



1100 Shawnee Street  
Mount Vernon, Illinois  
(P) 618.241.9270

RECORDATION NO. 31969  
FILED OCTOBER 9, 2015 3:02 PM  
SURFACE TRANSPORTATION BOARD

October 9, 2015

Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
Washington DC 20423-0001

Re: Rail Equipment Recordation; E-Filing

Dear Section Chief,

I have attached for recordation, pursuant to 49 U.S.C. 11301, one original and one certified true copy of a Locomotive Lease Agreement, dated May 1, 2008 and, a primary document.

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

Lessor: National Railway Equipment Co.  
1100 Shawnee Street  
Mt. Vernon, IL 62864

Lessee: BNSF  
2650 Lou Menk Drive  
Fort Worth, TX 76131-2830

The equipment covered by the Locomotive Lease Agreement is as follows:

One GP38-2 Locomotive, bearing road # 3075.

A short summary of the document to appear in the index:

Locomotive Lease Agreement between National Railway Equipment Co. (Lessor) and BNSF (Lessee), dated May 1, 2008, for the lease of one GP38-2 locomotive, bearing road # 3075.

Attached please find a credit card authorization form in the amount of \$43.00 to cover the E-Filing fees for recordation of the attached Locomotive Lease.



1100 Shawnee Street  
Mount Vernon, Illinois  
(P) 618.241.9270

Please return a date-stamped copy of the Locomotive Lease Agreement to:

Hal Burgan  
National Railway Equipment Co.  
P.O. Box 1416  
Mt. Vernon, Illinois 62864

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hal Burgan', written in a cursive style.

Hal Burgan  
General Counsel

**LOCOMOTIVE LEASE AGREEMENT**

**BY AND BETWEEN**

**NATIONAL RAILWAY EQUIPMENT CO.**

**AND**

**BNSF RAILWAY COMPANY**

## LOCOMOTIVE LEASE AGREEMENT

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease") is effective as of May 1, 2008 by and among National Railway Equipment Co., an Illinois corporation, having its principal address at 1100 Shawnee Street, Mount Vernon, IL 62864 ("Lessor") and BNSF Railway Company, a Delaware corporation, having its principal address at 2650 Lou Menk Drive, Fort Worth, TX 76161-0057 ("Lessee").

1. **Lease.** Subject to the terms and conditions of this Lease, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the rail equipment ( a "Unit") described on Exhibit A attached hereto.

2. **Selection and Acceptance of Unit.** Lessor is the supplier of the Unit. Lessee agrees that Lessor, at Lessor's expense, has furnished the Unit to Lessee (i) in good operating condition, working order and repair, (ii) in compliance with all Laws (as defined in Section 11(a) hereof), including, without limitation, the regulations of the Federal Railroad Administration ("FRA"), (iii) in conformity to the specification, if any, attached hereto, and (iv) in compliance with the rules of the Mechanical Division, Association of American Railroads ("AAR"), including the current Interchange Rules (the "Interchange Rules") in effect at the time of delivery (together, the "Required Condition"). At its expense, Lessee shall have the right (but not the obligation) to inspect the Unit prior to the transport of the Unit from their present location to the delivery point on Lessee's lines of railroad mutually agreed to by Lessor and Lessee, or if Lessor and Lessee are unable to agree, to a delivery point on Lessee's railroad lines specified by Lessee (the "Delivery Point"). Delivery and acceptance of the Unit occurred at Brownwood, Texas on May 1, 2008.

3. **Term.** The lease term (the "Term") for the Unit shall be ninety-six (96) months, commencing on May 1, 2008 ("Commencement Date") and ending on April 30, 2016.

4. **Rent.** During the Term, Lessee shall pay rent in the amount of \$235.00 per day per locomotive (the "Rent"), payable in arrears, the latter of, ten (10) days of the end of each month or within ten (10) days of receipt of invoice. Rent shall continue in effect for the Unit until such Unit is returned to Lessor in accordance with the terms hereof. Rent shall be pro-rated on a daily basis if the return date for the Unit is other than on the first day of any month. All payments of Rent shall be made directly to Lessor at its address for notices hereunder or, if Lessor and Lessee agree to wire transfers of payment, in accordance with wire transfer instructions provided by Lessor to Lessee.

5. **Net Lease.** Provided Lessor does not breach its covenant of quiet enjoyment set forth in Section 10(b) hereof, Lessee's obligation to pay all Rent and other sums when due and to otherwise perform its obligations under this Lease shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment, for any reason whatsoever, except for manifest errors in any invoice sent to Lessee by Lessor or in any Rent payments made by Lessee to Lessor. Except for the aforementioned covenant of quiet enjoyment, the Lessee further agrees that the Lease shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment, for any reason whatsoever, including, but

not limited to, (a) any past, present or future claims of Lessee against Lessor under this Lease or otherwise, (b) any defect in, damage to, loss of use or possession of, or destruction of any Unit from whatsoever cause, (c) the prohibition of or other restriction against Lessee's use of any Units, (d) the interference with such use by any private person, other than the Lessor or NREC and affiliates of such parties or governmental authority, (e) the invalidity, unenforceability, or lack of due authorization of this Lease, (f) any past, present or future claims of Lessee against any supplier, manufacturer, remanufacturer or refurbisher of any Unit or against any third party with whom Lessee has contracted for maintenance or servicing of any Unit, or (g) for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rents and other payments payable by Lessee under this Lease shall continue to be payable in all events in the manner and at the times herein and therein provided, except if Lessor has breached its covenant of quiet enjoyment described below in Section 10(b).

Lessee specifically acknowledges that its obligations to Lessor under the Lease shall continue on an unconditional basis without any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment, despite any breach by Lessor of its obligations hereunder or under any other agreement between Lessor with respect to the remanufacture, supply, delivery, maintenance or warranty of the Units.

#### **6. Possession, Use and Marks.**

(a) **Possession.** The Unit is and shall at all times be the property of Lessor and Lessee shall have no right, title or interest in the Unit except as set forth in this Lease. This Lease shall constitute a lease of personal property, and Lessee agrees to take all action necessary or appropriate as reasonably requested by Lessor to ensure that the Unit shall be and remain the personal property of Lessor.

(b) **Use.** Lessee covenants and agrees at all times that Lessee: (i) will use and operate the Unit in the ordinary conduct of its business by qualified operators and in accordance with Lessee's operating instructions for locomotives similar to the Units which it owns or leases, and (ii) Lessee will maintain the same records regarding such use as Lessee maintains for other locomotives similar to Units which it owns or leases, which records will be furnished to Lessor within thirty (30) days after receipt of a written request therefor.

