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LOUIS E. GITOMER

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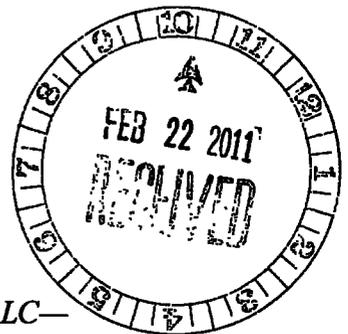
THE ADAMS BUILDING, SUITE 301  
600 BALTIMORE AVENUE  
TOWSON, MARYLAND 21204-4022  
(202) 466-6532  
FAX (410) 332-0885

ENTERED  
Office of Proceedings

February 22, 2011

FEB 22 2011

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Public Record



Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

RE: Finance Docket No. 35474, *DeQueen and Eastern Railroad, LLC—  
Corporate Family Lease Exemption—Texas, Oklahoma & Eastern  
Railroad, LLC*

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Verified Notice of Exemption under 49 C.F.R. 1180.2(d)(3), a check covering the \$1,400.00 filing fee, a CD with the file Notice of Exemption in Word and pdf, and 20 unbound copies of the map.

Please time and date stamp the extra copy of this letter and the Verified Notice of Exemption and return them in the enclosed stamped envelope. Thank you for your assistance.

If you have any questions, please call or email me.

Sincerely yours

Louis E. Gitomer  
Attorney for: DeQueen and Eastern Railroad, LLC

Enclosures

**FILED**  
FEB 22 2011  
SURFACE  
TRANSPORTATION BOARD

**FEE RECEIVED**  
FEB 22 2011  
SURFACE  
TRANSPORTATION BOARD

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35474

DEQUEEN AND EASTERN RAILROAD, LLC  
—CORPORATE FAMILY LEASE EXEMPTION—  
TEXAS, OKLAHOMA & EASTERN RAILROAD, LLC

VERIFIED NOTICE OF EXEMPTION

ENTERED  
Office of Proceedings

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TRANSPORTATION BOARD

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TRANSPORTATION BOARD

Robert I. Schelling, Jr.  
Vice President-Law  
One Boca Place, 2255 Glades Road  
Suite 342W  
Boca Raton, FL 33431  
(561) 443-5300

Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
(410) 296-2250  
Lou\_Gitomer@verizon.net

Attorneys for: DEQUEEN AND EASTERN  
RAILROAD, LLC

Dated: February 22, 2011

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 35474

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DEQUEEN AND EASTERN RAILROAD, LLC  
—CORPORATE FAMILY LEASE EXEMPTION—  
TEXAS, OKLAHOMA & EASTERN RAILROAD, LLC

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VERIFIED NOTICE OF EXEMPTION

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DeQueen and Eastern Railroad, LLC (“DQ&E”) and Texas, Oklahoma & Eastern Railroad, LLC (“TOE”) pursuant to 49 C.F.R. §§ 1180.2(d)(3) and 1180.4(g), file this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. § 11323 with the Surface Transportation Board (the “Board”). This Verified Notice of Exemption is being filed to permit DQ&E to lease and operate all of TOE’s lines of railroad. DQ&E and TOE are class III rail carriers and are wholly owned subsidiaries of Tennessee Southern Railroad Company (“TSRR”).<sup>1</sup>

a. **1180.6(a)(1)(i)**. A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

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<sup>1</sup> *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Columbia & Cowlitz Railway, LLC, DeQueen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma & Eastern Railroad, LLC, STB FD 35425 (STB served November 12, 2010). Patriot Rail, LLC, Patriot Rail Holding LLC, and Patriot Rail Corp. (jointly referred to as “Patriot”), through TSRR control DQ&E and TOE.*

DQ&E and TOE are both wholly owned subsidiaries of TSRR. Patriot, DQ&E, and TOE are all located at One Boca Place, 2255 Glades Road, Suite 342W, Boca Raton, FL 33431, (561) 443-5300.

