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17675
JAN 21 1992 -10 50 AM
INTERSTATE COMMERCE COMMISSION

2-021A028

January 10, 1992

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

RE: Lease of Locomotive Equipment
National Railway Equipment Company, Lessor
Soo Line Railroad Company

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 November 18, 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

Soo Line Railroad Company
P.O. Box 530, Soo Line Building
Minneapolis, MN 55440

MOTOR OPERATING UNIT
JAN 21 10 44 AM '92

A description of the equipment covered by the document follows:

<u>Unit No.</u>	<u>Type</u>	<u>General Description</u>
AEE 1	GP40	EMD Locomotive
AEE 2	GP40-2	EMD Locomotive

Office of the Secretary
January 10, 1992
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NRE 6698	GP40	EMD Locomotive
NRE 2078	GP38	EMD Locomotive

A fee of \$16.00 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.

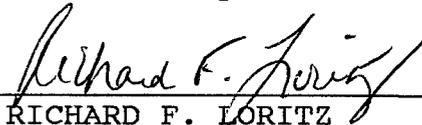
A short summary of the document to appear in the index follows:

A lease of locomotive equipment identified as four (4) locomotives, two EMD GP40, one EMD GP40-2, and one EMD GP-38, with National Railway Equipment Co., as Lessor, and Twin Cities & Western Railroad Company, as Lessee.

Also attached is an Affidavit executed by the attorney in fact for National Railway Equipment Co. and appropriately notarized declaring that the additional copy enclosed herewith is an exact copy of the original document.

Very truly yours,

NATIONAL RAILWAY EQUIPMENT CO.
an Illinois Corporation

BY: 
RICHARD F. LORITZ

ITS: Attorney and Agent in Fact

RFL/sjg

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

1/24/92

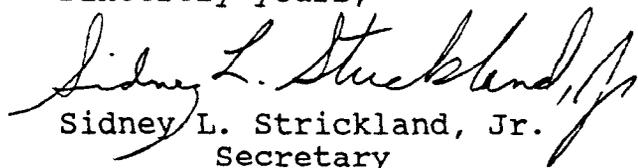
OFFICE OF THE SECRETARY

Richard F. Loritz
Orland State Bank Building
9533 West 143rd Street
Orland Park, Illinois 60462

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 1/21/92 at 10:50am , and assigned recordation number(s). 17675,17676,17677 , 17678 & 17679

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

17675
FILED NO _____ FILED 1408

JAN 21 1992 - 10 50 AM

SHORT TERM LEASE OF RAILROAD EQUIPMENT

INTERSTATE COMMERCE COMMISSION

This Short-Term Lease of RAILROAD EQUIPMENT ("Lease"), dated as of November 18, 1991 by and between NATIONAL RAILWAY EQUIPMENT CO. an Illinois Corporation ("LESSOR") and SOO LINE RAILROAD COMPANY, a Minnesota Corporation ("LESSEE").

WHEREAS, LESSOR is the owner of certain railroad equipment (individually a "Unit" and collectively the "Units" or "Equipment") which LESSEE desires to lease from LESSOR;

WHEREAS, said Equipment which is subject to this Lease is described and set forth in Appendix A attached hereto and incorporated herein by reference; and

WHEREAS, LESSOR has agreed to lease the equipment to LESSEE on the following terms and conditions;

NOW, THEREFORE, in consideration of the premises and of the rentals and other considerations to be paid and the covenants hereinafter mentioned to be kept and performed by the LESSEE, the LESSOR hereby leases the Equipment to the LESSEE upon the following terms and conditions:

1. Term. Unless sooner terminated in accordance with the provisions of this Lease, LESSOR agrees to lease the Equipment to LESSEE, and LESSEE agrees to lease the Equipment from LESSOR, for an initial term of Sixty (60) days from the date of delivery of the Equipment to LESSEE, which date shall commence upon delivery to LESSEE of possession of each Unit of Equipment, unless otherwise agreed between the parties. The parties shall have the right to extend this initial term of the Lease upon agreement in writing so amending this Lease.

2. Rent. LESSEE agrees to pay rates specified in Appendix A per day or a fraction thereof as rental for each such Unit of Equipment in LESSEE's possession. For purposes of this paragraph, "LESSEE's possession" shall mean the date and time of day LESSOR places each Unit on a track of LESSEE mutually agreed upon by LESSOR AND LESSEE. Upon termination of this Lease, LESSEE shall return such Units of Equipment, at its expense, to the same track for redelivery to the LESSOR, in the same operating condition, normal wear and tear excepted.

Rental due shall be billed to LESSEE and payable to LESSOR monthly in arrears.

