

HARTER, SECREST & EMERY

FEB 7 1989 2:20 PM

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* ADMITTED IN FLORIDA ONLY

February 3, 1989

Ms. Noreta McGee, Secretary
Interstate Commerce Commission
Recordation Office
12th Street & Constitution Avenues, N.W.
Washington, D.C. 20423

Date 2/17/89

Fee \$ 13.-

108 Washington, D.C.

MOTOR OPERATING UNIT
FEB 7 2 12 PM '89

Re: Recordation of Locomotive Lease Agreement

Dear Ms. McGee:

I have enclosed an original and one true certified copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a locomotive lease agreement, a primary document, dated January 16, 1989.

The names and addresses of the parties to the document are as follows:

Lessor: Precision National Leasing, Inc.
208 South LaSalle Street
Suite 1279
Chicago, Illinois 60604

Lessee: Buffalo & Pittsburgh Railroad, Inc.
201 North Penn Street
Punxsutawney, Pennsylvania 15767

A description of the equipment covered by the document follows:

<u>LOCOMOTIVE NUMBER</u>	<u>BUILDER</u>	<u>HORSEPOWER</u>
SD45/9128	EMD	3300
SD45/8844	EMD	3300
SD45/6680	EMD	3300

HARTER, SECREST & EMERY

Ms. Noreta McGee, Secretary

February 3, 1989

Page Two

A fee of Thirteen Dollars (\$13.00) is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to: Charles D. Cramton, Esq., Harter, Secrest & Emery, 700 Midtown Tower, Rochester, New York 14604, in the enclosed self-addressed envelope.

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

Locomotive Lease Agreement between Precision National Leasing, Inc. ("Lessor") and Buffalo & Pittsburgh Railroad, Inc. ("Lessee") dated January 16, 1989 and covering EMD locomotives SD45/9128, SD45/8844 and SD45/6680.

Very truly yours,

HARTER, SECREST & EMERY



Charles D. Cramton

Attorneys for Buffalo & Pittsburgh Railroad, Inc.

CDC/etg

Enclosures

cc: Mark Hastings
John Bell,
General Manager

Interstate Commerce Commission
Washington, D.C. 20423

2/7/89

OFFICE OF THE SECRETARY

Charles D. Cramton, Esq.
Harter, Secrest, & Emery
700 Midtown Tower
Rochester, New York 14604

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 2/7/89 at 2:20pm, and assigned recordation number(s) 16194

Sincerely yours,

Narta L. McEneaney

Secretary

Enclosure(s)

1619A

RECORDATION NO. _____ FILED

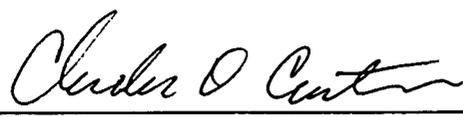
FEB 7 1989 2:20 PM

INTERSTATE COMMERCE COMMISSION

CERTIFICATE OF TRUE COPY

I, CHARLES D. CRAMTON, hereby state that I have compared the attached copy of the Locomotive Lease Agreement between Precision National Leasing, Inc. and Buffalo & Pittsburgh Railroad, Inc. dated January 16, 1989, with the original locomotive lease agreement and have found the copy to be complete and identical in all respects to the original document.

Dated: February 3, 1989



Charles D. Cramton
Notary Public

CHARLES D. CRAMTON
NOTARY PUBLIC, State of New York
Qualified in Monroe County
Commission Expires February 9, 1989

LOCOMOTIVE LEASE AGREEMENT

THIS LEASE made and entered into as of this 16th day
of January, 1989 by and between

PRECISION NATIONAL LEASING, INC.

an Illinois corporation, hereinafter called "Lessor," and

BUFFALO & PITTSBURGH RAILROAD, INC.

a New York Corporation, hereinafter called "Lessee."

LOCOMOTIVE LEASE AGREEMENT

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. **LEASE**: Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the Locomotives described in Schedule "A" attached hereto and made a part hereof, on an "as is," basis together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto, (hereinafter called "Locomotive(s)"), upon the terms and conditions herein set forth. This Lease shall be binding only on Locomotives described in Schedule "A." The Lessee may stencil it's name on the Locomotives, but shall not remove or obscure Lessor's reporting marks.

2. **INSPECTION AND ACCEPTANCE**: Lessee acknowledges that it will inspect the Locomotives at a mutually agreed upon location with the Lessor. At the time of said delivery of Locomotives to Lessee, Lessee shall inspect each Locomotive and except as otherwise determined by said inspection and except for defects outlined in Paragraph 10, each Locomotive shall be considered in good repair and operating condition at the time of delivery. At the time of return of the Locomotives to Lessor at Mt. Vernon, Illinois, a joint inspection of each Locomotive shall be performed and except as otherwise determined by said joint inspection, each Locomotive shall be considered to be in good repair and operating condition at the time Locomotives are returned to Lessor.