This is a transaction within a corporate family. This transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The transaction will result in more efficient lower cost operations.

Counsel to whom questions concerning the transaction can be addressed is: Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, (410) 296-2250, Lou\_Gitomer@verizon.net.

b. **1180.6(a)(1)(ii)**. The proposed time schedule for consummation of the proposed transaction.

DQ&E intends to commence service over TOE on or after March 24, 2011.

c. **1180.6(a)(1)(iii)**. The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

The Lease is intended to result in more efficient lower cost operations.

d. **1180.6(a)(5)**. A list of the State(s) in which any part of the property of each applicant carrier is situated.

DQ&E owns about 47 miles of railroad line between the Oklahoma-Arkansas state border, milepost 40.0, and Perkins, AR, milepost 87.0, including auxiliary, temporary storage, and spur tracks, all in Howard County, AR.

TOE owns about 40 miles of railroad line between the Oklahoma-Arkansas state border, milepost 40.0, and Valliant, OK, milepost 0.0, including auxiliary, storage, and spur tracks, all in McCurtain County, OK.

**e. 1180.6(a)(6). Map (Exhibit 1).** Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

*See Exhibit 1.*

**f. 1180.6(a)(7)(ii). Agreement (Exhibit 2).** Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.

*See Exhibit 2.*

**g. Labor Protection.**

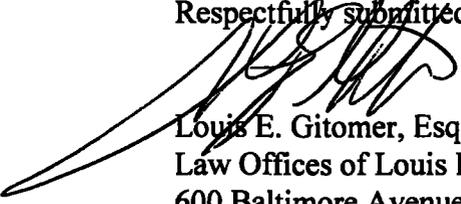
TSRR, DQ&E, and TOE are all class III railroads. As such, under 49 U.S.C. 11326 (c), labor protection does not apply to this transaction.

**h. Environmental and Historical documentation.**

This transaction qualifies for classification under 49 C.F.R. §1105.6(c)(2) and 1105.8(b)(2) thus neither an Environmental Assessment nor a Historic Report is required to be filed.

Respectfully submitted,

Robert I. Schelling, Jr.  
Vice President-Law  
One Boca Place, 2255 Glades Road  
Suite 342W  
Boca Raton, FL 33431  
(561) 443-5300



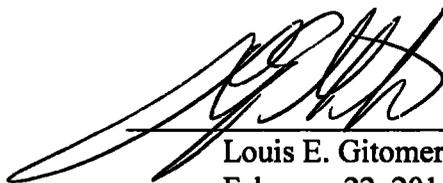
Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
(410) 296-2250  
Lou\_Gitomer@verizon.net

