

THE LAW OFFICES OF  
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3-126A027

RECORDATION NO. **18228** FILED 1425

David Dineff  
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Thomas E. Grotta  
Sheldon Lebold

May 4, 1993

MAY 6 1993 3:08 PM

Telecopier  
708-349-6628

Office of the Secretary  
Interstate Commerce Commission  
Twelfth Constitution Ave., N.W.  
Room 2303  
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

RE: Lease of Locomotive Equipment  
National Railway Equipment Company, Lessor  
Grand Trunk Western Railroad Inc., Lessee

Dear Sir/Madam:

I have enclosed an original and one 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 lease of locomotive equipment and is a primary document dated April 6, 1993. The names and addresses of the parties to the documents are as follows:

Lessor

National Railway Equipment Company  
An Illinois Corporation  
14400 S. Robey Street  
P.O. Box 2270  
Dixmoor, IL 60426

Lessee

Grand Trunk Western Railroad Inc.  
1333 Brewery Park Blvd.  
Detroit, MI 48207-2699

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Interstate Commerce Commission  
May 4, 1993  
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A description of the equipment covered by the document follows:

<u>Unit No.</u>	<u>Type</u>	<u>General Description</u>
869	SD	Road Locomotive
870	SD	Road Locomotive
872	SD	Road Locomotive
878	SD	Road Locomotive
882	SD	Road Locomotive
886	SD	Road Locomotive
889	SD	Road Locomotive
892	SD	Road Locomotive

A fee of \$16.00 is enclosed. Please return the original after recordation to Richard F. Loritz, 9533 W. 143rd Street, Orland Park, IL 60462.

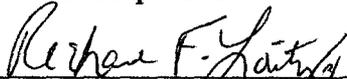
A short summary of the document to appear in the index follows:

A lease of locomotive equipment identified as eight (8) locomotives, type SD, Road Locomotives, with National Railway Equipment Co., as Lessor, and Grand Trunk Western Railroad Inc., as Lessee.

Also attached is an Affidavit executed by the attorney in fact for National Railway Equipment Co. and appropriately notarized declaring that the enclosed copy is identical to the original document which is also enclosed.

Very truly yours,

NATIONAL RAILWAY EQUIPMENT CO.  
an Illinois Corporation

BY:   
RICHARD F. LORITZ

ITS: Attorney and Agent in Fact

RFL/sjg  
Enclosures

nrcc#504.931

RECORDATION NO. **18228** FILED 1425

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INTERSTATE COMMERCE COMMISSION

LOCOMOTIVE LEASE AGREEMENT

THIS LOCOMOTIVE LEASE AGREEMENT ("Lease"), entered into as of the 6th day of April, 1993, between NATIONAL RAILWAY EQUIPMENT COMPANY, an Illinois corporation, ("LESSOR"), and GRAND TRUNK WESTERN RAILROAD INC., ("LESSEE").

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. LEASE AND LEASED PROPERTY

Lessee hereby leases from Lessor, the locomotive(s), ("Locomotives"), together with the parts, accessories, attachments and devices, if any, now or hereafter affixed thereto, as described in Schedule "A" attached to and made part hereof.

2. TERM

The term of this Lease for each Locomotive shall be the fixed term set forth in Schedule "A", commencing on the date such Locomotive is accepted by Lessee ("Commencement Date"). Upon termination of the lease, Lessee shall effect prompt delivery of the Locomotive(s) to Lessor at Dixmoor, Illinois.

3. RENTAL

- A. The rental payable shall be the sum identified in Schedule "A" payable monthly in advance. Lessee shall operate such Locomotive(s) in conformity with its use of Locomotives it owns and leases. If the Commencement Date for any locomotive does not fall on the first day of the month, the first rental payment shall be prorated accordingly.
- B. Payments past due for more than five (5) days shall bear interest at the rate of eighteen percent (18%) per annum.
- C. All rentals shall be paid to Lessor at National Railway Equipment Company, P.O. Box 74493, Chicago, IL 60690 or at such other address as Lessor may direct in writing.

4. TAXES

Lessee shall pay all use, excise, ad valorem, stamp, documentary and similar taxes on or relating to this lease of the Locomotive(s), or the use, registration, rental, maintenance, possession or operation thereof, and shall file any returns required therefor, and shall hold Lessor harmless against any liability and expense (including reasonable attorney fees and costs) on account of Lessee's failure to do the same.

5. OWNERSHIP AND LESSOR'S INSPECTION

- A. The Locomotive(s) shall at all times remain the sole and exclusive property of the Lessor.
- B. Lessee may add such equipment to the Locomotives as it uses in its operations, including radios and radio display units, and may retain them at lease end.
- C. Lessor shall keep the Locomotive(s), at all times, free and clear from all claims, liens and encumbrances.
- D. This Lease is intended to be a true lease of the Locomotive(s) and is not and in no way shall be construed as creating a sale of the Locomotive(s) to Lessee.