(c) **Identification Marks.** Lessee agrees to maintain the Unit's identifying mark and number as set forth on Exhibit A attached hereto, and Lessee shall not remove, change or alter the reporting marks or identification marks or numbers on the Unit as set forth in such Exhibit without the prior written consent of Lessor. If Lessor supplies Lessee with labels, plates, or other markings evidencing ownership, security or other interest in the Unit, Lessee shall affix (at Lessor's expense) and keep the same displayed on the Unit. Lessor may, at its expense, prepare a statement of new identifying marks and numbers to be filed, recorded or deposited by Lessor in all public offices where this Lease will have been filed, recorded and deposited and as Lessor shall reasonably determine. Except as herein provided, Lessee will not allow the name of any person, association or corporation other than Lessee or Lessor to be placed on the Unit as a designation that might be interpreted as a claim of ownership. The Unit shall have ABI tags at

the time of delivery, and if Lessor changes the mark of the Unit during the term of this Lease, Lessor shall bear the cost of reprogramming the Unit's ABI tags.

7. **Taxes.**

(a) **Taxes Indemnified.** Lessee shall be responsible for and shall indemnify Lessor from the payment of all taxes, assessments, fees or other charges or levies imposed or assessed on the Unit or with respect to the operation, possession or use of the Unit by any federal, state or local governmental agency or authority.

(b) **Taxes Excluded.** Nothing herein shall be construed to require the Lessee to be responsible for (i) taxes included in the cost of the Unit; (ii) taxes based upon, measured by or in respect to gross or net income of Lessor or NRE (including all taxes which are in substitution for, in the nature of, or in lieu of a net income tax); (iii) on items of preference or any minimum tax; (iv) value added taxes; (v) business and occupation taxes; (vi) franchise taxes; (vii) taxes based upon the Lessor's capital stock or net worth; (viii) fines and penalties to the extent due to the acts or omissions of Lessor; or (ix) any taxes of any kind arising out of the sale or transfer of the Unit or this Lease by Lessor, (x) taxes on gross or net receipts of Lessor; (xi) commercial activity taxes, business activities taxes, the Texas margin tax and other similar taxes of Lessor; (xii) taxes with respect to any period after the earliest of (A) the return of possession of the Unit to Lessor or (B) the discharge in full of Lessee's obligation to pay the loss value, if any, with respect to the Unit; or (xiii) taxes which arise out of or are caused by any breach by Lessor of any of its representations, warranties or covenants in this Lease, or the gross negligence or willful misconduct of the Lessor.

(c) **Tax Filings.** To the extent that it is legally permissible, Lessee shall timely prepare and file all property tax reports and returns which are required to be made with respect to any obligation of Lessee arising out of Section 7(a) hereof.

(d) **Contest.** Lessee shall have the right to contest or protest, in Lessee's own name, any tax for which it is responsible, provided only that such contest will not result in any material danger of sale, forfeiture, or loss of the Unit. If a written claim is made against the Lessor for taxes with respect to which the Lessee may be liable, the Lessor shall give the Lessee prompt written notice and shall furnish the Lessee with a copy of such claim received from the taxing authority. Failure of the Lessor to provide Lessee with timely notice shall release Lessee from any liability relating to said claim to the extent the Lessee suffers any irreparable harm which Lessee could have avoided had Lessee received timely notice. If Lessee is not able to contest any tax for which it is responsible in its own name, Lessor shall, if requested by Lessee, and at Lessee's expense, contest in its own name the validity, applicability or amount of such tax.

(e) **Nonconfidentiality Clause.** Notwithstanding anything herein to the contrary, any party subject to confidentiality obligations hereunder or under any other related document (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, such party's U.S. federal income tax treatment and the U.S. federal income tax structure of the transactions contemplated by this Lease and any

other agreement related thereto and all materials of any kind (including opinions or other tax analyses) that are provided to the party relating to such tax treatment and tax structure.

(f) **Tax Benefits.** The parties acknowledge that ownership of the Unit shall at all times remain with Lessor, that the lease evidenced by this Lease is intended to be a true lease, and that, as between Lessee and Lessor, Lessor is entitled to take applicable depreciation deductions with respect to the Unit. Lessee covenants that none of the Unit will be used predominantly outside the United States during the Lease Term within the meaning of Section 168(g) (4) of the Internal Revenue Code of 1986, as amended. If Lessor shall become liable for additional tax prior to the end of the Term as a direct result of Lessee having made an alteration or an addition to the Unit which would increase the productivity or capability of the Unit so as to violate the provisions of Rev. Proc. 2001-28, 2001-19 I.R.B. 1156 (as it may hereafter be modified or superceded), any such additional tax being hereinafter called a "Loss", then Lessee shall pay to Lessor, as an indemnity and as additional Rent, such amount as shall, in the reasonable opinion of Lessor cause Lessor's after-tax economic yields and cash flows with respect to the lease of the Unit, computed on the same assumptions ("Assumptions"), including the combined federal, state and local effective income tax rate of thirty-five percent (35%), as were utilized by Lessor in originally evaluating the lease of the Unit evidenced by this Lease (such yields and flows being hereinafter called the "Net Economic Return") to equal the Net Economic Return that would have been realized by Lessor if such Loss had not occurred. Such amount shall be payable thirty days after receipt of a statement describing in reasonable detail such Loss and the computation of such amount. Lessor agrees to supply Lessee with the Assumptions upon the occurrence of a Loss. Notwithstanding the above, Lessee shall not be required to pay for such Loss if the Lessor is entitled to claim a deduction with respect to the affected Unit in an amount corresponding to such Loss in the same taxable year.

8. **Event of Loss.** If any Unit shall be or become lost, stolen, destroyed or irreparably damaged, from any cause whatsoever (each such occurrence being hereinafter called an "Event of Loss") during the Term, Lessee shall give Lessor written notice thereof. Upon the occurrence of an Event of Loss, Lessee shall have the following options:

(a) On the Rent payment date next following the date of the notice of an Event of Loss, Lessee shall pay to Lessor (i) all Rent and other amounts then due and payable with respect to the Unit affected thereby, plus (ii) an amount ("**Stipulated Loss Value**") equal to the product of (A) the Stipulated Loss Value specified on Exhibit A attached hereto for the Units affected thereby for the Rent payment date next following the date of the notice of an Event of Loss, multiplied by (B) the number of Unit that suffered such Event of Loss. Upon the making of such payments by Lessee in respect of the Unit, Rent for the Unit shall cease to accrue as of the date of such payments, the Term as to the Unit shall terminate and (except in the case of the loss, theft or complete destruction of the Unit) Lessor shall convey the Unit to Lessee on an **AS IS, WHERE IS** basis, **WITHOUT EXPRESS OR IMPLIED WARRANTIES OR WARRANTIES FOR FITNESS OF PURPOSE**, except that the Unit shall be free and clear of all liens and encumbrances created by or through Lessor, and Lessor shall provide Lessee with a bill of sale in the form attached here to as Exhibit B; or