Attorneys for: DEQUEEN AND EASTERN  
RAILROAD, LLC

Dated: February 22, 2011

CERTIFICATE OF SERVICE

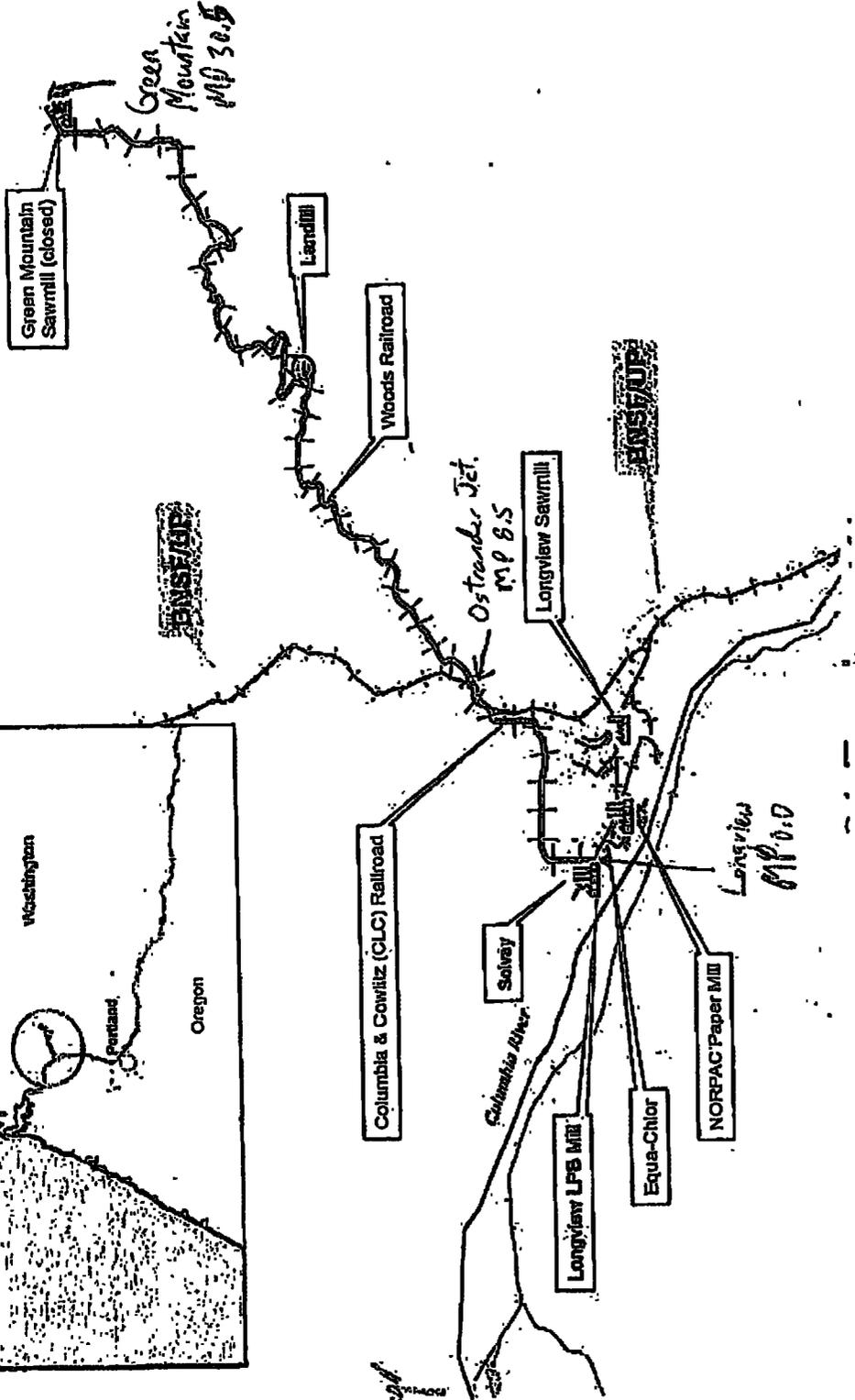
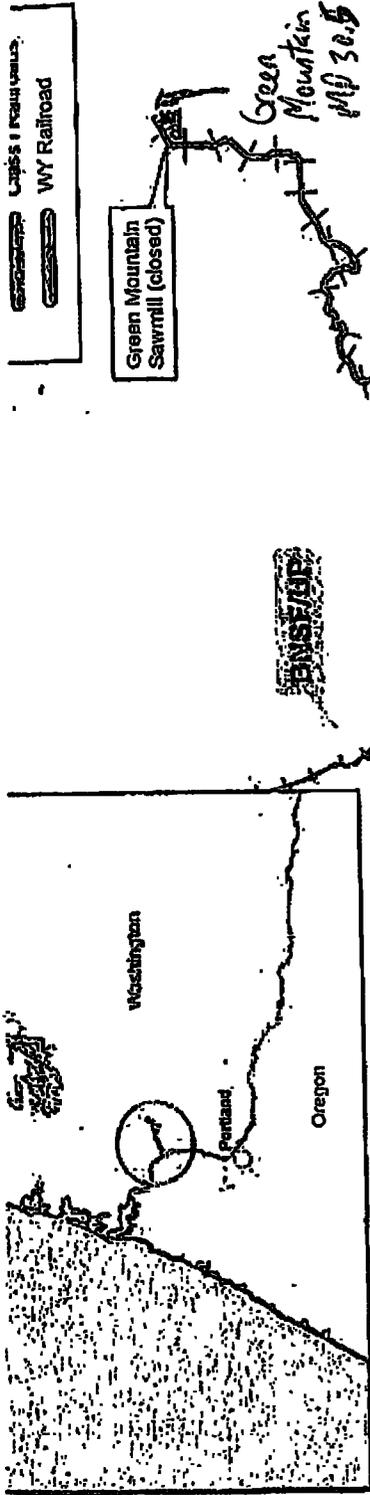
I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket No. 35474, *DeQueen and Eastern Railroad, LLC—Corporate Family Lease Exemption—Texas, Oklahoma & Eastern Railroad, LLC* to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governors, Public Service Commissions, and Departments of Transportation of the States of Oklahoma and Arkansas.



