

\$15

THE LAW OFFICES OF
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ORLAND PARK, ILLINOIS 60462
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RICHARD F. LORITZ
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• 17319
RECEIVED BY _____ FROM _____
MAY 21 1991 - 11 35 AM
INTERSTATE COMMERCE COMMISSION

May 16, 1991

Office of the Secretary
Interstate Commerce Commission
Washington, D.C. 20423

1-141A012

RE: Lease of Locomotive Equipment
National Railway Equipment Company, Lessor.
Arizona & California Railroad Company Limited
Partnership, Lessee

Dear Mr. Secretary:

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 May 8, 1991. 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

Arizona & California Railroad Company Limited Partnership
An Arizona Limited Partnership
1470 Railroad Avenue
St. Helena, CA 94574

MAY 21 11 27 AM '91
RECORDS SPEAKING UNIT

A description of the equipment covered by the document follows:

| <u>Unit No.</u> | <u>Type</u> | <u>General Description</u> |
|-----------------|-------------|----------------------------|
| 2001 | GP20 | EMD 2000 H.P. Locomotive |
| 2002 | GP20 | EMD 2000 H.P. Locomotive |

Office of the Secretary
May 16, 1991
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| | | |
|------|------|--------------------------|
| 2004 | GP20 | EMD 2000 H.P. Locomotive |
| 2005 | GP20 | EMD 2000 H.P. Locomotive |
| 2006 | GP20 | EMD 2000 H.P. Locomotive |

A fee of \$15.00 is enclosed. Please return the original and any extra copies not needed by the commission for 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 five (5) locomotives, type GP20, EMD 2000 H.P., with National Railway Equipment Co., as Lessor, and Arizona & California Railroad Company Limited Partnership, as Lessee.

Also attached is an Affidavit executed by the attorney in fact for National Railway Equipment Co. and appropriately notarized declaring that the enclosure is the original document.

Very truly yours,

NATIONAL RAILWAY EQUIPMENT CO.
an Illinois Corporation

BY: Richard F. Loritz
RICHARD F. LORITZ

ITS: Attorney and Agent in Fact

RFL/sjg

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

5/21/91

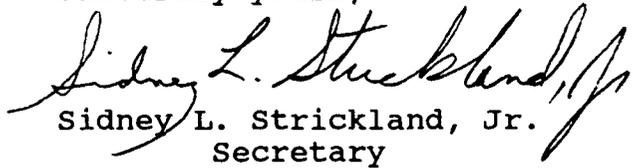
OFFICE OF THE SECRETARY

Richard F. Loritz
Orland State Bank Building
9533 West 143rd St
Orland, Park Illinois 66462

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 5/21/91 at 11:35am, and assigned recordation number(s). 17319

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

LOCOMOTIVE LEASE AGREEMENT

MAY 21 1991 - 11 25 AM

INTERSTATE COMMERCE COMMISSION

me
THIS Locomotive LEASE AGREEMENT ("Lease"), entered into as of the 8th day of April, 1990, between NATIONAL RAILWAY EQUIPMENT COMPANY, an Illinois corporation, ("LESSOR"), and ARIZONA & CALIFORNIA RAILROAD COMPANY LIMITED PARTNERSHIP, an Arizona limited partnership, ("LESSEE").

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. LEASE AND LEASED PROPERTY

Lessee hereby leases from Lessor, the Locomotive(s), ("Locomotive(s)"), 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 in advance monthly installments, with two months' rent payable on acceptance of the Locomotive(s) to be held as security. The security deposit shall be returned to Lessee upon the expiration of this Lease. Lessee shall operate such Locomotive(s) in service on its railroad and in trackage rights service integral to Lessee's operations. If the Commencement Date for any Locomotive does not fall on the first day of the month, the first rental payment shall be adjusted accordingly so that all payments are due on the first day of each month in arrears.

B. Payments past due for more than five (5) business 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 2001, Park Ridge, IL 60068 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 attorney fees and costs) on account of Lessee's failure to do the same.