(b) Provided that no Event of Default is then continuing by Lessee, advise Lessor that Lessee intends to replace the Unit which suffered an Event of Loss with a

Replacement Unit. As used herein, ("Replacement Unit") means a locomotive that is (i) of like kind and value to the Unit being replaced, (ii) is free and clear of all liens and encumbrances, and (iii) has a fair market value, utility and remaining useful life at least equal to the Unit so replaced (assuming the Unit was in the condition required to be maintained by the terms of this Lease). Lessee shall indemnify Lessor against any adverse tax consequences resulting from any such Replacement Unit. Lessee will furnish Lessor with a warranty bill of sale in the form attached hereto as Exhibit B with respect to the Replacement Unit. Upon providing Lessor with a warranty bill of sale in the form attached hereto as Exhibit B for the Replacement Unit, (A) the Replacement Unit shall be leased to Lessee upon all of the terms and conditions set forth in this Lease (including Section 10 below), and (B) Lessor shall (1) convey the replaced Unit to Lessee on an AS IS, WHERE IS basis, **WITHOUT EXPRESS OR IMPLIED WARRANTIES OR WARRANTIES FOR FITNESS OF PURPOSE**, except that the Unit shall be free and clear of all liens and encumbrances created by or through Lessor and Lessor shall provide Lessee with a bill of sale in the form attached here to as Exhibit B, and (2).

**9. Registration; Inspection.**

(a) **Registration.** If the Unit bears the reporting marks and numbers of Lessee, Lessee shall register the Units in the Official Railway Equipment Register and "UMLER" and shall insert reporting marks "NREX" in the ownership field.

(b) **Inspection.** Upon advance written notices and at the sole expense of Lessor, Lessor or its agent shall have the right to inspect the Unit and Lessee's records with respect thereto at such reasonable times and places as Lessor may request; provided, that Lessor shall not cause any unreasonable interruption or disruption to Lessee's operations and, provided further, that during the continuation of an Event of Default, such inspection shall be at Lessee's sole expense.

**10. Warranties & Quiet Enjoyment.**

(a) **Warranties.** LESSOR IS NOT A SELLER, SUPPLIER OR MANUFACTURER (AS SUCH TERMS ARE DEFINED OR USED, AS THE CASE MAY BE, IN THE UNIFORM COMMERCIAL CODE), OR DEALER, NOR A SELLER'S OR A DEALER'S AGENT. EXCEPT AS SET FORTH IN SECTION 10(b) HEREOF, LESSOR LEASES AND LESSEE ACCEPTS THE UNITS AS-IS, AND LESSOR MAKES NO, HAS NOT MADE, AND HEREBY DISCLAIMS LIABILITY FOR, AND LESSEE HEREBY WAIVES ALL RIGHTS AGAINST LESSOR RELATING TO, WARRANTIES, REPRESENTATIONS OR OBLIGATIONS OF ANY KIND WITH RESPECT TO THE UNITS, EITHER EXPRESS OR IMPLIED, ARISING BY APPLICABLE LAW OR OTHERWISE, INCLUDING ANY OF THE SAME RELATING TO OR ARISING IN OR UNDER (a) MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE, (b) COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE, OR (c) TORT (WHETHER OR NOT ARISING FROM THE ACTUAL, IMPLIED OR IMPUTED NEGLIGENCE OF LESSOR OR STRICT LIABILITY) OR THE UNIFORM COMMERCIAL CODE (INCLUDING ARTICLE 2A THEREOF) OR OTHER APPLICABLE LAW WITH RESPECT TO THE UNIT; it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee; and Lessor's agreement to

enter into this Lease is in reliance upon the freedom from and complete negation of liability or responsibility for the matters waived and disclaimed herein. **LESSOR IS NOT RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS OR LOSSES RESULTING FROM THE INSTALLATION, OPERATION, OR USE OF THE UNIT OR ARISING FROM THIS LEASE** (except for Lessor's indemnification obligations under Section 14(b) hereof). To the extent legally permissible, and so long as an Event of Default is not continuing, Lessor hereby assigns to Lessee all of the rights and benefits of any warranty provided by the manufacturer or remanufacturer or any repair shop other than Lessor with respect to the Unit, including the right to make claims thereunder, and Lessor agrees to cooperate with Lessee, at Lessee's expense, in Lessee's efforts to obtain the full benefit of any such warranties.

(b) **Quiet Enjoyment.** So long as no Event of Default has occurred and is continuing, Lessor warrants that neither Lessor nor its successors and assigns nor anyone else claiming by, through or under Lessor, Lessor's affiliates or the owner of the Unit will interfere with Lessee's quiet enjoyment and use of the Unit during the Term. Rent shall abate for any period during which this warranty of quiet enjoyment is breached.

#### 11. **Compliance with Laws; Required Modifications.**

(a) **Compliance with Laws.** Lessee agrees to comply with all laws, rules, regulations, decrees, or orders ("**Requirements**") which may apply to the operation, use or maintenance of the Unit, including, but not limited to, the rules and regulations of the AAR, the FRA and the Surface Transportation Board of the Department of Transportation ("**STB**"), or any other legislative, executive, regulatory, administrative or judicial body exercising any power or jurisdiction over any the Unit (collectively, "**Laws**") providing Lessee shall have the right to contest or protest, in Lessee's own name, any Requirements for which it is responsible, provided only that such contest will not result in any material danger of sale, forfeiture, or loss of the Units.

(b) **Emissions Modifications and Non-Emissions Required Modifications.** If, while the Unit is leased to Lessee, any remanufacture, upgrade or modification to the Unit shall be required to comply with or conform to any Laws for the limitation, reduction or further control of pollution or emissions arising from the use and operation of the Unit, including without limitation any remanufacture, upgrade or modification necessary to meet the requirements of 40 CFR Part 92, et seq. (an "**Emissions Modification**"), then Lessee shall redeliver the Unit to NRE who will make the Emissions Modification at no cost to Lessee but with no increase in the Rent for the Unit and the Term with respect to the Unit shall continue. Under no circumstances shall Lessee be deemed a "manufacturer" or "remanufacturer" of the Unit responsible for certification or otherwise for purposes of any Laws establishing locomotive emission standards, nor shall Lessee be required to take any action with respect to the Unit which would cause Lessee to be deemed to be such a "manufacturer" or "remanufacturer." In addition, if, while the Unit is leased to Lessee, any modification to the Unit shall be required to comply with and conform to any Laws other than an Emissions Modification (a "**Non-Emissions Modification**"), then Lessee shall redeliver the Unit to NRE who will make such Non-Emissions Modification at Lessor's expense. If a Unit is out of service for more than seven (7) consecutive days for an Emissions Modification or a Non-Emissions Modification, then Rent will stop for

such Unit starting at the end of such seven (7) day period and ending when the applicable modification is completed and such Unit is delivered to Lessee at a mutually agreed upon interchange point on Lessee's railroad lines.