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Louis E. Gitomer  
February 22, 2011

**EXHIBIT 1-MAP**



**EXHIBIT 2-AGREEMENT**

## **RAILROAD LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (“Lease”) dated this 1<sup>st</sup> day of February, 2011 by and between **Texas, Oklahoma & Eastern Railroad, LLC**, a Delaware Limited Liability Company (“Lessor” or “TOE”) and **DeQueen and Eastern Railroad, LLC**, a Delaware Limited Liability Company (“Lessee” or “DQ&E”).

**Whereas:** In that rail freight traffic moving over the contiguous rail lines of Lessor and Lessee would be best served by operation of trains by DQ&E only and would result in more efficient lower cost operations, and

**Whereas:** TOE is willing to lease its lines of railroad defined in Section 1.02, (the “Leased Premises”) to DQ&E to permit such operation of trains, and

**Whereas:** DQ&E is willing to lease the Leased Premises from TOE and operate trains over both its own rail lines and over the Leased Premises, and

**Whereas:** The parties desire to enter into this Lease setting forth terms and conditions for the use, management, operation and maintenance of the Leased Premises described herein.

**Now Therefore** the parties agree as follows:

### **1. Leased Premises**

Section 1.01: Lessor does hereby lease to Lessee and Lessee does hereby lease from Lessor the Leased Premises described herein. The Leased Premises shall include, without limitation, rights-of-way, tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, culverts, crossing warning devices and any and all improvements or fixtures affixed to the rights-of-way as indicated on Exhibit A hereto attached.

Section 1.02: The Leased Premises consists of 40 miles of railroad line between the Oklahoma-Arkansas state border, milepost 40.0, and Valliant, OK, milepost 0.0, including auxiliary, storage, and spur tracks, all in McCurtain County, OK, including all auxiliary tracks and yards.

Section 1.03: Lessee shall take the Leased Premises in an “AS IS, WHERE IS” condition and without any express or implied warranties, including but not limited to any warranties of merchantability or volume or quality of traffic on the Leased Premises and subject to (a) reservations or exceptions of record of minerals or mineral rights, including but not limited to all coal, oil, gas, casing head gasoline, and minerals of any nature and character whatsoever underlying the Leased Premises together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Lessor, (b) all easements, public utility easements and rights-of-way, howsoever created, for crossings, pipelines, wire lines, fiber optic facilities, roads, streets, highways and other legal purposes, (c) existing and future building zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations; (d) encroachments or other conditions that may be revealed by a survey, title search or inspection of the property; (e) all existing ways,

alleys, privileges, rights, appurtenances and servitudes, howsoever created; (f) any liens of mortgage or deeds of trust encumbering said property; (g) the right, interests, contracts, agreements, leases, licenses and easements and any Supplemental Agreements or Amendments thereto which are or become effective on or prior to the Commencement Date hereof.