6. DELIVERY/RETURN

Delivery of the Locomotive(s) shall be accepted by Lessee at Lessor's plant in Silvis, Illinois. Upon expiration or other termination of this Lease, Lessee shall return such Locomotive(s) to Lessor at Silvis, Illinois, in the same condition as when accepted, reasonable wear and tear excepted.

7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER

- A. i. Lessee hereby acknowledges that Lessee has had or will have the opportunity to inspect the Locomotive(s) prior to accepting delivery of same, and that acceptance of delivery of the Locomotive(s) by Lessee constitutes acknowledgment that they have been received in running order.
- ii. Except as provided in Section 8, Lessor shall not be responsible for any repairs or maintenance of the Locomotive(s) during the term of this Lease.
- B. Delivery to and acceptance of the Locomotive(s) by, and execution of a Schedule with respect thereto by Lessee shall constitute Lessee's acknowledgment that the locomotive(s) are of the manufacture, design and utility, quality and capacity selected by the Lessee, that Lessee is satisfied that the same is suitable for Lessee's purpose and that, except as otherwise provided in Section 8, LESSOR MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE(S), and Lessor hereby disclaims all such representation and warranties.

8. USE AND MAINTENANCE

Lessee agrees that:

- A. Lessee shall be responsible and pay for all registrations, certificates, and permits, and all other similar requirements of governmental authorities, whether required to be obtained in the name of the Lessor or Lessee.
- B. The Locomotive(s) shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee.
- C. Lessee shall comply with all applicable laws and regulations relating to the lease, possession, use and operation of the Locomotive(s).

8. USE AND MAINTENANCE (CONTINUED)

- D. 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 will, at its sole expense, perform all repair and maintenance work, servicing, lubrication and inspection of the Locomotives in accordance with Lessee's existing maintenance practices. Lessor agrees to accept responsibility for
- i. The catastrophic failure of the (a) turbocharger, (b) engine and (c) AR-10 alternator during the lease term and
  - ii. Any failure of any Locomotive's traction motor if such failure occurs within seven (7) days after the Commencement Date for such Locomotive ("Warranty Items(s)"); provided however Lessee agrees to accept responsibility for any Warranty Item at any time if the failure is caused by Lessee's misuse or abuse or caused by derailment or accident. For any Locomotive removed from service due to the catastrophic failure of any Warranty Item set forth in subparagraph (i) for which Lessor is responsible, rent shall abate for such Locomotive on the date Lessor is notified that such Locomotive has been removed from service and shall be reinstated on the date such Locomotive is redelivered to Lessee at a mutually agreed to interchange point. If a Locomotive shall repeatedly fail and the failure shall not be caused by improper maintenance by Lessee, Lessee may terminate this Lease as to such Locomotive. For any Locomotive removed from service due to the failure of the traction motor as set forth in subparagraph (ii), Lessor shall provide Lessee a running take out traction motor for such Locomotive and Lessee may either install such replacement traction motor in such Locomotive or replace its inventory with such traction motor if it shall have installed its own traction motor in the Locomotive. Lessee shall bear all costs associated with the installation of any traction motor in any Locomotive and rent shall abate for any Locomotive until a traction motor is provided by Lessor or Lessee shall have installed its own traction motor, whichever occurs first.

9. INDEMNIFICATION

Lessee does hereby agree to defend, indemnify, protect and hold harmless Lessor and any assignees or successors of Lessor, and their respective employees and agents, from and against any and all losses, liabilities (including without limitation strict liability imposed by law), damages, injuries, claims, demands and expenses (including legal expenses) of whatsoever kind and nature, resulting from or arising out of the use, condition, operation or ownership of any Locomotive. This covenant of indemnity shall continue in full force and effect notwithstanding the termination of this lease or the termination of the lease of any Locomotive.

- A. Except as otherwise provided in Section 8, Lessee assumes and agrees to indemnify, protect and hold free and harmless Lessor, any assignee or successor of Lessor, and their respective employees or agents, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive.
- B. In case of total destruction of any or all of the Locomotives, Lessee shall pay Lessor, per Locomotive, the amount stated as Replacement Value in Schedule "A". Daily lease rental shall continue on such locomotive(s) until such time that Lessee has issued payment to Lessor via bank check or bank wire transfer.

10. ASSIGNMENT AND LIENS

Lessor shall have the unconditional right to assign this lease, in whole or in part. Lessee shall have no right to assign or sub-lease this lease or any other of the Locomotive(s) or any interest therein.

11. DEFAULT

- A. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default"):
- i. Default in the payment within five days of when due of any installment of rental hereunder or of any other obligation for the payment of money now or hereafter owed by Lessee to Lessor.
  - ii. Default in the timely performance of any other liability, obligation, covenant or agreement hereunder of Lessee after written notice to Lessee and a reasonable time to cure.

