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RECORDATION NO. 24626-A FILED

OCT 1 2003

12:19 PM

SURFACE TRANSPORTATION BOARD

October 1, 2003

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423-0001  
Attn: Equipment recordations

To Whom It May Concern:

I am enclosing for recordation pursuant to the provisions of 49 U.S.C. 11301 a Collateral Assignment of Locomotive Lease Agreement dated September 30, 2003, a primary document.

The names and addresses of the parties to the enclosed document are:

Assignor/Company: National Railway Equipment Co.  
14400 S. Robey Street  
P.O. Box 2270  
Dixmoor, IL 60426

Assignee/Lender: LaSalle Bank National Association  
135 So. LaSalle Street  
Chicago, IL 60603

A description of the railroad equipment covered by the enclosed document is:

(i) All railroad cars, locomotives, or other rolling stock or accessories used on such railroad cars, locomotives or other rolling stock, as may be further described in Schedule 1.1, to the Locomotive Security Agreement and in the attached leases; (ii) all certificates of title and all other evidence of title with respect to the foregoing; (iii) all books, records, and files of whatever form or nature, whether or not written, stored electronically or in any other form, relating to any and all of the foregoing; and (iv) all products or proceeds of all of the foregoing, including proceeds of any insurance.

Hon. Vernon A. Williams  
October 1, 2003  
Page two

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

"Collateral Assignment of Locomotive Lease Agreement"

Also enclosed is a check in the amount of \$30 payable to the Surface Transportation Board to cover the required recordation fee.

Please date stamp and return to me one copy of the enclosed document.

Sincerely yours,



John D. Heffner

Enclosure

cc: Robert Loewer, Esq.

RECORDATION NO. 24626-A FILED  
OCT 1 '03 12:19 PM  
SURFACE TRANSPORTATION BOARD

**COLLATERAL ASSIGNMENT OF  
LOCOMOTIVE LEASE AGREEMENT**

**THIS COLLATERAL ASSIGNMENT OF LOCOMOTIVE LEASE AGREEMENT**  
(this "Assignment") is dated as of September ~~23~~ 2003 and is made by National Railway  
Equipment Co., an Illinois corporation (the "Company"), to and in favor of LaSalle Bank  
National Association (the "Lender").

**WHEREAS**, Company has entered into each of the Locomotive Lease Agreements listed  
on Schedule 1 hereto, true copies of which are attached hereto as Exhibit A through Exhibit P,  
and certain instruments, documents and agreements pursuant thereto (each a "Lease" and  
collectively, the "Leases") for the lease of certain locomotive inventory owned by Company as  
more fully set forth in the Leases;

**WHEREAS**, Company is party to that certain Loan and Security Agreement of even date  
herewith by and among Company, NRE Wheelworks, Inc., an Illinois corporation, N.R.E.  
Acquisition Co., L.L.C., a Kentucky limited liability company, NRE-ALCO Locomotives of  
Canada, Inc., an Illinois corporation, ALCO Locomotive Company, an Illinois corporation,  
NRE-ALCO Locomotives of Canada Co., a Nova Scotia unlimited liability company  
(collectively, the "Borrowers") and the Lender (as further amended, supplemented or otherwise  
modified from time to time, the "Loan Agreement");

**WHEREAS**, as a condition to the making of Loans and the issuance of Letters of Credit  
under the Loan Agreement and as security for all of the Liabilities of Borrowers under the Loan  
Agreement, Lender is requiring that Company execute and deliver this Assignment and grant the  
security interests contemplated hereby; and

**NOW, THEREFORE**, for good and valuable consideration, receipt of which is hereby  
acknowledged, and in consideration of the terms and conditions contained herein, Company  
hereby agrees with Lender as follows:

1. Collateral Assignment. For the purpose of securing all of Company's Liabilities  
to Lender under the Loan Agreement, Company does hereby collaterally assign and transfer to  
Lender, and grants a security interest to Lender in, all right, title and interest of Company in, to  
and under (a) each Lease, (b) all of Company's rights in, under and pursuant to each Lease,  
including, but not limited to, any and all rights to compensation thereunder, whenever arising or  
coming into existence and (c) all cash and non-cash proceeds of the foregoing, as collateral  
security for the payment in full of all of the Liabilities.
  
2. Lender not Obligated under Leases. Notwithstanding the foregoing, Company  
expressly agrees that it shall remain liable under each Lease to perform all of the conditions and  
obligations provided therein to be observed and performed by it, and neither this Assignment nor  
any action taken hereunder shall cause Lender to be under any obligation or liability in any  
respect to any party to such Lease including, without limitation, the lessee thereunder, for the  
performance or observance of any of the representations, warranties, conditions, covenants,  
agreements or other terms of such Lease.

3. Lender may Enforce Rights under Leases. Upon the occurrence of an Event of Default, Lender may enforce, either in its own name or in the name of Company, all rights of Company under each Lease, and may (a) enforce any rights of Company under such Lease in accordance with the terms thereof, (b) compromise or settle any disputed claims as to rights of Company under such Lease, (c) give releases or acquittances of rights of Company under such Lease or (d) do any and all things necessary, convenient or proper to fully and completely effectuate the collateral assignment of the rights of Company under such Lease pursuant hereto.

4. Further Assurances. Company agrees that at any time or from time to time, upon Lender's request, it will execute and deliver to Lender such further documents and do such other acts and things as Lender may request in order to further effect the purposes of this Assignment, including, without limitation, (a) the filing or recording of this Assignment (or any schedule, amendment or supplement thereto) with the Surface Transportation Board or (b) the filing of a financing or continuation statement with respect hereto with the Illinois Secretary of State, each in accordance with the applicable laws. Company hereby authorizes Lender to effect any such filing or recording as aforesaid (including the filing of any such financing statements or amendments thereto without the signature of the Company), and Lender's costs and expenses with respect thereto shall be payable by Company on demand. In the event any action is brought by Lender to enforce any rights of Company under the Loan Agreement in accordance with the terms thereof, Company will cooperate with and assist Lender, at Company's sole cost and expense, in the prosecution thereof.

5. Representations and Warranties. Company hereby represents and warrants with respect to each Lease that (a) such Lease is in full force and effect and is enforceable in accordance with its terms without amendment or modification, (b) no default or condition which, with the giving of notice or the passage of time or both would constitute a default, exists under such Lease, (c) Company has not assigned or pledged or otherwise encumbered such Lease and (d) such Lease has been properly recorded with the Surface Transportation Board in accordance with the applicable laws..

6. Covenants. Company hereby covenants and agrees with respect to each Lease that (a) it will not assign, pledge or otherwise encumber any of its right, title or interest under, in or to such Lease, to anyone other than Lender, its successors and assigns, (b) it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of such Lease or this Assignment, (c) it will not, outside of the ordinary course of Company's business, without prior written consent of Lender, enter into any agreement amending, supplementing or modifying such Lease, (d) it will not, outside of the ordinary course of Company's business, without the prior written consent of Lender, waive any obligation of any party to such Lease, (e) it will not, outside of the ordinary course of Company's business, consent or agree to any act or omission to act on the part of any party to such Lease which, without such consent or agreement, would constitute a default thereunder, (f) it will exercise promptly and diligently each and every right which it may have under such Lease (except for the right to terminate) and (g) it will deliver to Lender a copy of each demand, notice, communication or document (except for those received in the ordinary course of business and not relating to the amendment or termination thereof, or the default thereunder by any party)

delivered to it in any way relating to such Lease. Notwithstanding the foregoing, Company shall not take any action with respect to any Lease or any other Locomotive Lease which has been utilized for purposes of calculating the Term Loan Valuation or the Borrowing Base, if the effect of such action or the aggregate effect of all such actions reduces the Net Present Value of the lease payments due under the Leases and the Locomotive Leases by more than \$50,000.00.

7. Power of Attorney. Company hereby constitutes and appoints Lender, its successors and assigns, Company's true and lawful attorney, irrevocably, with full power (in the name of Company or otherwise), upon the occurrence and continuance of any Event of Default under the Loan Agreement to file any claims or take any action at law or in equity or as Lender may otherwise deem appropriate or to be necessary or advisable in respect of each Lease. This power of attorney is coupled with an interest and shall be irrevocable so long as there are any outstanding Liabilities.

8. Final Agreement. This Assignment is supplemental to the Loan Agreement and Lender shall be entitled to have all rights and remedies herein and therein, cumulatively.

9. Amendment. This Assignment may only be amended by a writing executed by the party to be bound by the amendment.

10. Choice of Law. This Assignment shall be governed by the internal laws of the state of Illinois (excluding, however, conflict of law principles).

11. Definitions. Capitalized terms not otherwise defined herein shall have the meanings provided in the Loan Agreement.

12. Counterparts. This Assignment may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

[signature page follows]

**LENDER:**

LASALLE BANK NATIONAL ASSOCIATION

By:   
Name: Brian Greenblatt  
Its: Senior Vice President

STATE OF ILLINOIS            )  
  )ss.  
COUNTY OF ~~COOK~~ <sup>Lake</sup>        )

On this 29<sup>th</sup> day of September 2003, before me personally appeared Brian Greenblatt, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of LaSalle Bank National Association, that the foregoing instrument was signed on behalf of said bank and he acknowledged that the execution of the said instrument was his free act and deed.

NOTARY PUBLIC: *Karen Petersen*  
My commission expires: 4-2-05



IN WITNESS WHEREOF, the undersigned has caused this Assignment to be executed under seal by its duly authorized officer on the day and year first written above.

NATIONAL RAILWAY EQUIPMENT CO.,  
an Illinois corporation

By: *L. J. Beal*  
Name: *L. J. BEAL*  
Its: *CEO & President*

STATE OF ILLINOIS )  
 )ss.  
COUNTY OF Cook )

On this 29<sup>th</sup> day of September 2003, before me personally appeared Lawrence Beal, to me personally known, who being by me duly sworn, says that he is the President of National Railway Equipment Co., that the foregoing instrument was signed on behalf of said company, and he acknowledged that the execution of the said instrument was his free act and deed.

NOTARY PUBLIC: Robert E. Loewer, Jr.  
My commission expires: 3-3-2007



## SCHEDULE 1

### Locomotive Lease Agreements

- A. By and between Company and Albany & Eastern Railroad, dated as of October 24, 2001
- B. By and between Company and APM S.A. de C.V., dated as of March 19, 2001
- C. By and between Company and Border Steel, dated as of January 29, 2001
- D. By and between Company and City of Tacoma, dated as of May 10, 1999
- E. By and between Company and Great Western Railway Company, dated as of February 26, 2001
- F. By and between Company and Indiana Harbor Belt Railroad Company, dated as of March 28, 2003
- G. By and between Company and Indiana Harbor Belt Railroad Company, dated as of January 14, 2003
- H. By and between Company and Minnesota Corn Processors, LLC, dated as of March 1, 2002
- I. By and between Company and Southern California Railroad Corporation, dated as of November 16, 2000
- J. By and between Company and Southwestern Railway Company, Inc., dated as of April 30, 2002
- K. By and between Company and Wisconsin & Southern Railroad Company, dated as of February 13, 2002
- L. By and between Company and Brookville Equipment Company, dated as of November 25, 2002
- M. By and between Company and ISPAT Inland Inc., dated as of September 9, 2003
- N. By and between Company and New Hampshire & Vermont Railroad Company, dated as of January 14, 2003
- O. By and between Company and Point Comfort & Northern Railway Co., dated as of January 30, 2003
- P. By and between Company and Nucor Steel, dated as of May 31, 2001
- Q. By and between Company and Utah Railway Company, dated as of March 30, 2001
- R. By and between Company and Holnam., Inc., dated as of April 3, 2000

**EXHIBIT A**

Albany & Eastern Railroad

## LOCOMOTIVE LEASE AGREEMENT

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 24th day of October 2001, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Albany & Eastern Railroad, ("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 affect prompt delivery of the locomotive(s) to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination.

#### 3. RENTAL

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one months rent payable on acceptance of the locomotive(s) and one months rent to be held as security. Lessee shall operate such locomotive(s) in service on its railroad. 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:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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**

Lessee shall accept delivery of the locomotive(s) at Lessor's staging area in Capreol, Ontario, Canada. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor or to Lessor's end-user(s) at one or more of its designated contiguous United States and/or Canadian facilities in good order and condition, reasonable wear and tear accepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

## **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 good condition and repair.
  - ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the specified warranty items as indicated below:
    - a. One hundred and eighty - (180) days on all qualified components, excluding allowance for any freight or labor charges from date of locomotive on-site commissioning, not to exceed a start/commissioning date past ninety days from date of ex-works shipment.
- 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 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 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) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.
- 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).
- iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

- i. be written in standard form by an insurance company acceptable to Lessor.
- ii. provide coverage in an amount not less than the replacement value 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Stipulated Loss Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer.

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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES.** Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to renewal or purchase the locomotive at the end of the initial lease term. The renewal purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### **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.

#### **13. 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 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.

#### **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 available to Lessor at Lessee's expense, any or all Equipment at 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Albany & Eastern Railroad  
1784 South Main Street  
Lebanon, Oregon 97355

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

**LESSOR:**

**NATIONAL RAILWAY EQUIPMENT CO.**

**BY:**

**NAME:** James E. Fisk

**TITLE:** President

**ATTEST:** Robert E. Loewer, Jr.

**BY:**

**TITLE:** Director Finance & General Counsel

**LESSEE:**

**ALBANY & EASTERN RAILROAD**

**BY:**

**NAME:** Mike Root

**TITLE:** President

**ATTEST:** Tamra Boyes

**BY:**

**TITLE:** Administrative Assistant

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 24<sup>th</sup> day of October 2001 by and between the National Railway Equipment Company (LESSOR) and Albany & Eastern Railroad (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
AERC 2001	EMD GP38	GP40 frame conversion to GP38
AERC 2002	EMD GP38	GP40 frame conversion to GP38

**LEASE RATE**

REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
\$320,000.00	84 months	\$4,380.00	\$144.00
\$320,000.00	84 months	\$4,380.00	\$144.00

**PURCHASE OPTION:** Lessee may elect, at the end of the 2,555-day initial lease term, to purchase the Locomotive(s) above for \$30,000.00 each.

**RENEWAL RATE, TERM AND PURCHASE OPTION:** At the end of the 2,555 day initial lease term, Lessee may elect to renew the lease for not less than one year (12 months) at a daily straight lease rate of \$144.00 per day per locomotive. The purchase option buyout at the end of the one-year renewal period would be \$20,000.00 per locomotive.

**COMMENCEMENT DATE:** January 31, 2002 accepted at Capreol, Ontario.

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the lease.

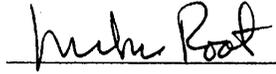
**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

BY: 

NAME: James E. Fisk

TITLE: President

**LESSEE: ALBANY & EASTERN RAILROAD**

BY: 

NAME: Mike Root

TITLE: President

**EXHIBIT B**

APM S.A. de C.V.

## LOCOMOTIVE LEASE AGREEMENT

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 19<sup>th</sup> day of March, 2001, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and APM S.A. de C.V. a Mexican Corporation, ("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 specifically described in Schedule "A" attached to and made part hereof. All commercial references and schedules identified herein and throughout the Agreement are in U.S. dollars.

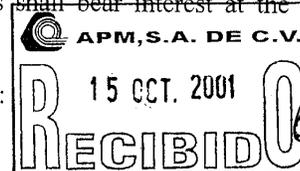
#### 2. TERM

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 either: a) effect prompt delivery of the locomotive(s) to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination (freight to be borne by Lessee) or; b) retain the locomotive at the Lessee's facility for directed disposition to another end-user within North America with freight disposition being borne by the Lessee.

Notwithstanding the foregoing, Lessee shall have the right to terminate this Agreement after the initial 24 (twenty four) month period, by giving prior written notice to Lessor with 30 (thirty) calendar days in advance to the date in which it desires to terminate this Agreement. In addition, Lessee will pay Lessor, within 14 (fourteen) calendar days of the termination date and in one lump sum, the net differential cost per day per EMD SW-1200 locomotive, for each day paid at US\$152 (One hundred and fifty two U.S. Dollars 00/100). This same penalty payment formulation will apply for a five year Baldwin locomotive lease under a voluntary early termination but at the rate for each day paid for the one Baldwin locomotive at US\$93.00 (Ninety three U.S. Dollars 00/100).

#### 3. RENTAL

- A. The rental payable shall be the sum identified in Schedule "A". Lessee shall operate such locomotive(s) in service on its railroad. 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 fifteen (15) days shall bear interest at the rate of twelve percent (12.00%) per annum.
- C. All rentals shall be paid to Lessor via wire transfer to:



LASALLE BANK N.A.  
120 S. LASALLE ST  
CHICAGO, IL 60603  
ABA# 071000505

TO THE ACCOUNT OF NATIONAL RAILWAY EQUIPMENT COMPANY  
ACCOUNT # 2275439

D. At the end of each 365 day period (from the date of Agreement signing), the locomotive daily rent shall escalate by the U.S. Consumer Price Index rate of inflation during the previous 12-month period.

#### 4. TAXES

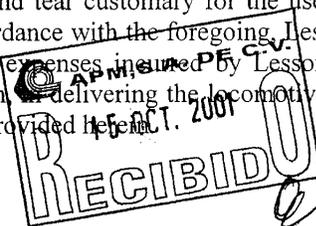
Each party shall be responsible to pay its corresponding taxes as set forth by applicable tax laws. Lessor shall pay its applicable taxes in accordance with the laws of the United States and Lessee shall pay its applicable taxes in accordance with the laws of Mexico. Import duties and other associated taxes for the equipment under the laws of Mexico are the responsibility of the Lessee throughout the duration of the Agreement.

#### 5. OWNERSHIP AND LESSOR'S INSPECTION

- A. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature, shall be made without Lessor's consent, 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. Lessee may exercise a renewal or a purchase option for the locomotive(s) at the end of the initial five-year term (see Article 11. and Schedule A below).

#### 6. DELIVERY/RETURN

Delivery of the locomotive(s) shall be accepted by Lessee at Lessor's staging areas in Dixmoor, Illinois and Silvis, Illinois and El Paso, Texas. Except as set forth in Articles 2 and 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor at one of its designated contiguous United States facilities or customer locations as complete locomotive(s) (with all the mechanical and electrical assemblies and components) and without physical locomotive(s) damage except for the reasonable wear and tear customary for the use of such locomotive(s). Lessee shall bear freight return costs. In accordance with the foregoing, Lessee shall pay or reimburse Lessor for any reasonable and ordinary expenses incurred by Lessor in returning the locomotive(s) to complete and undamaged condition and delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided hereunder.



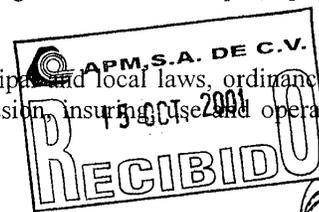
**7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER**

- A.
- i. Lessor hereby acknowledges that Lessee will have the opportunity to inspect and review in detail the locomotive(s) prior to accepting delivery of same, and that acceptance of delivery of the locomotive(s) by Lessee constitutes acknowledgment that Lessee agrees that the locomotive(s) have been received in good condition and repair, except for hidden defects or latent defects in the manufacturing, capacity, designs, etc.
  - ii. Lessor shall be responsible for the non-consumables (materials and labor) maintenance of the locomotive(s) during the term of this Lease. Lessee shall be responsible for the consumables, including water, oil, diesel fuel, sand, wheels, brake shoes and filters. In the understanding, however, that Lessor shall be responsible for any repairs and maintenance of the following major components, among others:
    - (a) Traction motors;
    - (b) Engine crankshaft;
    - (c) Generators;
    - (d) Air compressor;
    - (e) Auxiliary generator.
- B. Except as mentioned in Section A (i) above, 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 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:

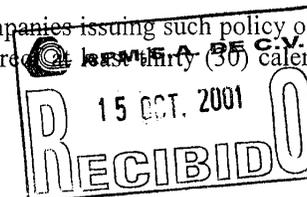
- A. Lessee shall be responsible and pay for all registrations, certificates, and permits, and all other similar requirements of governmental authorities, required to be obtained in the name of the Lessee.
- B. The locomotive(s) shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee. Lessor agrees to send an expert operator to train APM operators.
- C. Lessee shall comply with all federal, state, municipal and local laws, ordinances, and rules, and regulations relating to the lease, possession, insurance 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) in violation of any law, ordinance, rule or regulation of any governmental authority by Lessee.
- E. Lessee shall pay all costs, expenses and charges incurred in connection with the use and operation of the locomotive(s) but Lessee is limited only to the consumables materials regarding normal locomotive maintenance. The maintenance fee includes all labor and parts, excluding water, oil, diesel fuel, utilized fluids, sand, wheels, brake shoes and filters. These items (water, oil, diesel fuel, etc.) are considered consumables and are not typical to include in locomotive lease-maintenance contracts.
- F. Lessor shall maintain the locomotive(s) in good mechanical condition and running order and in compliance with OEM specifications. Lessee will provide an adequate facility for Lessor's on-going maintenance of the locomotive(s), including a roofed structure with a pit, forklift and portable crane capabilities on an as needed limited usage basis and adequate stores capabilities for spare locomotive component parts. Details of these requirements are listed under Exhibit I.
- 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 (US\$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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
  - ii. name Lessor as an additional insured party.
  - 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).
  - iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.
  - v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty (30) calendar days prior thereto.



- 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 coverages shall:
- i. be written in standard form by an insurance company acceptable to Lessor.
  - ii. provide coverage in an amount not less than the replacement value 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.
- D. Notwithstanding that Lessee shall provide certain insurance hereunder, 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 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive.
- 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

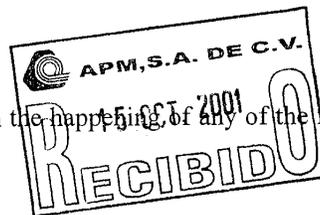
Lessor shall have the unconditional right to assign this lease, in whole or in part. Lessee shall have no right to assign or sub-lease this lease or any other of the locomotive(s) or any interest therein, except if to any subsidiary or affiliated company.

#### 11. RENEWAL AND PURCHASE OPTION

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 (ninety) business days notice, elect the option to renew or purchase the locomotive(s) at the end of the initial lease term. The renewal and purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### 12. DEFAULT

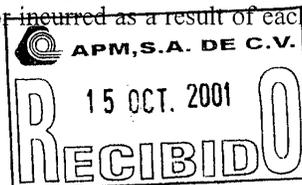
- A. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default"):



- i. Default in the payment 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

### 13. 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 available to Lessor at Lessee's expense, any or all Equipment 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 fifteen (15) calendar days prior to the date thereof shall constitute reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease or any one or more leases hereunder.

#### 14. RECORDATION OF LESSOR'S INTEREST

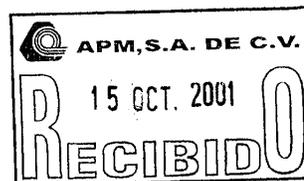
Lessee agrees to execute all recording documents requested by Lessor to show Lessor's interest in the locomotive(s). Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the locomotive(s) without Lessee's signature.

#### 15. FORCE MAJEURE

No party shall be considered to be in default in the performance of any of its obligations under this Agreement, when and to the extent failure of performance shall be due to Force Majeure. The party claiming Force Majeure shall use its reasonable efforts, including the expenditure of reasonable sums, to cure, mitigate or remedy the effects of Force Majeure.

For purposes of this Agreement, "Force Majeure" shall mean an act that (a) is beyond the reasonable control of the affected party, (b) is not due to its fault or negligence, and (c) cannot be avoided by the exercise of due diligence. Subject to the satisfaction of the conditions set forth in (a) through (c) above, Force Majeure shall include, without limitation: (i) natural phenomena, such as storms, floods, lightning, earthquakes; and drought; (ii) wars, civil disturbances, revolts, insurrections, sabotage and commercial embargoes, expropriation, confiscation and nationalization, and export or import restrictions; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any agreement by the affected party; (v) fires; and (vi) Change of Law or any actions or omissions of a Governmental Authority that were not voluntarily induced or promoted by the affected party, or brought about by the breach of its obligations under this Agreement or any Laws.

If any such cause of Force Majeure continues for a period of 90 (ninety) calendar days, then Lessee may terminate the Agreement with no responsibility whatsoever.

