all as defined on said Exhibit C, provided that any such installation and maintenance shall not substantially interfere with Buyer's operations or use of the Real Estate and provided further that such installation and maintenance shall be subject to the prior approval of the Buyer, which shall not be unreasonably withheld.

In the event that Buyer alters the electrical lines or facilities existing as of the Closing Date within said Boston Engine Terminal Area, Sellers shall have the right to make an electrical connection at Sellers' cost to either a public utility or a source of the Buyer, whichever shall be more economical for the Sellers, provided that such connection shall not substantially interfere with Buyer's operations or use of the Real Estate.

B. Electrical Covenant.

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The said deed shall contain a covenant that Sellers, insofar as they lawfully may, shall supply electricity to Buyer at the appropriate CE rate as long as Sellers retain the easement reserved in Paragraph A above.

C. Water Easement.

The Sellers' deed shall further reserve to them the right to take water from the 12-inch main through an 8-inch connection at point "A" and through a 12-inch connection at point "B" as shown on Exhibit G annexed hereto entitled "Sellers' Water System - Boston Yards, December 31, 1975". The said reserved easement shall include the right to flow water through said connections to serve the freight easement and for any other use, now or in the future, at not less than the rate currently maintained and without unreasonable interruption of flowage at any time. Said reserved easement shall include the right to inspect and maintain, repair, operate, renew or remove the said connections and said line between points "A" and "C" in a manner which shall not substantially interfere with Buyer's operations or use of the Real Estate. The Sellers shall be solely responsible for the inspection, maintenance and repair of said line between points "A" and "C", and Buyer shall not be obligated to contribute to the cost thereof. Subject to the final paragraph of this Section C, the Buyer will be solely responsible for the inspection, maintenance and repair of the lines between point "C" and points "D" and "E", but subject to the Sellers' obligations to contribute to the cost thereof as provided below.

The quantity of water taken at point "A" is estimated and the quantity of water taken at point "B" is and shall be metered, except for water used for fire protection, but if requested by the Buyer, the Sellers shall install a water meter at point "A", at the expense of the Buyer (or, if desired by the Sellers, they may install such meter at their own expense) to give an accurate measure of the usage of water through that connection.

The water line between points "D" and "F" as shown on Exhibit G shall continue to be owned by the Sellers, and the Sellers' deed shall reserve to them the right to inspect, maintain and repair the said line on the Real Estate to the extent that it is located thereon. The Sellers shall be solely responsible for the inspection, maintenance and repair of said line but the Buyer shall be obligated to contribute to the cost thereof as provided below. The Buyer shall have the right, subject to the rights of the Sellers and all those parties who have the right (claiming by, through, or under the Sellers or otherwise) to take water from the said line through the connections located between points "D" and "F", to receive water through the said line at point "D", for any use, at not less than the rate currently maintained and without unreasonable interruption of flowage at any time.

In each calendar year the Sellers shall be responsible for so much of the cost of inspecting, maintaining and repairing of all those portions of the water line shown on Exhibit G lying between points "C" and "F" and "C" and "E" as shall be proportional to the fraction of which the denominator is the total volume of water passing through points "E" and "F" in said year and the numerator is the sum of the volumes of water passing through the connections at points "A" and "B", and through all connections lying between points "D" and "F", during said year. The Buyer shall be responsible for the remainder of such cost, subject to Sellers' duty to contribute thereto in accordance with Article IV. A.2(d).

The said deed shall further provide that the Buyer shall have the right to discontinue the aforesaid right of the Sellers to take water at points "A" and "B" at any time upon not less than ninety days' prior written notice, provided that in such event the Buyer shall grant to the Sellers, without further consideration, upon written request therefor made to the Buyer by the Sellers, such easement or other reasonable rights as may be necessary to enable the Sellers to install and maintain at their expense a water main and connections adequate to supply the Sellers' needs for water for its freight service as well as the needs of any customers of the Sellers who are then receiving water from the connections at points "A" and/or "B", which easement and connection shall

be so located as to connect points "A" and "B" with either a public water line or a water line of the Buyer, whichever shall be the most economical for the Sellers, provided that such connection shall not substantially interfere with the Buyer's operations or use of the Real Estate.

