

LAW OFFICES OF
GENSBURG & AXELROD
A PROFESSIONAL CORPORATION

RICHARD A. AXELROD
ROBERT A. GENSBURG

101 EASTERN AVENUE
P. O. BOX 189
ST. JOHNSBURY, VERMONT 05819
(802) 748-8161

July 8, 1981

RECORDATION NO. **13184** Filed 1425

JUL 14 1981 - 2 15 PM

1-195A135

Secretary INTERSTATE COMMERCE COMMISSION
Interstate Commerce Commission
Washington, D.C. 20423

NO. **JUL 14 1981**
Date.....
Fee \$ **50.00**.....

Re: Lamoille Valley Railroad Company

ICC Washington, D. C.

Dear Sir:

Enclosed for recording please find Railroad Equipment Lease Agreement, and Amendment thereto, dated December 28, 1977 and July 1, 1981, respectively.

The name of the Lessee is Lamoille Valley Railroad Company, and its address is Stafford Avenue, Morrisville, Vermont 05661.

The name of the Lessor is John I. Nestel, and his address is RFD, Putney, Vermont 05346.

The name of the Guarantor of the lease is The Northern Vermont Corporation, and its address is c/o Lamoille Valley Railroad Company, Stafford Avenue, Morrisville, Vermont 05661.

This is a lease of four ALCO RS-3 1600 horsepower locomotives formerly bearing Delaware and Hudson road numbers 4025, 4068, 4071 and 4094, and now bearing LVRC road numbers 7802, 7801, 7803 and 7804, respectively. The locomotives are painted yellow with green stripes and bear the words "Lamoille Valley."

The undersigned is President of Lamoille Valley Railroad Company, has personal knowledge of the matters set forth in this letter of transmittal, and the original Railroad Equipment Lease Agreement and Amendment thereto should be returned to the undersigned at his address, which is Box 189, St. Johnsbury, Vermont 05819.

Enclosed please find the original Railroad Equipment Lease Agreement, duplicate original Amendment thereto and two certified true copies thereof.

RECEIVED
JUL 14 1981
GENERAL
ST. JOHNSBURY, VT.

The acknowledgement set forth in the Amendment to the Railroad Equipment Lease Agreement is in a form authorized by the law of the State of Vermont, where the documents were executed, for the acknowledgement of deeds of land.

Also enclosed is our check for \$50.00, the recording fee.

Very truly yours,

GENSBURG & AXELROD


By Robert A. Gensburg

encs.

RAGkss

Interstate Commerce Commission
Washington, D.C. 20423

7/14/81

OFFICE OF THE SECRETARY

Robert A. Gensburg
Gensburg & Axelrod
101 Eastern Avenue
P.O.Box 189
St. Johnsbury, Vermont 05819

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **7/14/81** at **12:15pm**, and assigned re-
recording number(s). **13184**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

JUL 14 1981 2 15 PM

RAILROAD EQUIPMENT LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, entered into and executed in triplicate original counterparts, at the places and on the dates set forth below, by and between JOHN I. NESTEL, of Setauket, Suffolk County, New York (herein referred to as LESSOR), and LAMOILLE VALLEY RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Vermont, with its principal place of business at Morrisville, Lamoille County, Vermont (herein referred to as LESSEE).

WITNESSETH THAT, in consideration of the mutual undertakings set forth herein, and for other good and valuable consideration, payment, receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. LESSOR does hereby lease, let, and demise unto LESSEE the following described rolling stock:
 - A. ALCO RS3 1600 HP Locomotive, Delaware & Hudson road number 4025
 - B. ALCO RS3 1600 HP Locomotive, Delaware & Hudson road number 4068
 - C. ALCO RS3 1600 HP Locomotive, Delaware & Hudson road number 4071
 - D. ALCO RS3 1600 HP Locomotive, Delaware & Hudson road number 4094
2. The term of this lease shall be a period of four (4) years, eleven (11) months, commencing December ____, 1977.
3. LESSEE shall accept delivery of the rolling stock FOB at Sheldon Junction or Swanton, Vermont. In taking delivery thereof, LESSEE acknowledges receipt of a Biannual Inspection Report and Certificate of Condition with respect to said rolling stock, dated December ____, 1977, prepared by the Federal Railroad Administration, and accepts said rolling stock in the condition in which it is delivered. At the time of delivery the rolling stock shall be in operating condition, with all new wheels and trucks shimmed and repaired as necessary to take up excess lateral movement. All generators and traction motors shall be cleaned, and the engine shall be worked and painted. The locomotive bodies shall be painted solid bright yellow with trucks painted black. LESSOR also shall furnish LESSEE with all available Delaware & Hudson documents and manuals. LESSOR shall deliver one (1) unit of rolling stock no later than January 16, 1978, January 23, 1978, January 30, 1978 and February 6, 1978.