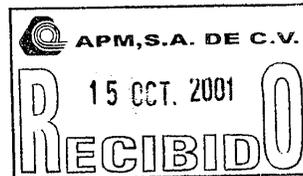


**16. MISCELLANEOUS**

- A. This Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Texas, U.S.A. Any dispute arising from or related to this Agreement shall be finally settled under the Rolesey Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with said rules, the arbitration procedure shall take place in Dallas, TX and be conducted in English language.
- 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 or Lessee in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Lessor or Lessee of any Event of Default by Lessee or Lessor 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, or if Lessee, by overnight courier, 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 Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: APM S.A. de C.V.  
Av. Churubusco Nte. No. 1000  
Apdo. Postal 1194 C.P. 64560  
Monterrey, N.L. México



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

**LESSOR:**

**NATIONAL RAILWAY EQUIPMENT CO.**

**BY:** 

**NAME:** Patrick C. Frangella

**TITLE:** Vice President & General Manager

**ATTEST:** Luis E. Mayor

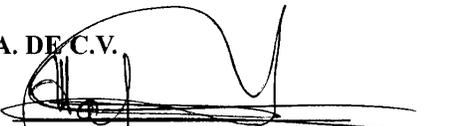
**BY:** 

**TITLE:** Vice President & Director of Finance

(Corporate Seal)

**LESSEE:**

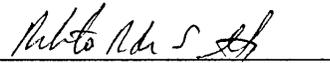
**APM S.A. DE C.V.**

**BY:** 

**NAME:** Mario Tijerina Molina

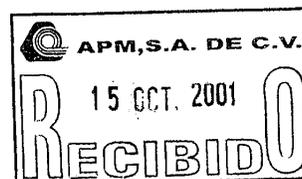
**TITLE:** Administration Manager

**ATTEST:** Roberto Rodríguez

**BY:** 

**TITLE:** Materials Manager

(Corporate Seal)



**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 19<sup>th</sup> day of March, 2001 by and between the National Railway Equipment Company (LESSOR) and APM S.A. de C.V. (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
112	EMD	SW-1200
108	EMD	SW-1200
TO BE DEFINED	Baldwin	RS-4-TC

**LEASE RATE**

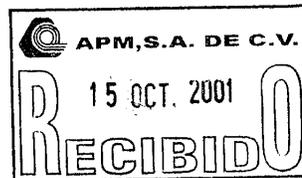
REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
\$410,000.00	5 Year	\$7,512.92	\$247.00
\$410,000.00	5 Year	\$7,512.92	\$247.00
\$165,000.00	90-120 days*	\$5,718.33	\$188.00

**PURCHASE OPTION:** Lessee may elect, at the end of the 5-year initial lease term, to purchase the EMD locomotive(s), model SW-1200, under Unit Numbers 112 and 108, for \$115,850.00 each per locomotive. In the event of Lessee executing a 5 year lease for the Baldwin locomotive, Lessee may elect, at the end of the 5-year initial lease term, to purchase the one (1) Baldwin locomotive for \$35,000.00 each.

**RENEWAL RATE:** At the end of the five year initial lease term (EMD SW-1200 locomotive(s)), Lessee may, at its option, choose to return the locomotive(s) to Lessor as described in Articles 2 and 6 above or continue the existing lease for a minimum renewal period of 365 days at the above referenced monthly and daily rates.

At the end of the 90-120 day initial lease term (Baldwin RS-4-TC locomotive), Lessee may, at its option, choose to return the locomotive to Lessor as described in Articles 2 and 6 above or continue the existing lease for a minimum renewal period of 5 years at the above referenced monthly and daily rates.

In the event of voluntary early termination of the lease (prior to the 60 month term but not, in any event, less than 24 months from Agreement effective date), Lessee will be responsible for the net accumulated daily difference of locomotive equipment payments under the 60-month term versus the schedule defined below. Rates shown are for the EMD SW-1200 locomotives, net daily each, excluding daily maintenance.

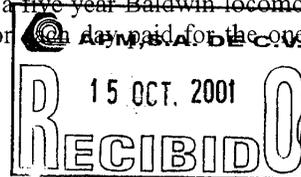


*Handwritten signatures and initials.*

LOCOMOTIVE LEASE					
PENALTY					
Period Month	Theoretical Rent	Daily Rent Per Locomotive	Difference Per Locomotive	Penalty Payment For SW-1200's	
12	\$ 469.00	\$ 152.00	No permitido	\$ -	\$ 109,440.00
24	\$ 469.00	\$ 152.00	No permitido	\$ -	\$ 218,880.00
25	\$ 300.00	\$ 152.00	\$ 148.00	\$ 222,000.00	\$ 228,000.00
26	\$ 292.70	\$ 152.00	\$ 140.70	\$ 219,492.00	\$ 237,120.00
27	\$ 285.40	\$ 152.00	\$ 133.40	\$ 216,108.00	\$ 246,240.00
28	\$ 278.10	\$ 152.00	\$ 126.10	\$ 211,848.00	\$ 255,360.00
29	\$ 270.80	\$ 152.00	\$ 118.80	\$ 206,712.00	\$ 264,480.00
30	\$ 263.50	\$ 152.00	\$ 111.50	\$ 200,700.00	\$ 273,600.00
31	\$ 256.20	\$ 152.00	\$ 104.20	\$ 193,812.00	\$ 282,720.00
32	\$ 248.90	\$ 152.00	\$ 96.90	\$ 186,048.00	\$ 291,840.00
33	\$ 241.60	\$ 152.00	\$ 89.60	\$ 177,408.00	\$ 300,960.00
34	\$ 234.30	\$ 152.00	\$ 82.30	\$ 167,892.00	\$ 310,080.00
35	\$ 227.00	\$ 152.00	\$ 75.00	\$ 157,500.00	\$ 319,200.00
36	\$ 219.70	\$ 152.00	\$ 67.70	\$ 146,232.00	\$ 328,320.00
37	\$ 207.00	\$ 152.00	\$ 55.00	\$ 122,100.00	\$ 337,440.00
38	\$ 204.71	\$ 152.00	\$ 52.71	\$ 120,178.80	\$ 346,560.00
39	\$ 202.42	\$ 152.00	\$ 50.42	\$ 117,982.80	\$ 355,680.00
40	\$ 200.13	\$ 152.00	\$ 48.13	\$ 115,512.00	\$ 364,800.00
41	\$ 197.84	\$ 152.00	\$ 45.84	\$ 112,766.40	\$ 373,920.00
42	\$ 195.55	\$ 152.00	\$ 43.55	\$ 109,746.00	\$ 383,040.00
43	\$ 193.26	\$ 152.00	\$ 41.26	\$ 106,450.80	\$ 392,160.00
44	\$ 190.97	\$ 152.00	\$ 38.97	\$ 102,880.80	\$ 401,280.00
45	\$ 188.68	\$ 152.00	\$ 36.68	\$ 99,036.00	\$ 410,400.00
46	\$ 186.39	\$ 152.00	\$ 34.39	\$ 94,916.40	\$ 419,520.00
47	\$ 184.10	\$ 152.00	\$ 32.10	\$ 90,522.00	\$ 428,640.00
48	\$ 181.81	\$ 152.00	\$ 29.81	\$ 85,852.80	\$ 437,760.00
49	\$ 179.52	\$ 152.00	\$ 27.52	\$ 80,908.80	\$ 446,880.00
50	\$ 177.23	\$ 152.00	\$ 25.23	\$ 75,690.00	\$ 456,000.00
51	\$ 174.94	\$ 152.00	\$ 22.94	\$ 70,196.40	\$ 465,120.00
52	\$ 172.65	\$ 152.00	\$ 20.65	\$ 64,428.00	\$ 474,240.00
53	\$ 170.36	\$ 152.00	\$ 18.36	\$ 58,384.80	\$ 483,360.00
54	\$ 168.07	\$ 152.00	\$ 16.07	\$ 52,066.80	\$ 492,480.00
55	\$ 165.78	\$ 152.00	\$ 13.78	\$ 45,474.00	\$ 501,600.00
56	\$ 163.49	\$ 152.00	\$ 11.49	\$ 38,606.40	\$ 510,720.00
57	\$ 161.20	\$ 152.00	\$ 9.20	\$ 31,464.00	\$ 519,840.00
58	\$ 158.91	\$ 152.00	\$ 6.91	\$ 24,046.80	\$ 528,960.00
59	\$ 156.62	\$ 152.00	\$ 4.62	\$ 16,354.80	\$ 538,080.00
60	\$ 154.33	\$ 152.00	\$ 2.33	\$ 8,388.00	\$ 547,200.00

- Lessee cannot voluntarily terminate the Locomotive Lease Agreement prior to 24 months.
- If Lessee elects to terminate the Locomotive Lease Agreement after the initial 24-month period, Lessee will pay Lessor, within 14 days of termination date and in one lump sum, the net Differential cost per day, per EMD SW-1200 locomotive, for each day paid at \$152.00. This same penalty payment formulation will apply to a five year Baldwin locomotive lease under a voluntary early termination but at the rate for ~~the one~~ Baldwin locomotive at US \$93.00.

1  
1



**COMMENCEMENT DATE:** Upon locomotive(s) acceptance at Dixmoor, Illinois and Silvis, Illinois and El Paso, Texas.

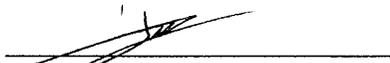
**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

**BY:** 

**NAME:** Patrick C. Frangella

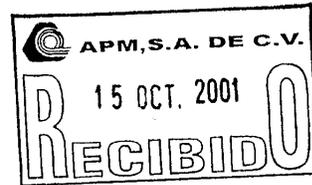
**TITLE:** Vice President & General Manager

**LESSEE: APM S.A. DE C.V.**

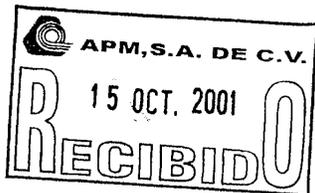
**BY:** 

**NAME:** Juan Carlos Marquinez

**TITLE:** Logistics Manager



112 and 108 started  
on Oct/15/01



**NATIONAL  
RAILWAY EQUIPMENT CO.**



14400 S. ROBESY STREET - P. O. BOX 2270 - DIXMOOR, ILLINOIS 60426  
TELEPHONE (708) 388 - 6002 - FAX (708) 388 - 2487

The following facilities and equipment are required to ensure expedient locomotive maintenance and service in the field and to ensure minimal locomotive downtime:

1. A building with dimensions of at least 60 feet long x 25 feet wide x 16 feet high (inside measurements) or at least a covered area reasonably clean and away from blowing dust and hot metal areas of a steel mill. This service area must be away from high traffic of all kinds.
2. A track with an inspection pit equipped with lighting at least 16 feet in length, over which to position one truck at a time for bottom inspection work.
3. Service: 480 volt 3 phase I outlet, 120 volt 1 phase multiple outlets, over head lighting, 90 psi compressed air supply (one out let minimum) and water supply (one outlet minimum).
4. A cleaning area to wash out the locomotive with appropriate drainage.
5. A secure, controlled access and dry parts storage area close to the service area.
6. Are the consumable items furnished by the end-user available close to the work area? Otherwise, a process for advanced staging of the materials must be established.
7. A crane with a 5 ton hoist which can at least reach the center of the track, high enough to clear the highest point of the locomotive (16 feet minimum) and be able to position the locomotive anywhere under the lifting device.
8. Jacking equipment capable of lifting the locomotive off the trucks or an over head crane capable of lifting the locomotive. The weight of the frame (without the trucks) would be 91 tons for the SW-1200 locomotives and approximately 50 tons for the Baldwin locomotive. (The jacking equipment was going to be provided by NREC, as per our first meeting in Dixmoor)
9. A forklift truck of 5-ton capacity and a mobile crane with a capacity of 30 tons.
10. Telephone access, rest room access; shower facility and clothes change area.
11. Plant access requirements including insurance requirements, telephone and fax numbers of local contacts, preferably bi-lingual and English speaking. A permanent 24-hour a day plant pass would be preferable.
12. Regarding the area where service is to be preformed and the track where the locomotive is located for service and maintenance work: can the track switch be padlocked to protect service personnel from locomotives and cars being set in on top of them?

**SCHEDULE "A" ADDENDUM MAY 3, 2002**

This Addendum, dated May 3, 2002, attached to and incorporated into the Lease dated the 19th day of March 2001 by and between the National Railway Equipment Company (LESSOR) and APM S.A. de C.V. (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
112	EMD	SW-1200
108	EMD	SW-1200
1255	Baldwin	RS-4-TC
To be defined	EMD	SW-1200

*Note that in Addendum "A" that the Baldwin is cancelled and we are waiting for the new addendum. Rob*

**LEASE RATE**

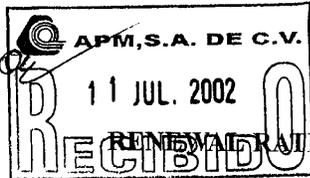
REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		MONTHLY	DAILY
\$410,000.00	5 Year	\$7,512.92	\$247.00
\$410,000.00	5 Year	\$7,512.92	\$247.00
\$165,000.00	6 Months	\$5,718.33	\$188.00
\$410,000.00	5 Year	\$7,512.92	\$247.00

**PURCHASE OPTION:** Lessee may elect, at the end of the 5-year initial lease term, to purchase the EMD locomotive(s), model SW-1200, under Unit Numbers 112, 108 and "to be defined" for \$115,850.00 each per locomotive.

Included in this Addendum Agreement is a commitment from Lessor to build out a pit and overhead housing structure to facilitate the maintenance of the locomotives throughout the term of the Agreement. In the event of voluntary early termination of the lease by Lessee, charges for the build out of the pit and structure (estimated at \$62,500.00 U.S. funds) will be prorated as an early termination charge to Lessee at 60% of \$62,500.00 if the lease is terminated in Year 3, 40% of \$62,500.00 if the lease is terminated in Year 4 and 20% of \$62,500.00 if the lease is terminated in Year 5. The estimate of \$62,500.00 will be adjusted to actual build out costs at the time of structural completion but in any event will not exceed the estimated cost of \$62,500.00.

Starting dates:

- Unit 112 accepted at APM-Monterrey on Monday, October 15, 2001
- Unit 108 accepted at APM-Monterrey on Monday, October 15, 2001
- Unit 1255 accepted at APM-Monterrey on Friday, May 3, 2002
- Unit "to be defined" to be accepted at APM-Monterrey on/or before November 1, 2002



**RENEWAL RATE:** At the end of the five year initial lease term (EMD SW-1200 locomotive(s),

*Handwritten initials and signature.*

Lessee may, at its option, choose to return the locomotive(s) to Lessor as described in Articles 2 and 6 above or continue the existing lease for a minimum renewal period of 365 days at the above referenced monthly and daily rates.

At the end of the 6 month initial lease term (Baldwin RS-4-TC locomotive), Lessee may, at its option, choose to return the locomotive to Lessor as described in Articles 2 and 6 above or continue the existing lease for minimum renewal periods of 60 days each at the above referenced monthly and daily rates.

In the event of voluntary early termination of the lease (prior to the 60 month term but not, in any event, less than 24 months from Agreement effective date), Lessee will be responsible for the net accumulated daily difference of locomotive equipment payments under the 60-month term versus the schedule defined below. Rates shown are for the EMD SW-1200 locomotives, net daily each, excluding daily maintenance.

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

**LESSOR:**

**NATIONAL RAILWAY EQUIPMENT CO.**

**BY:**

**NAME:** Patrick C. Frangella

**TITLE:** Vice President Operations

**ATTEST:**

Luis E. Mayor

James E. Fisk

**BY:**

**TITLE:** Assistant Secretary-  
President

(Corporate Seal)

**LESSEE:**

**APM S.A. DE C.V.**

**BY:**

**NAME:** Mario Tijerina Molina

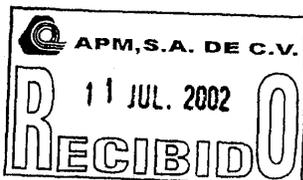
**TITLE:** Administration Manager

**ATTEST:** Roberto Rodríguez

**BY:**

**TITLE:** Materials Manager

(Corporate Seal)



*[Handwritten signature]*

**EXHIBIT C**

Border Steel

## LOCOMOTIVE LEASE AGREEMENT

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 29<sup>th</sup> day of January, 2001, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Border Steel, ("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 or to one of Lessor's end-users within the contiguous United States as designated by Lessor at time of termination.

#### **3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one months rent payable on acceptance of the locomotive(s) and one months rent to be held as security. Lessee shall operate such locomotive(s) in service on its railroad. 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:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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 therefore, 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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature, shall be made without Lessor's consent, 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**

Lessee shall accept delivery of the locomotive(s) at Lessor's staging area in Mt. Vernon, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor or to one of Lessor's end-users within the contiguous United States in good order and condition, reasonable wear and tear excepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

## **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 good condition and repair.
  - ii. Lessor shall be responsible for the non-consumables maintenance of the locomotive(s) during the term of this Lease. Lessee shall be responsible for the consumables, including water, fuel, sand, oil, wheels, brake shoes, traction motor brushes and filters. The Lessor point of contact for maintenance shall be Dwayne Ford in El Paso, Texas at 708.557.0306 or at 915.877.2356.
- 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 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 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) 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 use and operation of the locomotive(s) excluding non-consumables maintenance.

F. Lessor shall maintain the locomotive(s) in good mechanical condition and running order and in compliance with current OEM specifications for switcher locomotives. If the locomotive is down for more than 100 straight hours during any single occurrence, the lease payment will be abated for the period of time exceeding 100 straight hours.

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 five hundred thousand (\$500,000.00) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.

ii. name Lessor and Lessee as insured parties.

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).

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty (30) days prior thereto.

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 coverages shall:

- i. be written in standard form by an insurance company acceptable to Lessor.
- ii. provide coverage in an amount not less than the replacement value 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive.

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 no right to assign or sub-lease this lease or any other of the locomotive(s) or any interest therein.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to renew or purchase the locomotive at the end of the initial lease term. The renewal purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### **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.

### 13. 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 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.

### 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 available to Lessor at Lessee's expense, any or all Equipment 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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.

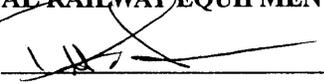
If to Lessor: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282  
Attention: James M. Wurtz, Jr.  
Phone: 708.388.6002

If to Lessee: Border Steel  
P.O. Box 12843  
El Paso, Texas 79913-0843  
Attention: Gerardo Salinas  
Phone: 915.886.2000

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

**LESSOR:**

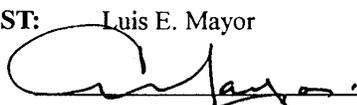
**NATIONAL RAILWAY EQUIPMENT CO.**

**BY:** 

**NAME:** Patrick C. Frangella

**TITLE:** Vice President Operations

**ATTEST:** Luis E. Mayor

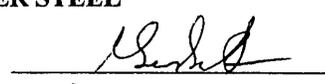
**BY:** 

**TITLE:** Assistant Secretary

(Corporate Seal)

**LESSEE:**

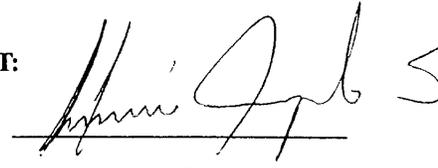
**BORDER STEEL**

**BY:** 

**NAME:** Gerardo SALINAS

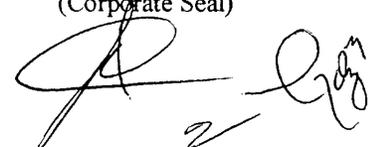
**TITLE:** President + COO

**ATTEST:**

**BY:** 

**TITLE:** OFFICER

(Corporate Seal)



**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 29<sup>th</sup> day of January by and between the National Railway Equipment Company (LESSOR) and Border Steel (LESSEE).

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

<b>UNIT NO.</b>	<b>TYPE</b>	<b>GENERAL DESCRIPTION</b>
2543	EMD	SW-1500 Switcher

**LEASE RATE**

<b>REPLACEMENT VALUE</b>	<b>LEASE TERM</b>	<b>LEASE RATE PER LOCOMOTIVE</b>	
		<b><u>MONTHLY</u></b>	<b><u>DAILY</u></b>
\$235,000.00	Two Years	\$5,931.25	\$195.00

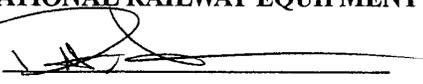
**PURCHASE OPTION:** Lessee may elect, at the end of the 730 day initial lease term, to purchase Locomotive(s) Unit No. 2543 for \$218,000.00.

**RENEWAL RATE, TERM AND PURCHASE OPTION:** At the end of the 730 day initial lease term, Lessee may elect to renew the lease for not less than two years (24 months) at a daily lease rate (with maintenance) of \$255.00 per day. The purchase option buyout at the end of the two-year renewal period would be \$198,000.00. In the event of a non-renewal and/or non-purchase of the subject locomotive, Lessee may return the locomotive to Lessor under the commercial conditions described in Article 2. and Article 6. above with a lump sum payment penalty of \$20,000.00 with payment penalty due via wire transfer within 48 hours of the lease termination date.

**COMMENCEMENT DATE:** February 28, 2001 accepted at Mt. Vernon, Illinois.

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the lease.

**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

**BY:** 

**NAME:** Patrick C. Frangella

**TITLE:** Vice President Operations

**LESSEE: BORDER STEEL**

**BY:** 

**NAME:** GERARDO SALINAS

**TITLE:** President + COO

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 29<sup>th</sup> day of January by and between the National Railway Equipment Company (LESSOR) and Border Steel (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
2543	EMD	SW-1500 Switcher

**LEASE RATE**

REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
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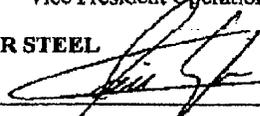
**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

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

NAME: Patrick C. Frangella

TITLE: Vice President Operations

**LESSEE: BORDER STEEL**

BY:  1/28/03

NAME: Jaime G. Sada

TITLE: Deputy President - Operations

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

LESSOR:

LESSEE:

NATIONAL RAILWAY EQUIPMENT CO.

BORDER STEEL

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

BY: [Signature] 1/28/03

NAME: Patrick C. Frangella

NAME: Jaime G. Soda

TITLE: Vice President Operations

TITLE: Deputy President - Operations

ATTEST: Luis E. Mayor

ATTEST: Jim Nielsen

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

BY: [Signature] 1-28-03

TITLE: Assistant Secretary

TITLE: MPI - General Foreman

(Corporate Seal)

(Corporate Seal)

**EXHIBIT D**

City of Tacoma

## LOCOMOTIVE LEASE AGREEMENT

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 10<sup>th</sup> day of May, 1999, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and City of Tacoma ("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 one of its contiguous United States facilities as designated by Lessor at time of termination.

#### 3. RENTAL

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one months rent payable on acceptance of the locomotive(s) and one months rent to be held as security. Lessee shall operate such locomotive(s) in service on its railroad. 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 ten (10) days shall bear interest at the rate of one percent (1%) per month.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

or at such other address as Lessor may direct in writing.

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#### **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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature, shall be made without Lessor's consent, 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 interchange in Tacoma, WA. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor at one of its designated contiguous United States facilities in good order and condition, reasonable wear and tear excepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

#### **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 good condition and repair.
- ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the following items:
  - a. Ninety (90) days on all major component with no allowance for any freight or labor charges. Major component shall be defined as follows:

1. Traction motors.
2. Engine crankshaft.
3. Alternator.
4. Air compressor
5. Aux. generator.

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 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 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) 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 two million (\$2,000,000.00) dollars combined single limit per occurrence shall be provided by Lessee at

ORIGINAL

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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.

ii. name Lessor and Lessee as insured parties.

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).

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty (30) days prior thereto.

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 coverages shall:

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

ii. provide coverage in an amount not less than the replacement value 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.

D. Notwithstanding that Lessee shall provide certain insurance hereunder, 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 provided that nothing herein shall require lessee to indemnify lessor, assignees or successors against and hold harmless lessor, assignees or successors from claims, demands or suits based solely upon the conduct of lessor, assignees or successors, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the lessee's agents or employees and (b) the lessor's agents or employees, this indemnity provision shall be valid and enforceable only to the extent of lessee's negligence or the negligence of the lessee's agents or employees.

E. 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 no right to assign or sub-lease this lease or any other of the locomotive(s) or any interest therein.

**11. PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days written notice, elect the option to purchase the locomotive during the lease term. The purchase option is listed on Schedule A.

**12. EARLY LEASE TERMINATION**

In the event this locomotive(s) is returned to one of the the Lessor's designated contiguous United States facilities prior to the three year lease termination period, a penalty of \$23,750.00 will apply to each year period of the lease which is not consummated in its entirety.