D. Water Covenant.

The Buyer shall pay the public supplier for all of the water taken at points "E" and "F" as determined by the meters located at said points. The Sellers shall pay Buyer for the estimated water taken at point "A" and for the metered water taken at point "B" and at all connections lying between points "D" and "F" at the prevailing water rates of the City of Somerville in existence from time to time.

ARTICLE VI

LABOR PROTECTION. The Buyer will indemnify and exonerate the Sellers, to the extent provided hereinbelow, against the cost of (and be responsible for) obligations, liability, or claims due to provisions of Sellers' labor agreements, including labor protective conditions of such agreements, or of labor protective conditions imposed by regulatory agencies or applicable laws. The obligation to indemnify and exonerate shall arise when employees or positions are adversely affected as a result of changes in the passenger service (including termination thereof), passenger facilities, or both, or by reason of the future contracting out or other removal or termination of work previously, now, or hereafter performed

by the Sellers' employees to the extent that such change, termination or contracting out is the result of an action taken by, or with the consent of, the Buyer.

It is understood and agreed that an action taken by the Buyer may have effects remote from the initial position or positions affected by such action as a result of successive seniority displacements, and it is the intention of the parties that the indemnification and exoneration herein provided shall extend to such more remote effects.

If the initiating action affects a position or positions solely engaged in the Service, the Buyer will pay all such costs. If the initiating action affects a position or positions engaged in both passenger service and freight service, the Buyer will pay the cost to the extent that it is solely traceable to the action taken by, or with the consent of, the Buyer.

In the event that in any instance the applicability of the immediately preceding sentence produces a result which is manifestly unfair to either party, the sharing of such termination cost will be renegotiated in good faith so as to provide for an equitable allocation thereof.

It is further understood and agreed that the Sellers shall use their best efforts to mitigate liability to such employees and that the Buyer shall be permitted to participate, within reason, in such efforts.

The Buyer will pay to the Sellers such funds as may be required to satisfy Buyer's obligation to indemnify and exonerate the Sellers hereunder, concurrently with the delivery of evidence of payment by the Sellers.

Sellers agree to keep Buyer currently informed, to the extent that Sellers can reasonably do so, of all aspects of local and national labor negotiations which might reasonably be expected to expand or broaden the scope of the protective provisions (i.e., provisions relating to termination rights) of labor agreements.

ARTICLE VII

LEASES, LICENSES AND SIDETRACK AGREEMENTS

Concurrently with the delivery of said deed, Sellers shall, insofar as they lawfully may, assign to Buyer all of their rights and privileges applicable to the conveyed premises, including but not limited to all leases and licenses and rights reserved by or granted to the Boston and Maine Railroad, its successors and assigns to use and allow rail patrons to use railroad stations, platforms, access and related facilities and all covenants running with said station properties related to the maintenance of the same. Sellers shall deliver the original leases and licenses properly assigned to the Buyer at the Closing together with an itemized schedule of such leases, licenses, rights and covenants in a form reasonably acceptable to the Buyer.

The conveyance of the Real Estate hereunder shall be subject to all existing leases, licenses and side track and switching agreements and arrangements. The Sellers hereby assign to the Buyer as of the Closing Date hereunder all of the Sellers' interest in said leases, and the Buyer hereby agrees to assume and perform all of the Sellers' obligations in connection with said leases except to the extent that the same constitute a part of the Sellers' freight service, in which case the Buyer shall have no obligation with respect thereto. All rents under all such leases, are hereby assigned by the Sellers to the Buyer

effective as of the Closing Date. Buyer agrees not to charge more for use of land in connection with side track agreements than the fair rental value of similar land in the vicinity. The Sellers shall in connection with the Freight Easement have the right to enter into new agreements and arrangements for the installation and maintenance of switches and side tracks with current or prospective users of its freight service, subject to the provisions of Article IV, Section E 1 (c) above, and the Buyer will cooperate with the Sellers in connection with such new agreements and arrangements and will grant such land leases at fair rental to Sellers' customers as may be necessary for the installation, maintenance and operation of such switches and side tracks.