If Lessor deems any Emissions or Non-Emissions Modification too costly then Lessor may terminate its obligations to this Lease upon ten (10) business days notice and Lessee shall deliver the Unit to the Delivery Point, in which event the provisions of sections 18(b) and (c) shall apply as to the return of the Unit.

**12. Maintenance; Alteration, Additions.**

(a) **Maintenance.** At Lessee's sole expense, Lessee shall at all times while the Unit is subject to this Lease cause the Unit to be maintained, serviced and repaired: (i) so as to keep it in the Required Condition; (ii) according to Lessee's standards for other locomotives similar to the Unit which it owns or leases; (iii) so as to be eligible for railroad interchange under the Interchange Rules of the AAR; (iv) as may be required to enforce any warranty rights applicable to the Unit, and (v) so that the Unit shall have passed a load test of plus (+) or minus (-) ten percent (10%). Notwithstanding anything to the contrary set forth elsewhere herein, Lessee shall not be required to perform any overhaul of a Unit unless such overhaul is required due to Lessee's failure to otherwise maintain the Unit in the condition required hereunder.

(b) **Alteration; Additions.** So long as Lessee no Event of Default is continuing hereunder, Lessee may, at its sole cost and expense, make any alterations, additions, modifications or attachments (collectively, "**Improvements**") to the Unit, provided that such Improvements (a) are readily removable without causing damage to the Unit, and (b) do not reduce the value or general usefulness of the Unit. Any such Improvements shall remain the property of Lessee and shall be removed by Lessee prior to the return of the Unit to Lessor. Except as set forth above, Lessee shall not materially alter, nor allow any third party to materially alter, the physical structure of the Unit without the prior written consent of Lessor. Notwithstanding the foregoing, all Improvements or replacements to the Unit made by Lessee which are (i) not readily removable without causing damage to the Unit, (ii) required by any Laws, or (iii) required by the maintenance provisions of Section 12(a) above shall constitute accessions to the Unit and belong to Lessor.

**13. Insurance.** Lessee will, during the Term with respect to the Unit, at its own expense, carry and maintain (i) property insurance in respect of the Unit, and (ii) public liability insurance with respect to third party personal injury or death and property damage, against such risks and in such amounts, if any, as customarily insured against by Lessee in respect to similar equipment owned or leased by it. Lessee, at its sole option, may elect to satisfy all or a part of the above insurance requirements through self-insurance. In the event of any insured property loss, the payment for such loss shall be made directly to Lessee; provided, however, that such direct payment shall not reduce or otherwise effect Lessee's obligations under Section 8 hereof with respect to the Unit affected by such loss. Within thirty (30) days of receipt of a written request from Lessor, Lessee shall provide Lessor with a written description of its self-insurance.

**14. Indemnification.**

(a) **Lessee Indemnification.** From and after the Commencement Date applicable to the Unit, Lessee shall indemnify, defend and hold harmless Lessor and its officers, shareholders, affiliates, directors, attorneys, employees and agents from and against any and all costs, expenses, losses, penalties, obligations, claims, damages, actions or other liabilities (including but not limited to reasonable counsel fees and expenses, and tort and strict liability claims) (collectively, "**Liabilities**") which Lessor may incur in any way relating to, arising from or by reason of (i) the use, operation, maintenance, condition or return of the Unit, until the Unit is returned to Lessor in accordance with the terms of this Lease, (ii) any accident, personal injury, death, property damage or other liability involving the Unit, on or after such Commencement Date until such Unit is returned to Lessor in accordance with the terms of this Lease, (iii) the breach by Lessee of any of its agreements, representations, warranties or covenants contained in this Lease, except that Lessee shall not be liable to the extent such Liabilities are the result of Lessor's gross negligence or willful misconduct.

(b) **Lessor Indemnity.** Lessor agrees to indemnify, defend and hold harmless Lessee and its officers, shareholders, affiliates, directors, attorneys, employees and agents from and against any and all Liabilities which Lessee may incur in any way relating to, arising from or by reason of any injury to, or death of, any person or any damage to any property or other damage or loss arising out of (i) Lessor's possession, use or control of the Unit, (ii) the presence on Lessee's property of NRE, its employees, agents, servants or designees, or of the Unit while the Unit is being stored by Lessee (iii) any adverse tax consequences incurred by Lessee as a result of the Replacement Unit provided by Lessor in accordance with Section 11(b) hereof. In the event repairs or inspection necessitate the presence of Lessor employees, agents or subcontractors on the locomotive the Lessee shall return the locomotive to an NREC facility served by BNSF for such repairs or inspection.

(d) **Survival of Indemnities.** The indemnities made by the parties in this Section shall survive payment or performance of all other obligations under this Lease or the expiration or earlier termination of this Lease.

(e) **Excluded Liabilities.** As used in this Lease, **LIABILITIES, LOSSES OR OTHER DAMAGES SHALL NOT INCLUDE ANY INCIDENTAL, CONSEQUENTIAL OR INDIRECT, SPECIAL, OR DAMAGES OR LOST PROFITS.**

**15. Intentionally Omitted.**

**16. Financial Information.** Lessee agrees to furnish to Lessor upon Lessor's individual request, its audited consolidated financial statements including its most recent balance sheets, statements of income, retained earnings and changes in financial position for the fiscal year then ended; all of which shall be certified by Lessee's independent auditors (or if unavailable by the president, chief financial officer, vice president - finance, vice president - accounting, or controller), to be complete and correct. The foregoing reporting requirement shall not apply during any period in which Lessee is a reporting company pursuant to and as defined in the Securities Exchange Act of 1934, as amended, and is current in its filings with the Securities and Exchange Commission.