**13. 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.

**14. 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 of more than 30 days when due of any installment of rental hereunder or of any other obligation for payment of money nor or hereafter owed by Lessee to Lessor.

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

B. Lessor shall provide Lessee with written notice of default, clearly identifying the nature of the default. Lessee shall have twenty (20) days from the date of the notice of default to cure such default. Upon request of Lessee, Lessor shall provide written confirmation of cure within five business days of Lessee's request.

**15. 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 available to Lessor at Lessee's expense, any or all Equipment 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease or any one or more leases hereunder.

#### **16. 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.

**17. 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: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: City of Tacoma  
Tacoma Rail  
Department of Public Utilities  
P.O. Box 11007  
Tacoma, Washington 98411

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

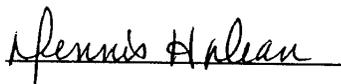
LESSOR:

LESSEE:

NATIONAL RAILWAY EQUIPMENT CO.

CITY OF TACOMA-TACOMA RAIL

BY: 

BY: 

NAME: Patrick C. Frangella

NAME: DENNIS H. DEAN

TITLE: Vice President Operations

TITLE: SUPERINTENDENT

ATTEST: Jerry J. Massie

BY: 

TITLE: Assistant Secretary

(Corporate Seal)

LESSEE:  
(Continued)  
City of Tacoma

Public Works Dept.

Finance Dept.

BY: 

BY: 

TITLE: Director

TITLE: Director  
*Mem 5/17/99*

City Manager

Risk Management

BY: 

BY: 

Ray E. Corpuz, Jr.

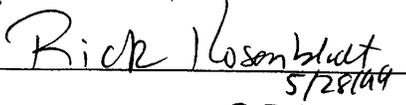
Title: City Manager

TITLE: Risk Manager

Form:

Attest:

BY: 

BY:   
*5/28/99*

Title: Chief Asst. City Attorney

TITLE: City Clerk

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**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 10<sup>th</sup> day of May by and between the National Railway Equipment Company (LESSOR) and City of Tacoma (LESSEE).

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

<b>UNIT NO.</b> 3065	<b>TYPE</b> EMD	<b>GENERAL DESCRIPTION</b> SD-40 3000 HP W/DYN. BRAKING
-------------------------	--------------------	--

**LEASE RATE**

<b>REPLACEMENT VALUE</b>	<b>LEASE TERM</b>	<b>LEASE RATE PER LOCOMOTIVE</b>	
		<b><u>MONTHLY</u></b>	<b><u>DAILY</u></b>
\$330,000.00	3 YEARS	\$4,866.66	\$160.00

**PURCHASE OPTION:** Lessee may elect, at the end of the 1095 day initial lease term, to purchase the subject Locomotive as follows:

Following completion of year no. 1: \$256,000.00  
Following completion of year no. 2: \$220,000.00  
Following completion of year no. 3: \$175,000.00

**COMMENCEMENT DATE:** May 24, 1999 accepted at Silvis, Illinois.

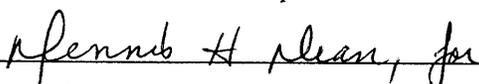
Lessee agrees to pay the first month of rent and one months rent to be held as security with their execution of the lease.

**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

**BY:** 

**NAME:** Patrick C. Frangella

**TITLE:** Vice President Operations

**LESSEE:** 

**BY:** DENNIS H. DEAN

**TITLE:** Superintendent

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**ADDENDUM I**

This Addendum I, dated the 10<sup>th</sup> day of May, 2002, attached to and incorporated into the Lease dated the 10<sup>th</sup> day of May, 1999 by and between the National Railway Equipment Company (LESSOR) and City of Tacoma (LESSEE).

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

<b>UNIT NO.</b> 3065	<b>TYPE</b> EMD	<b>GENERAL DESCRIPTION</b> SD-40 3000 HP W/DYN. BRAKING
-------------------------	--------------------	--

**LEASE RATE**

<b>REPLACEMENT VALUE</b>	<b>LEASE TERM</b>	<b>LEASE RATE PER LOCOMOTIVE</b>	
		<b><u>MONTHLY</u></b>	<b><u>DAILY</u></b>
\$175,000.00	7 YEARS	\$2,281.25	\$75.00

**MANDATORY PURCHASE BUYOUT** : Lessee shall be responsible, at the end of the seven year renewal lease term, to purchase the subject Locomotive at \$45,000.00 due and payable via wire transfer to the Lessor on/or before June 30, 2009.

**COMMENCEMENT DATE:** July 1, 2002

**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

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

**NAME:** James E. Fisk

**TITLE:** President

**LESSEE:** \_\_\_\_\_

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

**NAME:** \_\_\_\_\_

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

**EXHIBIT E**

Great Western Railway Company

## LOCOMOTIVE LEASE AGREEMENT

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 26th day of February, 2001, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Great Western Railway Company, ("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 affect prompt delivery of the locomotive(s) to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination.

#### 3. RENTAL

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one months rent payable on acceptance of the locomotive(s) and one months rent to be held as security. Lessee shall operate such locomotive(s) in service on its railroad. 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:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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**

Lessee shall accept delivery of the locomotive(s) at Lessor's staging area in Mt. Vernon, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor at one of its designated contiguous United States facilities in good order and condition, reasonable wear and tear excepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

## **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 good condition and repair.
  - ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the following items:
    - a. One hundred eighty- (180) days on all major components, excluding allowance for any freight or labor charges. Major components shall be defined as follows:
      - 1. Traction motors
      - 2. Engine crankshaft
      - 3. Generator
      - 4. Air compressor
      - 5. Auxiliary generator
- 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 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 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) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.
- 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).

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

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

ii. provide coverage in an amount not less than the replacement value 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive.

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 no right to assign or sub-lease this lease or any other of the locomotive(s) or any interest therein.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to renew or purchase the locomotive at the end of the initial lease term. The renewal purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

## 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.

## 13. 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 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.

## 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 available to Lessor at Lessee's expense, any or all Equipment at 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Great Western Railway Railway Company  
P.O. Box 669  
Shaunavon, Saskatchewan SON-2MO

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

LESSOR:

LESSEE:

NATIONAL RAILWAY EQUIPMENT CO.

GREAT WESTERN RAILWAY CO.

BY: 

BY: 

NAME: Patrick C. Frangella

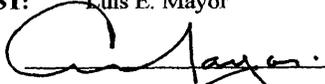
NAME: G. WICENTOWICZ

TITLE: Vice President Operations

TITLE: GENERAL MANAGER

ATTEST: Luis E. Mayor

ATTEST:

BY: 

BY: S. Dunham

TITLE: Assistant Secretary

TITLE: Assistant Manager.

(Corporate Seal)

(Corporate Seal)



**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 26<sup>th</sup> day of February by and between the National Railway Equipment Company (LESSOR) and Great Western Railway Company (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
CDR 2000	Alco	Four axle 2000 horsepower
CDR 2001	Alco	Four axle 2000 horsepower

**LEASE RATE**

REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
\$137,280.00	36 Months	\$3,432.83	\$112.86
\$137,280.00	36 Months	\$3,432.83	\$112.86

**PURCHASE OPTION:** Lessee may elect, at the end of the 1095-day initial lease term, to purchase Locomotive(s) CDR 2000 and CDR 2001 for \$40,000.00 per locomotive.

**RENEWAL RATE, TERM AND PURCHASE OPTION:** At the end of the 1095 day initial lease term, Lessee may elect to renew the lease for not less than two years (24 months) at a daily straight lease rate of \$112.86 per day. The purchase option buyout at the end of the two-year renewal period would be \$10,000.00 per locomotive.

**COMMENCEMENT DATE:** March 15, 2001 accepted at Mt. Vernon, Illinois.

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the lease.

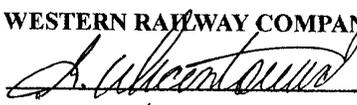
**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

BY: 

NAME: Patrick C. Frangella

TITLE: Vice President Operations

**LESSEE: GREAT WESTERN RAILWAY COMPANY**

BY: 

NAME: G. WICENTOWICZ

TITLE: GENERAL MANAGER

**EXHIBIT F**

Indiana Harbor Belt Railroad Company (March 28, 2003)

## **LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 28<sup>th</sup> day of March, 2003, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Indiana Harbor Belt Railroad Company, ("LESSEE").

### **LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:**

#### **1. LEASE AND LEASED PROPERTY**

Lessee hereby leases from Lessor, the locomotives, ("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 affect prompt delivery of the locomotives to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination. Locomotives have already been delivered and accepted by Lessee.

#### **3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in monthly installments, with one month's rent payable on/or before the last day of each month and one month's rent payable upon Locomotive Lease Agreement signing and to be held as security through the duration of the Agreement. Lessee shall operate such locomotives in service on its railroad and/or adjoining railroads. 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 twelve percent (12%) per annum.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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 locomotives, or the use, registration, rental, maintenance, possession or operation thereof, and shall file any returns required therefore, 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, except for any income taxes owed by Lessor.

#### **5. OWNERSHIP AND LESSOR'S INSPECTION**

A. The locomotives 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 access to the locomotives at reasonable times for the purpose of inspections, without undue interference of Lessee's business.

C. No accessions, additions, alterations or improvements to the locomotives of any nature, shall be made without Lessor's consent, but if any are made, they immediately shall become part of the locomotives and shall become Lessor's property.

D. Lessor shall keep the locomotives, at all times, free and clear from all claims, liens and encumbrances, unless caused by Lessor.

E. This Lease is intended to be a true lease of the locomotives and is not and in no way shall be construed as creating a sale of the locomotives to Lessee, except as set forth in Schedule A.

#### **6. DELIVERY/RETURN**

Delivery of the locomotives shall be accepted by Lessee at Lessee's staging area in Hammond, Indiana. Except as set forth in Paragraph 11 and Schedule "A", upon expiration or other termination of this Lease, Lessee shall return such locomotives to Lessor at one of its designated contiguous United States facilities or to one of the Lessor's predesignated customer(s) in good order and condition, reasonable wear and tear excepted. Lessee shall bear freight return costs. Lessee shall pay or reimburse Lessor for any reasonable and ordinary expenses incurred by Lessor in returning the locomotives to good order and condition, in delivering the locomotives to Lessor or effecting return of the locomotives from Lessee as provided herein.

#### **7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER**

A. Lessee hereby acknowledges that Lessee has had or will have the opportunity to inspect the locomotives prior to accepting delivery of same, and that acceptance of delivery of the locomotives by Lessee constitutes acknowledgment that they have been received in good condition and repair.

B. Delivery to and acceptance of the locomotives by, and execution of a Schedule with respect thereto by Lessee shall constitute Lessee's acknowledgment that the locomotives 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 MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION,

MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVES, 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 locomotives shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee.

C. Lessee and Lessor shall comply with all federal, state, municipal and local laws, ordinances, and rules, and regulations relating to the lease, possession, insuring, use and operation of the locomotives.

D. Lessee shall be solely responsible for the payment of any and all fines, penalties or forfeitures (including without limitation the confiscation of the locomotives) levied upon or arising out of the use, operation, maintenance or insuring of the locomotives in violation of any law, ordinance, rule or regulation of any governmental authority, unless caused by the Lessor. Lessor shall have no responsibility to upgrade or change Locomotive(s) to meet changes in any of the above in this paragraph or paragraph C.

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

F. Lessee shall maintain the locomotives 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 locomotives.

#### **9. INSURANCE/INDEMNIFICATION**

A. Public liability insurance providing coverage in an amount not less than ten million (\$10,000,000.00) 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. be written by an insurance company or companies with an A.M. Bests rating of A- IX or better and authorized to transact business in all of the states and countries in which the locomotives will be used and operated.

ii. name Lessor and Lessee as insured parties.

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 locomotives.

- iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.
- v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty (30) days prior thereto.

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 coverages shall:

- i. be written in standard form acceptable to Lessor, such acceptance not to be unreasonably withheld.
- ii. provide coverage in an amount not less than the replacement value of the locomotives.
- 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive.

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, after giving Lessee ten business days written notice, may obtain such required insurance coverage on behalf of Lessee and Lessee's expense.

G. Notwithstanding any provision in this Agreement, Lessor shall be responsible for its own negligent actions occurring after the date this Agreement is signed and if such actions are the result of the repair or maintenance of the Locomotive(s) after the date of this Agreement.

#### **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 locomotives or any interest therein.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to renewal or purchase the locomotive at the end of the initial lease term. The renewal purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### **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 locomotives as Lessor reasonably may request. These statements shall remain confidential except as deemed necessary by Lessor to assign this lease to a lending institution.

#### **13. 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 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.

#### **14. REMEDIES UPON DEFAULT**

A. Upon the occurrence of any Event of Default or at any time hereafter, and only after fifteen business days from the notice of an Event of Default and if the Event of Default is not cured within such time, Lessor, in its sole discretion, may take any one or more of the following actions with respect to the locomotives:

- 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 locomotives wherever found, and for this purpose Lessor may at Lessor's option enter upon the premises where such locomotives 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 available to Lessor at Lessee's expense, any or all Equipment 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 locomotives 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 locomotives, 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 reasonable 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 locomotives.

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 locomotives 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, ACCEPT AS SPECIFICALLY PROVIDED HEREIN, AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF EQUIPMENT BY LESSOR 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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 locomotives. Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the locomotives after Lessee's approval of such documents, such approval not to be unreasonable withheld.

## **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.

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 28th day of March, 2003, by and between the National Railway Equipment Company (LESSOR) and Indiana Harbor Belt Railroad Company (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
2256	EMD	Switcher Four Axle 2,0000 HP
2272	EMD	Switcher Four Axle 2,0000 HP

REPLACEMENT VALUE EACH	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
<del>\$145,000.00</del>	<del>through June 1, 2007</del>	<del>\$2,190.00</del>	\$70.00

above lease rates to be effective commencing April 1, 2003 for Unit Number 2256

above lease rates to be effective commencing April 1, 2003 for Unit Number 2272

**RENEWAL RATE, TERM AND PURCHASE OPTION:** At the end of the initial lease term, Lessee may elect to either renew the lease for not less than one year (12 months) at a daily straight lease rate of \$72.00 per day per locomotive or exercise the purchase of all two locomotives as indicated in the terms and conditions under **PURCHASE** below. The purchase option buyout at the end of the one year renewal period will be \$15,000.00 per locomotive.

**PURCHASE:** Lessee may elect to purchase, at the conclusion of the lease term locomotive, Unit Numbers 2256 and 2272 for \$25,000.00 each. The total of \$50,000.00 shall be due via wire transfer to the predesignated bank account of Lessor on/or before June 1, 2007. The Lessee is required to advise Lessor in writing at least 90 days in advance of the lease expiration date to effect the purchase transaction. The purchase option, if exercised, requires that all four units be purchased at the conclusion of the lease term.

**COMMENCEMENT DATE:** Per the above referenced commencement dates accepted at Hammond, Indiana.

Lessee agrees to pay each month of rent on/or before the last day of each month and one month's rent to be held as security with their execution of the lease.

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 Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Indiana Harbor Belt Railroad Company  
2721 161<sup>st</sup> Street  
Hammond, Indiana 46323-1099

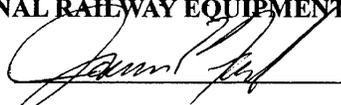
WITNESS WHEREOF, the parties have executed this Lease the day and year first mentioned above.

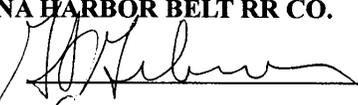
**LESSOR:**

**LESSEE:**

**NATIONAL RAILWAY EQUIPMENT CO.**

**INDIANA HARBOR BELT RR CO.**

**BY:** 

**BY:** 

**NAME:** James E. Fisk

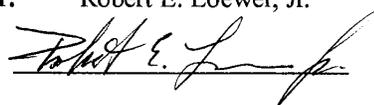
**NAME:** GENERAL MANAGER

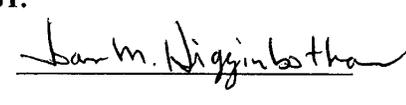
**TITLE:** President

**TITLE:** GARY GISON  
3-25-07

**ATTEST:** Robert E. Loewer, Jr.

**ATTEST:**

**BY:** 

**BY:** 

**TITLE:** Director of Finance

**TITLE:** Executive Asst. to Gen Mgr

(Corporate Seal)

(Corporate Seal)

LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY

BY:

NAME: James E. Fisk

TITLE: President

LESSEE: INDIANA HARBOR BELT RAILROAD COMPANY

BY:

NAME: GARY GIBSON

TITLE: GENERAL MANAGER

3-25-03

**EXHIBIT G**

Indiana Harbor Belt Railroad Company (January 14, 2003)

**LOCOMOTIVE LEASE AGREEMENT**

*Handwritten initials and date: 14th Muee*

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 13<sup>th</sup> day of January, 2003, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Indiana Harbor Belt Railroad Company, ("LESSEE").

**LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:**

**1. LEASE AND LEASED PROPERTY**

Lessee hereby leases from Lessor, the locomotives, ("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 affect prompt delivery of the locomotives to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination. Locomotives have already been delivered and accepted by Lessee.

**3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in monthly installments, with one month's rent payable on/or before the last day of each month and one month's rent payable upon Locomotive Lease Agreement signing and to be held as security through the duration of the Agreement. Lessee shall operate such locomotives in service on its railroad and/or adjoining railroads. 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 twelve percent (12%) per annum.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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 locomotives, or the use, registration, rental, maintenance, possession or operation thereof, and shall file any returns required therefore, 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, except for any income taxes owed by Lessor.

FEB-06-03 12:30PM FROM-RAILWAY EQUIPMENT

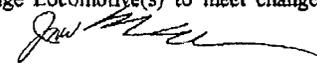
1-708-388-2487

T-375 P.04/10 F-438

name of the Lessor or Lessee.

B. The locomotives shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee.

C. Lessee and Lessor shall comply with all federal, state, municipal and local laws, ordinances, and rules, and regulations relating to the lease, possession, insuring, use and operation of the locomotives.

D. Lessee shall be solely responsible for the payment of any and all fines, penalties or forfeitures (including without limitation the confiscation of the locomotives) levied upon or arising out of the use, operation, maintenance or insuring of the locomotives in violation of any law, ordinance, rule or regulation of any governmental authority, unless caused by the Lessor. Lessor shall have no responsibility to upgrade or change Locomotive(s) to meet changes in any of the above *in this paragraph or paragraph C.* 

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

F. Lessee shall maintain the locomotives 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 locomotives.

#### 9. INSURANCE/INDEMNIFICATION

A. Public liability insurance providing coverage in an amount not less than ten million (\$10,000,000.00) 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. be written by an insurance company or companies with an A.M. Best's rating of A- IX or better and authorized to transact business in all of the states and countries in which the locomotives will be used and operated.

ii. name Lessor and Lessee as insured parties.

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 locomotives.

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty (30) days prior thereto.

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 coverages shall:

- i. be written in standard form acceptable to Lessor, such acceptance not to be unreasonably withheld.
- ii. provide coverage in an amount not less than the replacement value of the locomotives.
- 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive.

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, after giving Lessee ten business days written notice, may obtain such required insurance coverage on behalf of Lessee and Lessee's expense.

G. Notwithstanding any provision in this Agreement, Lessor shall be responsible for its own negligent actions occurring after the date this Agreement is signed and if such actions are the result of the repair or maintenance of the Locomotive(s) *after the date of this Agreement.*

**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 locomotives or any interest therein.

**11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to renewal or purchase the locomotive at the end of the initial lease term. The renewal purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

## 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 locomotives as Lessor reasonably may request. These statements shall remain confidential except as deemed necessary by Lessor to assign this lease to a lending institution.

## 13. 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 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.

## 14. REMEDIES UPON DEFAULT

A. Upon the occurrence of any Event of Default or at any time hereafter, and only after fifteen business days from the notice of an Event of Default and if the Event of Default is not cured within such time, Lessor, in its sole discretion, may take any one or more of the following actions with respect to the locomotives:

- 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 locomotives wherever found, and for this purpose Lessor may at Lessor's option enter upon the premises where such locomotives 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 available to Lessor at Lessee's expense, any or all Equipment 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 locomotives 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 locomotives, 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 reasonable 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 locomotives.

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 locomotives 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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 locomotives. Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the locomotives after Lessee's approval of such documents, such approval not to be unreasonable withheld.

#### 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.

FEB-08-03 12:31PM FROM-RAILWAY EQUIPMENT

1-708-388-2487

T-375 P.08/10 F-488

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 Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Indiana Harbor Belt Railroad Company  
2721 161<sup>st</sup> Street  
Hammond, Indiana 46323-1099

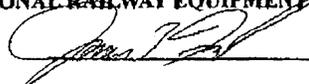
WITNESS WHEREOF, the parties have executed this Lease the day and year first mentioned above.

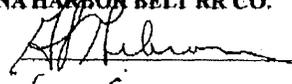
LESSOR:

LESSEE:

NATIONAL RAILWAY EQUIPMENT CO.

INDIANA HARBOR BELT RR CO.

BY: 

BY: 

NAME: James E. Fisk

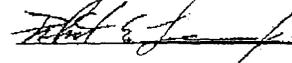
NAME: GARY GISSON

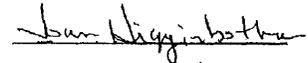
TITLE: President

TITLE: GENERAL MANAGER

ATTEST: Robert E. Loewer, Jr.

ATTEST:

BY: 

BY: 

TITLE: Director of Finance

TITLE: Executive Asst to gm

(Corporate Seal)

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 13th day of January, 2003, by and between the National Railway Equipment Company (LESSOR) and Indiana Harbor Belt Railroad Company (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
2027 (2922)	EMD	Special Duty Six Axle 2,0000 HP
2031 (2923)	EMD	Special Duty Six Axle 2,0000 HP
2035 (2924)	EMD	Special Duty Six Axle 2,0000 HP
2037 (2925)	EMD	Special Duty Six Axle 2,0000 HP

REPLACEMENT VALUE EACH	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		MONTHLY	DAILY
\$170,000.00	through June 1, 2007	\$2,190.00	\$72.00

above lease rates to be effective commencing January 14, 2003 for Unit Number 2027  
 above lease rates to be effective commencing January 16, 2003 for Unit Number 2031  
 above lease rates to be effective commencing April 1, 2003 for Unit Number 2035  
 above lease rates to be effective commencing November 1, 2003 for Unit Number 2037

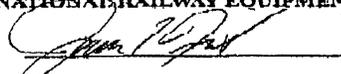
**RENEWAL RATE, TERM AND PURCHASE OPTION:** At the end of the initial lease term, Lessee may elect to either renew the lease for not less than one year (12 months) at a daily straight lease rate of \$72.00 per day or exercise the purchase of all four locomotives as indicated in the terms and conditions under PURCHASE below. The purchase option buyout at the end of the one year renewal period will be \$10,000.00 per locomotive.

**PURCHASE:** Lessee may elect to purchase, at the conclusion of the lease term locomotive, Unit Numbers 2027, 2031, 2035 and 2037 for \$72,850.00 each. The total of \$115,400.00 shall be due via wire transfer to the predesignated bank account of Lessor on/or before June 1, 2007. The Lessee is required to advise Lessor in writing at least 90 days in advance of the lease expiration date to effect the purchase transaction. The purchase option, if exercised, requires that all four units be purchased at the conclusion of the lease term.

**COMMENCEMENT DATE:** Per the above referenced commencement dates accepted at Hammond, Indiana.

Lessee agrees to pay each month of rent on/or before the last day of each month and one month's rent to be held as security with their execution of the lease.

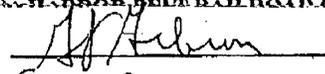
**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

BY: 

NAME: James E. Fisk

TITLE: President

~~LESSEE: INDIANAPOLIS AND OHIO RAILROAD COMPANY~~

BY: 

NAME: GARY GIBSON

TITLE: GENERAL MANAGER

**COPY**

**LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 25th day of May 2001, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Indiana Harbor Belt Railroad Company, ("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 affect prompt delivery of the locomotive(s) to Lessor at Dixmoor, Illinois as designated by Lessor at time of termination.

**3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one months rent payable on acceptance of the locomotive(s) and one months rent to be held as security. Lessee shall operate such locomotive(s) in service on its railroad. 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 twenty (20) days shall bear interest at the rate of eighteen percent (18%) per annum.