ARTICLE VIII

ACCIDENT RESPONSIBILITY

In the event that the Sellers shall cease to conduct passenger service for the account of the Buyer, pursuant to the Operating Agreement or a successor operating agreement, the following terms and conditions shall immediately become effective with respect to events occurring after such cessation;

A. In the event that harm, damage or injury (including death) is caused by the negligence or other act for which one of the parties hereto is legally responsible without any contributory negligence or legal responsibility on the part of the other party hereto (except in circumstances described in C below) and said harm, damage or injury (including death) occurs to the property of, or in the custody of, one of the parties hereto, to property used jointly by the parties, to the employees, passengers or licensees of either party, to common agents or employees or to third parties, the party which caused such harm, damage or injury (including death) shall bear all of the cost, expense and liability arising therefrom and shall save harmless the other party from and against any loss, cost or expense connected therewith. (This Section is not intended to confer any rights upon third parties.)

B. In the event that harm, damage or injury (including death) is caused solely by an act or omission for which, a third party is legally responsible, to the property of, or in the custody of, one of the parties hereto, or to the employees, passengers or licensees of one of the parties hereto, that party shall assume all loss, cost and expense arising therefrom, without contribution from the other party. (This Section is not intended to relieve any third party from any liability).

C. In the event that harm, damage or injury (including death) is caused by the condition of jointly used lines, facilities or equipment, to the property

of, or in the custody of, one of the parties hereto, or to the employees, passengers or licensees of one of the parties hereto, that party shall assume all loss, cost and expense arising therefrom, without contribution from the other party, except that damage to such jointly used lines, facilities or equipment shall be repaired by the Maintaining Party subject to contribution from the other party as provided in Article IV. F.

D. In the event that harm, damage or injury (including death) is caused by an act or omission for which both of the parties hereto are legally responsible and such harm, damage or injury (including death) occurs to the property of, or in the custody of, one or both of the parties hereto, or to the employees, passengers or licensees of one or both of the parties, each party shall bear all of the costs, expenses and liability arising from such harm caused to its own property, to property in its custody or to its employees, passengers or licensees. Any other loss, cost or expense so caused, including expense of repairing jointly used lines, facilities or equipment shall be divided equally between the parties.

E. In the event that harm, damage or injury (including death) is caused by an act or omission for which at least one of the parties hereto is legally responsible but in circumstances where legal responsibility cannot be attributed to one party or the other nor to both parties jointly because of lack of evidence or a conflict in evidence which cannot be resolved, by litigation or otherwise, and said harm, damage or injury (including death)

occurs to the property of, or in the custody of, one or both of the parties hereto, or to the employees, passengers or licensees of one or both of the parties, each party shall bear all of the costs, expenses and liability arising from such harm caused to its own property, to property in its custody or to its employees, passengers or licensees. Any other loss, cost or expense so caused, including expense of repairing jointly used lines, facilities or equipment, shall be divided equally between the parties.

F. In the event of any derailment or other accident occurring upon the Real Estate wherein cars, motive power or other equipment of either party shall fall or encroach upon tracks, bridges or other property being used by the other party so that said property is blocked or normal operation thereover is impeded, the party whose property has so fallen or encroached shall expeditiously remove the same and cause all necessary repairs to be made and all tracks and appurtenances restored, at its expense, as may be required for the continued operation of the other party's railroad activities.