4. LESSEE shall pay Lessor as rental for the use of the rolling stock the sum of Thirty Dollars (\$30.00) per unit of rolling stock per day from the date specified in Section 2 hereof to December 31, 1978; the sum of Thirty-Seven and 50/100ths Dollars (\$37.50) per unit of rolling stock per day from January 1, 1979 to December 31, 1979; the sum of Forty-Six Dollars (\$46.00) per unit of rolling stock per day from January 1, 1980 to December 31, 1980; the sum of Fifty-Three and 50/100ths Dollars (\$53.50) per unit of rolling stock per day from January 1, 1981 to December 31, 1981; and the sum of Sixty-One Dollars (\$61.00) per unit of rolling stock per day from January 1, 1982 to November 30, 1982. Rental shall be due on the first day of each month for which the rent accrues. Rental shall be promptly paid by LESSEE. A rental charge of one day shall be made if any rolling stock is held twenty-four (24) hours or less. Rental shall be computed and paid in advance monthly starting with the date of delivery of each unit of rolling stock to LESSEE and ending on the day of which each unit of equipment is returned to LESSOR. LESSOR acknowledges receipt of the sum of _____ Dollars (\$_____) as security deposit for the above-described rolling stock, which sum shall be held in escrow by _____, pending LESSEE's full and complete performance hereunder.

5. In addition to the rental specified in Section Four, LESSEE shall pay the following charges where applicable for the rolling stock covered by this lease:

A. For rolling stock equipment which is operated under its own power or as part of a train during the term of this lease, LESSEE shall also pay the cost of preparation for movement, wages of crews, cost of fuel, water, and other supplies used in the movement, including trackage charges.

B. LESSEE shall pay all taxes assessed on the equipment by the State of Vermont or any other taxing authority within or without the State of Vermont. This shall not include any income taxes assessed by the federal or state governments against LESSOR.

C. LESSEE shall pay any Sales and Use Tax levied by the State of Vermont or by any other state which may arise as a result of the leasing of the above-described rolling stock.

6. LESSEE shall assume all expenses for repairs of the rolling stock due to ordinary wear and tear. LESSEE shall assume all expenses for repairs or reconstruc-

tion of the rolling stock due to improper usage, derailment, or accident, however sustained, while in LESSEE's possession.

7. After time of delivery, LESSOR shall not be liable under any circumstances for any loss or delay or for any damage of any kind to the shipments made in any of the demised rolling stock. LESSOR shall not be liable to LESSEE because of any damage or injury caused directly or indirectly by any of the rolling stock, or resulting in any way from the use thereof. LESSEE shall fully indemnify LESSOR against all claims, demands, or causes of action asserted against LESSOR by any other person, firm or corporation on account of damages or injury caused by any of the rolling stock or resulting in any way from use thereof. LESSEE shall defend, at LESSEE's expense, any litigation arising from the operation of the rolling stock.

8. LESSEE shall have the right to permit shippers and carriers to use the rolling stock as LESSEE may determine on terms and conditions that LESSEE shall deem proper. In that event, LESSOR shall continue to look solely to LESSEE for payment of rentals and fulfillment of other obligations of this contract as if said rolling stock actually were still being operated by LESSEE.

9. ~~LESSEE shall not operate said rolling stock in a manner which may be injurious or harmful to the same.~~ JMN 12/29/77

10. In case of bankruptcy or insolvency of LESSEE, the appointment of a receiver or the institution of any legal proceedings of any kind or character affecting possession of any of the rolling stock subject to this lease, LESSOR may, at its option, retake immediate and exclusive possession of and remove the rolling stock wherever it may be found, without notice and without legal proceeding unless notice or legal proceeding is specifically required by law. In case LESSOR shall so retake possession, this lease shall terminate. LESSEE acknowledges the retention of legal title to said rolling stock in LESSOR; and in order to facilitate possession under this section and section 11, LESSEE shall execute and deliver to LESSOR a standard form financing statement, attached hereto as Exhibit A.

11. All payments required by this lease to be made by LESSEE shall be made at such place and to such person as designated in writing by LESSOR. In the event LESSEE fails to make any of the payments within fifteen (15) days from the date the

payment is due, LESSOR may, at its option, terminate this lease and take possession of the rolling stock without further notice, unless notice is specifically required by law, all at the expense of LESSEE.