C. All rentals shall be paid to Lessor at:

---

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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 (excluding Lessor's income tax) 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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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**

- A. Lessee shall accept delivery of the locomotive(s) at Lessor's staging area in Mt. Vernon, Illinois. 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 accepted. Lessee shall bear freight return costs.
- B. Lessor hereby acknowledges that Lessor has had or will have the opportunity to inspect the locomotive(s) prior to accepting the return of same and that acceptance of the return of the locomotive(s) by Lessor constitutes acknowledgement that the locomotive(s) have been returned in good condition and repair.
- C. Lessee shall not be responsible for any repairs or maintenance of the locomotive(s) not disclosed at the time of said inspection.

## **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 good condition and repair.
  - ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the following items:
    - a. One hundred and eighty- (180) days on all major components, excluding allowance for any freight or labor charges. Major components shall be defined as follows:
      - 1. Engine crankshaft
      - 2. Alternator
- 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 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 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) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.
- 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).

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

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

ii. provide coverage in an amount not less than the replacement value 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.

D. Notwithstanding that Lessee shall provide certain insurance hereunder and irrespective of any responsibility for negligence (unless resulting from Lessor's sole 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 (unless resulting from Lessor's sole negligence), 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.

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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Stipulated Loss Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer.

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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES.** Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to renew the locomotive at the end of the initial lease term. The renewal options are listed on Schedule A. The Lessee shall elect subject option through a written notice.

#### **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. The Lessor shall treat such documentation as confidential.

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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 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.

iii. Lessor shall notify Lessee in writing thirty (30) days prior to declaring default of this Agreement, at which time Lessee shall have the right to remedy any discrepancies prior to being declared in default of this Agreement.

#### **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 available to Lessor at Lessee's expense, any or all Equipment at 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease or any one or more leases hereunder.

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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.

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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.

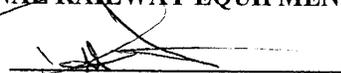
If to Lessor: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Indiana Harbor Belt Railroad Company  
2721 161<sup>st</sup> Street  
Hammond, Indiana 46323-1099

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

**LESSOR:**

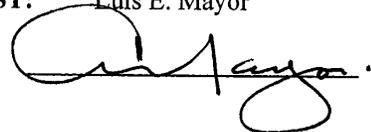
**NATIONAL RAILWAY EQUIPMENT CO.**

**BY:** 

**NAME:** Patrick C. Frangella

**TITLE:** Vice President Operations

**ATTEST:** Luis E. Mayor

**BY:** 

**LESSEE:**

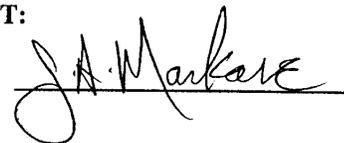
  
\_\_\_\_\_

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

**NAME:** C.H. ALLEN

**TITLE:** GENERAL MANAGER

**ATTEST:**

**BY:** 

**TITLE:** Vice President & Director of Finance

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

(Corporate Seal)

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 25<sup>th</sup> day of May, 2001 by and between the National Railway Equipment Company (LESSOR) and Indiana Harbor Belt Railroad Company (LESSEE).

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

<b>UNIT NO.</b>	<b>TYPE</b>	<b>GENERAL DESCRIPTION</b>	
NREX 6330	EMD	SD38-2	
<b>LEASE RATE</b>			
<b>REPLACEMENT VALUE</b>	<b>LEASE TERM</b>	<b>LEASE RATE PER LOCOMOTIVE</b>	
\$360,000.00	7 Years	<b><u>MONTHLY</u></b>	<b><u>DAILY</u></b>
		\$4,761.43	\$156.54

**PURCHASE OPTION:** Lessee may elect, at the end of the seven (7) year initial lease term, to purchase Locomotive(s) Unit No. 6330 for \$120,000.00.

**RENEWAL RATE AND TERM:** At the end of the seven (7) year initial lease term, Lessee may elect to renew the lease for not less than one year (12 months) at a daily straight lease rate of \$156.54 per day.

**EARLY TERMINATION OPTION:** At anytime after 36 months from the commencement date of this Lease, if no event or default shall have occurred, Lessee shall be entitled at its option, to exercise an early termination option by paying to Lessor, an amount equal to the sum of: (i) the fair market value of all the Equipment leased herein as determined by, and in the sole and absolute discretion of, Lessor at the time this option is exercised, plus (ii) the remaining aggregate rents due on the date this option is exercised, such rents discounted at an annual rate of 6%; plus (iii) and early termination fee equal to \$360,000.00.

**COMMENCEMENT DATE:** July 30, 2001 accepted at Mt. Vernon, Illinois.

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

**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

BY: 

NAME: Patrick C. Frangella

TITLE: Vice President Operations

**LESSEE: INDIANA HARBOR BELT RAILROAD COMPANY**

BY: 

NAME: C.H. ALLEN

TITLE: GENERAL MANAGER

## MEMORANDUM OF LEASE AGREEMENT

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of May 25, 2001, by and between NATIONAL RAILWAY EQUIPMENT COMPANY ("Lessor"), and INDIANA HARBOR BELT RAILROAD COMPANY ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, Locomotive model(s) described herein.

Each locomotive is fully-described in a certain Lease Agreement dated as of May 25, 2001 (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee. A Schedule of the equipment is attached hereto.

2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.

The Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

**LESSEE:**

**INDIANA HARBOR BELT RR COMPANY**

By: C.H. Allen

Name: C.H. ALLEN

Title: GENERAL MANAGER

**LESSOR:**

**NATIONAL RAILWAY EQUIPMENT COMPANY**

By: Luis E. Mayor

Name: Luis E. Mayor

Title: Vice President & Director of Finance

STATE OF Indiana )  
 ) SS.  
COUNTY OF Lake )

On this 6th day of August, 2001, before me appeared C.H. Allen, the person who signed this instrument who acknowledged that (s) he is the Lessee of Indiana Harbor Belt Railroad Co. and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

PAULETTE J. PETERSON  
Notary Public, State of Indiana  
County of Lake  
My Commission Expires Apr. 3, 2008

*Paulette J. Peterson*

Notary Public

[Seal]

My Commission Expires:

April 3, 2008

STATE OF ILLINOIS) ) SS.  
COUNTY OF WILL)

On this 13th day of August, 2001, before me appeared hross, the person who signed this instrument who acknowledged that (s) he is an officer of **NATIONAL RAILWAY EQUIPMENT COMPANY** and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.



*Debra L. Radtke*

Notary Public

[Seal]

My Commission Expires:

7-10-2005

### SCHEDULE OF EQUIPMENT

Lessor: NATIONAL RAILWAY EQUIPMENT COMPANY

Lessee: INDIANA HARBOR BELT RAILROAD COMPANY

Approved by: \_\_\_\_\_

(Lessee to initial each page)

Attached to Bill of Sale dated: Equipment Located at:

\_\_\_\_\_ Hammond, Indiana in Lake County

Equipment Schedule No.: See Schedule "A"

Manufacturer and/or Vendor  
Name & Invoice Number

Equipment  
Description

National Railway Equipment Company

EMD SD38-2 Six Axle 2,000 HP

**EXHIBIT H**

Minnesota Corn Processors, LLC

## LOCOMOTIVE LEASE AGREEMENT

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 1st day of March 2002, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Minnesota Corn Processors, LLC, a Colorado company ("LESSEE").

### LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

#### 1. LEASE AND LEASED PROPERTY

Lessee hereby leases from Lessor, the locomotive, ("Locomotive"), 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 affect prompt delivery of the locomotive(s) to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination.

#### 3. RENTAL

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with the first month of rent payable upon execution of the lease agreement and one month of rent payable upon execution of the lease agreement to be held as a security deposit during the term of the lease agreement. Lessee shall operate such locomotive(s) in service on its railroad. 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 thirty (30) days shall bear interest at the rate of twelve percent (12%) per annum.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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, 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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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**

Lessee shall accept delivery of the locomotive(s) at Lessee's operating facility in Columbus, Nebraska. However, Lessee shall bear the cost of freight from Lessor's manufacturing facility to Columbus, Nebraska. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor or to Lessor's end-user(s) at one or more of its designated contiguous United States facilities in good order and condition, reasonable wear and tear accepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein. Excluding potential damage to the locomotive during the return to Lessor, the good order and condition of the locomotive shall be determined and mutually agreed upon by Lessee and Lessor prior to affecting the locomotive return to Lessor.

## **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 good condition and repair.

ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the specified non-consumable warranty items as indicated below:

a. Twelve thousand five hundred locomotive hours on all new, remanufactured and rebuilt assemblies and components, excluding allowance for any freight or labor charges from date of locomotive on-site commissioning, not to exceed a start/commissioning date past ninety days from date of ex-works shipment, Silvis, Illinois. The warranty for the remote control system shall be enforced by the Lessor to the benefit of the Lessee as defined by the original equipment manufacturer of the remote control system.

- b. Associated freight charges for the delivery of all warranted replacement parts from Lessor and the return of all warranted assembly/component part cores to Lessor shall be borne by Lessee. Lessee shall be responsible for the consumables, including water, oil, diesel fuel, all locomotive fluids, sand, wheels, brake shoes, traction motor/generator brushes and all associated locomotive filters.
  - c. Lessor shall be responsible for on-site 92-day inspections of the locomotive throughout the term of this lease agreement. These inspections shall commence with the initial on-site delivery and commissioning of the locomotive to Columbus, Nebraska. Coordination of the inspection activity shall be mutually initiated 6 weeks prior to the scheduled 92-day inspection date to ensure locomotive availability and special order parts availability (as required). In the event of a "unit down" emergency condition, irrespective of a warranty or non-warranty claim, the Lessor shall provide on-site service within 24-48 hours of Lessee's verbal notification to Lessor.
  - d. The Lessor point of contact for warranty shall be National Railway Equipment Company Pat Murphy or Mike Berry in Silvis, Illinois at 309.755.6800 or Pat Frangella in Dixmoor, Illinois at 708.388.6002.
- B. Within the first three hundred and sixty five days from delivery and on-site commissioning of the locomotive, if the locomotive fails to operate "properly" (with "properly" being defined as an availability rate of at least 95%+) after the Lessee and Lessor have made reasonable efforts to repair the locomotive, Lessee may, at its option, and upon written notification to Lessor, temporarily terminate the lease of the locomotive. Lessee shall return the locomotive, at Lessor's expense, to Lessor's designated manufacturing facility in Silvis, Illinois. Lessor shall replace the failed locomotive with a locomotive of like kind and shall deliver the replacement locomotive at Lessor's cost to Lessee at Columbus, Nebraska. At such time, the lease shall be renewed in full force and effect.
- C. 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 MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY, EXCEPT AS PROVIDED HEREIN, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE, 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 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) 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) excepting as previously defined in this lease agreement with specific reference to Article 7. above.

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. Lessor's obligations and responsibilities to the mechanical condition and running order of the locomotive are defined in Article 7. above.

G. Lessor shall supply an interim use locomotive to Lessee in the event the leased locomotive is down due to a mechanical and/or electrical equipment malfunction for more than seven consecutive days during an unscheduled maintenance repair. Lessor shall be responsible for the associated rental costs of the interim locomotive only in the event the mechanical and/or electrical equipment malfunction of the lease locomotive is not from the cause of Lessee misuse, neglect, abuse or force majeure. During this period of unit downtime, as defined by the locomotive being out of service more than seven consecutive days, Lessee's daily rental shall cease until the date that the interim use locomotive is on-site at the Lessee's facility and is operational. At such time, the daily rental shall be renewed.

H. 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.
- 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).
- iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

- i. be written in standard form by an insurance company acceptable to Lessor.
- ii. provide coverage in an amount not less than the replacement value 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.

D. Lessee will indemnify Lessor for any negligence or willful misconduct acts by Lessee arising out of the use or operations of the locomotive. Notwithstanding that Lessee shall provide certain insurance hereunder, 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.

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 in Lessee's possession due solely to Lessee's negligence or willful misconduct. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any and all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Stipulated Loss Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer.

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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVE.** Lessor may assign its interest in this lease and sell or grant a security interest in any part of the Locomotive without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 60 days notice, elect the option to renew or purchase the locomotive at the end of the initial lease term. The renewal and purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### **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.

#### **13. 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 when more than 30 days past 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.

#### **14. REMEDIES UPON DEFAULT**

A. Upon the occurrence of any Event of Default or at any time hereafter, and if Lessee remains in default for a period of more than 30 days from the date of written notice by Lessor, and excepting if Lessee is in default due to withholding of monthly lease payments as a consequence of Lessor's failure to meet Lessor's obligations under the terms of this lease, 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 date and up to four years forward to be immediately due and payable and after the end of the fifth year such amount shall only be up to that date and six months forward.
- 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 available to Lessor at Lessee's expense, any or all Equipment at 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease or any one or more leases hereunder.

BMM

**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 New York.

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 Company  
P.O. Box 2270  
Dixmoor, Illinois 60426

If to Lessee: Minnesota Corn Processors, LLC  
901 N. Hwy 59  
Marshall, MN 56258  
ATTN: VP of Operations  
CC: Legal Council

BMM

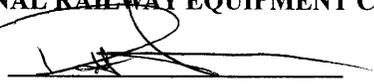
WITNESS WHEREOF, the parties have executed this Lease the day and year first mentioned above.

LESSOR:

LESSEE:

NATIONAL RAILWAY EQUIPMENT CO.

MINNESOTA CORN PROCESSORS LLC

BY: 

BY: 

NAME: Patrick Frangella

NAME: LARRY J. SCHIAVO

TITLE: Vice President of Operations

TITLE: MCP, VP of OPERATIONS  
AND BUSINESS DEVELOPMENT.

ATTEST: Robert E. Loewer, Jr.

ATTEST:

BY: 

BY: 

TITLE: Director of Finance

TITLE: Vice President of Finance

(Corporate Seal)

(Corporate Seal)

BDM

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 1st day of March 2002 by and between the National Railway Equipment Company (LESSOR) and Minnesota Corn Processors LLC (LESSEE).

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

<b>UNIT NO.</b>	<b>TYPE</b>	<b>GENERAL DESCRIPTION</b>
NREX 101	EMD	Remanufactured MU Capable SW-1500 Switcher Equipped w/Kim Hot Start and Cattron Remote/Speed Control System

**LEASE RATE**

<b>REPLACEMENT VALUE</b>	<b>LEASE TERM</b>	<b>LEASE RATE PER LOCOMOTIVE</b>	
		<b><u>MONTHLY</u></b>	<b><u>DAILY</u></b>
\$489,750.00	7 Years	\$6,357.08	\$209.00

**PURCHASE OPTION:** Lessee may elect, at the end of the seven-year initial lease term, to purchase Locomotive(s) Unit No. 101 for \$90,000.00.

**RENEWAL RATE AND TERM:** At the end of the seven year initial lease term, Lessee may elect to renew the lease for not less than one year (12 months) at a daily straight lease rate of \$209.00 per day. The purchase option at the end of the one-year renewal period shall be \$55,000.00

**COMMENCEMENT DATE:** \_\_\_\_\_, 2002 accepted at Columbus, Nebraska.

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the lease.

**LESSOR: NATIONAL RAILWAY EQUIPMENT COMPANY**

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

NAME: Patrick Frangella

TITLE: Vice President of Operations

**LESSEE: MINNESOTA CORN PROCESSORS LLC**

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

NAME: LARRY J. SCHIAVO

TITLE: MCP, VP of OPERATIONS  
AND BUSINESS DEVELOPMENT

EDM

**MEMORANDUM OF LEASE AGREEMENT**

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of March 1, 2002, by and between NATIONAL RAILWAY EQUIPMENT COMPANY ("Lessor"), and MINNESOTA CORN PROCESSORS LLC ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, Locomotive model described as SW-1500 Locomotive bearing reporting mark: NREX 101

The locomotive is fully-described in a certain Lease Agreement dated as of March 1, 2002 (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee. A Schedule of the equipment is attached hereto.

2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.

The Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

**LESSEE:**

MINNESOTA CORN PROCESSORS LLC

By: *Larry J. Schiavo*

Name: LARRY J. SCHIAVO

Title: MCP, VP of OPERATIONS  
AND BUSINESS DEVELOPMENT

**LESSOR:**

NATIONAL RAILWAY EQUIPMENT COMPANY

By: *Patrick Frangella*

Name: Patrick Frangella

Title: Vice President of Operations

*BDM*

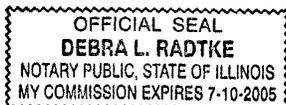
STATE OF Illinois )  
COUNTY OF Will ) SS.

On this 1st day of March, 2002, before me appeared Patrick Zampella the person who signed this instrument who acknowledged that (s) he is the BM of NATIONAL RAILWAY EQUIPMENT COMPANY and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

Debra L Radtke

Notary Public

[Seal]



My Commission Expires:

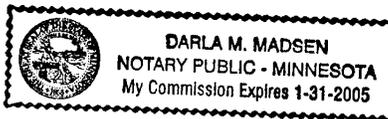
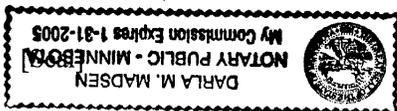
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STATE OF ~~ILLINOIS~~ Minnesota )  
COUNTY OF ~~WILL~~ Lyon ) SS.

On this 13th day of march, 2002, before me appeared Harry J. Schiavo, the person who signed this instrument who acknowledged that (s) he is an officer of NATIONAL RAILWAY EQUIPMENT COMPANY and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.  
BM Minnesota Corn Processors, LLC

Darla M. Madsen

Notary Public



My Commission Expires:

1-31-2005

BM

**SCHEDULE OF EQUIPMENT**

Lessor: NATIONAL RAILWAY EQUIPMENT COMPANY

Lessee: MINNESOTA CORN PROCESSORS LLC

Approved by: *Ben Hultman*  
(Lessee to initial each page)

Equipment Located at:

\_\_\_\_\_ 300 Ninth Street North  
Silvis, Illinois 61282

Equipment Schedule No.: NREX 101

<u>Manufacturer and/or Vendor Name &amp; Invoice Number</u>	<u>Equipment Description</u>
National Railway Equipment Company	Remanufactured MU Capable SW-1500 Switcher Equipped w/Kim Hot Start and Cattron Remote/Speed Control System

Unit Number(s)

NREX 101

Acceptance Date

*BHM*

**SPECIFICATIONS COVERING:**

**THE REMANUFACTURE OF EMD SW1500**

**SWITCHING LOCOMOTIVE**

**I. GENERAL**

This specification covers the remanufacture, design, engineering, labor and material requirements of an EMD SW1500 1,500 horsepower locomotive, using the following specification modifications and options are detailed below.

**II. LOCOMOTIVE OPTIONS AND MODIFICATIONS - SPECIFICATIONS**

**A. AIR SYSTEM**

**1. AIR BRAKES**

a. Rebuild present air portions and reapply to present 26L air brake system. Replace as necessary defective air brake piping back in kind and make necessary modifications to meet specified requirements.

**b. Air Brake Connections**

1. Basic duplex air end connection with ball type cutout cocks. Main reservoir cock to be vented when closed and direct air away from operator. Brake pipe angle cock must also be vented.

2. MU hoses at both ends on both sides of coupler.

3. Brake pipe located on right hand side of coupler when facing end plate, both ends.

**c. Other Air Brake Modifications:**

1. Independent brake valve control pressure set for 45 psi.

2. Removable independent brake valve handle provided.

3. Removable automatic brake valve handle provided.

4. Emergency brake valve in cab provided basically.

5. Provision for compatible operation with locomotives with

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6BL brakes not provided.

6. Exhaust port "Y" of automatic brake valve and exhaust port from independent brake valve piped below floor. Hard pipe must be used for this modification. No hose accepted.

7. Retain and qualify, dual ported or MU2A cutout cock.

2. AIR COMPRESSOR

- a. Rebuilt **GARDNER-DENVER** WBO air compressor, full flow oil filter, drilled connecting rods, and equipped with the **GARDNER-DENVER** . Compressor control set at 120 psi to 130 psi.
- b. Air compressor governor rebuilt.
- c. Filter is basic **FARR** Pamic.

3. GAUGES & FITTINGS

- a. Air gauges to be rebuilt. Brake cylinder, main reservoir - brake pipe, and auxiliary reservoir.

4. MAIN RESERVOIR

- a. Filters: Basic 824 coalescent centrifugal filter rebuilt to provide filtered air for the air brake and auxiliaries.
- b. Drain Valves & Actuation
  - 1. Drain valves applied at both main reservoirs. Exhausted air to be piped into 1" pipe mounted to rear of fuel tank.
  - 2. Actuation of Filters and Drain Valves.

Blow-down of Filters and automatic drain valves is actuated by air compressor.

5. WARNING DEVICES

- a. Bell-Basic application to be mounted to top of car body long hood.
- b. Horn: One (1) three (3) chime horn mounted to engine cab. Horn is to be activated on control stand.
- c. Other Warning Devices.
  - 1. Locomotive event recorder system to be installed as an option.
  - 2. Alerter system installed as option.

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**B. SANDING**

1. CONTROL

- a. Basic lead wheel sanding.
- b. Train lined pneumatic sanding control supplements basic electric control. Assignments of train control wires covered under C.2.a.1. below.

2. SWITCHES & LIGHTS

- a. Manual sanding switch is basic non-latching type.
- b. Lead axle sanding switch is basic latching type.

3. SAND TRAPS AND RELATED DEVICES

- a. A total of four (4) qualified sand traps including rotary shutoff valves.

4. SAND BOX CAPACITY

- a. Sand box capacity as built both ends.

5. OTHER SANDING MODIFICATIONS

- a. Sand trap alcove drain and continuous sand box weld will be inspected for integrity.

**C. MULTIPLE UNIT CONTROL**

Multiple unit control is provided. The following modifications/features are provided.

1. CABLES

- a. One (1) new 27-point jumper cable, 9 feet long.

2. RECEPTACLE

- a. Single 27- point receptacle at each end.
  - 1. Standard AAR pin assignments. Forward and reverse sanding on #11 and emergency sanding on #5.
- b. Receptacle is to be relocated in the end plate at both ends in line with present conduit opening.

3. WALKWAY RAMPS

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- a. Fixed walkway provided on front and hand railing retained in kind.
- b. Fixed walkway provided on rear, retaining present style handrail.
- c. Chains with breakaway links to be installed.

**D. DYNAMIC BRAKES**

Not equipped.

**E. ELECTRICAL CONTROL MODIFICATIONS**

1. BATTERIES

Unit to have new 19 plate batteries.

2. AUXILIARY GENERATOR

- a. Rebuilt 14KW DC is to be provided as standard.

3. GROUND RELAY RESET

Manual ground relay provided.

4. D32P MAIN GENERATOR

- a. D32P to receive complete basic overhaul.
- b. Replace bearing with new.
- c. Apply all new brushes.
- d. Hi-Pot generator after assembly.

6. REMANUFACTURING DETAIL OF ELECTRICAL SYSTEM

System designed to follow latest industrial standards for this group.

- a. All low voltage wiring to be replaced with **EXANE** insulated AAR approved cabling. Identification markers to be standard **EMD**. Brady wire markers are acceptable. High voltage cabling to be inspected, tested and qualified for reuse.
- b. Electrical cabinet interiors to be painted white.
- c. All motors and generators to be basic overhauled. These to include, one (1) each 14 KW DC auxiliary generator, four (4) each D-77B traction motors one (1) D32P main generator and one (1) each fuel pump.
- d. Electrical equipment in cabinet to be rebuilt, including, reversers,

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power contactors, generator bus and shunt, ammeter shunt, battery switch and breaker switch panel. Low voltage carrying relays and current rectifiers to be inspected, tested and qualified for reuse.

- e. The AC cabinet will be rebuilt in kind.
- f. All magnet valves on locomotive shall be rebuilt.
- g. All temperature and pressure switches rebuilt and/or renewed.
- h. All light sockets, bulbs and globes rebuilt and/or renewed.
- i. Existing cable cleating to be used. Use new rubber style cleating when going through walls.
- j. Engineers control stand to be AAR clean cab, with provisions for clean cab radio.
- k. Apply rebuilt fuel pump motor assembly.

6. TRACTION MOTOR BLOWER

Assembly to be reconditioned in kind. Rebalance blower wheel.

7. CATTRON REMOTE CONTROL SYSTEM

- a. apply Cattron remote control system per customer specifications with the speed versus throttle control feature

**F. ENGINE MODIFICATIONS**

1. FILTERS.

- a. Engine Air Filters.
  - 1. Engine air filters to be paper type.
- b. Primary fuel filtration.
  - 1. Standard capacity using new filters.