Both parties will cooperate with each other to expedite the repair and removal of such cars, motive power and other equipment and will make all reasonable efforts to restore the affected line or facility to service.

ARTICLE IX

ARBITRATION

A. Selection of Arbitrators.

If at any time a controversy shall arise which is referable to arbitration according to subsection C of this Article IX, the parties hereto agree to engage forthwith in good faith discussions attempting to resolve such

controversy. If the parties so agree, they may involve a disinterested person experienced in railroad operations to render his objective advice and opinions, which shall be advisory only and not binding unless the parties agree in writing to be bound by his judgment in a particular instance. In the event such good faith discussions do not resolve such controversy within 30 calendar days, or such other time as the parties may agree in writing, the parties shall submit such difference or dispute to disinterested arbitrators, one of whom shall be appointed by the Sellers and the other of whom shall be appointed by the Buyer; and if the two arbitrators so chosen cannot agree, they shall select a third arbitrator, and their decision, or that of a majority of them, shall be final and conclusive between the parties hereto, except that if either party claims that the arbitrators' decision is based upon an error of law, it may, within 30 days after receipt of such decision, institute an action at law to determine such legal issue. In any such action at law, the parties shall stipulate the facts to be as set forth by the arbitrators. In case either of the said parties shall fail or refuse to appoint an arbitrator as aforesaid for the period of 30 calendar days after written notice given by the other party to make such appointment, then and in that event the arbitrator appointed by the party not in default shall appoint a like competent and disinterested arbitrator for the defaulting party, and the said two arbitrators, so appointed, shall select a third arbitrator, and the three so chosen shall hear and decide such

Boston Engine Terminal Area in order to bring to an end, expeditiously, the time within which any claims in contravention of the foregoing representation and warranty may be asserted.

ARTICLE III

CLOSING DATE AND INSURANCE

The agreed purchase price for all of the real and personal property described and referred to as being sold herein in Article I above is Thirty-nine Million Five Hundred Thousand Dollars (\$39,500,000) which shall be paid by certified or bank cashier's check, at the time of the delivery of the aforesaid deed and bill or bills of sale. Subject to fulfillment of all of the terms and conditions of this Agreement, said deed and bill or bills of sale shall be delivered and the purchase price paid at the offices of the Sellers at 150 Causeway Street, Boston, Massachusetts, unless the Buyer otherwise designates (in a writing to be delivered at least one week prior to the closing) another place in Suffolk County at such hour and on such date (not later than thirty (30) days after all requisite conditions, as hereinafter set forth, have been satisfied) as shall be designated by the Buyer in a written notice given to the Sellers (said time and date being herein referred to as the "Closing Date").

If all of the approvals and the grant or loan, referred to in Paragraph A of Article XVII or the relief from taxation referred to in Paragraph C of said Article, have not been obtained by December 31, 1976, the Sellers may,

at any time within thirty (30) days thereafter, by written notice of termination given to the Buyer, terminate this agreement and all obligations of both parties hereunder shall cease. If the Sellers do not give such notice within said thirty (30) day period (or such further time as the parties may agree upon in writing) this Agreement shall continue in full force and effect but thenceforth the relief from taxation referred to in Paragraph C of said Article XVII shall cease to be a condition of the obligations to perform under this Agreement.

If the approvals referred to in Paragraph B of Article XVII have not been obtained by December 31, 1976, the Buyer may, at any time within thirty (30) days thereafter, by written notice of termination given to the Sellers, terminate this Agreement and all obligations of both parties hereunder shall cease. If the Buyer does not give such notice within said thirty (30) day period (or such further time as may be agreed upon in writing), this Agreement shall continue in full force and effect.

If any of the required approvals of A or B of Article XVII are not obtained by December 31, 1977 (and this Agreement has not been earlier terminated), either party may terminate this Agreement by written notice to the other, and all obligations of both parties hereunder shall cease.