3. **RENTAL**: Lessee shall pay to Lessor as rental for each Locomotive the sum outlined in Schedule A for each day or fraction thereof from the time that each Locomotive is delivered to Lessee at a mutually agreed interchange point, (hereinafter called "Rent Commencement Date"), until same is returned to Lessor at the expiration of the lease term. Lessor shall render a monthly bill to Lessee for said rental and Lessee shall pay same within thirty (30) days of receipt thereof.

Lessee shall not be entitled to any abatement of rent, except as otherwise provided herein, reduction thereof or set-off, counterclaim, recoupment of defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any pact, present or future claims of Lessee against Lessor or any other person for any reason of any defect in the condition, design, operation or fitness for use of any Locomotive damage to or loss of possession or use or destruction of all or any of such Locomotives from whatever cause and of whatever duration, except as otherwise provided herein. Lessor hereby irrevocably appoints and constitutes

Lessee its attorney-in-fact for and in its name and behalf, but for the account of Lessee, to make and enforce, from time to time, at Lessee's expense, whatever claims Lessor may have against manufacturer that arise or are discovered during the term of this Lease. Lessee acknowledges that: Lessor is in no way connected to the Locomotive manufacturer; Lessor has no knowledge or information as to the condition or suitability for Lessee's purpose of the Locomotives; and Lessor's decision to enter into this Lease is made in reliance on Lessee's undertakings herein, including Lessee's express agreement not to assert against Lessor any claims, defenses, set-offs or counterclaims it may now or hereafter have against the Locomotive manufacturer.

4. **TERM:** The term of this Lease shall begin on the Rent Commencement Date and continue for a period of six (6) months.

In the event Lessee desires to extend the term of this Lease, Lessee shall give Lessor fifteen (15) days notice prior to its termination. It is understood that any extension of the Lease may have substantially different terms.

5. **WARRANTIES AND REPRESENTATIONS:** LESSOR MAKES NO REPRESENTATION OR WARRANTIES, EXCEPT AS PROVIDED IN SECTION 10 BELOW, OF ANY KIND RESPECTING THE LOCOMOTIVES, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE LOCOMOTIVES, PURSUANT TO THIS AGREEMENT TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN THE LOCOMOTIVES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT EXCEPT AS OUTLINED IN PARAGRAPH 10. Lessee accordingly agrees not to assess any claims whatsoever against Lessor based thereon, except that this shall not limit Lessee's rights against the manufacturer as stated in Section 3. Lessee further agrees, regardless of cause, not to assess any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

6. **PLACE OF PAYMENT OF RENT:** Lessee shall direct payment of the monthly rent to the following address:

PRECISION NATIONAL LEASING, INC.
208 SOUTH LASALLE STREET
SUITE 1279
CHICAGO, ILLINOIS 60604

7. **RECORDKEEPING; INSPECTION:** Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of each Locomotive while in its possession as shall be reasonably required by Lessor.

Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee. Lessor agrees that its agents will sign a disclaimer or release of liability as a precondition to having access to Lessee's property.

8. **LOSS OR DESTRUCTION:** Lessee agrees that it will be solely responsible for any loss, damage or destruction due to accident, derailment, collision or inappropriate use of any Locomotive leased from Lessor while subject to this Lease. In case any of the Locomotives during the term of the Lease period become lost, destroyed or damaged beyond repair from any cause whatsoever except as provided in Section 10, rental with respect to any such Locomotive shall cease immediately, but in such case Lessee agrees to pay Lessor for each unit type as outlined in Schedule A.

9. **INSURANCE:** (a) Subject to the limitations set forth in Section 8, all risk of loss of, damage to, or destruction of the Locomotives shall at all times be on Lessee except for loss, damage or destruction resulting from a negligent act or omission of Lessor, its officers, employees, agents, representatives, assignees, and/or successors.

(b) Lessee shall provide (i) insurance against loss, theft, and destruction or damage of the Equipment, and (ii) comprehensive public liability insurance against claims for personal injuries, death and property damage in no event less comprehensive in amount and against risk customarily insured against by Lessee in respect of similar equipment owned or leased by it. Lessee shall pay applicable premiums for insurance. Lessee shall have the right to insure the Locomotives for its own account, for the amount by which its fair market value exceeds the coverage required hereunder.