**III. GENERAL ENGINE SPECIFICATION FOR 12-645-E**

Before actual qualification and remanufacturing operations commence, the intended crankcase is to be completely dismantled to accommodate the thorough cleaning of all components. Cleanliness to be maintained throughout the remanufacturing cycle. Qualification of all engine components, as well as necessary repair work, must be in accordance with **EMD** recommended specifications.

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A. **CRANKCASE AND OIL PAN**

1. Strip case and pan.
2. Thoroughly strip (lower liner inserts, crab studs and pipe plugs) and clean crankcase and oil pan through hot tank soaking or high-pressure type washing machine.
3. Dimensionally qualify cylinder bore sizes, including: upper liner pilot, lower liner bore, and concentricity between upper and lower bores.
4. Check cam-bearing keyways for both size and alignment.
5. Check crankshaft thrust face location and width.
6. Qualify/rework dowel hole locations in end plates.
7. Visually inspect all tapped holes for defects (i.e., stripped, crossed or flat threads).
8. Tapped holes to be qualified with thread gauges, with special attention to all exhaust deck holes. Repair damaged holes through installation of thread inserts with the exception of lifting shackle holes. These must be weld repaired and tapped.  
  
All exhaust deck hole repairs must include seal welding.
9. Standard crabs and bolts applied.
10. Recondition water inlet holes.
11. Qualify seal groove size.
12. Remove welding slag, spatter and machine burrs.
13. Flush out all water passages.
14. Qualify handhold window diameters.
15. Perform individual dimensional inspections on the main bearing bore diameters and perform alignment inspection between the bores (line bore qualified per **EMD M.I. 100**).
16. Dimensionally qualify the relationship of other surfaces to the centerline of the main bearing, including: centerline to pitch line serration, centerline to base rail, centerline to P.C. manifold, centerline to cam pads and centerline to head seats.
17. Perform measurements to qualify length, squareness of end plates, and squareness of base rails.

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18. Inspect and qualify main bearing studs.
19. Upgrade water manifold holes in the "generator end" end plate for application of the new-hardened sleeves. Renew water inserts for each bank (Ref. **EMD P/N 8433263**).
20. Perform visual inspections to identify structural fatigue cracks in critical areas, and to all previous or current weld repaired areas.
21. Perform dye penetrant inspections to identify interior (subsurface) fatigue cracks at the A-frame to air box channel weld joints. Repair by welding and/or machining rework in accordance with defects found.
22. Replace water manifold sleeves.
23. Weld up dowel holes in engine mounting pads. Bottom surface of mounting pads will be left in a smooth condition.

**B. HEAD FRAMES AND TOP DECK COVERS**

1. Head frames are to be inspected for damage and distortion. Rework as required. All top deck cover inboard (exhaust manifold side) latches to be renewed as needed. Other latches qualified and renewed as required.
2. Covers should be free moving and straight. New seals are to be applied.

**C. EXHAUST CHAMBERS, EXPANSION JOINTS AND TURBO SCREEN**

1. Exhaust chambers are to be cleaned and inspected. All cracks will be repaired.
2. Base plate flanges must be flat to within 0.010" per **EMD Pointer, June 4, 1971**.

**D. ACCESSORY END OF ENGINE**

1. Inspect and qualify accessory drive housing.
2. Modify crankcase for over speed trip housing internal drain. Apply modified over speed trip housing. (**Pointers 3L-85**)
3. Recondition lube oil strainer.
4. Rebuild governor drive gear.
5. Gear backlash to be 0.08"-0.016". Visually inspect all gears.
6. Rebuilt stub shaft.

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7. Accessory drive housing will be doweled in place.
8. Clean, inspect and reuse exterior lube and water manifolds.
9. Qualify over speed trip and injector control linkage.
10. Thoroughly clean and inspect all fuel oil manifolds and piping.
11. Apply new spin-on fuel filter elements.
12. Apply reconditioned engine protector.
13. Qualify lube oil relief valve.
14. Inspect and requalify over speed trip and cam counterweights.
15. Recondition governor.
16. New injector control linkage bearings.
17. Inspect, qualify and reuse accessory drive coupling. Renew center-bonded joints.
18. Rebuild vibration damper. No viscous permitted.

**E. CAM DRIVE END OF ENGINE**

1. Visually inspect all gears for the following conditions and scrap according to, **ESFR**: overheat/burning, scoring, galling and cracking.
2. Inspect idler gear I.D. and surface finish.
3. New idler gear bushings.
4. Rebuilt idler stub shafts.
5. Recondition auxiliary generator drive assembly.
6. Install rebuilt engine blowers.
7. Recondition lube oil separator.
8. Inspect and qualify cam drive housing.
9. Inspect, qualify and coupling disc.

**F. CRANKSHAFT**

1. The remanufactured crankshaft will be given a thorough cleaning, a high-pressure flush, magna-glow inspection and a complete

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dimensional inspection. Hand polishing of main and crank pin journals is satisfactory for removing light etching and dirt marks.

**G. CAMSHAFTS**

1. Camshafts segments to be rebuilt.

**H. POWER ASSEMBLIES AND RELATED COMPONENTS**

1. Power packs to be 645-E style, **EMD** Diamond 3 or better head with cast iron liner (Ref. ED P/N 8415993, tin plated piston skirt and new rings.
2. Recondition valve bridges. Rebuilt lash adjusters applied.
3. Recondition rocker arm shafts and rocker arm. Apply new bushings and rollers, as needed.
4. Apply all new camshaft bushings.
5. Apply new lower liner inserts.
6. Connecting rods to be rebuilt.

**I. MISCELLANEOUS COMPONENTS**

1. Qualify cylinder test valves.
2. Qualify handhold covers. Apply new seals.
3. Qualify water manifolds and jumper lines.
4. Qualify piston-cooling tubes.
5. Apply qualified fuel jumper lines.
6. Rebuilt injectors will be installed. Vendor to be Haynes.
7. Inspect and reapply drain plugs, crab studs, main bearing studs, plates and covers.
8. Reassemble engine using all new gaskets, seals, o-rings, bushings and miscellaneous hardware.
9. Apply hour meter to engine for monitoring number of engine hours under warranty.

**J. ENGINE ASSEMBLY**

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1. Engine to be reassembled using **EMD** recommended torque specifications, clearances and gear lash tolerances except where modified.
2. Test data showing horsepower, RPM, governor rack setting, oil pressure, fuel pressure and water temperature at rear of engine will be provided.
3. New builder's serial number plate to be applied. This number will be recorded on all build-up sheets.
4. Customer will be supplied with the engine bills of material ("BOM") at time of acceptance. BOM's will include the serial numbers and part numbers of the following components:

Crankcase	Connecting Rods	Liners	Carriers
Oil Pan	Pins	Water Pumps	Injectors
Turbocharger	Cylinder Heads	Pistons	Governor
Main Oil Pump	Gear-Accessory & Camshafts		

**K. KIM HOT START**

1. Apply Kim Hot Start emersion heating system for oil and water with the battery trickle charge feature.

**L. SPECIAL INSTRUCTIONS**

1. To be provided: compression lead readings, accessory and camshaft gear clearance.

**M. TRUCKS**

1. Basic remanufactured truck with the following features and modifications:
2. WHEEL/AXLE/GEAR
  - a. Gear ratio - 62:15 gear ratio provides full HP to 65 miles per hour.
  - b. Axles - To be sonic tested.
  - c. Wheels – 2 inch or better cast steel wheels to be applied.
  - d. Gear cases rebuilt and new seals applied.
3. JOURNAL BOXES

*BOM*

- a. Rebuilt journal boxes to be installed.

4. BRAKE RIGGING AND SHOES

- a. Pin type slack adjustors installed.
- b. Apply BSA 12812 wrap-around brake shoes

5. HUCK FASTENERS

Gear case halves bolted together.

6. TRACTION MOTOR MODIFICATIONS

- a. **NATIONAL CARBON** or **CARBONE DE-7000** wafer chamfered edge traction motor brushes to be installed.

7. OTHER TRUCK MODIFICATIONS

- a. Traction motor dual seal support bearing seal rings.
- b. Plastic pedestal liners installed.
- c. Journal springs tested and qualified for reuse.

**N. CAB MODIFICATIONS**

1. CAB SEATS

- a. New Engineer's seat pedestal mount seat to be installed.  
Helper side seat shall be installed.

2. WATER COOLER/REFRIGERATOR

Install as an option.

3. SPEED INDICATOR

Includes over speed switch set for 65 miles per hour. Installed per customer specifications.

4. TEMPERATURE CONTROL-OPTIONAL FEATURES

- b. Apply electric cab heat.
- b. Apply temperature gauge in cab

5. CAB FLOORING/CEILING

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a. Apply Lon seal cab flooring.

b. Cab insulation renewed.

6. AWNINGS

Installed as option.

7. WIND DEFLECTORS

Installed as option.

8. DOORS, WINDOWS AND GLASS

a. Cab door to be rebuilt as required.

b. Window Glass – Renewed

Basic application - high impact front and rear window material according to FRA rules. Sliding to be Type II glazing.

c. Apply swing-out mirrors for engineer's viewing visibility

9. CONTROLLER

Standard **EMD** "two-handle" to be supplied. All gauges and numbers to be clearly visible for the engineer and operators.

10. OTHER CAB MODIFICATIONS

a. Cab interior to rebuilt as required.

b. Windshield weather strip, with extended overlapping lip, will be applied.

c. sufficient cab window and door insulation to minimize/eliminate grain dust in the cab

**O. RADIATORS**

New 6" mechanical bond radiators installed.

**P. RADIO & END OF TRAIN DEVICE**

Allow sufficient space for customer supplied auxiliary power and configure for plug and play radio installation (radio to be supplied by the customer)

**Q. CARBODY**

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1. Basic low profile with short hood.
2. #1 (FRONT) END ARRANGEMENT
  - a. Basic pilot to be qualified.
3. #2 (REAR) END ARRANGEMENT
  - a. Basic pilot to be qualified.
4. COUPLER/DRAFT GEAR

Draft gear and "E" coupler to be rebuilt. Pockets to be rebuilt as required.
5. LIGHTS
  - a. The basic complement of lights, including twin sealed beam headlights (32VDC each).
  - b. Ditch lights applied front and rear for visibility.
6. FIRE EXTINGUISHERS

Two (2) 20 lb. **ANSUL BC** fire extinguishers to be mounted in cab and in engine room.
7. LIFTING AND JACKING DEVICES
  - a. Jacking pad/cable sling
    1. Basic arrangement only, consisting of one (1) combination sling/jacking pad welded to the under frame side sill, near the longitudinal bolster center.
8. LOCOMOTIVE WEIGHT

The standard manufacturing tolerance applied. Variation between trucks not to exceed 3,500 pounds.
9. CLEARANCE

No special height restrictions.
10. OTHER CARBODY MODIFICATIONS
  - a. Car body to be sealed to route effluents to a 100-gallon holding tank.

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**R. FUEL TANK**

1. DESCRIPTION

a. Capacity

1. Fuel tank to be provided will be a minimum 600-gallon capacity.

b. Filler Pipes

1. One filler pipe located on each side of tank.

c. Gauges

1. Install qualified gauges using all new gaskets upon installation.
  - a. Remove and clean sight glasses. Replace all gaskets.

**S. STYLE/SANDBLASTING AND PAINTING**

In accordance with drawings prepared by end-user.

1. PAINT

a. Sandblast the complete locomotive exterior.

Exterior:

Locomotive to be painted to customer specifications.

Cab interior is painted with basic enamel suede gray.

The interior of the short hood, long hood, and components is painted with basic enamel suede gray.

Upper locomotive - exterior car body surfaces painted with polyurethane.

Customer color specified:

2. DECORATIVE PRESSURE SENSITIVE MARKINGS

Stencil (stick on type) to be applied to the paint, including the sides of the hood and numbers on the cab.

3. IDENTIFICATION.

- a. Stencil "F" is located on the side sills, nearest the front end.

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b. **NUMBER BOXES**

1. Number panels are of plastic construction and included black on white.

c. Road numbers are as follows:

1. ROAD NUMBERS - Supplied by end-user.

4. OTHER STYLE AND PAINT MODIFICATIONS

- a. Horn will be painted.
- b. Catwalks to be non-skid.

**T. SHIPMENT**

1. CONSIGNMENT AND ROUTING

In accordance with written instructions furnished by UP.

2. OPERATING SUPPLIES

Units are to be drained of cooling water and fuel for shipment.

**U. DRAWINGS, DIAGRAMS AND MANUALS**

1. A standard set of drawings is provided in book form 11" x 17" size.
2. All drawings are to be compatible with **AUTOCAD** on computer floppy disk, or CD.
3. Wiring diagrams and schematics, inclusive of the remote control system, to be provided.
3. Operating manuals and parts books (310 and 300 series) to be provided
4. Drawings and floppies to be sent to: Minnesota Corn Processors  
3000 East 8<sup>th</sup> Street  
Columbus, Nebraska 68601  
Attn: Bill Percival  
Phone: 402.562.5048  
E-mail: bill.percival@mcp.net

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**EXHIBIT I**

Southern California Railroad Corporation

## **LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 16th day of November, 2000, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Southern California Railroad Corporation, ("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 affect prompt delivery of the locomotive(s) to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination.

#### **3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one months rent payable on acceptance of the locomotive(s) and one months rent to be held as security. Lessee shall operate such locomotive(s) in service on its railroad. 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:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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 staging area in Mt. Vernon, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor at one of its designated contiguous United States facilities in good order and condition, reasonable wear and tear excepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

#### **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 good condition and repair.

ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the following items:

a. Ninety- (90) days on all major components, excluding allowance for any freight or labor charges. Major components shall be defined as follows:

1. Engine crankshaft
2. Alternator

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 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 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) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.

ii. name Lessor and Lessee as insured parties.

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).

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

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

ii. provide coverage in an amount not less than the replacement value 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive.

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 no right to assign or sub-lease this lease or any other of the locomotive(s) or any interest therein.

## **11. PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect to purchase the locomotive at the end of the initial lease term. The purchase option is listed on Schedule A. The Lessee shall elect this option with a written notice.

## **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.

## **13. 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 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.

## **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 available to Lessor at Lessee's expense, any or all Equipment 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Southern California Railroad Corporation  
207 South Cook Street  
Suite 200  
Barrington, Illinois 60010

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

**LESSOR:**

**LESSEE:**

**NATIONAL RAILWAY EQUIPMENT CO.**

**SOUTHERN CALIFORNIA RR CORP.**

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

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

**NAME:** Patrick C. Frangella

**NAME:** \_\_\_\_\_

**TITLE:** Vice President Operations

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

**ATTEST:** Luis E. Mayor

**ATTEST:**

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

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

**TITLE:** Assistant Secretary

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

(Corporate Seal)

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 16th day of November by and between the National Railway Equipment Company (LESSOR) and Southern California Railroad Corporation (LESSEE).

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

<b>UNIT NO.</b>	<b>TYPE</b>	<b>GENERAL DESCRIPTION</b>	
3076	EMD	GP-40	
<b>LEASE RATE</b>			
<b>REPLACEMENT VALUE</b>	<b>LEASE TERM</b>	<b>LEASE RATE PER LOCOMOTIVE</b>	
		<b><u>MONTHLY</u></b>	<b><u>DAILY</u></b>
\$215,000.00	72 Months	\$3,123.10	\$102.68

**PURCHASE OPTION:** Lessee may elect, at the end of the 72-month initial lease term, to purchase Locomotive Unit Number 3076 for \$35,000.00.

**COMMENCEMENT DATE:** November 1, 2000 accepted at Mt. Vernon, Illinois.

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the lease.

**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

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

**NAME:** Patrick C. Frangella

**TITLE:** Vice President Operations

**LESSEE: SOUTHERN CALIFORNIA RAILROAD CORPORATION**

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

**NAME:** \_\_\_\_\_

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

**EXHIBIT J**

Southwestern Railroad Company, Inc.

## **LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 30th day of April 2002, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Southwestern Railroad Company, 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 affect prompt delivery of the locomotive(s) to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination.

#### **3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with two months advance rent payable upon purchase order receipt date and, in addition, two months rent payable upon purchase order receipt date to be held as a security deposit prior to qualification of the equipment. Lessee shall operate such locomotive(s) in service on its railroad. 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 twelve percent (12%) per annum.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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**

Lessee shall accept delivery of the locomotive(s) at Lessor's manufacturing facility in Silvis, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor or to Lessor's end-user(s) at one or more of its designated contiguous United States facilities in good order and condition, reasonable wear and tear accepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

## **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 good condition and repair.
  - ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the specified non-consumable warranty items as indicated below:
    - a. One hundred and eighty - (180) days on all qualified components, excluding allowance for any freight or labor charges from date of locomotive on-site commissioning, not to exceed a start/commissioning date past ninety days from date of ex-works shipment.
    - b. Associated freight charges for the delivery of all warranted replacement parts from Lessor and the return of all warranted assembly/component part cores to Lessor shall be borne by Lessee. Lessee shall be responsible for the consumables, including water, oil, diesel fuel, all locomotive fluids, sand, wheels, brake shoes, traction motor/generator brushes and all associated locomotive filters which are not covered by the qualification warranty of 180 days..
    - c. The Lessor point of contact for warranty shall be National Railway Equipment

Company in Silvis, Illinois at 309.755.6800, Attn: Pat Murphy.

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 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 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) 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. Railroad liability insurance providing coverage in an amount not less than ten million (\$10,000,000.00) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.

- 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).
- iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.
- v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

- i. be written in standard form by an insurance company acceptable to Lessor.
- ii. provide coverage in an amount not less than the replacement value 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Stipulated Loss Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay

any sales and use taxes due on such transfer.

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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES.** Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 60 days notice, elect the option to renew or purchase the locomotive at the end of the initial lease term. The renewal purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### **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.

#### **13. 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 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.

#### **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 available to Lessor at Lessee's expense, any or all Equipment at 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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 Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Southwestern railway Company, Inc.  
P.O. Box 1544  
Ogden, Utah 84402

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

**LESSOR:**

**LESSEE:**

**NATIONAL RAILWAY EQUIPMENT CO.**

**SOUTHWESTERN RR CO., INC.**

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

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

**NAME:** James E. Fisk

**NAME:** \_\_\_\_\_

**TITLE:** President

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

**ATTEST:** Robert E. Loewer, Jr.

**ATTEST:**

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

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

**TITLE:** Director of Finance

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

(Corporate Seal)

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 30<sup>th</sup> day of April by and between the National Railway Equipment Company (LESSOR) and Southwestern Railway Railroad Company, Inc. (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
SWRR 3000	GP-40 EMD	3,000 HP FOUR AXLE

**LEASE RATE**

REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
\$235,000.00	72 Months	\$4,045.42	\$133.00

**PURCHASE OPTION:** Lessee may elect, at the end of the six-year initial lease term, to purchase Locomotive(s) Unit No. SWRR 3000 for \$20,000.00.

**RENEWAL RATE, TERM AND PURCHASE OPTION:** At the end of the six year initial lease term, Lessee may elect to renew the lease for not less than one year at a daily lease rate of \$133.00 per day. The purchase option buyout at the end of the one-year renewal period would be \$5,000.00.

**COMMENCEMENT DATE:** May 15, 2002 accepted at Silvis, Illinois .

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the lease.

**LESSOR: NATIONAL RAILWAY EQUIPMENT COMPANY**

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

**NAME:** James E. Fisk

**TITLE:** President

**LESSEE: SOUTHWESTERN RAILROAD COMPANY, INC.**

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

**NAME:** \_\_\_\_\_

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

**MEMORANDUM OF LEASE AGREEMENT**

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of April 30, 2002, by and between NATIONAL RAILWAY EQUIPMENT COMPANY ("Lessor"), and Southwestern Railroad Company, Inc. ("Lessee"), with reference to the following:

- 1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, Locomotive model(s) described herein.

Each locomotive is fully-described in a certain Lease Agreement dated as of April 30, 2002 (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee. A Schedule of the equipment is attached hereto.

- 2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.

The Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

**LESSEE:**

**SOUTHWESTERN RAILROAD COMPANY,INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSOR:**

**NATIONAL RAILWAY EQUIPMENT COMPANY**

By: \_\_\_\_\_

Name: James E. Fisk

Title: President



**SCHEDULE OF EQUIPMENT**

Lessor: NATIONAL RAILWAY EQUIPMENT COMPANY

Lessee: SOUTHWESTERN RAILROAD COMPANY, INC.

Approved by: \_\_\_\_\_  
(Lessee to initial each page)

Attached to Bill of Sale dated:  
\_\_\_\_\_

Equipment Located at:

300 Ninth Street North  
Silvis, Illinois 61282

Equipment Schedule No.: See Schedule "A"

Manufacturer and/or Vendor  
Name & Invoice Number

Equipment  
Description

National Railway Equipment Company

GP40 EMD 3000 HP

**EXHIBIT K**

Wisconsin & Southern Railroad Company

## **LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 13th day of February, 2002, between the National Railway Equipment Company, an Illinois corporation ("LESSOR"), and Wisconsin & Southern Railroad Company ("LESSEE").

### **LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:**

#### **1. LEASE AND LEASED PROPERTY**

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

#### **2. TERM**

The term of this Lease for each locomotive shall be the fixed term set forth in Schedule "A", commencing for each locomotive on the date such locomotive is accepted by Lessee, as shown on the Schedule of Equipment applicable to such locomotive ("Commencement Date").

#### **3. RENTAL; SECURITY DEPOSIT**

A. The rental payable shall be the sums identified in Schedule "A" as Base Rent and Additional Rent payable in advance monthly or bi-monthly installments with rent for the first month of the term payable upon execution of this Lease. 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 twelve percent (12%) per annum.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

or at such other address as Lessor may direct in writing.

D. Upon execution of this Lease, Lessee shall deposit with Lessor, as security for performance by Lessee's obligations under this Lease (the "Security Deposit"), an amount equal to one month's rent for all the Locomotives. Lessor may apply the Security Deposit to satisfaction of any payment of Lessee which is not made when due. Any amount not so applied will be returned to Lessee upon termination of this Lease and return of the Locomotives in accordance with the terms of this Lease. The Security Deposit will not bear interest.

E. Lessee agrees to establish, prior to delivery of any Locomotives hereunder, and to maintain with Lessee's bank an automatic payment arrangement providing for payment of all Base Rent and

Additional Rent when due.

#### **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.

E. This Lease is intended to be a true lease of the locomotive for federal income tax purposes and is not and in no way shall be construed as creating a sale of the locomotive(s) to Lessee. Lessee agrees to indemnify and hold Lessor harmless from and against any adverse tax consequences, which may result from Lessee's acts or failures to act with respect to the Locomotives, or from Lessee taking any position contrary to the intention and understanding that this Lease is a true lease.

#### **5. OWNERSHIP AND LESSOR'S INSPECTION**

A. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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.

#### **6. DELIVERY/RETURN**

A. Lessee shall accept delivery of the locomotive(s) at Lessor's manufacturing facilities in Illinois.

B. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor or to Lessor's end-user(s) at one of its Illinois facilities (as designated by Lessor) in good order and condition, reasonable wear and tear accepted, as specified in C below. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

C. Lessee's acceptance of the locomotives and Lessee's return of the locomotives shall comply to the following mechanical and electrical service conditions:

- received and returned in good operating and serviceable condition
- received and returned clean and free of broken and damaged parts
- received and returned with full 2,000 horsepower capability, +/- 5%

- received and returned with all systems operating as designed for the locomotive model
- the locomotives meeting federal and state regulatory requirements at the time of receipt and at the time of return
- returned with reasonable wear and tear accepted
- received and returned in load tested condition with a minimum of 45 minutes in each throttle notch position upon delivery and with a minimum of 15 minutes in each throttle notch position upon return

## **7. LESSEE'S INSPECTION; WARRANTY; AVAILABILITY GUARANTY; DISCLAIMER**

A. 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 good condition and repair. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the specified Warranty of qualified, non-consumable components in B below. Lessee shall be responsible for the consumables, including water, oil, diesel fuel, all locomotive fluids, sand, wheels, brake shoes, traction motor/generator brushes and all associated locomotive filters which are not covered by the Warranty in B.

B. Lessor warrants the qualified, non-consumable components of each Locomotive for 180 days from the commissioning date of such Locomotive. Lessor's obligations under this warranty are limited to replacement of components that are returned to Lessor within the warranty period. Lessor shall have no obligation for freight or labor charges for failed components. Associated freight charges for the delivery of all warranted replacement parts from Lessor and the return of all warranted assembly/component part cores to Lessor shall be borne by Lessee. The Lessor point of contact for warranty shall be National Railway Equipment Company in Dixmoor, Illinois at 708.388.6002.