## **2. Lease Term**

Section 2.01: This Lease shall be effective on the Commencement Date and shall remain in effect unless terminated by either party on six (6) months written notice to the other party. The Commencement Date shall be the date upon which Lessee shall have acquired the right to conduct rail freight service over the Leased Premises from the STB and/or from any other agency having jurisdiction thereof.

## **3. Rail Services**

Section 3.01: Beginning on the Commencement Date and throughout the term of this Lease, Lessee shall be entitled to full and exclusive use of the Leased Premises for operation of rail freight service including the right to access and interchange traffic directly with all present and future applicable railroads. Except as may otherwise be ordered by the Surface Transportation Board ("STB") by direct service order, during the term hereof, Lessor shall not have the right to operate freight trains over the leased Premises.

Section 3.02: During the term of this Lease Lessee will not suspend or discontinue its operation by rail over all or any part of the Leased Premises without first applying for and obtaining from the STB and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Leased Premises; PROVIDED, HOWEVER, that Lessee will not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue its operations on the Leased Premises, without first giving Lessor sixty (60) days' notice of Lessee's intent to do so. Prior to filing for STB authorization to discontinue service over the leased Premises or a portion thereof, DQ&E shall give TOE one hundred twenty (120) days prior written notice of its plan to seek such authorization. TOE may, in its sole discretion, join DQ&E's request or file a request for authority to abandon the Leased Premises or a portion thereof.

Section 3.03: Upon suspension or discontinuance of Lessee's operations as a rail carrier of freight over all or any part of the Leased Premises during the term hereof, for reasons other than events of force majeure or a lawful embargo, whether or not pursuant to necessary and proper regulatory authority as required by Section 3.02 hereof, Lessee will immediately relinquish to Lessor possession of the Leased Premises and this Lease Agreement will terminate; PROVIDED, HOWEVER, any discontinuance of service or abandonment of any portion(s) of the Leased Premises which are inconsequential to rail freight service over the Leased Premises will be permitted and will not result in a termination of this Lease or require relinquishment of possession of the Leased Premises by Lessee. Upon expiration or earlier termination of this Agreement DQ&E shall surrender the Leased Premises to TOE, free and clear of all liens and encumbrances created by DQ&E, in good working order, in the condition necessary to permit

railroad freight operations and in at least FRA Class One standard. Upon expiration or earlier termination of this Lease, DQ&E shall, at no cost to TOE, assign to TOE all agreements entered into by DQ&E pursuant to Section 1.03 hereof.

#### **4. Rent**

Section 4.01: In consideration of this Lease, and subject to the terms and conditions set forth herein, Lessee agrees to pay Lessor rent for the Leased Premises in the amount of One Dollar (\$1.00) per year payable annually in advance on the anniversary of the Commencement Date.

#### **5. Conditions Precedent**

As conditions precedent to either party's obligations hereunder:

Section 5.01: Lessee shall have acquired the right to conduct rail freight service over the Leased Premises from the STB, and shall have obtained such judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder.

Section 5.02: Lessor and Lessee shall not be prevented from fulfilling their respective obligations under this Lease as a result of legislative, judicial or administrative action.

#### **6. Maintenance**

Section 6.01: During the term hereof, Lessee shall maintain the Leased Premises to a standard that is sufficient to continue rail freight service commensurate with the needs of rail users located thereon. Lessor shall have no obligation under the terms of this Lease to perform any maintenance upon, or furnish any materials for the maintenance of the Leased Premises during the term hereof. Lessee shall comply with all applicable federal, state or local laws, ordinances and regulations and shall protect the Leased Premises against all encroachments or unauthorized uses.