Any failure or refusal of LESSEE to properly and fully observe the terms and conditions contained herein shall entitle LESSOR to immediately terminate this lease and resume absolute possession of the rolling stock wherever situated without legal demand, notice or proceeding unless legal demand, notice, or proceeding is specifically required by law, and at the expense of LESSEE, which expense shall be repaid by LESSEE to LESSOR on demand. A waiver of any default of LESSEE shall not be taken to be a waiver of any other or subsequent default, nor shall the termination of this lease for any reason relieve or release LESSEE from any liability or obligation growing out of or connected with the leasing of the rolling stock.

12. The lease shall be terminated on expiration of the lease term or as provided in Sections 10 and 11. At the termination of this lease for any reason LESSEE shall, at its own cost, redeliver the rolling stock and each part thereof to LESSOR at original point of delivery, and the returned rolling stock shall be in the same condition as when received, as determined by a Federal Railroad Administration inspection and Interstate Commerce Commission inspection.

In the event any of the rolling stock is not returned by LESSEE in as good condition and repair as when delivered to it, resulting from LESSEE's failure to maintain and repair said rolling stock as called for in Section 6 hereof, LESSOR is authorized to make necessary repairs thereto at the expense of LESSEE, which expense shall be paid by LESSEE on demand, and should any of the rolling stock be destroyed or for any other reason not be returned to LESSOR, LESSEE shall pay LESSOR the depreciated value of the rolling stock, based upon its age, less the value of salvage, if any.

13. This lease shall be binding on the parties hereto, their successors and assigns.

14. During the term of this lease, LESSEE shall insure the rolling stock against all loss as a result of fire, flood, vandalism, collision, explosion and theft. A copy of the policy or policies of insurance, naming LESSOR as loss-payee, shall be delivered to LESSOR within ten (10) days of the complete execution hereof.

In the event of the total loss of the rolling stock, the value thereof shall be its depreciated value, based upon its age, less the value of salvage, if any.

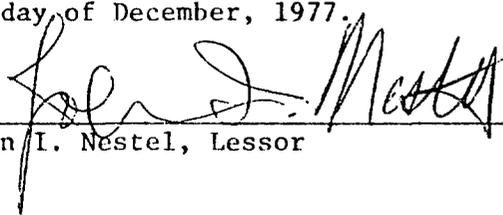
15. LESSEE acknowledges that the rolling stock ^{or may be} is encumbered by a purchase money security interest held by The Howard Bank of Burlington, Vermont. LESSEE assents to the collateral assignment of this lease by LESSOR to The Howard Bank for the purpose of securing LESSOR's obligation of the terms of a financing statement dated December _____, 1977, entered into by and between LESSOR and The Howard Bank. LESSEE shall in no way be responsible for any obligation or performance under said financing agreement.

16. Northern Vermont Corporation, a corporation organized and existing under the laws of the State of Vermont, with its principal place of business at St. Johnsbury, Caledonia County, Vermont (herein referred to as GUARANTOR), joins in the execution and delivery of these presents for the purpose of guaranteeing LESSEE's performance of each and every obligation hereunder. In the event of LESSEE's default hereunder, and upon receipt of written notice thereof from LESSOR within ten (10) days of such default, GUARANTOR covenants and agrees with LESSOR to cure such default promptly, but in no event more than thirty (30) days from receipt of notice of default.

17. The parties hereto, including GUARANTOR, mutually represent to one another that they have lawful capacity to enter into this agreement, and that the individuals executing the same are properly empowered to do so.

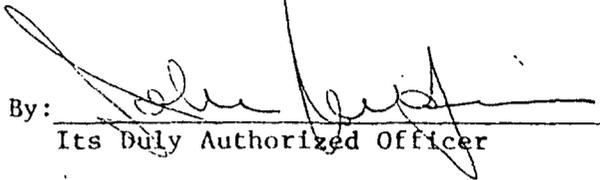
18. Pending refurbishing of the above-described rolling stock, LESSOR shall furnish LESSEE two (2) substitute locomotives in operating condition for use as specified herein and under the terms and conditions hereof, except with respect to rent, and LESSEE shall pay LESSOR as rental therefor the sum of Sixty Dollars (\$60.00) per locomotive per day, said rental payment being LESSOR's actual acquisition cost.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed at St. Johnsbury, Vermont, this 28 day of December, 1977.