5. OWNERSHIP AND LESSOR'S INSPECTION

A. Except as provided in Paragraph 11 of this Agreement, the Locomotive(s) shall at all times remain the sole and exclusive property of the Lessor.

B. Upon reasonable notice to Lessee, Lessor or its agents shall have free access to the Locomotive(s) at reasonable times for the purpose of inspections.

C. No material accessions, additions, alterations or improvements to the Locomotive(s), shall be made without Lessor's consent, which consent shall not be unreasonably withheld or delayed, but if any are made, they immediately shall become part of the Locomotive(s) and shall become Lessor's property.

D. Lessor shall keep the Locomotive(s), at all times, free and clear from all claims, liens and encumbrances.

E. 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 Dixmoor, Illinois subject to Lessor's performance of the work detailed on Schedule "B" attached to and made part hereof. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such Locomotive(s) to Lessor at Dixmoor, Illinois in good order and condition, reasonable wear and tear excepted. Lessee shall pay or reimburse Lessor for any reasonable and ordinary expenses incurred by Lessor in returning the Locomotive(s) to good order and condition in the event the Locomotive(s), are returned to Lessor other than in good order and condition, in delivering the Locomotive(s) to Lessor or effecting return of the Locomotive(s) from Lessee as provided

herein; provided, however, that payments or reimbursements made by Lessee pursuant to this Paragraph 6 shall not exceed the replacement value of each Locomotive, as that value is described in Schedule A.

7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER

A. i. Lessee hereby acknowledges that Lessee 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 good condition and repair. Lessee's acceptance of the Locomotives however, is subject to Lessor's performance of the work detailed in schedule "B" hereto. The Locomotive(s), when delivered by Lessor to Lessee, shall be free from FRA defects.

ii. 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, LESSOR SHALL WARRANT SAID LOCOMOTIVES, FOR MAJOR COMPONENTS ONLY WITH NO FREIGHT ALLOWED, FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE THE LOCOMOTIVES ARE PLACED INTO SERVICE. MAJOR COMPONENTS CONSIST OF ENGINE CRANKSHAFT, MAIN GENERATOR AND TRACTION MOTORS.

8. USE AND MAINTENANCE

Lessee agrees during the term of this Lease as follows:

A. Lessee shall be responsible and pay for all registrations, certificates, and permits with respect to the Locomotives, and all other similar requirements of governmental authorities in connection therewith, 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 and trained personnel authorized by Lessee.

C. Lessee shall comply will all federal, state, municipal and local laws, ordinances, and rules, and regulations relating to the lease, possession, insuring, use and operation of the Locomotive(s).

D. Lessee shall be solely responsible for the payment of any and all fines, penalties or forfeitures (including without limitation the confiscation of the Locomotive(s)) levied upon or arising out of the use, operation, maintenance or insuring of the Locomotive(s) by Lessee from the Commencement Date through the termination of this Lease, in violation of any law, ordinance, rule or regulation of any governmental authority.

E. Lessee shall pay all costs, expenses and charges incurred in connection with the maintenance, lease, use and operation of the Locomotive(s).

F. Lessee shall maintain the Locomotive(s) in good mechanical condition and running order and in compliance with OEM specifications and safety rules and regulations now or hereafter promulgated by applicable governmental authorities.

G. Lessee shall keep and maintain any and all books and records and make any filings required by any governmental authority with respect to the possession, lease, use or operation of the Locomotive(s).

9. INSURANCE/INDEMNIFICATION

A. Public liability insurance providing coverage in an amount not less than three million (\$3,000,000.00) dollars combined single limit per occurrence shall be provided by Lessee at Lessee's sole expense throughout the term of this Lease as to each Locomotive. The insurance policy or policies providing the foregoing coverage shall:

i. name Lessor and Lessee as insured party.

ii. protect the interests of Lessor and Lessee, including Lessee's authorized operators, with respect to liability for injuries to or the death of third party persons and damage to or loss of use of property of third persons resulting from the ownership, maintenance, use or operation of the Locomotive(s).

iii. protect the interests of Lessor and Lessee, including Lessee's authorized operators, with respect to liability for injuries to or the death of third party persons and damage to or loss of use of property of third persons resulting from the ownership, maintenance, use or operation of the Locomotive(s).