(c) All insurance policies required hereunder shall (i) be issued by insurance carriers of recognized responsibility, (ii) cover the interests of Lessee and Lessor and protect Lessee and Lessor in respect of risks arising out of the condition, maintenance, use, ownership and operation of the Locomotives, (iii) provide that the insurance carrier give at least 30 days prior notice in the event of cancellation or material alternation in coverage, (iv) provide, as such to physical damage insurance, that the losses, if any, shall be payable to the Lessor under a standard long form loss payable clause, (v) provide that in respect of the interest of the Lessor in such policies, the insurance shall not be invalidated by an action or inaction of Lessee and shall insure Lessor's interest as it appears regardless of any breach or violation by Lessee of any warranty, declaration or condition contained in such policies, and shall include coverage against liability which lessor might incur by reason of the operation of the Locomotives, and (vi) not required co-insurance.

(d) The proceeds of any physical damage insurance received by Lessor shall be paid to Lessee; (i) in the case of a destruction with respect to any Locomotive upon payment by Lessee of the Casualty Value of such Locomotive, or (ii) upon the loss, damage or destruction of any Locomotive which does not constitute a Casualty Occurrence, upon the receipt from Lessee of a certificate to the effect that such Locomotive has been repaired, restored or replaced, as the case may be (which certificate shall be accompanied by satisfactory evidence of such repair, restoration or replacement), provided that so long as any default by Lessee or event of default shall be continuing hereunder, Lessor shall be entitled to apply such proceeds against Lessee's obligations hereunder or under any other obligation of Lessee to Lessor. Lessee shall furnish Lessor with certificates reasonably be requested.

10. COMPLIANCE WITH LAW; REPAIR, MAINTENANCE AND LIENS: Lessee shall comply with FRA and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during the Lease period.

The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee shall, at it's own cost and expense, maintain and keep the Locomotives in good order, condition and repair (including lubrication and inspection of Locomotives in accordance with manufacturers recommendation), ordinary wear and tear excepted. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, except communication equipment installed by Buffalo & Pittsburgh Railroad, Inc., without cost or expense to Lessor. Lessee will not permit any liens or encumbrances to be placed on the Locomotives and will promptly take action, at it's expense, to remove and discharge any liens that may be placed on the Locomotives.

Lessor shall accept responsibility for the crankshaft, main engine block, turbocharger, air compressor and main generator (alternator) during the term of this Lease. Should any of the above components fail, rent shall abate upon failure of any of the foregoing components. If the Lessee performs the repairs, which repairs shall be done in a timely and expedited manner, rent shall commence on such locomotive when the repairs are completed. If the Lessee does not repair the locomotives, then rent shall commence with respect to such locomotives when the repaired locomotive is delivered to the Lessee. Lessee agrees to accept 100% responsibility for the above components at any time if said failure has been caused by misuse or accident of Lessee.

Notwithstanding the foregoing, however, Lessor shall have the right to terminate the Lease of any Locomotive that fails due to any of the above reasons. In the event Lessor terminates the Lease of any Locomotive due to mechanical reasons, rental shall cease on the date of the mechanical breakdown or the date that Lessee delivers Locomotive to Lessor at a mutually agreed location, whichever come first.

Both parties will use their best efforts and good faith to either repair the Locomotive at the nearest location or to expedite its movement to the interchange point nearest the location of repair.

11. **INDEMNITY**: Subject to the obligations and undertakings of the Lessor specified in Sections 8, 10, and 14 of this Lease, Lessee does hereby release, indemnify and save harmless Lessor, its successors and assigns, from and against any and all liability, loss, cost, damage, charges and expense which Lessor may incur, suffer or in any way be subjected to, resulting from or arising out of injury to or death of any person or persons whomsoever, and the loss or destruction of or damage to any property whatsoever of any person, firm or corporation, including but not limited to the property of the parties hereto or in the care or custody of the parties hereto and from any and all claims, demands, or actions for such loss, injury or damage, caused by, growing out of or in any way connected with the Lease, possession, use, maintenance or operation of said equipment by Lessee except when attributable to the fault, failure or negligence of Lessor or otherwise. The foregoing release and indemnification shall apply to matters or things occurring only between the time all Locomotives are delivered to Lessee and the time they are re-delivered to Lessor (save and except while any Locomotive or Locomotives are within the Lessor's possession).

12. **ASSIGNMENT**: Lessee shall not assign or sublet its interest, or any part thereof, under this Lease, or permit the use or operation of any Locomotive subject to this Lease by any other person, firm or corporation, other than wholly-owned subsidiaries of Genesee and Wyoming Industries, Inc. Lessor expressly consents to incidental operation and use on railroads other than Lessee's under standard run-through and power pooling arrangements. Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee and in such event Lessor's transferee as assignee shall have all the rights, powers, privileges and remedies of the Lessor hereunder. Lessee shall have no obligation to pay any assignee, and shall continue to pay Lessor until such time as notice of such assignment is given to Lessee.