3. Ownership of Equipment. It is understood by the parties that LESSOR shall at all times be and remain the owner of the Equipment. LESSEE agrees that it will at no time take any action or file any document which is inconsistent with LESSOR'S ownership and that it will take such action and execute such documents as may be necessary to preserve the LESSOR'S rights in accordance with this understanding.

4. Condition of Equipment. LESSOR represents that each Unit is in satisfactory operating condition and fit for general purpose use. For a period of ten (10) days from date of delivery, the LESSOR will warrant that the units will remain free of catastrophic failures, and the LESSOR further warrants the diesel engine from catastrophic failure such as a crankshaft & the main generator, turbo charger & air compressor against failure replacement for the term of this LEASE, other than through abuse, misuse, or mishap while in the LESSEE'S possession. If LESSEE notifies LESSOR in writing that any such condition exists, rental for the Unit of Equipment so affected will not be charged for the unserviceable period. The method and location of any required repairs and all related expenses must be mutually agreed upon by the LESSOR and LESSEE at that time, or LESSEE shall return the Unit to the LESSOR at the same location where delivery was made. LESSOR shall have the right, but not the obligation, to correct any such condition, to designate with LESSEE'S consent a substitute Unit, or in LESSOR'S sole discretion to delete such Unit from this Lease. Any Unit so repaired or substituted shall, upon redelivery to LESSEE, become subject to all the terms and conditions of this Lease following satisfactory completion of the repairs or such substitution. LESSOR makes no other warranty or representation, expressed or implied, with respect to the Equipment.

5. Inspections by LESSOR/LESSEE. Prior to delivery of the Equipment by LESSOR to LESSEE, and upon re-delivery by the LESSEE to the LESSOR, a mechanical inspection will be made by the LESSOR. LESSEE shall, at its option, have the right to have a designated representative present at these inspections to insure that the Equipment is in the same condition as at the time of delivery to the LESSEE; if LESSEE elects not to have a representative present at either or both inspections, LESSEE shall waive such right by signing a "Waiver of LESSEE'S Right of Inspection" in the form attached hereto as Appendix B.

6. Modifications. LESSOR shall not provide radios with the Equipment.

LESSEE shall not alter, modify or improve any Unit without the prior written consent of LESSOR. Any replacement parts and modifications shall constitute accessions to the Units and shall become the property of LESSOR. If LESSEE makes any alteration, modification or improvement to a Unit without LESSOR'S prior written consent, LESSEE shall be liable to LESSOR for any costs reasonably incurred by LESSOR to restore such Unit to its condition prior to such change.

7. Records and Inspection. LESSEE agrees to keep and maintain and make available upon request to LESSOR such records of LESSEE'S use, operation, inspection, repairs and maintenance of each Unit while in its possession as shall be reasonably required by LESSOR. LESSOR, by its designated agent(s), shall have the right at all reasonable times to go upon LESSEE'S property to inspect the Equipment while in the possession of LESSEE.

8. Casualties and Insurance. LESSEE agrees that it will be solely

responsible for any loss, damage or destruction of any Unit leased hereunder to it by LESSOR while in possession of LESSEE and subject to this Lease unless due to an item under warranty under Section 4 hereof. In the event of said Units during the term of this Lease (including any extension thereof) and before redelivery of the Unit to LESSOR becomes lost, destroyed or damaged beyond repair from any cause whatsoever (except causes which LESSOR warrants in Section 4 hereof), rental with respect to such Unit shall cease immediately, but in such case LESSEE agrees to pay LESSOR the sum specified as the casualty value in Appendix A per Unit within thirty (30) days of such event. LESSEE agrees to notify LESSOR in writing within five (5) business days after such event occurs. Upon such payment by LESSEE, the LESSEE shall have exclusive rights to said Unit. LESSEE agrees to insure or self insure the Units in the same manner it insures and self insures similar owned equipment.

9. Payments. LESSEE agrees to make each rental and other payment provided for herein at or prior to 15 business days after receipt of LESSOR's invoice, in the city where such payment is to be made. Unless otherwise directed, LESSEE shall make such payments to the following address:

National Railway Equipment Co.
14400 S. Robey St., P. O. Box 2270
Dixmoor, IL 60426

LESSOR shall have the right to direct LESSEE to make such payments by wire transfer of such funds by providing wire transfer instructions 15 days in advance of the due date of the payment.