B. Lessee, at Lessee's sole expense, shall provide collision and comprehensive physical damage insurance on each Locomotive. The insurance policy or policies providing the foregoing coverage shall:

i. be written in standard form by an insurance company reasonably acceptable to Lessor.

ii. provide coverage in an amount not less than the replacement value for like kind and quality of the Locomotive(s).

iii. provide for losses to be payable to Lessor and Lessee as their respective interests may appear.

C. Lessee shall furnish Lessor with a certificate(s) of insurance or other evidence of said insurance coverage. Lessee, upon receipt of a notice of cancellation of the insurance policy or policies required to be maintained by Lessee pursuant to this Paragraph 9, shall provide a copy of such notice to Lessor as soon as reasonably possible, but in no event shall such notice be provided more than 10 days after Lessee's receipt of such notice.

D. Notwithstanding that Lessee shall provide certain insurance hereunder and irrespective of any responsibility for negligence, 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 during the term of this Lease, except that Lessee shall not be liable for any such expenses or costs arising from the negligence or intentional acts of Lessor, any assignee or successor of Lessor, and their respective employees or agents. 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.

E. 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 from any loss, damage, theft or destruction of any Locomotive during the term of this Lease except that Lessee shall not be liable for any such loss, damage, theft or destruction arising from the negligence or intentional acts of Lessor, any assignee or successor of Lessor, and their respective employees or agents.

F. If Lessee shall fail to obtain or maintain the insurance coverage required in this lease, or shall fail to furnish Lessor with evidence thereof, Lessor at its option, may obtain such required insurance coverage on behalf of Lessee and Lessee's expense.

10. ASSIGNMENT AND LIENS

Lessor shall have the unconditional right to assign this lease, in whole or in part. Lessee shall have the right to assign or sub-lease this Lease or any other of the Locomotive(s) or any interest therein subject to Lessor's consent, which consent shall not be unreasonably withheld or delayed except that Lessor hereby consents to Lessee's assignment of its interest in the Locomotive(s) as security to its purchase money lender, Bank of America National Trust and Savings Association.

11. PURCHASE OPTION

Provided Lessee is not in default under this Lease, Lessee is hereby given the right, at the expiration of the term of this Lease, to purchase one or more of the Locomotive(s) described in Schedule "A" for "Fair Market Value". The parties shall negotiate in good faith to establish the Fair Market Value of the Locomotive(s). In the event that Lessee desires to purchase one or more of the Locomotive(s), and the parties are unable to agree upon the Fair Market Value within 10 days after Lessee's providing of notice of its intent to acquire the Locomotive(s), each party shall select an appraiser experienced in valuing Locomotives, and the named appraisers shall select a third appraiser experienced in valuing Locomotives. In the event that Lessor fails to select an appraiser or the named appraisers cannot agree upon a third appraiser, Lessee may request that the American Arbitration Association select the third appraiser. Within 15 days after selection of the third appraiser, each party shall submit to the appraisers a proposed Fair Market Value. Within 15 days after submission of the proposals the appraiser shall, by majority vote, select from the proposals submitted by the parties the proposed Fair Market Value that best reflects the Fair Market Value of the Locomotives, and Lessee shall be obligated to purchase the Locomotive(s) and Lessor shall be obligated to sell the Locomotive(s) for a price equal to the Fair Market Value determined as set forth above. Lessor shall exercise such option to purchase by notifying Lessor in writing at least ninety (90) days prior to the expiration of the term of this Lease.