Sellers shall deliver the Real Estate and the personal property to be sold hereunder to the Buyer, on the Closing Date, in as good condition as they now are, reasonable use and wearing and damage by fire or other casualty only excepted.

If the Real Estate of personal property shall have been damaged by fire or casualty insured against, then the Sellers shall, unless the Sellers have previously restored the same to a condition no less useful than its former condition:

- (a) pay over or assign to the Buyer, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the Sellers for any partial restoration, or
- (b) if a holder of a mortgage on said premises or the Federal District Court for the District of Massachusetts shall not permit the insurance proceeds or a part thereof to be used to restore the Real Estate or the said personal property,

there shall be deducted an amount against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage, less any amounts reasonably expended by the Sellers for any partial restoration.

Until the delivery of the deed, Sellers shall maintain its present policies of insurance on the Real Estate and said personal property. Copies of all of said policies have been furnished to the Buyer.

If the said Real Estate or personal property shall be damaged by fire or casualty not insured against (or to the extent of any amount deductible from insurance applicable to insured property), there shall be deducted from the purchase price on delivery of the deed an amount equal to the decrease in net salvage value of any Real Estate or personal property so damaged as a result of fire or casualty, less any amounts reasonably expended by the Sellers for any restoration or partial restoration thereof; provided, that no such deduction shall be made with respect to any damage to any Real Estate or personal property having no practical value to the Buyer in its passenger operation or with respect to any damage to any property which is comprised within the Non-line Areas and Facilities outside the Boston Engine Terminal Area, or with respect to any damage to any property not excepted by the two preceding clauses, except to the extent that such damage involves an uninsured loss of value, in each instance, of more than \$10,000.

ARTICLE IV

Freight Easement

The Sellers shall retain by easement reserved in the Deed, unto themselves, their successors and assigns, the right to use certain of the property to be conveyed as more specifically described, articulated and defined hereinafter. It is the general intention of the parties hereto that after the conveyance of the properties to the Buyer, the Sellers shall continue to use such of the properties to be transferred and conveyed as are appropriate and necessary to the continuance of their freight transportation business, at present or reasonably foreseeable levels of traffic volume and activity, in the general manner in which it is now conducted with reasonable access to the Real Estate subject to the Easement and without undue interference from the activities of the Buyer. Concurrently, it is the general intention of the parties hereto that after the conveyance of the subject properties, the Buyer will own them and, as owner, will have the right (having in mind the aforesaid easement) to use, maintain and alter them as it sees fit and the Buyer will have the right to schedule passenger trains with priority over Sellers' freight trains (but freight trains will be moved without undue disruption to freight service) and to exercise control over the use, condition, maintenance and operation of the properties.

The provisions hereinafter set forth more specifically defining the general intentions hereinabove expressed (in some cases

limiting and in other cases expanding) shall govern with respect to the matters treated therein but shall be construed in the light of the said general intentions.

The areas of the Real Estate in which Sellers shall retain freight easements and within which other facilities that Sellers shall continue to have a right to use are located are for the purposes hereof categorized as:

Non-Line Areas and Facilities,
Perimeter Lines, and Other Lines

A. Non-Line Areas and Facilities

1. Outside the Boston Engine Terminal Area.

Sellers shall have the right and easement to continue to use or to use in the future all those areas of land and buildings contained in the Real Estate and all that equipment (excluding passenger rolling stock) and those facilities other than lines of railroad, including but not limited to yards, freight buildings, public delivery facilities, the buildings located in North Billerica, shops, and servicing facilities ("Non-Line Areas and Facilities") situated outside the Boston Engine Terminal Area. Said Boston Engine Terminal Area is defined on Exhibit C. The Sellers' right herein shall exclude any use of such Non-Line Facilities outside the Boston Terminal Area by the Buyer which would in any material way adversely affect the Sellers' use of the same, except as follows:

(a) Buyer may make such use as it may desire of said Non-Line Areas and Facilities so long as, and to the extent that, such use does not materially interfere with the then current