10. Indemnification. Until the termination of this Lease with respect to each Unit of Equipment, the possession, use, operation and maintenance of each Unit shall be at the sole risk and expense of the LESSEE (except for those matters which are the subject of the warranty in Section 4 hereof). LESSEE shall indemnify and save harmless the LESSOR from and against all liability, cost and expense arising during the term of this Lease with respect to each such Unit from any claim, cause of action, damages or liability (including reasonable attorney fees and expenses in connection therewith) which the LESSOR may incur in any manner which may arise in any manner out of, or as a result of, the use, maintenance, repair or operation of the Equipment or by reason of its condition or as a result of any claim or suit for negligence in tort or injury to any person, except that LESSEE will not be obligated to indemnify LESSOR from claims or losses arising from LESSOR's negligence, or strict liability, or from LESSOR's responsibilities under Section 4 hereof, or losses or damages occurring after the earlier of the redelivery of the Equipment or the expiration of the Lease. In consideration of LESSEE's obligation to indemnify LESSOR pursuant to this section, LESSOR agrees to assign to LESSEE any rights LESSOR may have against any third party in connection with any matter so indemnified.

11. Compliance with Applicable Laws. LESSEE agrees that, while it has physical possession and control of the Equipment during the term

of this Lease, the Equipment will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the Units may be operated and in compliance with all applicable laws, regulations, rules, requirements or orders of any governmental bodies having power to regulate or supervise the use of the Equipment, except that either LESSOR or LESSEE may in good faith and by appropriate proceedings contest the applicability of any such laws, regulations, rules, requirements or orders in any reasonable manner at the expense of the contesting party.

LESSEE agrees to use each Unit only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. LESSEE shall, at its own cost and expense, maintain and keep each Unit in the same order, condition and repair, ordinary wear and tear excepted, and except for items warranted by LESSOR in Section 4 hereof.

12. Possession and Use; Assignments. So long as LESSEE shall not be in default under this Lease, LESSEE shall, except as otherwise provided in this section, be entitled to the possession, use and quiet enjoyment of each Unit of Equipment in accordance with the terms hereof. However, LESSEE's rights shall be subject and subordinate to the rights of any secured party under any financing agreement entered into by LESSOR in connection with some or all of the Units, and upon notice to LESSEE from any such secured party that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent be paid directly to such party or that said Units be immediately returned to such party. LESSEE's obligations to pay rent will terminate when the Unit is returned to such party.

LESSEE shall not assign or sublet its interest under this Lease, or any part thereof, or permit the use or operation of any Unit of Equipment subject to this Lease by any other person, firm or corporation, other than wholly-owned subsidiaries of LESSEE or its parent and its parents wholly owned subsidiaries, without the prior written consent of LESSOR. LESSOR expressly consents to incidental operation and use on railroads other than LESSEE under standard run-through and power pooling arrangements. LESSOR may at any time assign all or any portion of the rentals or other payments due or to become due hereunder, and/or its interest in the leased Equipment, without notice to LESSEE and in such event LESSOR's transferee, as such assignee, shall have all the rights, powers, privileges and remedies of the LESSOR hereunder. LESSEE shall have no obligation to pay any such assignee, and shall continue to pay LESSOR, until such time as written notice is given by LESSOR to LESSEE of such assignment.

13. Notices. Unless otherwise specifically provided, any notices required or permitted to be given by either party hereto to the other shall be deemed to have been given when personally delivered or five days after mailing by certified or registered mail, postage prepaid, addressed as follows:

(a) If to the LESSOR,
National Railway Equipment Co.
14400 S. Robey St., Box 2270
Dixmoor, IL 60426
Attn: President

(b) If to the LESSEE,
Soo Line Railroad Company,
P.O. Box 530, Soo Line Building,
Minneapolis, MN 55440,
Attention: Mr. L. D. Bell

or addressed to any party at such other address as such party shall hereafter furnish to the other party in writing.

14. Taxes. LESSEE agrees to indemnify LESSOR against all taxes, fees and charges (including sales, use, excise, personal property and other taxes) imposed by any Federal, state or local tax authority which would not have been imposed or levied but for the transaction contemplated hereby: excluding taxes imposed or based on the gross or net income of LESSOR, or franchise taxes, gross receipts taxes, revenue ton mile taxes, single business taxes, capital or net worth taxes, or any other taxes to the extent that they are in lieu of gross or net income taxes imposed on LESSOR by Federal, state or local tax authorities. LESSEE will not indemnify LESSOR for any taxes imposed or levied upon the LESSOR where such taxes are the result of LESSOR's act or failure to act or misrepresentation or omission or negligence.