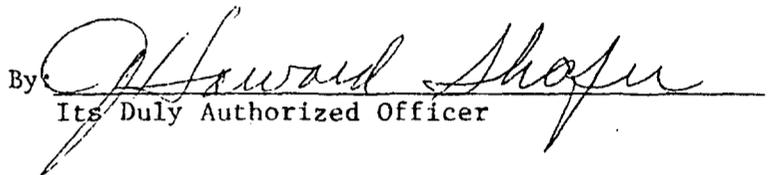


John I. Nestel, Lessor

LAMOILLE VALLEY RAILROAD COMPANY, LESSEE

By:  President
Its Duly Authorized Officer

NORTHERN VERMONT CORPORATION, GUARANTOR

By: 
Its Duly Authorized Officer

AMENDMENT TO RAILROAD
EQUIPMENT LEASE AGREEMENT

John I. Nestel of Putney, Windham County, Vermont (hereinafter referred to "Lessor") and Lamoille Valley Railroad Company, a Corporation organized and existing under the laws of the State of Vermont with its principal place of business at Morrisville, Lamoille County, Vermont (hereinafter referred to as "Lessee"), in consideration of the recitals and covenants and agreements hereinafter set forth, do contract and agree as follows:

RECITALS

1. Lessor and Lessee are the Lessor and Lessee, respectively, who entered into a certain "Railroad Equipment Lease Agreement" (hereinafter "the agreement") on December 28, 1977, a copy of which is attached hereto and marked Exhibit A.

2. On March 13, 1981 Lessor and Lessee conditionally amended the terms of the agreement, a copy of the said conditional amendment being attached hereto and marked Exhibit B.

3. On June 10, 1981 Lessee notified Lessor that it would tender \$205,000.00 to Lessor, and would exercise the several options granted to it in the aforesaid amendment to the agreement.

4. The \$205,000.00 to be so tendered to Lessor is sub-

ject to certain adjustments and setoffs between Lessor and Lessee, as follows:

Adjustment	Amount
Required Tender Due to Lessor	\$205,000.00
Credit for Security Deposit	(5,280.00)
Credit for Reduced Rent (4/1/81-6/30/81)	(19,474.00)
Additional Rent Due (4/1/81-6/30/81)	364.00
July Rent Due	<u>124.00</u>
Total Amount Due	\$180,734.00

5. By the execution hereof Lessor acknowledges the receipt from Lessee of \$180,734.00 in form satisfactory to Lessor.

COVENANTS AND AGREEMENTS

Now, therefore, Lessor and Lessee amend the agreement as follows:

6. Paragraph 2 of the Agreement is amended by deleting the same in its entirety and inserting in its place the following:

"2. The term of this lease shall be a period of five years one month, commencing December 31, 1977 and terminating January 31, 1983."

7. Paragraph 4 of the Agreement is amended by deleting the same in its entirety and inserting in its place the

following:

"4. Lessee shall pay Lessor as rental for the use of the rolling stock the sum of \$30.00 per unit of rolling stock per day from the date specified in section 2 hereof to December 31, 1978; the sum of \$37.50 per unit of rolling stock per day from January 1, 1979 to December 31, 1979; the sum of \$46.00 per unit of rolling stock per day from January 1, 1980 to December 31, 1980; the sum of \$53.50 per unit of rolling stock per day from January 1, 1981 to March 31, 1981; and the sum of \$1.00 per unit of rolling stock per day from April 1, 1981 to January 31, 1983. Rental shall be due on the first day of each month for which the rent accrues. Rental shall be promptly paid by Lessee. A rental charge of one day shall be made if any rolling stock is held 24 hours or less. Rental shall be paid in advance monthly starting with the date of delivery of each unit of rolling stock to Lessee."

8. Paragraph 9 of the agreement is amended by deleting the same in its entirety.

9. Paragraph 10 of the agreement is amended by deleting the same in its entirety and inserting in its place the following:

"10. In case of bankruptcy or insolvency of the Lessee, and Lessee's subsequent failure to affirm this agreement, and Lessee's failure in that event to timely pay the remaining balance of rent reserved hereunder for the entire term hereof, Lessor may, at his option, retake immediate and exclusive possession of and remove the rolling stock wherever it may be found, without notice and without legal proceeding unless legal proceeding is specifically required by law. In case Lessor shall so retake possession, this lease shall terminate. Lessee acknowledges the retention of legal title to the rolling stock in Lessor; in order to facilitate possession under this Section and Section 11 hereof, Lessee shall execute and deliver to Lessor a standard form financing agreement, attached hereto as Exhibit A."