17. **Liens.** At its sole expense, Lessee will promptly pay, satisfy and otherwise take such actions as may be reasonably necessary to keep the Unit free and clear of, and to duly discharge, eliminate or bond in a manner satisfactory to Lessor, any and all liens, security interests, charges, claims or other encumbrances ("**Liens**") other than Permitted Liens. For purposes hereof, "Permitted Liens" with respect to the Unit shall mean: (i) any Liens arising by, through or under Lessor, including any interests of the Lessee or its sublessees, successors and assigns permitted pursuant to this Lease; (ii) any Liens thereon for taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings so long as there exists no material risk of sale, forfeiture, loss, or loss of use of the Unit; (iii) any Liens of mechanics, suppliers, materialmen, and other like Liens securing obligations which are not due and payable or the amount or validity of which is being contested so long as there exists no material risk of sale, forfeiture, loss, or loss of use of the Unit; and (iv) any other Lien with respect to which the Lessee (or any permitted sublessee, successor or assign) shall have provided an adequate bond; and (v) Liens, if any, under existing mortgages upon the leasehold interest of the Lessee in the Units so long as foreclosure or similar remedies with respect to such Liens shall not have been commenced.

18. **Renewal or Return.**

(a) **Prior Notice.** If, not less than ninety (90) days prior to the end of the Term, Lessee shall notify Lessor of its desire to renew the lease evidenced by this Lease at the end of the Term, then the parties shall use commercially reasonable efforts to negotiate, execute and deliver a renewal lease on mutually satisfactory terms prior to the end of the Term.

(b) **Return.** If the parties are unable to agree upon the terms of a renewal lease for the Unit subject to this Lease, or if the notice described in Section 18(a) shall not have been given at the time set forth therein, or upon the earlier termination of the Term, Lessee will, at its own expense and risk, return the Unit to Lessor at an inspection location on Lessee's railroad lines as mutually agreed to between the parties, or if the parties are unable to agree, to an inspection location at an NREC facility served by Lessee as mutually agreed to by Lessee and Lessor (the "**Inspection Location**"). Lessee shall return the Unit upon the expiration or earlier termination of the Term to Lessor in the condition required by Section 12(a) of this Lease (the "**Return Condition**"). All obligations of Lessee under this Lease shall continue with respect to the Unit not returned by the expiration or earlier termination of the Term until the Unit is returned to the Inspection Location in accordance herewith, including, without limitation, the obligation to pay Rent, which shall continue at the rental rate for the Unit existing at the expiration or termination of the Term for the first 90 days that the Unit is late, increasing thereafter to 125% of such existing Rent for the period thereafter. In addition to its other rights and remedies hereunder, if the Unit is not returned to the Inspection Location as provided herein within 180 days after the expiration or earlier termination of the Term, Lessor may declare that an Event of Loss shall have occurred with respect to the Unit and Lessee shall promptly thereafter comply with its obligations under Section 8 with respect to the Unit. Except as provided in Section 18(c) below with respect to a rejected Unit, upon return to the Inspection Location in accordance herewith, all obligations (including Rent obligations) of Lessee hereunder shall cease with respect to the Unit.

(c) **Acceptance by Lessor.** Lessor shall have ten (10) business days following receipt of notice from Lessee that such Unit has been returned to the Inspection Location to inspect the Unit and verify satisfaction of the Return Condition of the Unit. Provided that Lessor does not request storage as set forth in Section 18(d) below, upon the date a Unit is inspected and accepted by Lessor, Lessee shall promptly transport the accepted Unit to any interchange point located on the lines of Lessee as reasonably designated by Lessor, or if Lessor shall have failed to designate such interchange point, to such other interchange point on Lessee's lines as Lessee shall designate (the "**Return Point**"). The return of each Unit to the Return Point shall be at the expense and risk of Lessee. If a Unit is reasonably rejected by Lessor, by immediate detailed written notice to Lessee, for failure to meet the Return Condition, at its expense Lessee shall, within thirty (30) days after the date of rejection by Lessor, perform the necessary repairs to return any rejected Unit to the Return Condition. All Rent obligations (except for due and unpaid Rent) of Lessee hereunder shall cease with respect to such Unit upon delivery of the Unit to the Inspection Location; provided, however, that from the date of rejection by Lessor until the date such Unit is redelivered to the Inspection Location and accepted by Lessor, such obligations shall resume, with Rent being payable at the rental rate for such Unit existing at the expiration or termination of the Term for the first 90 days following the date of rejection, increasing thereafter to 125% of such existing Rent for any period thereafter. In addition to its other rights and remedies hereunder, if any Unit is not re-delivered to the Inspection Location within 180 days after the expiration or earlier termination of the Term, Lessor may declare that an Event of Loss shall have occurred with respect to such Unit and Lessee shall promptly thereafter comply with its obligations under Section 8 with respect to such Unit. Except as provided in this Section with respect to rejected Units, upon return to the Inspection Location, all obligations hereunder (including Rent obligations) of Lessee that arise beyond the date of return shall cease with respect to such Unit, provided that all accrued obligations shall not cease.

19. **Default.** Each of the following shall constitute an "**Event of Default**" under this Lease:

(a) Lessee fails to make any payment of any part of the Rent or any other amount payable to Lessor under this Lease and such nonpayment continues for fifteen (15) business days after written notice from Lessor that such payment is past due;

(b) Lessee shall make or permit any assignment or transfer of this Lease or of possession of the Unit, or any part thereof, other than as permitted in Section 21 hereof, which continues uncured for thirty (30) calendar days after written notice by Lessor;

(c) Lessee fails to perform or observe any term, covenant, condition or agreement contained in this Lease or any document collateral hereto and such failure continues uncured for thirty (30) calendar days following written notice thereof from Lessor; provided, however, that if such default cannot reasonably be cured within such thirty (30) day period, then Lessee shall have an additional one hundred twenty (120) day period to effect such cure, provided Lessee commences to cure within such thirty (30) day period and thereafter diligently proceeds to effect such cure;

(d) Any material representation or warranty made by Lessee in this Lease or in any document collateral hereto shall be found to be false or misleading when made in any material respect and such false or misleading statement continues for thirty (30) days following written notice from Lessor;

(e) Lessee ceases doing business as a going concern or transfers all or a substantial part of its assets (other than in connection with a merger or other business combination permitted under Section 21 hereof); or becomes or is adjudicated insolvent or bankrupt, admits in writing its inability to pay its debts as they become due, or makes an assignment for the benefit of creditors; or Lessee applies for or consents to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer is appointed without the consent of Lessee; or Lessee institutes any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or any such proceeding is instituted against Lessee and is not dismissed within sixty (60) calendar days.