If any claim is made against LESSOR for any taxes indemnified against pursuant to the preceding paragraph, LESSOR shall promptly notify LESSEE. LESSEE may, and LESSOR shall, upon LESSEE's request, contest, through appropriate administrative or judicial forum, any claim that could result in an indemnity payment pursuant to the preceding paragraph. LESSEE shall pay all costs incurred in connection with such a contest. LESSEE shall have the right to review and approve all submissions to any administrative agency or court. Such approval shall not be unreasonably withheld. LESSEE shall not be required to pay or discharge any tax or claim so long as LESSEE or LESSOR shall, in good faith, contest the validity of the tax or claim in accordance with this paragraph.

15. Events of Default. The occurrence of any of the following events shall be an Event of Default:

- (a) The non-payment by LESSEE of any sum required to be paid by it to LESSOR hereunder after five (5) business days written notice from LESSOR that such has not been paid when due;
- (b) The breach by LESSEE of any other term, covenant or condition of this Lease which is not cured within fifteen (15) days (WAS 30 DAYS) after receipt of written notice from LESSOR of such breach; and

- (c) Any act of insolvency or bankruptcy, whether voluntary or involuntary, of LESSEE, including the filing by LESSEE of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

Upon the occurrence of any such Event of Default, LESSOR may, at its option and to the extent permitted by law (including applicable sections of the Federal Bankruptcy Code):

- (a) Terminate this Lease; proceed by any lawful means to recover damages for a breach hereof; and terminate LESSEE's right of possession and use of the Equipment, whereupon all right and interest of LESSEE in the Equipment shall terminate and thereupon LESSOR may lawfully enter upon any premises where the Equipment is located and take possession of the Equipment and henceforth hold, possess and enjoy the same free of any right of the LESSEE, provided that LESSOR shall nevertheless retain the right to recover from LESSEE any and all rental or other payments which under the terms of this Lease may then be due or which may have accrued to the date on which LESSOR took such possession; or,
- (b) Proceed by any lawful means to enforce performance by LESSEE of this lease;

in which event LESSEE agrees to bear the cost and expense, including without limitation reasonable attorney fees, incurred by LESSOR in connection with the exercise of its remedies pursuant to this section.

17. Miscellaneous.

- A. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- B. No failure or delay by LESSOR shall constitute a waiver or otherwise affect or impair any right, power or remedy available to LESSOR nor shall any waiver or indulgence by LESSOR or any partial or single exercise of any right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy.
- C. This Lease shall be governed by and construed in accordance with the laws of the State of Minnesota; provided however, that the parties shall be entitled to all rights conferred by Section 11303 of the Interstate Commerce Act, and, if applicable, Section 86 of the

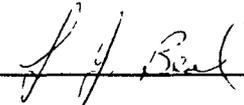
Railway Act of Canada.

- D. This Lease, and the appendices hereto, exclusively and completely represent the entire agreement and states the rights of the LESSOR and LESSEE with respect to the leasing of the Equipment and supersedes any other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for both the LESSOR and LESSEE.

- E. All agents or representatives of the LESSOR must sign a personal liability waiver form before gaining access to the LESSEE'S property for any reason.

In WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

NATIONAL RAILWAY EQUIPMENT CORP.
LESSOR

By: 
Title: President

Date Executed: 12/10/91

SOO LINE RAILROAD COMPANY,
LESSEE

By: 
Title: Vice President and
Chief Operating Officer

Date Executed: 11/18/91

APPENDIX A TO SHORT TERM LEASE OF RAILROAD EQUIPMENT

Description of Equipment: 2 EMD GP40 Locomotives
1 EMD GP40-2 Locomotive
1 EMD GP-38 Locomotive

The locomotive initials and numbers are as follows:

Locomotive #	Description	Daily Rate	Casualty Value
AEE 1	GP40 Locomotive	\$200.00	\$250,000.00
AEE 2	GP40-2 Locomotive	\$275.00	\$325,000.00
NRE 6698	GP40 Locomotive	\$175.00	\$200,000.00
NRE 2078	GP38 Locomotive	\$175.00	\$175,000.00

APPENDIX B TO SHORT-TERM LEASE OF RAILROAD EQUIPMENT

WAIVER OF LESSEE'S RIGHT OF INSPECTION

The undersigned, having the authority to act for and on behalf of the LESSEE, hereby waives the right of LESSEE, as set forth in Section 5 of "Short Term Lease of Railroad Equipment" dated as of November 18, 1991, to have a representative present at the inspection of the locomotives prior to delivery to the LESSEE.

Date: 11 Nov 91

By C. E. Beal

Title: Chief Mechanical Officer

The undersigned, having the authority to act for and on behalf of the LESSEE, hereby waives the right of LESSEE, as set forth in Section 5 of "Short Term Lease of Railroad Equipment" dated as of December 10, 1991, to have a representative present at the inspection of the locomotives upon redelivery to LESSOR.

Date: 12/10/91

By J. J. Beal

Title: President