C. Within the first three hundred and sixty five days from delivery and on-site commissioning of the locomotives, if one of the five locomotives fails to operate "properly" (with "properly" being defined as an availability rate of at least 90%+) after the Lessee and Lessor have made reasonable efforts to repair the locomotive, Lessee may, at its option, and upon written notification to Lessor, return the locomotive, at Lessor's expense, to Lessor's designated manufacturing facility in Mt. Vernon, Illinois, whereupon Lessor shall replace the failed locomotive with a locomotive of like kind and shall deliver the replacement locomotive at Lessor's cost to Lessee. Upon such replacement, the replacement Locomotive shall be subject to this Lease as one of the Locomotives, and this Lease shall be terminated with respect to the replaced Locomotive. Lessor and Lessee shall execute documentation necessary and appropriate to effect such replacement.

D. Delivery to and acceptance of the locomotive(s) by, and execution of a Schedule of Equipment 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 (see Exhibit I), that Lessee is satisfied that the same is suitable for Lessee's purpose and that, 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 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) 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) excepting as provided under Article 7. above.

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, at Lessee's expense, obtain crankcase oil samples and submit to a lab for analysis on a monthly basis. Lessee shall also obtain air compressor oil samples and submit to a lab for analysis on a monthly basis. Results of the lab analysis shall be submitted to the Lessor monthly and bi-monthly in accordance with the aforementioned schedule.

H. 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. Railroad liability insurance providing coverage in an amount not less than ten million (\$10,000,000.00) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.
- 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).

- iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.
- v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

- i. be written in standard form by an insurance company acceptable to Lessor.
- ii. provide coverage in an amount not less than the replacement value 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Stipulated Loss Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer.

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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES.** Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 60 days notice, elect the option to renew or purchase the locomotive at the end of the initial lease term. The renewal and purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### **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.

#### **13. DEFAULT**

Each of the following events shall constitute an event of default ("Event of Default") under this Lease:

- i. Lessee shall fail to pay when due any installment of rental hereunder or of any other obligation for the payment of money now or hereafter owed by Lessee to Lessor.
- ii. Lessee shall fail to timely perform any other liability, obligation, covenant or agreement hereunder of Lessee.
- iii. Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency law (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against Lessee in any such proceeding, or Lessee shall by voluntary petition, answer or consent, seek relief under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors, or take any corporate action to authorize any of the foregoing;
- iv. a receiver, trustee, liquidator or custodian of Lessee or of a substantial part of its property

shall be appointed by court order and such order shall remain in effect for more than 60 days; or Lessee shall be adjudicated bankrupt or insolvent or any of its properties shall be sequestered by court order and such order shall remain in effect for more than 60 days; or a petition shall be filed against Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and shall not be dismissed within 60 days after such filing; or Lessee makes a general assignment for the benefit of its creditors; or Lessee admits in writing its inability to pay its debts generally as they become due, or is unable to pay or is generally not paying its debts as they become due, or takes any corporate action to authorize any of the foregoing, or

- v. Lessee shall be in default under any other lease or agreement for borrowed money to which Lessee is a party.

#### **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 available to Lessor at Lessee's expense, any or all Equipment at 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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 Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Wisconsin & Southern Railroad Company  
P.O. Box 9229  
Milwaukee, Wisconsin 53209-0229

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

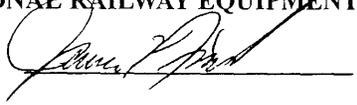
LESSOR:

LESSEE:

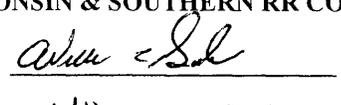
NATIONAL RAILWAY EQUIPMENT CO.

WISCONSIN & SOUTHERN RR CO.

BY:



BY:



NAME: James E. Fisk

NAME: William E Gardner

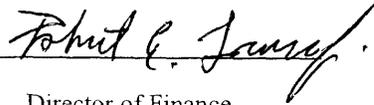
TITLE: President

TITLE: CEC

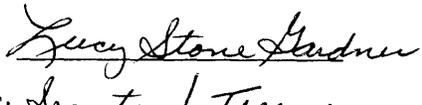
ATTEST: Robert E. Loewer, Jr.

ATTEST:

BY:



BY:



TITLE: Director of Finance

TITLE: Secretary/Treasurer

(Corporate Seal)

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 13<sup>th</sup> day of February 2002 by and between the National Railway Equipment Company (LESSOR) and Wisconsin & Southern Railroad Company (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
TBD	EMD	GP38 locomotives with AR-10 alternators
TBD	EMD	GP38 locomotives with AR-10 alternators
TBD	EMD	GP38 locomotives with AR-10 alternators
TBD	EMD	GP38 locomotives with AR-10 alternators
TBD	EMD	GP38 locomotives with AR-10 alternators

**LEASE RATE  
MECHANICALLY AND ELECTRICALLY QUALIFIED  
LEAD CAB QUALIFIED WITH RETENTION TANK  
NON-PAINTED FINISH**

**BASE RENT**

REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE		
		<u>MONTHLY</u>	<u>TWICE MONTHLY</u>	<u>DAILY</u>
\$307,000.00	7 Years	n/a	\$1,629.55	n/a
\$307,000.00	7 Years	n/a	\$1,629.55	n/a
\$307,000.00	7 Years	n/a	\$1,629.55	n/a
\$307,000.00	7 Years	n/a	\$1,629.55	n/a
\$307,000.00	7 Years	n/a	\$1,629.55	n/a

**ADDITIONAL RENT**

	LEASE RATE PER LOCOMOTIVE		
	<u>MONTHLY</u>	<u>TWICE MONTHLY</u>	<u>DAILY</u>
Per Locomotive	n/a	\$ 686.15	n/a

The payment total for five locomotives of base rent and five locomotives of additional rent is \$11,578.50 due twice monthly through automatic payment arrangement from Lessee's bank. The total number of these payments shall be one hundred and sixty-eight (168) through the duration of the seven (7) year lease agreement.

**PURCHASE OPTION:** Lessee may elect, at the end of the seven-year initial lease term, to purchase Locomotive(s) Unit Nos. (TBD) for \$35,000.00 each.

**RENEWAL RATE AND TERM:**

At the end of the seven-year initial lease term, Lessee may elect to renew the lease three months at a daily straight lease rate of \$100.00 per day per locomotive. The purchase option at the end of the three-month renewal period shall be \$32,500.00 per locomotive for those Locomotives subject to a purchase option as provided above.

Upon mutual agreement with Lessor, Lessee may renew the lease for a period of either six, twelve or eighteen months at a daily straight lease rate of \$100.00 per day per locomotive. The purchase option at the end of the six, twelve and eighteen month renewal periods shall be \$30,000.00 per locomotive (six month renewal), \$25,000.00 per locomotive (twelve month renewal) and \$20,000.00 per locomotive (eighteen month renewal) for those Locomotives subject to a purchase option as provided above.

**COMMENCEMENT DATE:** Acceptance Date shown on Schedule of Equipment

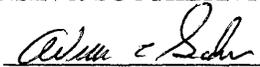
**LESSOR: NATIONAL RAILWAY EQUIPMENT COMPANY**

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

**NAME:** James E. Fisk

**TITLE:** President

**LESSEE: WISCONSIN & SOUTHERN RAILROAD COMPANY**

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

**NAME:** William E Gardner

**TITLE:** CEO

**MEMORANDUM OF LEASE AGREEMENT**

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of February 13, 2002, by and between NATIONAL RAILWAY EQUIPMENT COMPANY ("Lessor"), and WISCONSIN & SOUTHERN RAILROAD COMPANY ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, Locomotive model(s) described as GP-38 Locomotive(s) bearing reporting mark(s): TBD.

Each locomotive is fully-described in a certain Lease Agreement dated as of February 13, 2002 (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee. A Schedule of the equipment is attached hereto.

2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.

The Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

**LESSEE:**

WISCONSIN & SOUTHERN RAILROAD COMPANY

By: William E. Gardner

Name: William E. Gardner

Title: CEO

**LESSOR:**

NATIONAL RAILWAY EQUIPMENT COMPANY

By: James E. Fisk

Name: James E. Fisk

Title: President

STATE OF WISCONSIN )  
 ) SS.  
COUNTY OF MILWAUKEE )

On this 13th day of FEBRUARY, 2002, before me appeared Wm. E. Gardner the person who signed this instrument who acknowledged that (s) he is the CEO of WISCONSIN & SOUTHERN RAILROAD and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.



Notary Public

My Commission is PERMANENT.

[Seal]

My Commission Expires:  
\_\_\_\_\_

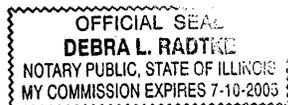
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK Will )

On this 13th day of February, 2002, before me appeared \_\_\_\_\_, the person who signed this instrument who acknowledged that (s) he is an officer of **NATIONAL RAILWAY EQUIPMENT COMPANY** and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.



Notary Public

[Seal]



My Commission Expires:  
7-10-2005

*SW*

## SCHEDULE OF EQUIPMENT

Lessor: NATIONAL RAILWAY EQUIPMENT COMPANY

Lessee: WISCONSIN & SOUTHERN RAILROAD COMPANY

Approved by: *William Sch*  
(Lessee to initial each page)

Equipment Located at:

\_\_\_\_\_ 1100 Shawnee Street  
Mt. Vernon, Illinois 62864

Equipment Schedule No.: TBD

Manufacturer and/or Vendor  
Name & Invoice Number

Equipment  
Description

National Railway Equipment Company

EMD GP-38 2,000 hp

Unit Number(s)

Acceptance Date

22  
EP

EXHIBIT I

DATE & ESTIMATE  
SIGN OFF HOURS CODE KEY TOTAL

ENGINE

Install qualified 16-645-E engine.	_____	A26
Perform prelube.	_____	A28
Leads to be taken on each assembly.	_____	A20
Lube oil samples will be taken prior to start up and after load testing.	_____	A13
Engine to be load tested with governors and racks set to gain proper horsepower.	_____	A04
Inspect exhaust stack holes. Repair as required. Apply spark-arresting stacks Wisc. Regs.	_____	A16
Apply engine intake filters.	_____	A17
Perform air box inspection.	_____	A20
Apply lubricating oil to engine.	_____	A13
Install roots blown engine intake filter housing into carbody/longhood.	_____	A17
Install starter motors and starter bracket.	_____	A19
Weld, drill and apply dowels.	_____	A21
Apply low profile lube oil sparator.	_____	

**TOTAL ENGINE HOURS:**

TRUCKS

Trucks to be cleaned as required.	_____	B08
Repair brake rigging. Replace pins, bushings and pedistal liners as required. Must be clasp brake.	_____	B03
Inspect brake shoes. Replace as required.	_____	B03
Qualify lubricating wick and check oil level.	_____	B17

BC  
9/12

Qualify truck frames.	_____	B11
Qualify slack adjusters.	_____	B12
Apply 1 3/4" or better Hyatt bearing wheel and axle assemblies.		B01

<u>DATE &amp; SIGN OFF</u>	<u>ESTIMATE D HOURS</u>	<u>CODE KEY</u>	<u>TOTAL</u>
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**TRUCKS CONTINUED**

Qualify gear cases.	_____	B08
Qualify brake cylinders.	_____	B04

**TOTAL TRUCK HOURS:**

**TRACTION MOTORS**

Inspect traction motors from Silvis.	_____	C07
--------------------------------------	-------	-----

**TOTAL TRACTION MOTOR HOURS:**

**ALTERNATOR**

Electrically qualify for service.	_____	D17
Inspect collector ring brushes. Replace as required.	_____	D02
Clean interior of AR10 as required.	_____	D06
Monitor bearing for noise. Replace as required.	_____	D01
Modify air box from turbocharger to roots blown type.	_____	D10
Modify aux gen mounting lugs & apply thick plates		
Weld, drill and apply dowels.	_____	D07

**TOTAL MAIN GENERATOR HOURS:**

**ELECTRICAL SYSTEM**

Inspect contactors and relays for proper operation.	_____	E02
Inspect high voltage switch gear for proper operation.	_____	E03
Inspect low voltage wiring.	_____	E05
Clean high voltage cabinet.	_____	E07

Qualify all doors and covers.	_____	E09
Qualify all switches and breakers.	_____	E12

<u>DATE &amp;</u>	<u>ESTIMATE</u>		
<u>SIGN OFF</u>	<u>D</u>	<u>CODE KEY</u>	<u>TOTAL</u>
	<u>HOURS</u>		

**ELECTRICAL SYSTEM CONTINUED.**

Qualify resistors and rectifiers.	_____	E13
Inspect high voltage wiring in cabinet.	_____	E15
Inspect voltage regulator	_____	E19
Inspect all terminal boards and wiring.	_____	E16
Free locomotive of grounds	_____	E02

**TOTAL HIGH VOLTAGE CABINET:**

**AUX. GENERATOR**

Electrically qualify for reuse.	_____	F09
Inspect brushes. Replace as required.	_____	F02
Monitor bearings for noise. Replace as required.	_____	F01
Inspect commutator. Stone if required.	_____	F03
Qualify covers and guards.	_____	F12
Modify aux. generator housing and AR-10 housing convert to blower engine type.	_____	F10
Inspect mounting bolts and dowels. Repair as required.	_____	F09
Apply aux gen mounting legs.		
Apply new drive parts & guard.		

**TOTAL AUX. GENERATOR:**

**A.C. CABINETS**

Inspect A.C. cabinet.	_____	G01
Qualify A.C. cabinet equipment.	_____	G02
Inspect A.C. cabinet wiring.	_____	G03

BC  
H

Clean cabinet as required.	_____	G04
Terminal boards and wire guides.	_____	G11
Remove # 2 fan contactor & tie back wiring		

**TOTAL A.C. LOCKER:**

**DATE & ESTIMATE  
SIGN OFF D HOURS CODE KEY TOTAL**

**INSTALLATION/ALIGNMENT OF ROTATING**

Re-install AR10 alternator.	_____	H04
Align AR10 alternator.	_____	H01
Align air compressor.	_____	H02
Re-install aux. Generator blower asy.	_____	H06
Align aux. Generator.	_____	H03

**TOTAL INSTALLATION/ALIGNMENT:**

**DYNAMIC BRAKING**

Inspect and qualify dynamic brake grids, fans and cabling.	_____	I11
Apply exhaust stack outlets to DB hatch		

**TOTAL DYNAMIC BRAKING:**

**DISASSEMBLE**

Remove diesel engine.	_____	J01
Remove trucks.	_____	J02
Remove AR10 alternator.	_____	J03
Remove auxiliary generator/blower asy.	_____	J05
Remove longhood.	_____	J98
Misc. stripping.	_____	J21

**TOTAL DISASSEMBLE HOURS:**

**ELECTRICAL GENERAL & MODS.**

Inspect longhood wiring.	_____	K01
Inspect cab electrical.	_____	K03

Handwritten initials/signature in the top right corner.

Install rebuilt batteries.	_____	K05
Cleaning.	_____	K07
Qualify lighting circuits.	_____	K08

**DATE & ESTIMATE**  
**SIGN OFF D HOURS CODE KEY TOTAL**

**ELECTRICAL GENERAL & MODS. CONT.**

Qualify load regulator.	_____	K10
Qualify cab heaters. Install two strip heaters.	_____	K12
Test and set transition.	_____	K15
Test and set wheel slip.	_____	K16
Inspect and qualify MU receptacles.	_____	K25
Troubleshoot L.V. circuits.	_____	K30
Troubleshoot H.V. circuits.	_____	K31
Install front ditch lighting.	_____	K22
Install event recorder system.	_____	K19
Install alerter system.	_____	K17
Qualify radio enclosure, antenna and coaxial cable.	_____	K28
Qualify existing speedometer systems. Must be in working condition.	_____ _____	K09
Perform function test of all circuits.	_____ _____	K37
Apply roots blower filter vacuum switch to new housing & tie in.		

**TOTAL ELECTRICAL GENERAL HOURS:**

**PAINTING**

Hand scrape heavy areas, foam, steam clean engine room, trucks and underframe.	_____	L03
Hand clean, vacuum and wipe down interior of cab and engine room.	_____	L03
Clean cab interior, sub-base and short nose area.		L03

BT  
AK

**TOTAL CLEANING HOURS:**

	<u>DATE &amp; SIGN OFF</u>	<u>ESTIMATE D HOURS</u>	<u>CODE KEY</u>	<u>TOTAL</u>
<b><u>CONTROL STAND</u></b>				
Qualify controller.	_____		M02	
All meters and guages to be qualified and calibrated.	_____		M03	
Qualify all switches.	_____		M04	
Qualify lighting circuits.	_____		M05	
Qualify wiring.	_____		M06	
Cleaning.	_____		M07	
Apply all covers.	_____		M08	

**TOTAL CONTROL STAND HOURS:**

**CAB AND CARBODY**

Perform necessary long hood repairs.	_____		N01	
Perform necessary cab repairs.	_____		N03	
Perform necessary frame, step and pilot repairs.	_____		N04	
Clean interior and exterior of carbody.	_____		N14	
Qualify FRA glazing.	_____		N24	
Inspect and qualify cab cab floor.	_____		N23	
Cab weatherstrip to be replaced as required.	_____		N21	
Inspect center casting. Repair as required.	_____		N05	
Inspect side-bearing clearance. Repair as required.	_____		N05	

B6  
[Signature]

Modify partition for application of roots blowers.

N09

Remove #2 fan & blank opening.

Apply oval cuttouts to fan hatch baffles. Between  
1 & 2, 2 & 3 fans.

DATE & ESTIMATE  
D  
SIGN OFF HOURS CODE KEY TOTAL

**CAB AND CARBODY CONTINUED**

Install working pump style toilet.

\_\_\_\_\_

N20

Install three good cab seats.

\_\_\_\_\_

N22

**TOTAL CARBODY HOURS:**

**AIR SYSTEM**

Insure sanders, inboard and outboard, are in  
good working condition.

\_\_\_\_\_

O02

Insure wiper motor, wiper arms and wiper  
blades are in good and working condition.  
All are missing.

\_\_\_\_\_

O03

Perform FRA air brake test. Locate blue card  
for additional FRA requirements.

\_\_\_\_\_

O04

Qualify horn and bell. Bell missing.

\_\_\_\_\_

O07

Qualify MU piping and hoses on corners.

\_\_\_\_\_

O08

**TOTAL AIR SYSTEM HOURS:**

**AIR COMPRESSOR**

Apply lubricating oil to crankcase.

\_\_\_\_\_

P08

Renew filter on air compressor.

\_\_\_\_\_

P07

Take lube oil sample.

\_\_\_\_\_

P08

**TOTAL AIR COMPRESSOR HOURS:**

**TRACTION MOTOR BLOWERS**

Qualify traction motor blower housing.

\_\_\_\_\_

R02

Insure proper fit to modified AR10 housing.

\_\_\_\_\_

R02

**TOTAL T.M. BLOWER HOURS:**

	<u>DATE &amp; SIGN OFF</u>	<u>ESTIMATE D HOURS</u>	<u>CODE KEY</u>	<u>TOTAL</u>
<b><u>COOLING SYSTEM</u></b>				
Qualify radiator cores.	_____		T01	
Insure shutters are free from defects or damage and work properly.	_____		T03	
Qualify cooling fans. Remove center cooling fan and blank off opening.	_____		T08	
Qualify cooling system.	_____		T01	

**TOTAL COOLING SYSTEM HOURS:**

**FUEL SYSTEM**

Sixty (60) pound test engine fuel lines and injectors for leakage.	_____		U07	
Change all fuel filters.	_____		U03	
Apply necessary fuel for testing.	_____		U08	
Qualify fuel pump and motor.	_____		U02	
Drain, flush & clean fuel tank.	_____		U01	
Qualify fuel gauges.	_____		U10	

**TOTAL FUEL SYSTEM HOURS:**

**LUBE OIL SYSTEM**

Inspect lube oil system for leaks. All piping shall be free of leaks.	_____		V01	
Qualify lube oil cooler on load box.	_____		V04	
Monitor temperature difference on lube oil cooler during load testing.	_____		V04	
All major oil leaks to be corrected.	_____		V01	

*Handwritten initials/signature*

**DATE & ESTIMATE  
SIGN OFF D HOURS CODE KEY TOTAL**

**LUBE OIL SYSTEM CONTINUED**

Change lube oil filters and clean strainer screens. \_\_\_\_\_ V03

**TOTAL LUBE OIL HOURS:**

**COUPLER AND DRAFT GEARS**

Qualify couplers and draft gears. \_\_\_\_\_ W01

Qualify draft gear pockets. \_\_\_\_\_ W03

**TOTAL COUPLER/DRAFT GEAR HOURS:**

**LOAD TESTING**

Hook unit to load box. \_\_\_\_\_ X01

Perform standard load test. \_\_\_\_\_ X04

Adjust and correct defects. \_\_\_\_\_ X05

Disconnect from load box. \_\_\_\_\_ X02

**TOTAL LOAD TESTING HOURS:**

**SPECIAL ITEMS**

In-plant switching. \_\_\_\_\_ Y11

**TOTAL SPECIAL ITEMS:**

**INSPECTIONS**

Perform 92 day mechanical \_\_\_\_\_ Z04

Perform 92 day electrical. \_\_\_\_\_ Z05

Perform 92-day air system. \_\_\_\_\_ Z06

**TOTAL INSPECTIONS:**

**TOTAL ESTIMATED HOURS:**

**LEASE TERMINATION & LOAN AGREEMENT**

Wisconsin & Southern Railroad Company, a Wisconsin corporation ("WSOR"), and National Railway Equipment Company ("NREC"), an Illinois corporation, agree that the leases entered into on February 17, 1998 and on April 22, 1998, ("Terminated Leases") shall terminate upon both parties' signatures to this Agreement and to the Locomotive Lease Agreement dated February 13, 2002 ("New Lease"). All obligations of the Terminated Leases shall cease as of the date both parties sign below, except for provisions regarding Delivery/Return and Insurance and Indemnification, which provisions shall survive until such time as all Locomotives are returned to NREC and all obligations thereunder are met by WSOR.

In addition, to the WSOR's obligations as a Lessee in the New Lease, the parties also agree that WSOR shall also owe to NREC an amount equal to the entire remaining unpaid lease rent of the Terminated Lease reduced by the Extinguished Amount ("Amount Owed").

The amount of the debt owed to NREC shall be reduced by payments of Additional Rent made by WSOR under the New Lease (the amount of such reductions being the "Extinguished Amount").

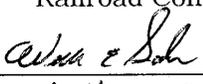
If an Event of Default occurs under the New Lease and such default is not remedied in thirty days, then NREC shall have the right to declare the Amount Owed immediately due and payable. After a default has occurred and not been remedied in thirty days, the Amount Owed will bear interest at the rate of 1.0% per month. WSOR agrees to pay all of NREC's costs of collection of the amount owed, including reasonable attorney's fees, collection agency fees and/or court costs (or such other costs and fees allowed by law).

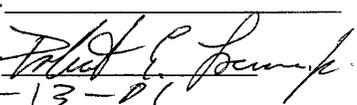
This Agreement constitutes the entire agreement and shall be governed and construed in accordance with the internal laws of the State of Illinois.

National Railway Equipment Company

Wisconsin & Southern  
Railroad Company

BY:   
Name: James E. Fisk  
Title: Vice President  
Date: 2-13-02

BY:   
Name: William E. Gardner  
Title: CEO

Date: \_\_\_\_\_  
Attested by   
Date: 2-13-02  
Date: \_\_\_\_\_

Attested by   
Secretary/Treasurer

**LEASE TERMINATION & LOAN AGREEMENT**

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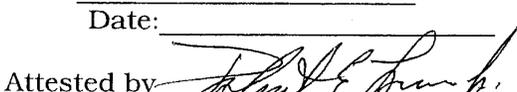
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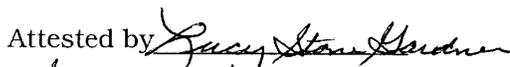
National Railway Equipment Company

Wisconsin & Southern  
Railroad Company

BY:   
Name: JAMES E. KISK  
Title: PRES. COO  
Date: 2-13-02

BY:   
Name: William E. Cardue  
Title: CEO

Date: \_\_\_\_\_  
Attested by:   
Date: 2-13-02  
Date: \_\_\_\_\_

Attested by:   
Secretary/Treasurer

**EXHIBIT L**

Brookville Equipment Company

## **LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease") entered into as of this 25th day of November 2002, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Brookville Equipment Company, a Pennsylvania corporation ("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 affect prompt delivery of the locomotive(s) to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination.