Section 6.02: Lessee may relocate switches and industrial tracks from one location on the Leased Premises to another location on the Leased Premises upon receiving any necessary and proper regulatory authority. Any rehabilitation or reconstruction, including but not limited to that necessitated by an Act of God, will be the sole responsibility of Lessee. Such maintenance will include any function which Lessor, but for this Lease, would be required to perform pursuant to applicable federal, state and municipal laws, ordinances, and regulations.

Section 6.03: Nothing herein shall preclude Lessee, at its sole cost and expense, from maintaining the Leased Premises to a standard higher than the minimum herein provided, but Lessee shall not be required hereunder to do so.

Section 6.04: Lessee's maintenance obligations hereunder shall include, but not be limited to, highway grade crossings, grade crossing signal protection devices, bridges, culverts, and other

structures, and sub-roadbed. Lessee agrees that all grade crossing and grade crossing protection devices will be given a high priority in Lessee's maintenance program.

Section 6.05: Lessee will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for or employed by Lessee during the term of this Lease in any construction, repair, maintenance, or removal on the Leased Premises and any improvements located thereon, whether such improvements are the property of Lessor or of Lessee, and Lessee will indemnify and save harmless Lessor from all such claims, liens or demands whatsoever.

## **7. Modifications and Improvements**

Section 7.01: In connection with its use of the Leased Premises, Lessee shall have the right to remove, replace, add to or relay elements of the Leased Premises in the interest of cost or operating efficiency provided that a continuous and usable line of railroad between the termini in effect on the Commencement Date is maintained. Lessee shall have the right to apply the net proceeds from salvaged materials to maintenance or improvements of the Leased Premises. Improvements to the Leased Premises, whether normal maintenance or otherwise, will be treated as capital expenditures or operating expenses under the then current rules of the STB; and such improvements shall become part of the Leased Premises and, at the termination of this Lease, shall be the property of Lessor unless Lessor has determined that Lessee may retain ownership thereof.

Section 7.02: Lessee may from time to time establish, relocate or remove sidetracks or industrial spur tracks on the Leased Premises after Lessee obtains any necessary regulatory authority. Lessor shall have no obligation to bear any cost of materials, construction or maintenance of said industrial spur tracks. That portion of any such spur track which is located on the Leased Premises shall become a part of the Leased Premises and, upon termination of this Lease, shall become the property of Lessor. All industrial track agreements, regardless of duration, shall contain provisions indemnifying Lessor and holding it harmless from all liability in connection with the construction, maintenance or operation thereof.

## **8. Environmental**

Section 8.01: During the term of this Lease, Lessee will comply with all federal, state, and local laws, rules, regulations and ordinances controlling air, water, noise, hazardous waste, solid waste and other pollution; or relating to the storage, transport, release, or disposal of hazardous materials, substances, waste, or other pollutants. Lessee at its own expense will make all modifications, repairs, or additions to the Leased Premises, install and bear the expense of any and all structures, devices, or equipment, and implement and bear the expense of any remedial action which may be required under any such laws, rules, regulations, ordinances or judgments. During the term of this Lease, Lessee will not dispose of any wastes of any kind, whether hazardous or not, on the Leased Premises.

Section 8.02: Where contamination, Environmental Problems, personal injury, death or property damage arises out of acts, omissions or events occurring on the Leased Premises after the Commencement Date, regardless of the negligence of the Lessor, Lessee assumes the risk of and agrees to indemnify and hold Lessor harmless and to defend Lessor against and from any claims,

costs, liabilities, expenses (including without limitation court costs and attorneys' fees) or demands of whatsoever nature or source for any (i) contamination or Environmental Problems, latent or obvious, discovered or undiscovered, in the real and chattel property conveyed hereunder; (ii) personal injury or death of any persons whomsoever (including without limitation employees, agents or contractors of Lessor, Lessee, or any third party); (iii) property damage or destruction of whatsoever nature ( including without limitation property of Lessor or Lessee, or property in Lessee's care, custody or control, and third party property).