12. FINANCIAL DATA

Upon the written request of Lessor, Lessee shall furnish to Lessor, when reasonably available, copies of Lessee's financial statements and such other reports and statements concerning this Lease and the Locomotive(s) as Lessor reasonably may request. Lessor shall consider such information to be

confidential and shall not distribute or disseminate such information in any way to persons not a party to this Lease.

13. DEFAULT

A. Subject to Paragraphs 13(A) and 13(B) below, 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 when due of any installment of rental hereunder or of any other obligation for the payment of money now or hereafter owed by Lesser to Lessor.

ii. Default in the timely performance of any other liability, obligation, covenant or agreement hereunder of Lessee.

B. Upon the occurrence of any Event of Default or at any time thereafter, Lessor may exercise the remedies provided in Paragraph 14 only after Lessor provides written notice ("Default Notice") to Lessee with respect to the Event of Default and in the event of failure to make a payment within 5 business days after receipt of Default Notice, or in the event of failure to perform any other liability, obligation, covenant or agreement hereunder of Lessee within 5 business days after receipt of Default Notice, such failure shall be continuing.

C. Lessee may (but need not) make such payment or perform any such liability, obligation, covenant or agreement prior to the expiration of the period specified above with respect thereto, and such payment or performance shall be deemed to have cured such default.

14. 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.

iv. Require that Lessee shall, upon written demand by Lessor and at Lessee's expense, promptly make the Locomotive(s) available to Lessor at Lessee's expense, at a places designated by Lessor which is reasonably convenient to both parties.

v. Use, hold, sell, lease or otherwise dispose of any or all such Locomotive(s) as Lessor in its sole discretion may decide, without affecting the obligations of Lessee as provided in this Lease.

vi. Sell or lease any or all Locomotive(s), at public or private sales or proceedings, at such time or times and upon such terms as Lessor may determine, free and clear of any rights of Lessee and, if notice thereof is required by applicable law, any notice in writing of any such sale or Lease by Lessor to Lessee not less than five (5) days prior to the date thereof shall constitute reasonably notice to Lessee.

vii. 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).

viii. 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 14 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.

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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act (which bankruptcy action, if involuntary, is not vacated within 45 days after

commencement thereof), then Lessor may, at Lessor's election, terminate this Lease or any one or more leases hereunder.

15. RECORDATION OF LESSOR'S INTEREST

Lessee agrees to execute all recording documents requested by Lessor to show Lessor's interest in the Locomotive(s). Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the Locomotive(s) without Lessee's signature.

16. MISCELLANEOUS

A. This Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois.

B. Neither this Lease nor any schedule shall be amended, and no provision hereof or of any Schedule shall be waived or varied unless by a writing signed by the parties.

C. No delay or omission by Lessor in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Lessor of any Event of Default by Lessee shall not be construed as a waiver of any future occasion.

D. In case any provision (or portions thereof) in this Lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions (or portions thereof) hereby shall not in any way be affected or impaired thereby.

E. This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors.

F. All notices permitted or required to be given pursuant to this Lease shall be mailed by Certified or Registered Mail, Return Receipt Requested to the parties at the following addresses or at such other addresses as each party may notify the other.

If to Lessor: National Railway Equipment Co.
 P.O. Box 2270
 Dixmoor, IL 60426

With copies to: Richard F. Loritz, Esq.
 Law Offices of Richard F. Loritz
 Orland State Bank Building
 9533 West 143rd Street
 Orland Park, IL 60462

If to Lessee: Arizona & California Railroad
Company Limited Partnership
1470 Railroad Avenue
St. Helena, CA 94574

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

LESSOR:

NATIONAL RAILWAY EQUIPMENT
CO.

BY: *Laurence J. Beal*

NAME: LAURENCE J. BEAL

TITLE: PRESIDENT

LESSEE:

ARIZONA & CALIFORNIA RAILROAD
COMPANY LIMITED PARTNERSHIP

BY: *David L. Parkinson*
PARTNER

NAME: DAVID L. PARKINSON

TITLE: PRESIDENT

ATTEST:

BY: *Gayle*

TITLE: VICE PRESIDENT

(Corporate Seal)

2107

ATTEST:

BY: *David L. Parkinson*

TITLE: ASST. SEC.