#### **3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one month's advance rent payable upon purchase order receipt date and, in addition, one month's rent payable upon purchase order receipt date to be held as a security deposit prior to qualification of the equipment. Lessee shall operate such locomotive(s) in service on its railroad. 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 twelve percent (12%) per annum.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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**

Lessee shall accept delivery of the locomotive(s) at Lessor's manufacturing facility in Dixmoor, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor or to Lessor's end-user(s) at one or more of its designated contiguous United States facilities in good order and condition, reasonable wear and tear accepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

## **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 good condition and repair.
  - ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the specified non-consumable warranty items as indicated below:
    - a. During the term of the lease on all qualified major components, inclusive of the engine crank shaft, generator, air compressor and traction motors but excluding allowance for any freight or labor charges from date of locomotive on-site commissioning, not to exceed a start/commissioning date past ninety days from date of ex-works shipment.
    - b. Associated freight charges for the delivery of all warranted replacement parts from Lessor and the return of all warranted assembly/component part cores to Lessor shall be borne by Lessee. Lessee shall be responsible for the consumables, including water, oil, diesel fuel, all locomotive fluids, sand, wheels, brake shoes, traction motor/generator brushes and all associated locomotive filters which are not covered by the qualification warranty of 180 days..

- c. The Lessor point of contact for warranty shall be National Railway Equipment Company in Dixmoor, Illinois at 708.388.6002.

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 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 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) 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. Railroad 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.

- 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).
- iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.
- v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.
- vi. Lessee shall also be responsible for insurance coverage in the form of collision and comprehensive physical damage on the locomotive

C. 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. 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.

D. 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. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Stipulated Loss Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer.

E. 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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS**

**LEASE OR THE LOCOMOTIVES.** Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 60 days notice, elect the option to renewal or purchase the locomotive at the end of the initial lease term. The renewal purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### **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.

#### **13. 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 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.

#### **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 available to Lessor at Lessee's expense, any or all Equipment at 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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.

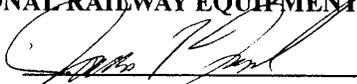
If to Lessor: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Brookville Equipment Corporation  
175 Evans Street  
P.O. Box 130  
Brookville, Pennsylvania 15825

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

**LESSOR:**

**NATIONAL RAILWAY EQUIPMENT CO.**

**BY:** 

**NAME:** James E. Fisk

**TITLE:** President

**ATTEST:** Robert E. Loewer, Jr.

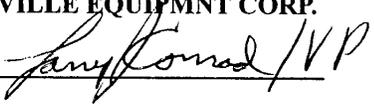
**BY:** \_\_\_\_\_

**TITLE:** Director of Finance

(Corporate Seal)

**LESSEE:**

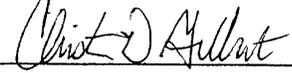
**BROOKVILLE EQUIPMNT CORP.**

**BY:** X  /VP

**NAME:** Larry J. Conrad

**TITLE:** V.P. of Operations

**ATTEST:** Christine D. Gilbert

**BY:** 

**TITLE:** Contract Review

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 25<sup>th</sup> day of November by and between the National Railway Equipment Company (LESSOR) and Brookville Equipment Company (LESSEE).

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

<b>UNIT NO.</b>	<b>TYPE</b>	<b>GENERAL DESCRIPTION</b>	
8413	EMD	GP-10	
<b>LEASE RATE</b>			
<b>REPLACEMENT VALUE</b>	<b>LEASE TERM</b>	<b>LEASE RATE PER LOCOMOTIVE MONTHLY</b>	<b>DAILY</b>
\$138,500.00	250 Days	\$3,345.83	\$110.00

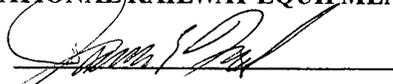
**PURCHASE OPTION:** Lessee may elect, at the end of the 250 day initial lease term, to purchase Locomotive(s) Unit No. 8413 at \$120,000.00

**RENEWAL RATE AND TERM:** At the end of the 250 day initial lease term, Lessee may elect to renew the lease for not less than 30 days at a daily lease rate of \$110.00 per day.

**COMMENCEMENT DATE:** On the day of on-site commissioning by Lessor, estimated to be December 15, 2002.

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the lease.

**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

BY: 

NAME: James E. Fisk

TITLE: President

**LESSEE: BROOKVILLE EQUIPMENT COMPANY**

BY: X 

NAME: Larry J. Conrad

TITLE: V.P. of Operations

**EXHIBIT M**

ISPAT Inland Inc.

## LOCOMOTIVE LEASE AGREEMENT

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 9<sup>th</sup> day of September 2003, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Ispat Inland 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 rental term of this Lease for each locomotive shall be the fixed term set forth in Schedule "A", commencing on October 1, 2003 (" Rent Commencement Date"). Upon termination of the lease, Lessee shall affect prompt delivery of the locomotive(s) to Lessor at its Dixmoor, Illinois or Mt. Vernon, Illinois facilities as designated by Lessor at time of termination.

### 3. RENTAL

A. The rental payable shall be the sum identified in Schedule "A" payable in arrears <sup>with initials</sup> monthly installments. Lessee shall be responsible for the successful execution of the lease and return of said locomotive(s) to Lessor or to Lessor's end-user(s) at one or more of its designated contiguous United States facilities in good working order and condition, reasonable wear and tear excepted. Lessee shall operate such locomotive(s) in service on its railroad. 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 twelve percent (12%) per annum.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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

Lessee shall accept delivery of the locomotive(s) at Lessor's manufacturing facility in Dixmoor, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor at its Dixmoor, Illinois or Mt. Vernon, Illinois facilities as designated by Lessor at time of termination in good working order and condition, reasonable wear and tear excepted. Lessee shall bear incoming rail freight costs from Lessee's East Chicago plant site to commence the locomotive remanufacturing process (see Exhibit I) and Lessor shall bear outgoing rail freight costs to Lessee's East Chicago plant site following completion of the locomotive remanufacturing process. Lessee shall bear freight return costs to Lessor at its Dixmoor, Illinois or Mt. Vernon, Illinois facilities as designated by Lessor at time of termination. Lessee shall pay or reimburse Lessor for any reasonable and ordinary expenses incurred by Lessor in returning the locomotive(s) to good working order and condition in delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

#### 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 good condition and repair.

- ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the specified non-consumable warranty items as indicated below:
  - a. Lessor shall warrant for three hundred and sixty (360) days all mechanical and electrical items that have been remanufactured and replaced / added as new during the remanufacturing process. Lessor shall warrant for one hundred and eighty (180) days all mechanical and electrical items that have been qualified during the remanufacturing process. Items specifically excluded from this warranty are consumable parts, including:
    - 1. all locomotive filters
    - 2. all electrical-rotating brushes
    - 3. all wheels
    - 4. all brake shoes
    - 5. all locomotive fluids, sand, water, fuel, additives and treatments
    - 6. all lights, bulbs and fuses
    - 7. all locomotive gaskets, o-rings and seals
    - 8. all consumable /replacement materials normally associated with quarterly, semi-annual and annual inspections
  - b. Subject warranty excludes any allowance for freight and/or labor charges associated with the warranty replacement(s). The costs for freight and/or labor charges associated with the warranty replacement(s) shall be the responsibility of the Lessee.
  - c. Associated freight charges for the delivery of all warranted replacement parts from Lessor and the return of all warranted assembly/component part cores to Lessor shall be borne by Lessee.
  - d. Lessor shall be responsible for timely delivery (fob Lessor's North American facilities) of validated warranty replacement parts. These items are off-the-shelf components from the Lessor and shall be dispatched within 24-72 hours of notification by Lessee as a normal course of business.
  - e. The Lessor point of contact for warranty shall be National Railway Equipment Company in Dixmoor, Illinois at 309.755.6800, attention Mr. Frank Pezel or Mr. Jerry Ferrara.

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 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 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) 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 / electrical condition and proper working order and in compliance with industry standards 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. Railroad liability insurance providing coverage in an amount not less than ten million (\$10,000,000.00) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.
- 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).

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

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

ii. provide coverage in an amount not less than the replacement value 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Stipulated Loss Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer.

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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES.** Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to renewal or purchase the locomotive at the end of the initial lease term. The renewal purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### **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 maintain the confidentiality of such financial data.

#### **13. DEFAULT**

A. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default") without timely cure by Lessee:

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

B. Lessor shall provide written notice of any Event of Default to Lessor, who shall have a reasonable period of time not less than ten days for the payment of moneys owed to Lessor with interest as specified herein, not less than 30 days to take any actions required by this Lease other than the payment of monies to Lessor.

#### **14. REMEDIES UPON DEFAULT**

A. Upon the occurrence of any uncured 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 available to Lessor at Lessee's expense, any or all Equipment at 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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 Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Ispat Inland Inc.  
3210 Watling Street  
East Chicago, Indiana 46312

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

LESSOR:

NATIONAL RAILWAY EQUIPMENT CO.

BY:

NAME: James M. Wurtz, Jr.

TITLE: Vice President

ATTEST: Robert E. Loewer, Jr.

BY:

TITLE: Director of Finance

(Corporate Seal)

LESSEE:

ISPAT INLAND INC.

BY:

NAME: TAMICUE

TITLE: TREASURER

ATTEST:

BY:

TITLE: EXECUTIVE VICE PRESIDENT  
SALES, FINANCE & ADMINISTRATION  
& CFO

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 9<sup>th</sup> day of September 2003 by and between the National Railway Equipment Company (LESSOR) and Ispat Inland Inc. (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
NREX 152	EMD	SW-1200 Switcher Four Axle
NREX 153	EMD	SW-1200 Switcher Four Axle

**LEASE RATE**

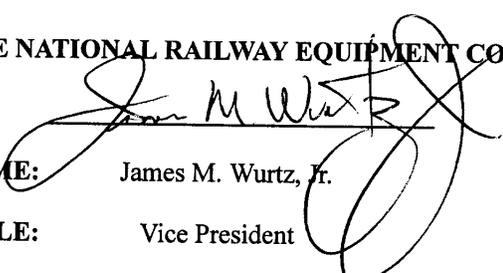
REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
\$410,000.00	6 Years	\$4,938.47	\$162.36
\$410,000.00	6 Years	\$4,938.47	\$162.36

**PURCHASE OPTION:** Lessee may elect, at the end of the six year initial lease term, to purchase Locomotive(s) Unit Numbers NREX 152 and NREX 153 at the price of \$50,000.00 per unit (each).

**RENEWAL RATE, TERM AND PURCHASE OPTION:** At the end of the six year initial lease term, Lessee may elect to renew the lease for not less than 180 days at a daily straight lease rate of \$105.00 per day. The purchase option buyout at the end of the renewal period shall be prorated with 10% of the amount of the lease payments made during the renewal period being applied against the purchase buyout option of \$50,000.00 per locomotive unit (each).

**RENT COMMENCEMENT DATE:** October 1, 2003

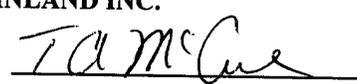
**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

BY: 

NAME: James M. Wurtz, Jr.

TITLE: Vice President

**LESSEE: ISPAT INLAND INC.**

BY: 

NAME: T.A. McCue

TITLE: TREASURER

**MEMORANDUM OF LEASE AGREEMENT**

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of September 9, 2003, by and between NATIONAL RAILWAY EQUIPMENT COMPANY ("Lessor"), and ISPAT INLAND INC. ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, Locomotive model(s) described herein.

Each locomotive is fully-described in a certain Lease Agreement dated as of September 3, 2003 (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee. A Schedule of the equipment is attached hereto.

2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.

The Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

**LESSEE:**

**ISPAT INLAND INC.**

By: TA McCue

Name: TAMCCUE

Title: TREASURER

**LESSOR:**

**NATIONAL RAILWAY EQUIPMENT COMPANY**

By: James M. Wurtz, Jr.

Name: James M. Wurtz, Jr.

Title: Vice President

STATE OF Indiana )  
 ) SS.  
COUNTY OF Lake )

On this 10th day of September, 2003, before me appeared Thomas A. McEve, the person who signed this instrument who acknowledged that (s) he is the TREASURER of ISPT ISLANDS INC. and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

Joanne M. Bruszkowski  
Notary Public

[Seal]

My Commission Expires:

August 12, 07

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF WILL )

On this 25th day of September 2003, before me appeared James M. [Signature], the person who signed this instrument who acknowledged that (s) he is an officer of NATIONAL RAILWAY EQUIPMENT COMPANY and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

Lisa Fuehrmeyer  
Notary Public

[Seal]



My Commission Expires:

\_\_\_\_\_

**SCHEDULE OF EQUIPMENT**

Lessor: NATIONAL RAILWAY EQUIPMENT COMPANY

Lessee: ISPAT INLAND INC.

Approved by: TA McCre - TREASURER  
(Lessee to initial each page)

Attached to Bill of Sale dated:

\_\_\_\_\_

Equipment Located at:

14400 South Robey Street  
Dixmoor, Illinois 60426

Equipment Schedule No.: See Schedule "A"

Manufacturer and/or Vendor  
Name & Invoice Number

National Railway Equipment Company

Equipment  
Description

2 EMD SW-1200 locomotives

**NATIONAL RAILWAY EQUIPMENT COMPANY  
EMD SW-1200 (1200 HP) LOCOMOTIVE REBUILDS  
LOCOMOTIVE LEASE PROPOSAL**

**SELECTED OPTION:** Unit numbers 152 and 153 returned to Dixmoor for compliance to rebuild specifications indicated below. This proposal includes the optional items identified below.

- in-frame generator reconditioning
- air compressor removed and rebuilt
- engine in-frame overhaul with all rebuilt components excluding a non-split block and pan
- re-qualification of the electrical system with special emphasis on:
  - load regulators wearing and leaking
  - review of problems with the battery field circuits and resistors
- auxiliary generator removed and rebuilt
- new batteries installed
- re-qualification of the cooling system with special emphasis on:
  - leaks in the heads
  - review of problems with the hexagon plugs which corrode prematurely and leak coolant (remove and reapply with a more corrosive resistant material)
  - review of problem with water pump to manifold piping (Maintenance having to braze the copper piping due to leaks...reapply with new, more resilient piping)
- renew the sanding system and ensure proper functioning
- tri-annual air system renewal with special emphasis on:
  - brake response time and delay when utilizing the remote control system; current practice is to drill-out brake pipe adapters and increase the diameter of the hole from the the brake cylinder to the brake pipes; work with Cattron to correct
  
- do not sand blast and repaint to new Ispat color scheme; touch-up only
- re-qualify trucks with new pins and bushings and other wear items as required
- re-qualify the existing traction motors using the present wheels

- Optional Items:**
1. Q-Tracs 1000 tractive effort wheel slip system.....yes
  2. Remote control installation with NREC supplied remote control system valued at \$28,000.00.....yes
  3. Adapters with overfill hoses.....no
  4. Salem / 500 BC sander valves.....no
  5. Smart Start dual emersion heating and start-up and shut-down system.....yes
  6. Quantum Q-1066 event recorder.....no
  7. EMCO Wheaton G-1620 series fuel receptacles.....no

**Delivery Lead-Times:** 60-75 days from date of locomotive receipt to NREC's manufacturing facility in Dixmoor, Illinois.

**Warranty:** See Lease Agreement

**Buy-Out Options:** See Lease Agreement

**Lease Rates:**

	No. of Units	Daily Rate Each	Monthly Rate Each	Buyout Each
72 Month	2 Dixmoor	\$162.36	\$4,938.457	\$50,000.00

**Special Notations:**

1. The Cattron remote control system will not be received prior to November 1, 2003. Therefore, the lease rate does not reflect labor installation of this equipment at 160 hours. In the event ISPAT elects to have NREC technical personnel install the equipment on-site, this will be billed at NREC field labor service rates of \$64.00 per hour under a separately issued purchase order from ISPAT. NREC will prep the unit to minimize field installation requirements. These hours will be charged separately at an in-house labor rate of \$60.00 per hour under a separately issued purchase order from ISPAT.
2. Valuation of the Cattron remote control system is at \$28,000.00. If additional charges are incurred from Cattron (specification changes, etc.), this will be handled under separate purchase order from ISPAT.
3. At the conclusion of the lease, ISPAT may remove the remote control system and retain the equipment under ISPAT ownership.

## **LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 5th day of August 2003, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and ISPAT Inland 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 rental term of this Lease for each locomotive shall be the fixed term set forth in Schedule "A", commencing on October 1, 2003 (" Rent Commencement Date"). Upon termination of the lease, Lessee shall affect prompt delivery of the locomotive(s) to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination.

#### **3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one month's advance rent payable upon the execution of this lease and, in addition, one month's rent payable upon the execution of this lease to be held as a security deposit. This security deposit shall be reimbursed to the Lessee by the Lessor within thirty (30) days following Lessee's successful execution of the lease and return of said locomotive(s) to Lessor or to Lessor's end-user(s) at one or more of its designated contiguous United States facilities in good working order and condition, reasonable wear and tear excepted. Lessee shall operate such locomotive(s) in service on its railroad. 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 twelve percent (12%) per annum.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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**

Lessee shall accept delivery of the locomotive(s) at Lessor's manufacturing facility in Dixmoor, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor or to Lessor's end-user(s) at one or more of its designated contiguous United States facilities in good working order and condition, reasonable wear and tear excepted. Lessee shall bear incoming rail freight costs from Lessee's East Chicago plant site to commence the locomotive remanufacturing process (see Exhibit I) and Lessor shall bear outgoing rail freight costs to Lessee's East Chicago plant site following completion of the locomotive remanufacturing process. Lessee shall bear freight return costs to Lessor or to Lessor's end-user(s) at one or more of its designated contiguous United States facilities at lease termination. Lessee shall pay or reimburse Lessor for any reasonable and ordinary expenses incurred by Lessor in returning the locomotive(s) to good working order and condition in delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

#### **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 good condition and repair.

- ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the specified non-consumable warranty items as indicated below:
  - a. Lessor shall warrant for three hundred and sixty (360) days all mechanical and electrical items that have been remanufactured and replaced / added as new during the remanufacturing process. Lessor shall warrant for one hundred and eighty (180) days all mechanical and electrical items that have been qualified during the remanufacturing process. Items specifically excluded from this warranty are consumable parts, including:
    - 1. all locomotive filters
    - 2. all electrical-rotating brushes
    - 3. all wheels
    - 4. all brake shoes
    - 5. all locomotive fluids, sand, water, fuel, additives and treatments
    - 6. all lights, bulbs and fuses
    - 7. all locomotive gaskets, o-rings and seals
    - 8. all consumable /replacement materials normally associated with quarterly, semi-annual and annual inspections
  - b. Subject warranty excludes any allowance for freight and/or labor charges associated with the warranty replacement(s). The costs for freight and/or labor charges associated with the warranty replacement(s) shall be the responsibility of the Lessee.
  - c. Associated freight charges for the delivery of all warranted replacement parts from Lessor and the return of all warranted assembly/component part cores to Lessor shall be borne by Lessee.
  - d. Lessor shall be responsible for timely delivery (fob Lessor's North American facilities) of validated warranty replacement parts. These items are off-the-shelf components from the Lessor and shall be dispatched within 24-72 hours of notification by Lessee as a normal course of business.
  - e. The Lessor point of contact for warranty shall be National Railway Equipment Company in Dixmoor, Illinois at 309.755.6800, attention Mr. Frank Pezel or Mr. Jerry Ferrara.

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 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 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) 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 / electrical condition and proper working order and in compliance with industry standards 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. Railroad liability insurance providing coverage in an amount not less than ten million (\$10,000,000.00) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.
- 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).

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

- i. be written in standard form by an insurance company acceptable to Lessor
- ii. provide coverage in an amount not less than the locomotive value of \$125,000.00
- 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.

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. 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. Notwithstanding the foregoing, Lessor shall be liable to the extent of its own negligence.

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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus the locomotive value as identified in Article 9., Section B., Sub-Section ii. above. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items

shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer. Notwithstanding the foregoing, Lessor shall be liable to the extent of its own negligence.

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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES.** Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 60 days notice, elect the option to renew or purchase the locomotive at the end of the initial lease term. The renewal purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### **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 maintain the confidentiality of such financial data.

#### **13. DEFAULT**

A. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default") without timely cure by Lessee:

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

B. Lessor shall provide written notice of any Event of Default to Lessor, who shall have a reasonable period of time not less than ten days for the payment of moneys owed to Lessor with interest as specified herein, not less than 30 days to take any actions required by this Lease other than the payment of monies to Lessor.

#### 14. REMEDIES UPON DEFAULT

A. Upon the occurrence of any uncured 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 available to Lessor at Lessee's expense, any or all Equipment at 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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 Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: ISPAT Inland Inc.  
3210 Watling Street  
East Chicago, Indiana 46312

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

**LESSOR:**

**LESSEE:**

**NATIONAL RAILWAY EQUIPMENT CO.**

**ISPAT INLAND INC.**

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

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

**NAME:** James M. Wurtz, Jr.

**NAME:** \_\_\_\_\_

**TITLE:** Vice President

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

**ATTEST:** Robert E. Loewer, Jr.

**ATTEST:**

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

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

**TITLE:** Director of Finance

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

(Corporate Seal)

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 5<sup>th</sup> day of August 2003 by and between the National Railway Equipment Company (LESSOR) and ISPAT Inland Inc. (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
NREX 152	EMD	SW-1200 Switcher Four Axle
NREX 153	EMD	SW-1200 Switcher Four Axle

**LEASE RATE**

REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
\$410,000.00	6 Years	\$4,938.47	\$162.36
\$410,000.00	6 Years	\$4,938.47	\$162.36

**PURCHASE OPTION:** Lessee may elect, at the end of the six year initial lease term, to purchase Locomotive(s) Unit Numbers NREX 152 and NREX 153 at the price of \$50,000.00 per unit (each).

**RENEWAL RATE, TERM AND PURCHASE OPTION:** At the end of the six year initial lease term, Lessee may elect to renew the lease for not less than 180 days at a daily straight lease rate of \$105.00 per day. The purchase option buyout at the end of the renewal period shall be prorated with 10% of the amount of the lease payments made during the renewal period being applied against the purchase buyout option of \$50,000.00 per locomotive unit (each).

**RENT COMMENCEMENT DATE:** October 1, 2003

Lessee agrees to pay the first month of rent covering the period beginning with the Rent Commencement Date and one month's rent to be held as security with their execution of the lease.

**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

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

**NAME:** James M. Wurtz, Jr.

**TITLE:** Vice President

**LESSEE: ISPAT INLAND INC.**

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

**NAME:** \_\_\_\_\_

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

**MEMORANDUM OF LEASE AGREEMENT**

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of August 5, 2003, by and between NATIONAL RAILWAY EQUIPMENT COMPANY ("Lessor"), and ISPAT Inland Inc. ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, Locomotive model(s) described herein.

Each locomotive is fully-described in a certain Lease Agreement dated as of August 5, 2003 (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee. A Schedule of the equipment is attached hereto.

2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.

The Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

**LESSEE:**

**ISPAT INLAND INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSOR:**

**NATIONAL RAILWAY EQUIPMENT COMPANY**

By: \_\_\_\_\_

Name: James M. Wurtz, Jr.

Title: Vice President

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me appeared \_\_\_\_\_, the person who signed this instrument who acknowledged that (s) he is the \_\_\_\_\_ of \_\_\_\_\_ and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

\_\_\_\_\_  
Notary Public

[Seal]

My Commission Expires:  
\_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF WILL )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me appeared \_\_\_\_\_, the person who signed this instrument who acknowledged that (s) he is an officer of **NATIONAL RAILWAY EQUIPMENT COMPANY** and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

\_\_\_\_\_  
Notary Public

[Seal]

My Commission Expires:  
\_\_\_\_\_

**SCHEDULE OF EQUIPMENT**

Lessor: NATIONAL RAILWAY EQUIPMENT COMPANY

Lessee: ISPAT INLAND INC.