10. Paragraph 11 of the agreement is amended by deleting the second full paragraph of the same and inserting in

its place the following:

"Any failure or refusal of Lessee to properly and fully observe the terms and conditions contained herein, and upon receiving notice of such failure its failure to pay within 15 days of receipt of such notice the remaining portion of the rent reserved hereunder for the entire term hereof, Lessor shall have the right at his option to immediately terminate this lease and resume absolute possession of the rolling stock wherever situated without legal demand, notice or proceeding unless legal demand, notice or proceedings is specifically required by law, and at the expense of Lessee, which expense shall be repaid by Lessee to Lessor on demand. A waiver of any default of Lessee shall not be taken to be a waiver of any other or subsequent default, nor shall the termination of this lease for any reason relieve or release Lessee from any liability or obligation growing out of or connected with the leasing of the rolling stock.

11. Paragraph 12 of the agreement is amended by deleting the same in its entirety and inserting in its place the following:

"12. The lease shall be terminated on expiration of the lease term, or as provided in sections 10 and 11, or in the event of a default hereunder by Lessee the failure to correct such default within 15 days of receipt of notice of such default or the failure within 15 days to pay the balance of the rent reserved within for the entire term hereof. At the termination of this lease for any reason, and in the event Lessee has not paid the balance of the rent reserved hereunder for the entire term hereof Lessee shall, at its own cost, redeliver the rolling stock and each part thereof to Lessor at original point of delivery, and the returned rolling stock shall be in the same condition as received, as determined by a Federal Railroad Administration Inspection and Interstate Commerce Commission inspection. In the event any other rolling stock is not returned by Lessee in as good condition of repair as delivered to it, resulting from Lessee's failure to maintain said rolling stock as called for in Section 6 hereof, Lessor is authorized to make necessary repairs thereto at the expense of Lessee, which expense shall be paid by Lessee on demand, and should any of the rolling stock be destroyed or for any other reason not be returned to Lessor, Lessee shall pay Lessor the depreciated value of the rolling stock, based upon its age, less the value of salvage, if any.

effective 23 of January
1983

JIN
SJS
7-1-81

4/11/81
2/1/81

"In the event this lease terminates for any reason and, at or about the time of such termination, the entire amount of the rent reserved hereunder for the entire term hereof has been paid by Lessee to Lessor, this agreement shall be a bill of sale of the rolling stock, consisting of 4 Alco RS-3 1600 horsepower locomotives, giving, granting, conveying, confirming and selling from Lessor to Lessee all right, title and interest Lessor has in and to the said rolling stock, free and clear of any and all encumbrances whatsoever. Lessor covenants that the title so conveyed shall be good, its transfer by him is rightful, that the rolling stock shall be delivered free from any security interest or other lien or encumbrance without exception whatsoever, and that the rolling stock shall be delivered free of the rightful claim of any third person by way of infringement or the like, all as set forth in 9A V.S.A. §2-312."

IN WITNESS WHEREOF, Lessor and Lessee have caused this amendment to be executed this ^{1st} 29th day of ^{July} June, 1981.

IN PRESENCE OF:

Robert J. Deming

John I. Nestel
JOHN I. NESTEL

Joseph A. [Signature]

IN PRESENCE OF:

LAMOILLE VALLEY RAILROAD COMPANY

Robert J. Deming

By [Signature]
Duly Authorized Agent

Wanda M. [Signature]

STATE OF VERMONT
Lamoille COUNTY, ss.

At Wilmington in said County and State
this ^{1st} 29th day of ^{July} June, 1981, JOHN I. NESTEL personally appeared

and he acknowledged the foregoing by him subscribed to be his free act and deed.

Before me, Robert M. Dowley
Notary Public

STATE OF VERMONT

Lamoille COUNTY, ss.

At Warrington in said County and State
this ^{1st} ~~29th~~ day of ^{July} ~~June~~, 1981, David A. Snyder, duly
authorized agent for Lamoille Valley Railroad Company, personally
appeared and he acknowledged the foregoing by him subscribed to
be his free act and deed and the free act and deed of Lamoille
Valley Railroad Company.

Before me, Robert M. Dowley
Notary Public

CERTIFICATE PURSUANT TO 49 CFR §1116.3(b)

The undersigned, Robert A. Gensburg hereby certifies that he is a notary public duly commissioned as such pursuant to the laws of the State of Vermont, that he has compared the attached copies of a "Railroad Equipment Lease Agreement," and "Amendment to Railroad Equipment Lease Agreement" dated December 28, 1977 and July 1, 1981, respectively, to the originals thereof, and that the attached copies are true and correct copies of the originals thereof in all respects.

Dated at St. Johnsbury, Vermont this eighth day of July, 1981.


Robert A. Gensburg