13. **NOTICE**: Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

1) Buffalo & Pittsburgh Railroad
201 North Penn Street
Punxsutawney, PA 15767

Attention: John Bell

2) Genesee & Wyoming Industries, Inc.
71 Lewis Street
Greenwich, CT 06830

Attention: Mark W. Hastings

or to such other address as Lessee may from time to time indicate by written notice to Lessor.

(b) Notices from Lessee to Lessor shall be sent to:

Precision National Leasing, Inc.
208 South LaSalle Street
Suite 1279
Chicago, Illinois 60604

or to such other address as Lessor may from time to time indicate by written notice to Lessee.

14. **QUIET ENJOYMENT:** So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

15. **AUTHORITY:** The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Lease and bind the respective parties to the terms and provisions hereof.

16. **LATE CHARGES:** Delinquent installments of rent shall bear interest at the rate of 1-1/2% per month if not prohibited by law, otherwise at the highest lawful contract rate.

17. **FILING AND ADMINISTRATION:** Lessee will promptly cause a summary of this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 for the protection of Lessor's title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the

Locomotives to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filing.

18. **TAXES:** Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to a sale to Lessee, use and property taxes, gross receipts taxes arising out of receipts from use or operation of Locomotives including without limitation amounts payable under Section 3 hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Lessor or Lessee.

19. **DEFAULT:** If the Lessee, after five (5) business days notice of default, shall fail to carry out and perform any of the obligations on its part to be performed under this Lease, or if a petition, in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessee, then, and in any of said events Lessor shall have all rights available to it at law or in equity, including without limitation the right immediately to repossess the Locomotives, to remove the Locomotives from Lessee's service, to terminate this Lease, and recover any and all damages sustained as a result of Lessee's default. If Lessor shall terminate this Lease pursuant to this Section, Lessee shall remain liable for all unpaid rent and other amounts due hereunder. The rights and remedies herein given are provided by law or in equity.

Should any proceedings be instituted by Lessor for monies due to Lessor hereunder and/or for possession of any or all of the Locomotives or for any other relief, Lessee shall pay Lessor a reasonable sum as attorney's fees. In addition to any remedies provided herein, lessor shall have all the rights provided to Lessor under Section 1168 of Title 11 of the United States Code and any amendments thereto.

20. **MISCELLANEOUS:** All transportation charges for delivery of the Locomotives to the Lessee shall be borne by Lessee. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations or any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. Lessee acknowledges the receipt of a true copy of this Locomotive Lease Agreement.

21. **LAWS GOVERNING LEASE:** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

22. EXECUTION: This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names as of the date first above written.

BUFFALO & PITTSBURGH RAILROAD, INC.

By *Mark W. Nesting*

Title *Treasurer*

PRECISION NATIONAL LEASING, INC.

By *Ken Forgy*

Title Vice President

SCHEDULE A

Attached to and a part of Lease dated January 16, 1989,
 between Precision National Leasing, Inc., Lessor and
 Buffalo & Pittsburgh Railroad, Inc., Lessee.

The Locomotive numbers are as follows:

LOCOMOTIVE NUMBER	BUILDER	HORSE- POWER	DAILY RENTAL RATE	RENT COMMENCE- MENT DATE	CASUALTY VALUE
1. SD45/9128	EMD	3300	\$250.00		\$175,000.00
2. SD45/8844	EMD	3300	\$250.00		\$175,000.00
3. SD45/6680	EMD	3300	\$250.00		\$175,000.00


 BPRR

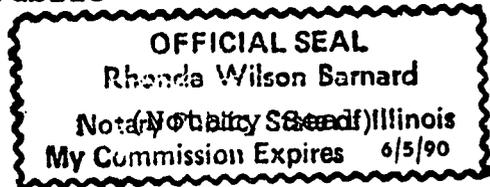

 PNL

STATE OF ILLINOIS)
)
COUNTY OF JEFFERSON)

On this 16th day of January, 1989, before me personally appeared B. Ken Forqey, III, to me personally known, who, being by me duly sworn, says that he is Vice President of PRECISION NATIONAL LEASING, INC., that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rhonda Wilson Barnard
Notary Public

MY COMMISSION EXPIRES:
06/05/90



STATE OF Connecticut)
)
COUNTY OF Fairfield)

On this 17th day of January, 1989, before me personally appeared Mark W. Hastings, to me personally known, who, being by me duly sworn, says that he is Treasurer of Buffalo & Pittsburgh Railroad, Inc., that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James M. Barnard
Notary Public

MY COMMISSION EXPIRES:
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1993

(Notary Seal)