## **20. Remedies.**

(a) **Events of Default.** Upon the occurrence of any Event of Default, Lessor may, with or without notice to Lessee, exercise any one or more of the following remedies, as Lessor in its sole discretion shall elect:

(i) proceed by appropriate court action(s) either at law or in equity, to enforce Lessee's performance under this Lease to which the Event of Default applies or to recover damages for the breach thereof;

(ii) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Unit shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as herein provided;

(iii) require Lessee, at Lessee's expense, to return the Unit in accordance with the return provisions of this Lease, or Lessor or its agent, at its option may in a reasonable manner and without damage to the property of Lessee or any third party (but subject to the provisions of Section 14(b)) enter upon the premises of Lessee or other premises where the Unit may be and take possession of the Unit and thenceforth hold, possess and enjoy the same free from any right of Lessee (or its sublessees, successors or assigns) to use such Units for any purposes whatsoever;

(iv) with advance written notice to Lessee, sell by public or private sale, release, hold, retain, or otherwise dispose of the Unit in any manner Lessor chooses, free and clear of any claims or rights of Lessee;

(v) to declare, by written notice to Lessee, all Rent and other amounts then due or thereafter scheduled to become due under this Lease to be immediately due and payable (provided that future Rent payments shall be reduced to present value using a discount rate of six percent (6%) per annum); and

(vi) exercise any other right or remedy then available to Lessor at law or in equity.

(b) **Interest.** In the event Lessee shall be in default in the payment of Rent or any other amount due under this Lease, Lessee shall pay interest to Lessor on such unpaid sum from its due date to the date of payment at an annual rate equal to the prime rate set forth in *The Wall Street Journal (Midwest Edition)*, plus one and one-half percent (1-1/2%), or the maximum rate permitted by law, whichever is less.

(c) **Cumulative Remedies.** No remedy referred to in this Lease is intended to be exclusive, but each shall be cumulative and concurrent to the extent permitted by law, and shall be in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity. No failure or delay on the part of Lessor to exercise any right or remedy hereunder shall operate as a waiver thereof. No express or implied waiver by Lessor of any default or breach shall constitute a waiver of any other or subsequent default or breach by Lessee, or a waiver of any of Lessor's rights. If Lessee fails to pay or otherwise perform any of its obligations under this Lease, Lessor may, but shall not be obligated to, pay such amounts or perform such obligations for the account of Lessee without thereby waiving Lessor's right to declare an Event of Default. In any such event, Lessee shall immediately upon demand reimburse Lessor for any such costs and expenses incurred by Lessor.

(d) **Mitigation.** In exercising its rights and remedies hereunder, Lessor shall comply with all mitigation obligations imposed on Lessor by applicable law.

## 21. **Assignment and Use.**

(a) **Assignment by Lessor.** Lessor may, without the consent of and without notice to Lessee, assign or sell its interest in, grant a security interest in, or otherwise transfer in whole or in part this Lease or, in whole only, the Unit or any of its rights, interests or obligations with respect thereto, including, without limitation, all Rent and other sums due or to become due to one or more persons or entities, provided that such assignment or sale shall not in any manner change the rights, obligations, or duties of Lessee. Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. In conjunction with any assignment of this Lease by Lessor and the assumption of Lessor's obligations thereunder by the assignee, Lessee hereby agrees to promptly provide an estoppel certificate and consent to assignment in the form attached hereto as Exhibit C if requested by Lessor. Lessor shall pay all reasonable costs associated with assignment and assignee shall assume all Lessor obligations.

(b) **Assignment by Lessee.** So long as no Event of Default shall have occurred and be continuing hereunder, Lessee may (i) sublease the Units for a term of one (1) year or less, and, (ii) with the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed, sublease for a term greater than one (1) year any one or more of the Unit or assign this Lease to third parties; provided, that (A) any such sublease or assignment shall provide that the subject Unit shall be operated and maintained in accordance with the terms hereof; (B) Lessee shall provide Lessor with at least thirty (30) business days advance written notice of any sublease greater than one (1) year or any assignment and a copy of

such proposed sublease or assignment document. Any such sublease shall be subject and subordinate to the terms and provisions of this Lease and the interests of Lessor and no such sublease shall relieve Lessee of its obligations under this Lease, which shall remain those of a principal and not a surety.

If no Event of Default shall have occurred and be continuing, Lessee may assign or transfer all of its rights and obligations under this Lease to any entity with which the Lessee shall have merged or consolidated or which shall have acquired all or substantially all of the assets of Lessee, so long as (1) such assignee or transferee shall have duly assumed the obligations of Lessee hereunder by written agreement reasonably satisfactory to Lessee, and (2) such assignee or transferee shall have delivered an opinion of counsel reasonably satisfactory to Lessor confirming that such assumption agreement has been duly authorized, executed and delivered by, and is the binding and enforceable agreement of, such assignee or transferee, in which case Lessee shall thereafter be released from all of its obligations hereunder.

Notwithstanding anything to the contrary set forth above, Lessee may transfer the temporary possession or control of any of the Unit to a third party in connection with run-through or similar agreements, consistent with Lessee's practices with respect to other locomotives owned or leased by Lessee.

## **22. Representations and Warranties of Lessee and Lessor.**

(a) Lessee represents and warrants to Lessor that (i) Lessee is a corporation duly organized, validly existing and in good standing under applicable state law, with adequate corporate power to enter into this Lease; (ii) this Lease has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy laws, general equitable principles and public policy considerations); (iii) the execution and performance of this Lease will not contravene, breach or create a material default under any legal, organizational or contractual obligation of Lessee or any law, rule, regulation, judgment or order binding upon Lessee or its property; and (iv) there are no pending or threatened actions or proceedings before any court or administrative agency that could have a material adverse effect on Lessee, nor has Lessee been placed into an "Event of Default" under any material loan, lease or purchase obligation evidencing Lessee's obligation for borrowed money in principal amount exceeding \$75,000,000.

(b) Lessor represents and warrants to Lessee that (i) Lessor is a company duly formed, validly existing and in good standing under applicable state law, with adequate power to enter into this Lease; (ii) this Lease has been duly authorized, executed and delivered by Lessor and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy laws, general equitable principles and public policy considerations); (iii) the execution and performance of this Lease will not contravene, breach or create a material default under any legal, organizational or contractual obligation of Lessor or any law, rule, regulation, judgment or order binding upon Lessor or its property, and (iv) Lessor is either the lawful owner of the Units or if Lessor is not the lawful owner of the Unit, Lessor has the right to lease the Units to Lessee pursuant to the

terms and conditions hereof. Lessor is not in default under any lease agreement pursuant to which it acts in the capacity of lessor.