(Corporate Seal)

SCHEDULE "A"

*DNP
MAY*

Attached to and incorporated into the Lease dated the 8th day of April, 1991, by and between NATIONAL RAILWAY EQUIPMENT COMPANY (LESSOR) and ARIZONA & CALIFORNIA RAILROAD COMPANY LIMITED PARTNERSHIP (LESSEE). *DNP*

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

| <u>UNIT NO.</u> | <u>TYPE</u> | <u>GENERAL DESCRIPTION</u> |
|-----------------|-------------|----------------------------|
| 2001 | GP20 | EMD 2000 H.P. Locomotive |
| 2002 | GP20 | EMD 2000 H.P. Locomotive |
| 2004 | GP20 | EMD 2000 H.P. Locomotive |
| 2005 | GP20 | EMD 2000 H.P. Locomotive |
| 2006 | GP20 | EMD 2000 H.P. Locomotive |

| <u>REPLACEMENT</u> | <u>TERM</u> | <u>LEASE RATE</u> | |
|--------------------|-------------|-----------------------|--------------|
| | | <u>PER Locomotive</u> | |
| | | <u>MONTHLY</u> | <u>DAILY</u> |
| \$175,000.00 | 1825 DAYS | \$3,406.67 | \$112.00 |

COMMENCEMENT DATE: DATE LOCOMOTIVE(S) IS ACCEPTED BY LESSEE.

LESSOR: NATIONAL RAILWAY EQUIPMENT COMPANY

BY:

NAME: *Lawrence J. Beal*

TITLE: President

LESSEE: ARIZONA & CALIFORNIA RAILROAD COMPANY LIMITED PARTNERSHIP

PARKSIERRA, CORP., GENERAL PARTNER

BY: *David L. Parkinson*

NAME: DAVID L. PARKINSON

TITLE: PRESIDENT

SCHEDULE "B"

DMO
May Attached to and incorporated into the Lease dated the 8th day of April 1991, by and between National Railway Equipment Company (Lessor) and Arizona & California Railroad Company Limited Partnership (Lessee). *DVT*

WORK TO BE PERFORMED BY LESSOR TO THE LOCOMOTIVES PRIOR TO SHIPMENT

Lessor hereby agrees to:

1. Permit a representative of Lessee to be present at Lessor's shops during the performance of the work scheduled herein.
2. Repair oil leaks deemed excessive by Lessee's representative at time of load test.
3. Load test the completed Locomotives for the following time periods.

| <u>NOTCH</u> | <u>(HOURS)</u> |
|--------------|----------------|
| 2 | 1/2 |
| 4 | 1/2 |
| 6 | 1 |
| 8 | 4 |

4. Clean all electrical rotating equipment deemed reasonably necessary by Lessee's representative. If rotating equipment has dirt or dust, it shall be blown out. If rotating equipment has grease or oil, it shall be cleaned with a solvent.
5. Change oil in journal boxes and traction motor support bearings; change wick gaskets.
6. Free grounds from high and low and AC electrical systems.
7. Supply four GP20 Locomotive with oldest date with new three (3) year air cards.
8. Apply clear coat to finished paint scheme.
9. Supply all Locomotives with two (2) inch or better wheels with 1 3/8" flange height and 1 5/32" width.

10. All work described in Lessor's March 25, 1991 proposal to Lessee.

LESSOR: NATIONAL RAILWAY EQUIPMENT COMPANY

BY: Lawrence J. Bond
Title: PRES

LESSEE: ARIZONA & CALIFORNIA RAILROAD COMPANY
LIMITED PARTNERSHIP

PARKSIERRA, CORP., GENERAL PARTNER

BY: David L. Parkinson

NAME: DAVID L. PARKINSON

Title: PRESIDENT