"Environmental Problems" means any cause or action under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended) and any cause or action arising from similar federal, state or local legislation or other rules of law, and private causes of action of whatever nature which arise from environmental damage, contamination, toxic wastes or similar causes.

## **9. Indemnification and Insurance**

Section 9.01: Lessee shall protect, defend, hold harmless and indemnify Lessor from and against any and all liability, expense, cost, claim or suit, including attorney's fees, incurred by or assessed against Lessor, its agents, servants, affiliated companies and its successors and assigns on account of personal injuries, death or property loss or damage arising from Lessee's use, operation or maintenance of the Leased Premises; PROVIDED HOWEVER, that all liability, including liability for any personal injury, death, loss or damages arising in connection with toxic waste or environmental conditions shall be governed by the provisions of Section 8 hereof.

Section 9.02: Lessee shall procure such insurance as may be required by Lessor and its parent company to insure against such loss and damage.

## **10. Taxes**

Section 10.01: Lessee shall pay all taxes and assessments, general and special or otherwise which may be levied, assessed or imposed upon the Leased Premises during the Lease term. Lessee shall pay such taxes and assessments directly to the taxing authorities on or before the due date, but reserves the right to contest any tax or assessment, in good faith by appropriate proceeding, as it may deem necessary or appropriate.

## **11. Miscellaneous**

Section 11.01: This Lease expresses the entire Agreement between the parties and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein, and no modification of this Lease shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

Section 10.02: All notices, demands, requests or other communications which may be or are required to be given, served or sent by any party to the other pursuant to this Lease shall be in

writing and shall be deemed to have been properly given or sent when received by the recipient at its regular business offices with a copy provided to the following:

Patriot Rail Corp.  
2255 Glades Road, Suite 342-W  
Boca Raton, FL 33431  
Attn: Vice President-Law

Section 10.03: This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and shall be binding upon the successors and assigns of Lessor and Lessee; PROVIDED, HOWEVER, that in the event Lessee elects to assign its interest in the Leased Premises, Lessee will first secure the approval of the STB and/or such other regulatory approvals as may be then required.

Section 10.04: This Lease shall be governed and construed in accordance with the laws of the State of Florida. Lessee's operations under this Lease shall also comply with the applicable provisions of Federal law and the applicable rules, regulations and policies of any agency thereof.

**In Witness Whereof**, the parties hereto have caused this Lease Agreement to be duly executed on their behalf as of the date first above written.

**Texas, Oklahoma & Eastern Railroad, LLC**

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

Its:

**DeQueen and Eastern Railroad, LLC**

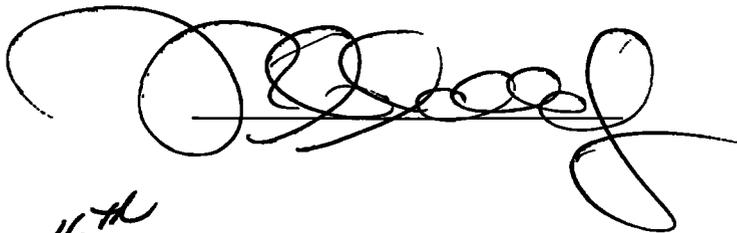
By: \_\_\_\_\_

Its:

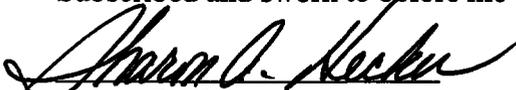
**VERIFICATION**

State of Florida                    )  
  )ss  
County of Palm Beach            )

I, Robert I. Schellig, Jr., being duly sworn, depose and state that I am Vice President Law of Patriot Rail, LLC, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate to the best of my knowledge, information and belief.



Subscribed and sworn to before me this 16<sup>th</sup> day of February 2011.

  
Notary Public

My Commission expires: Nov. 29, 2011