**23. Notices.** Any notices given or required to be given hereunder shall be sufficient upon receipt if transmitted and received by facsimile (with a confirmation copy sent by overnight air courier or certified mail), upon delivery if sent by overnight air courier, or three (3) business days after mailing if deposited in the United States mail, postage prepaid, certified, return receipt requested, to the addresses set forth below or at such other address (es) as the parties shall have specified in writing:

If to Lessor:

National Railway Equipment Co.  
14400 South Robey Street  
Dixmoor, IL 60426  
Attention: Jim Wurtz

If to Lessee:

BNSF Railway Company  
2650 Lou Menk Drive  
P.O. Box 961057  
Fort Worth, TX 76161-0057  
Attention: Director, Locomotive Planning and Leasing

**24. Miscellaneous.**

(a) **Further Assurances.** Upon execution of this Lease, or in connection with a Replacement Unit, Lessee shall (at Lessor's expense, except with respect to a Replacement Unit) execute in triplicate a memorandum of this Lease, or with respect to such Replacement Unit, as the case may be, in substantially the form attached hereto as Exhibit D to be filed and recorded by Lessor with the STB in accordance with 49 U.S.C. 11301. At Lessor's sole expense, Lessee shall promptly execute, acknowledge and deliver such further documents, and take any and all other action reasonably requested by Lessor from time to time as is necessary for the purpose of effectuating the intent and purposes of this Lease, as required by law or to protect the interests of Lessor in the Unit and this Lease.

(b) **Severability.** If any term, provision, covenant or restriction of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. It is hereby stipulated and declared to be the intention of the parties hereto that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such which may be hereafter declared invalid, void or unenforceable.

(c) **Entire Agreement; Amendment.** This Lease, together with all exhibits attached hereto, contains the entire agreement of the parties regarding the subject matter hereof and supersedes all other agreements and understandings, oral or written, with respect thereto. This Lease may not be amended, modified or changed, or any provision of this Lease waived, except by instruments in writing signed by the parties hereto. No course of dealing between the parties will be deemed to modify, amend or discharge any part of this Lease or any rights or obligations of any party.

(d) **Successors and Assigns.** This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

(e) **Counterparts.** This Lease may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original, but all such counterparts taken together shall constitute but one agreement; provided, however, that only one fully-executed counterpart of this Lease shall be signed by the parties, which shall be marked "Original" and shall constitute chattel paper for purposes of the Uniform Commercial Code.

(f) **Law Governing.** This Lease shall be construed and enforced, in accordance with the laws of the State of Illinois, without reference to its choice of law provisions. Lessor and Lessee irrevocably waive any objection based on venue or on the grounds of forum non conveniens with respect to any of the jurisdictions named above.

(g) **Construction.** The language used in this Lease will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against either party. Lessee acknowledges that it has been represented by counsel in connection with this Lease or that it has voluntarily declined to seek representation by counsel. Lessee has not received nor is Lessee relying on advice concerning tax and legal matters from Lessor or its counsel.

(h) **Brokers.** Each party represents and warrants that it has not employed, authorized or appointed a broker in connection with the transactions contemplated by this Lease.

(i) **Survival.** The respective representations, warranties, indemnities, covenants, obligations and agreements of the parties shall survive the expiration or earlier termination of this Lease or any extensions thereof.

(j) **Attorneys' Fees.** If any legal action is brought for the enforcement of this Lease or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Lease, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceeding.

IN WITNESS WHEREOF, the parties hereto have caused this Locomotive Lease Agreement to be executed by their duly authorized representatives on the dates under their signatures, to be effective as of the day and year first above written.

LESSOR:

LESSEE:

NATIONAL RAILWAY EQUIPMENT CO.

BNSF RAILWAY COMPANY

By: *James M. Wertz*

By: *H. Baldaccini*

Print Name: *James M. Wertz, Jr.*

Print Name: *H. Baldaccini*

Title: *Vice President*

Title: *DIA Loco Planning*

Date: *12/29/08*

Date: *12/30/08*



**EXHIBIT A**

A. DESCRIPTION OF UNIT: The Unit bearing the following reporting mark and road number is leased pursuant to this Lease:

NREX #	TYPE	DY BRAKE			
3075	GP38-2	DB-XT			

B. STIPULATED LOSS VALUE: Stipulated Loss Value payments as shown below are in addition to any then outstanding Rent payments.

	Stipulated Loss Value Per Unit
--	--------------------------------

STIPULATED  
LOSS VALUE

BEGINNING

- 07/01/08
- 07/31/08
- 08/31/08
- 10/01/08
- 10/31/08
- 12/01/08
- 12/31/08
- 01/31/09
- 03/03/09
- 03/31/09
- 05/01/09
- 05/31/09
- 07/01/09
- 07/31/09
- 08/31/09
- 10/01/09
- 10/31/09
- 12/01/09
- 12/31/09
- 01/31/10
- 03/03/10
- 04/01/10
- 05/02/10
- 06/01/10
- 07/02/10
- 08/01/10
- 09/01/10



10/02/10  
11/01/10  
12/02/10  
01/01/11  
02/01/11  
03/04/11  
04/01/11  
05/02/11  
06/01/11  
07/02/11  
08/01/11  
09/01/11  
10/02/11  
11/01/11  
12/02/11  
01/01/12  
02/01/12  
03/03/12  
03/31/12  
05/01/12  
05/31/12  
07/01/12  
07/31/12  
08/31/12  
10/01/12  
10/31/12  
12/01/12  
12/31/12  
01/31/13  
03/03/13  
03/31/13  
05/01/13  
05/31/13  
06/30/13  
07/30/13  
08/29/13  
09/28/13  
10/28/13  
11/27/13  
12/27/13  
01/26/14  
02/25/14  
03/27/14  
04/26/14  
05/26/14  
06/25/14  
07/25/14  
08/24/14  
09/23/14  
10/23/14  
11/22/14



12/22/14  
01/21/15  
02/20/15  
03/22/15  
04/21/15  
05/21/15  
06/20/15  
07/20/15  
08/19/15  
09/18/15  
10/18/15  
11/17/15  
12/17/15  
01/16/16  
02/15/16  
03/16/16  
04/15/16  
05/15/16



**EXHIBIT B**

**WARRANTY BILL OF SALE**

\_\_\_\_\_ (the "Seller"), in consideration of the sum of ONE AND NO/100'S DOLLAR (\$1.00) and other good and valuable consideration to it paid, the receipt of which is hereby acknowledged, does hereby sell, assign, grant, bargain, transfer, convey and set over unto \_\_\_\_\_, a(n) \_\_\_\_\_ corporation, (the "Purchaser") all right, title and interest of the Builder in and to the following railroad locomotive (the "Locomotive"):

<u>NO. OF UNITS</u>	<u>DESCRIPTION OF EQUIPMENT</u>	<u>ROAD NUMBER</u>
1	Model _____ Locomotives	____ - ____ inclusive

And Seller hereby conveys all of Seller's right, title and interest in the Locomotive **AS IS** WHERE IS free and clear of any liens and encumbrances except those created by or through Purchaser, to have and to hold, all and singular, the Locomotive to the Purchaser, its successors and assigns, for its and their own use and behoove forever. **SELLER DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES OR WARRANTIES FOR FITNESS OF PURPOSE.**

The Seller hereby warrants to the Purchaser, its successors and assigns, that on the dates of delivery of the Locomotive the Seller had legal title to the Locomotives free and clear of all mortgages, pledges, security interests, liens, encumbrances, leases, dispositions of title or other charges or claims or rights of others of any kind (all of the foregoing are hereinafter referred to as "Liens") except to the extent arising by, through or under Purchaser.