12. REMEDIES UPON DEFAULT

- A. Upon the occurrence of any Event of Default or at any time hereafter, Lessor, in its sole discretion, may take any one or more of the following actions with respect to the Locomotive(s):
- i. Declare all unpaid amounts of rental to be immediately due and payable.
  - ii. Terminate the lease of any or all Locomotives by written notice to Lessee.
  - iii. Whether or not the lease is terminated, take possession of any or all Locomotive(s) wherever found, and for this purpose Lessor may at Lessor's option enter upon the premises where such Locomotive(s) are located and take immediate possession of and remove the same, all without liability to Lessee for damage to property or otherwise for actions taken in a commercially reasonable manner.
  - iv. Require that Lessee shall, upon written demand by Lessor and at Lessee's expense, promptly make available to Lessor at Lessee's expense, any or all Locomotives at a places designated by Lessor which is reasonably convenient to both parties.

12. REMEDIES UPON DEFAULT (CONTINUED)

- v. Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof or to rescind the lease hereunder of any or all Locomotive(s).
  - vi. Exercise any and all rights and remedies available to Lessor under any applicable law. In addition, Lessee shall be charged with and shall pay to Lessor all reasonable costs and expenses of Lessor incurred as a result of each Event of Default by Lessee.
- B. None of the rights and remedies under or referred to in this Paragraph 12 is intended to be exclusive, but each such right or remedy shall as to each Locomotive be cumulative and may be availed of separately or concurrently with or in addition to any other right or remedy provided or referred to herein or otherwise available to Lessor at law or in equity. Any repossession or subsequent sale or lease by Lessor of any Locomotive(s) shall not bar an action against Lessee for a deficiency. To the extent permitted by applicable law, LESSEE WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF EQUIPMENT BY LESSOR IN A COMMERCIALY REASONABLE MANNER AS A RESULT OF ANY EVENT OF DEFAULT HEREUNDER BY LESSEE.
- C. Without limitation of any rights of Lessor otherwise existing or otherwise available to Lessor, it is expressly covenanted and agreed by the parties hereto that in the event of any assignment by operation of law of this Lease or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease.

13. RECORDATION OR LESSOR'S INTEREST

Lessee acknowledges that Lessor may record this lease with the Interstate Commerce Commission pursuant to 49 USC #11303.



WITNESS WHEREOF, the parties have executed this Lease the day and year first mentioned above.

LESSOR:

NATIONAL RAILWAY EQUIPMENT CO.

BY: Lawrence J. Beal

NAME: Lawrence J. Beal

TITLE: President

ATTEST:

BY: Patrick C. Frangella

NAME: Patrick C. Frangella

TITLE: Vice President - Administration

(Corporate Seal)

LESSEE:

GRAND TRUNK WESTERN RAILROAD, INC.

BY: E. E. Shepard

NAME: ERNEST SHEPARD

TITLE: Gen. Mgr.

ATTEST:

BY: \_\_\_\_\_

NAME:

TITLE: \_\_\_\_\_

(Corporate Seal)

4/13/93

SCHEDULE "A"

Attached to and incorporated into the Lease dated the 6th day of April, 1993, by and between NATIONAL RAILWAY EQUIPMENT COMPANY (LESSOR) and GRAND TRUNK WESTERN RAILROAD INC. (LESSEE).

Type and General Description of Locomotive Unit, Marks and Numbers:

<u>UNIT NO.</u>	<u>TYPE</u>	<u>GENERAL DESCRIPTION</u>
869.	SD	Road Locomotive
870.	SD	Road Locomotive
872.	SD	Road Locomotive
878.	SD	Road Locomotive
882.	SD	Road Locomotive
886.	SD	Road Locomotive
889.	SD	Road Locomotive
892.	SD	Road Locomotive

<u>REPLACEMENT VALUE</u>	<u>TERM</u>	<u>LEASE RATE PER LOCOMOTIVE</u>	
		<u>MONTHLY</u>	<u>DAILY</u>
\$200,000.00	_____	_____	\$ 285.00
_____	_____	_____	_____

COMMENCEMENT DATE: \_\_\_\_\_

Lessee agrees to pay the first month of lease with their execution of the lease.

SPECIAL TERMS: Lessee shall have the option, at expiration of this lease to purchase these locomotives for:

\_\_\_\_\_

\_\_\_\_\_

LESSOR: NATIONAL RAILWAY EQUIPMENT COMPANY

BY: Lawrence J. Boal

TITLE: President

LESSEE: GRAND TRUNK WESTERN RAILROAD INC.

BY: E. E. Shepard

TITLE: Gen Mgr

**AFFIDAVIT**

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

The undersigned states that he has read the attached document and that the document attached is identical to the complete and original Lease Agreement.

This Affidavit is made pursuant to the procedures in Section 117.3(2)(b) relative to the recordation of documents with the Interstate Commerce Commission.

*Richard F. Lowry*  
\_\_\_\_\_  
AFFIANT

Subscribed and Sworn to  
before me this 4<sup>th</sup> day  
of May, 1993.

*Sarah J. Goodnight*  
\_\_\_\_\_  
NOTARY PUBLIC