**IN WITNESS WHEREOF**, the Seller has caused this instrument to be signed by a duly authorized representative and its corporate seal to be hereto affixed, duly attested, this \_\_\_ day of \_\_\_\_\_, 200\_\_.

**Seller:**

\_\_\_\_\_

**By:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**EXHIBIT C**

**FORM OF LESSEE'S ESTOPPEL LETTER**

[Company Name]

[Address]

[City, State, Zip]

Re: Locomotive Leased from \_\_\_\_\_

Gentlemen:

The undersigned, BNSF Railway Company ("Lessee"), is the lessee of the equipment (the "Locomotive") described in that certain Locomotive Lease Agreement effective May 1, 2008 (the "Lease") by and among National Railway Equipment Co. ("Lessor") and Lessee.

The undersigned has been informed by Lessor that \_\_\_\_\_ ("Assignee") will purchase the Locomotive and Lessor will assign its interest, as lessor, under the Lease with respect to the Locomotive to Assignee on \_\_\_\_\_, \_\_\_\_\_. After giving effect to the foregoing transactions, the parties to the Lease shall be Assignee, as lessor, and Lessee, as lessee.

The undersigned hereby agrees as follows:

- (1) Attached hereto is a true, correct and complete copy of the Lease with all amendments and supplements thereto. The Lease is in full force and effect and has not been further altered, supplemented or amended in any way and there are no other agreements with respect to the Lessee's use, lease or possession of the Locomotive.
- (2) There are no Events of Default under the Lease, nor has any event occurred which, with the giving of notice or passing of time or both, would result in an Event of Default under the Lease on the part of the Lessee, or to Lessee's knowledge, on the part of the Lessor.
- (3) Lessee has not prepaid any amounts due under the Lease other than rent paid not more than one month in advance.
- (4) Lessee's interest in the Locomotive is solely that of lessee under the Lease, and Lessee has no claim of ownership to the Locomotive.
- (5) To the best of Lessee's knowledge, the operation and use of the Locomotive is not in violation of any law, regulation or order, which violation adversely affects use of the Locomotive in unrestricted interchange service in the United States.

- (6) To the best of Lessee's knowledge, all Locomotive is in interchangeable condition under the rules of the Association of American Railroads and is in a condition suitable for placement to load.
- (7) Upon (a) the sale to Assignee of Locomotive and (b) the assignment by Lessor to Assignee, and the assumption by Assignee of Lessor's right, title, and interest and obligations, as Lessor, under the Lease, Lessee will recognize Assignee as the owner of the Locomotive and as the lessor thereof, and until notice to the contrary from Assignee, will make all rent and other payments under the Lease to Assignee as set forth below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and will provide all notices that are to be sent to the lessor under the Lease to the following address:

\_\_\_\_\_  
\_\_\_\_\_

Attn:

Sincerely,

**BNSF RAILWAY COMPANY**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT D**

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE AGREEMENT ("Memorandum") is effective as of May 1, 2008, and is intended to evidence that certain Locomotive Lease Agreement dated as of May 1, 2008 (the "Lease") by and among NATIONAL RAILWAY EQUIPMENT CO., an Illinois corporation ("Lessor") and BNSF RAILWAY COMPANY, a Delaware corporation ("Lessee"), for the purpose of satisfying the requirements of recordation with the Surface Transportation Board of the Department of Transportation under Section 49 of U.S.C. 11301.

The locomotive bearing the following reporting mark and road number is leased pursuant to the Lease for a term of ninety-six months, commencing on May 1, 2008 and ending on April 30, 2016:

<b>NREX #</b>	<b>TYPE</b>	<b>DY BRAKE</b>			
3075	GP38-2	DB-XT			

The Lease and the above-described locomotive leased thereunder cannot be assigned or subleased (other than for a term of one (1) year or less) by Lessee without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed.

The addresses of the parties are as follows:

**Lessor:** National Railway Equipment Co., 14400 S. Robey, Dixmoor, IL 60426,  
Attention: Jim Wurtz

**Lessee:** BNSF Railway Company, 2650 Lou Menk Drive, Fort Worth, TX 76161-0057,  
Attention: Director, Locomotive Planning and Leasing

The terms and provisions of the lease of the above-described locomotive are more particularly set forth in the Lease, which are incorporated herein by reference.

This Memorandum may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be executed by their duly authorized representative as of the day and year first above written.

**LESSOR:**

**NATIONAL RAILWAY EQUIPMENT CO.**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSEE:**

**BNSF RAILWAY COMPANY**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**NRE:**

**NATIONAL RAILWAY EQUIPMENT CO.**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT D - Continued**

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2008, before me personally appeared \_\_\_\_\_, of BNSF RAILWAY COMPANY, either \_\_\_ personally known to me **-OR-** \_\_\_ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, who being by me duly sworn says that he/she is the \_\_\_\_\_ of such company, and that he/she executed the foregoing instrument on behalf of said company by authority of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF ILLINOIS

COUNTY OF COOK

On \_\_\_\_\_, 2008, before me personally appeared \_\_\_\_\_, of NATIONAL RAILWAY EQUIPMENT CO., either \_\_\_ personally known to me **-OR-** \_\_\_ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, who being by me duly sworn says that he/she is the \_\_\_\_\_ of such company, and that he/she executed the foregoing instrument on behalf of said company by authority of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

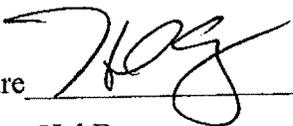
My commission expires:



1100 Shawnee Street  
Mount Vernon, Illinois  
(P) 618.241.9270

I, Hal Burgan, certify that I am the General Counsel of National Railway Equipment Co., that the seal affixed to the forgoing instrument is the corporate seal of said corporation, that the instrument was signed and sealed on behalf of the corporation by the authority of its Board of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporation. I further state under penalty of perjury that the foregoing is true and correct.

Executed on October 9, 2015

Signature \_\_\_\_\_

Hal Burgan  
General Counsel  
National Railway Equipment Co.