Approved by: \_\_\_\_\_  
(Lessee to initial each page)

Attached to Bill of Sale dated:  
\_\_\_\_\_

Equipment Located at:

14400 South Robey Street  
Dixmoor, Illinois 60426

Equipment Schedule No.: See Schedule "A"

Manufacturer and/or Vendor  
Name & Invoice Number

Equipment  
Description

National Railway Equipment Company

2 EMD SW-1200 locomotives

**EXHIBIT I**

**NATIONAL RAILWAY EQUIPMENT COMPANY  
EMD SW-1200 (1200 HP) LOCOMOTIVE REBUILDS  
LOCOMOTIVE LEASE PROPOSAL**

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  - load regulators wearing and leaking
  - review of problems with the battery field circuits and resistors
- auxiliary generator removed and rebuilt
- new batteries installed
- re-qualification of the cooling system with special emphasis on:
  - leaks in the heads
  - review of problems with the hexagon plugs which corrode prematurely and leak coolant (remove and reapply with a more corrosive resistant material)
  - review of problem with water pump to manifold piping (Maintenance having to braze the copper piping due to leaks...reapply with new, more resilient piping)
- renew the sanding system and ensure proper functioning
- tri-annual air system renewal with special emphasis on:
  - brake response time and delay when utilizing the remote control system; current practice is to drill-out brake pipe adapters and increase the diameter of the hole from the the brake cylinder to the brake pipes; work with Catron to correct
  
- do not sand blast and repaint to new ISPAT color scheme; touch-up only
- re-qualify trucks with new pins and bushings and other wear items as required
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  2. Remote control installation with NREC supplied remote control system valued at \$28,000.00.....yes
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  7. EMCO Wheaton G-1620 series fuel receptacles.....no

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**Warranty:** See Lease Agreement

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	No. of Units	Daily Rate Each	Monthly Rate Each	Buyout Each
72 Month	2 Dixmoor	\$162.36	\$4,938.45	\$50,000.00

**Special Notations:**

1. The Cattron remote control system will not be received prior to September 15, 2003. Therefore, the lease rate does not reflect labor installation of this equipment at 160 hours. In the event ISPAT elects to have NREC technical personnel install the equipment on-site, this will be billed at NREC field labor service rates of \$64.00 per hour under a separately issued purchase order from ISPAT. NREC will prep the unit to minimize field installation requirements. These hours will be charged separately at an in-house labor rate of \$60.00 per hour under a separately issued purchase order from ISPAT.
2. Valuation of the Cattron remote control system is at \$28,000.00. If additional charges are incurred from Cattron (specification changes, etc.), this will be handled under separate purchase order from ISPAT.
3. At the conclusion of the lease, ISPAT may remove the remote control system and retain the equipment under ISPAT ownership.

## **LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 27<sup>th</sup> day of April, 1999, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Ispat Inland Incorporated, ("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 one of its contiguous United States facilities as designated by Lessor at time of termination.

#### **3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one months rent payable on acceptance of the locomotive(s) and one months rent to be held as security. Lessee shall operate such locomotive(s) in service on its railroad. 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:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature, shall be made without Lessor's consent, 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 staging area in Dixmoor, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor at one of its designated contiguous United States facilities in good order and condition, reasonable wear and tear excepted. ~~Lessee shall bear freight return costs.~~ 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

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#### 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 good condition and repair.

ii. Lessor shall not be responsible for any repairs or maintenance of the locomotive(s) during the term of this Lease with the exception of the following items:

a. A warranty period of three hundred-sixty five (365) days on all new and rebuilt assemblies and components and one hundred-eighty (180) days for all qualified assemblies and components. Consummables such as fuel, oils, grease, sand, brake

shoes, wheels, filters, etc. are excluded from warranty. ~~Assembly and component parts replacement under warranty will be fob Dixmoor, Mt. Vernon or Silvis, Illinois. Associated labor and unit downtime are excluded from this warranty.~~

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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 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 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) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.

ii. name Lessor and Lessee as insured parties.

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).

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty (30) days prior thereto.

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 coverages shall:

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

ii. provide coverage in an amount not less than the replacement value 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive.

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 no right to assign or sub-lease this lease or any other of the locomotive(s) or any interest therein.

## **11. PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to purchase the locomotive at the end of the initial lease term. The purchase option is listed on Schedule A. The Lessee shall elect the purchase option with a written notice.

## **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.

## **13. 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 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.

## **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 available to Lessor at Lessee's expense, any or all Equipment 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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. COMMERCIAL ADDENDUMS**

- A. Included in this agreement and made part of the commercial pricing lease rate is the trade-in acceptance by Lessor of one (1) fire damaged SW-1200 locomotive from the Lessee.
- B. Lessor has agreed to install one (1) Lessee supplied remote control system to the locomotive unit # 1215 .
- C. In the event the fob delivery date (Lessor's facility) of unit # 1215 exceeds 120 days from date of Lessee's physical purchase order notification (April 16, 1999), Lessee is entitled to 30 days free lease of unit # 1442 covered under a separate lease agreement between Lessor

and Lessee.

- D. Lessee has agreed, as part of this commercial contract and special lease rate, to award all future short term locomotive leases (less than one year duration) to Lessor at the rate of \$225.00 per day, up to six (6) months, and \$200.00 per day for all days in excess of the six (6) month period. The short term locomotive lease rate agreed upon applies to switcher equipment configurations in the 800-1200 horsepower class.

#### 17. 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: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Ispat Inland Incorporated  
3210 Watling Street (MC 8-110)  
East Chicago, Illinois 46312

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

LESSOR:

NATIONAL RAILWAY EQUIPMENT CO.

BY: 

NAME: Patrick C. Frangella

TITLE: Vice President Operations

ATTEST: Jerry J. Massie

BY: 

TITLE: Assistant Secretary

(Corporate Seal)

LESSEE:

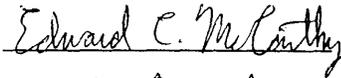
ISPAT INLAND INCORPORATED

BY: 

NAME: \_\_\_\_\_

TITLE: MANAGER, PURCHASING

ATTEST:

BY: 

TITLE: Asst. Counsel

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 27<sup>th</sup> day of April by and between the National Railway Equipment Company (LESSOR) and Ispat Inland Incorporated (LESSEE).

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

<b>UNIT NO.</b>	<b>TYPE</b>	<b>GENERAL DESCRIPTION</b>
1215	EMD	SW-1200 remanufactured

**LEASE RATE**

<b>REPLACEMENT VALUE</b>	<b>LEASE TERM</b>	<b>LEASE RATE PER LOCOMOTIVE</b>	
		<b><u>MONTHLY</u></b>	<b><u>DAILY</u></b>
\$350,000.00	60 months	\$4,988.33	\$164.00

**PURCHASE OPTION:** Lessee may elect, at the end of the eighteen hundred-twenty five day initial lease term, to purchase Locomotive(s) Unit No. 1215 for \$75,000.00.

**COMMENCEMENT DATE:** August 13,1999 accepted at Dixmoor, Illinois.

Lessee agrees to pay the first month of rent and one months rent to be held as security with their execution of the lease.

**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

**BY:** 

**NAME:** Patrick C. Frangella

**TITLE:** Vice President Operations

**LESSEE: ISPAT INLAND INCORPORATED**

**BY:** 

**TITLE:** MANAGER, PURCHASING

## MEMORANDUM OF LEASE AGREEMENT

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of April 27, 1999 by and between NATIONAL RAILWAY EQUIPMENT COMPANY ("Lessor"), and ISPAT INLAND INCORPORATED ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, Locomotive model(s) described as EMD SW-1200 Locomotive(s) bearing reporting mark(s): # 1215.

Each locomotive is fully-described in a certain Lease Agreement dated as of April 27, 1999 (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee. A Schedule of the equipment is attached hereto.

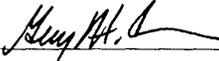
2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.

The Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

**LESSEE:**

ISPAT INLAND INC, ~~CORPORATED~~

By: 

Name: \_\_\_\_\_

Title: MANAGER, PURCHASING,

**LESSOR:**

NATIONAL RAILWAY EQUIPMENT COMPANY

By: 

Name: Lawrence J. Beal

Title: President

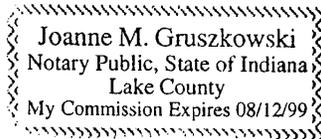
STATE OF INDIANA )  
 ) SS.  
COUNTY OF LAKE )

On this 25th day of MAY, 1999, before me appeared GUY H. RUSMUS the person who signed this instrument who acknowledged that (s)he is the MANAGER of PURCHASING and that, being duly authorized, (s)he signed such instrument as a free act on behalf of said corporation.

Joanne M. Gruskowski

Notary Public

[Seal]



My Commission Expires:

AUGUST 12, 1999

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF ~~COOK~~ Will )

On this 27<sup>th</sup> day of April, 1999, before me appeared Lawrence J. Beal, the person who signed this instrument who acknowledged that (s)he is an officer of **NATIONAL RAILWAY EQUIPMENT COMPANY** and that, being duly authorized, (s)he signed such instrument as a free act on behalf of said corporation.

Debra L. Radtke

Notary Public

[Seal]



My Commission Expires:

4-18-2001

**SCHEDULE OF EQUIPMENT**

Lessor: NATIONAL RAILWAY EQUIPMENT COMPANY

Lessee: ~~ISPAT INLAND INCORPORATED~~

Approved by: *Ray M. A.*  
(Lessee to initial each page)

Attached to Bill of Sale dated: \_\_\_\_\_

Equipment Located at:

14400 South Robey Street  
Street Number

Equipment Schedule No.: \_\_\_\_\_

Dixmoor      Cook      Illinois      60426  
City              County          State          Zip

Manufacturer and/or Vendor  
Name & Invoice Number

Equipment  
Description

National Railway Equipment Company

EMD SW-1200 Remanufactured Locomotive

**EXHIBIT N**

New Hampshire & Vermont Railroad Company

## LOCOMOTIVE LEASE AGREEMENT

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 14th day of January 2003, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and New Hampshire & Vermont Railroad Company, ("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 or to Lessor's end-user(s) within the United States or Canada as designated by Lessor at time of termination.

### 3. RENTAL

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one month's rent payable on acceptance of the locomotive(s) and one month's rent to be held as security. Lessee shall operate such locomotive(s) in service on its railroad. 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:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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

Lessee shall accept delivery of the locomotive(s) at Lessee's field site in Attica, Kansas. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor or to Lessor's end-user(s) at one or more of its designated contiguous United States and/or Canadian facilities in good order and condition, reasonable wear and tear accepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

#### 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 good condition and repair.

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 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 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) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.
- 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).
- iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

- i. be written in standard form by an insurance company acceptable to Lessor.
- ii. provide coverage in an amount not less than the replacement value 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Stipulated Loss Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer.

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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES.** Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 30 days notice, elect the option to renew the locomotive at the end of the initial lease term. The renewal options are listed on Schedule A. The Lessee shall elect the renewal option with a written notice.

#### **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.

#### **13. 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 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.

#### **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 available to Lessor at Lessee's expense, any or all Equipment at 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: New Hampshire & Vermont Railroad Company  
P.O. Box 1267  
Trenton, Florida 32693

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

LESSOR:

LESSEE:

NATIONAL RAILWAY EQUIPMENT CO.

NEW HAMPSHIRE & VERMONT RR

BY:

BY:

NAME: James E. Fisk

NAME: BRAD E. FORBES

TITLE: President

TITLE: Pres.

ATTEST: Robert E. Loewer, Jr.

ATTEST:

BY:

BY:

TITLE: Director Finance

TITLE: Chairman

(Corporate Seal)

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 14<sup>th</sup> day of January 2003 by and between the National Railway Equipment Company (LESSOR) and New Hampshire & Vermont Railroad Company (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
NREX 911	EMD GP-9	1750 Horsepower Four Axle

**LEASE RATE**

REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
\$98,000.00	5 Years	\$1,764.17	\$ 58.00

**PURCHASE OPTION:** Lessee may elect, at the end of the initial 5 year lease term, to purchase Locomotive(s) Unit No. NREX 911 for \$25,000.00.

**RENEWAL RATE AND TERM OPTION:** At the end of the 5 year initial lease term, Lessee may elect to renew the lease for not less than two years (24 months) at a daily straight lease rate of \$58.00 per day per locomotive. The buyout option at the end of the two year renewal period shall be \$7,500.00.

**COMMENCEMENT DATE:** Upon arrival and commissioning at Lessee's site in Attica, Kansas.

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the lease.

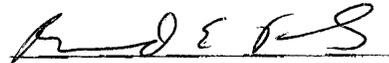
**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

BY: 

NAME: James E. Fisk

TITLE: President

**LESSEE: NEW HAMPSHIRE & VERMONT RAILROAD COMPANY**

BY: 

NAME: BRAD E. Forbes

TITLE: Pres

**EXHIBIT O**

Point Comfort & Northern Railway Co.

## LOCOMOTIVE LEASE AGREEMENT

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 30th day of January 2003, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Point Comfort & Northern Railway Co., ("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", ("Lease Term") commencing on the date such Locomotive is accepted by Lessee ("Commencement Date"). Upon termination of this Lease, Lessee shall affect prompt delivery of the Locomotive(s) to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination.

#### 3. RENTAL

A. The Rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one month's rent payable on acceptance of the Locomotive(s) and one month's rent to be held as security ("Rental"). The one month's security will be used for payment of the final month's Rental payment. Locomotive will be operated in unit train service between Lolita, Texas and Marjorie, Texas by Union Pacific operators on Union Pacific tracks. 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 which have continued to be past due for a period of thirty (30) days after written notice from the Lessor shall bear interest at the rate of twelve (12%) per annum.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

or at such other address as Lessor may direct in writing.

D. The Total Rental Amount is defined as the daily lease rate per locomotive times the number of days in the lease term. References throughout the Lease to the Total Rental Amount are on a cumulative basis, as opposed to on a basis exclusive to any one provision. Only those provisions that directly reference the Total Rental Amount are applicable to the Total Rental Amount cap. Cumulative expenses, applicable to the Total Rental Amount cap, that exceed the Total Rental

Amount cap are for account of Lessor. If cumulative expenses, applicable to the Total Rental Amount cap, begin to exceed the Total Rental Amount cap, Lessor may at its option choose to supply the associated labor and materials directly.

#### 4. TAXES

Lessee shall pay its pro-rated share of the excise and ad valorem taxes on this Lease of the Locomotive(s), or Lessee's pro-rated share of the excise and ad valorem taxes applicable to the use, registration, rental, maintenance, possession or operation thereof, and shall hold Lessor harmless against any liability and expense (including attorney fees and costs) on account of Lessee's failure to pay its portion of the applicable taxes, provided, however, that Lessee shall not be responsible for any income taxes, earnings taxes, or other liabilities indigenous to the Lessor.

#### 5. OWNERSHIP AND LESSOR'S INSPECTION

- A. 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 accessions, additions, alterations or improvements to the Locomotive(s) of any nature shall be made without Lessor's consent, but if any are made, they immediately shall become part of the Locomotive(s) and shall become Lessor's property. ~~However, the cost of any accessions, additions, alterations, changes, or improvements that are required by the AAR, DOT, FRA or any federal governmental authority during the term of this Lease will be borne by the Lessor.~~
- 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

Lessee shall accept delivery of the Locomotive(s) at Lessor's manufacturing facility in Mt. Vernon, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall be responsible for returning the Locomotive to Lessor in good order and condition, reasonable wear and tear excepted. Lessor shall be permitted to store subject Locomotive on-site at Lolita, Texas without charge for a period of up to one year prior to shipping such Locomotive(s) to another location. Lessor shall bear freight delivery and return costs. Lessee shall pay or reimburse Lessor up to the Total Rental Amount of the Lease for any reasonable and ordinary expenses incurred by Lessor in returning the Locomotive(s) to good order and condition, in delivering the Locomotive(s) to Lessor or effecting return of the Locomotive(s) from Lessee as provided herein.

#### 7. LESSEE'S INSPECTION/WARRANTY

- A. Lessee shall be responsible for the normal repairs or normal maintenance, including associated labor, freight, and materials expense, of the Locomotive(s) during the term of this Lease up to the Total Rental Amount of the Lease. Labor rates and parts procurement dollars are to be

within railroad industry standards.

B. Lessor will be responsible for the parts replacement of the Major Components for a period of one hundred and eighty two (182) days from date of locomotive commissioning at Lessee's Lolita, Texas railroad, excluding labor and freight.

Major Components shall be defined as follows:

1. Engine crankshaft
2. Alternator
3. Traction Motor
4. Air Compressor
5. Auxiliary Generator

C. The Lessor agrees that the Locomotive and related equipment is in complete and operational condition at the time of delivery to the Lessee at Mt. Vernon, Illinois. Lessor also agrees that the Locomotive and related equipment shall be delivered to Lessee in full compliance with all specifications and regulations including OEM specifications and FRA safety standards and other safety rules and regulations. ~~now or hereafter promulgated by applicable governmental authorities.~~ Lessor warrants that said Locomotive is of the size, design, capacity and manufacture as required and selected by Lessee and said Locomotive is suitable for Lessee's present use and purposes in entering into this Lease. Lessor warrants that all Locomotives hereunder will be free from defects in design, material and workmanship. Warranties made by the seller and/or manufacturer of the leased Locomotive and related equipment are assigned by Lessor to Lessee.

## 8. USE AND MAINTENANCE

Lessee agrees that:

A. The Locomotive(s) shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee or the Union Pacific.

B. Lessee shall substantially comply with 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).

C. Except as otherwise provided in this Lease, Lessee shall pay expenses and charges incurred in connection with the maintenance, lease, use and operation of the Locomotive(s) up to the Total Rental Amount of this Lease.

D. Lessee shall maintain the Locomotive(s) in good mechanical condition and running order and in compliance with OEM specifications and safety rules and regulations promulgated by applicable governmental authorities at the time of this Lease.

E. 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 five million (\$5,000,000.00) 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. be written by a financially responsible insurance company or companies authorized to transact business in all of the states in which the Locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.
- 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).
- iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.
- v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty (30) days prior thereto.

B. Lessee, at Lessee's sole expense, shall provide collision and comprehensive physical damage insurance on each Locomotive. Lessee may maintain such insurance under blanket policies consistent with industry standards, with coverage and deductibles written in the manner in which Lessee customarily insures comparable risks. The insurance policy or policies providing the foregoing coverages shall:

- i. be written in standard form by a financially responsible insurance company.
- ii. provide coverage in an amount not less than the replacement value 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.

D. Notwithstanding that Lessee shall provide certain insurance hereunder, and except for such loss, destruction, or damage to the Locomotive(s) or parts thereof arising from Lessor's 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 the loss or destruction of, or damage to, the Locomotive(s) or any parts thereof, or any liability, loss, claim, suit, damage or expense in connection therewith during the term of this Lease. Lessor shall not be entitled to indemnification for damages, loss, or destruction of the Locomotive(s) or any parts thereof, or any liability, loss, claim, suit, damage in connection therewith during the term of this Lease, if the same was caused by a latent or hidden defect in the Locomotive(s) or any parts thereof furnished by

Lessor.

E. In the event of damage, misuse, or neglect to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor and Lessee, in the exercise of reasonable judgment, determine and agree that the Locomotive is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such Locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Stipulated Loss Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate. Lessee shall pay any sales and use taxes due on such transfer.

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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES.** Notwithstanding the above, however, Lessee may enter into agreement(s) with the Union Pacific regarding any and all aspects of the Union Pacific's use of the Locomotive(s) over Union Pacific lines between Lolita, TX and Marjorie, TX. Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessor and Lessee further agree that no such assignment shall change Lessee's or Lessor's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 30 days notice, elect the option to renew the Locomotive at the end of the initial lease term. The renewal options are listed on Schedule A. The Lessee shall elect subject option through a written notice.

#### **12. DEFAULT**

A. Lessee shall be in default under this Lease upon the happening of the following events or conditions ("Event of Default") described in this Section:

- i. Default in the payment of any installment of Rental hereunder when such default in performance shall have continued for a period of thirty (30) days after written notice thereof given by the Lessor.

- ii. Default in the timely performance of any other liability, obligation, covenant or agreement hereunder of Lessee when such default in timely performance of any liability, obligation, covenant, or agreement shall have continued for a period of thirty (30) days after written notice thereof given by the Lessor.

B. Lessor shall be in default under this Lease upon the happening of the following events or conditions:

- i. If Lessor breaches any obligation under this Lease or defaults in the performance of any liability, covenant or agreement hereunder.
- ii. If the Lessor delivers the Locomotive and the Locomotive fails to operate or is in violation of OEM specifications and FRA and other applicable safety rules and regulations now or hereafter promulgated by applicable governmental authorities.

### 13. REMEDIES UPON DEFAULT

A. **Lessor's Remedies:** Upon the occurrence of any Event of Default or at any time hereafter, Lessor 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. Require that Lessee shall, upon written demand by Lessor and at Lessee's expense, promptly make available to Lessor at Lessee's expense, the Locomotive(s) at places designated by Lessor, which are reasonably convenient to both parties. 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.
- iv. 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 thirty 30 days prior to the date thereof shall constitute reasonable notice to Lessee.
- 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. **Lessee's Remedies:** Upon the occurrence of any Event of Default or at any time hereafter, Lessee may take any one or more of the following actions with respect to the Locomotive(s):

- i. Lessee may terminate this Lease without penalty and without obligation to pay the remaining lease term and without being in default under this Section or any other provision hereunder. In this event, Lessor will be responsible for any and all damages caused by Lessor's failure to perform its obligations under this Lease. However, not terminating this Lease in no way constitutes acceptance by the Lessee of the default, and in no way limits the remedies of the Lessee.
- ii. Exercise any and all rights and remedies available to Lessee under any applicable law. In addition, Lessor shall be charged with and shall pay to Lessee all reasonable costs and expenses of Lessee incurred as a result of each Event of Default by Lessor.
- iii. Proceed by appropriate action either at law or in equity to enforce performance by Lessor 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).
- iv. Terminate the lease of any or all Locomotives by written notice to Lessor.

C. None of the rights and remedies under or referred to in this paragraph 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 or Lessee 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.

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

#### **14. RECORDATION OF LESSOR'S INTEREST**

Lessor acknowledges that recordation of Lessor's interest is Lessor's responsibility and Lessor agrees to execute all recording documents to show Lessor's interest in the Locomotive(s).

#### **15. CONFIDENTIALITY**

Lessor acknowledges that all processes, methods, drawings, data, reports, plans, documents, business secrets and confidential information of any kind pertaining to the business of Lessee which is non-public ("Confidential Information") is proprietary to Lessee. Lessor agrees to maintain such Confidential Information as secret and confidential, and shall not disclose, use or permit disclosure or use of such Confidential Information. Promptly upon request, Lessor shall return all copies of materials encompassing Confidential Information to Lessee.

#### **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 or Lessee in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Lessor or Lessee of any Event of Default by Lessee or Lessor 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: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Point Comfort & Northern Railway Co.  
Farm to Market Route 616 at Corner Jackson Street  
Lolita, TX 77971

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

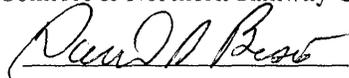
LESSOR:

LESSEE:

National Railway Equipment Co.

Point Comfort & Northern Railway Co.

BY: 

BY: 

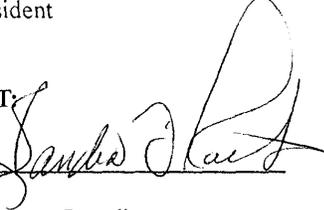
NAME: James E. Fisk

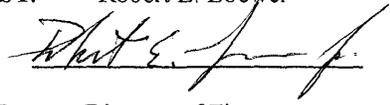
NAME: David A. Besio

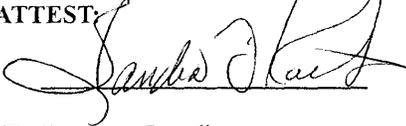
TITLE: President

TITLE: President

ATTEST: Robert E. Loewer

ATTEST: 

BY: 

BY: 

TITLE: Director of Finance

TITLE: Revenue Coordinator

(Corporate Seal)

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 30th day of January 2003 by and between the National Railway Equipment Company (LESSOR) and Point Comfort & Northern Railway Co. (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
NREX 5979	EMD	SD40-2 Locomotive

**LEASE RATE**

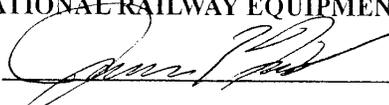
REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
\$485,000.00	12 Months	\$5,627.09	\$185.00

**RENEWAL RATE AND TERM:** At the end of the 365 day initial lease term, Lessee may elect to renew the Lease for another 365 day lease term at a daily straight lease rate of \$185.00 per day.

**COMMENCEMENT DATE:** Upon delivery to Lessee's operation at Lolita, Texas.

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the Lease.

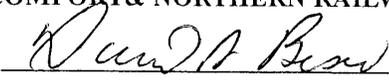
**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

BY: 

NAME: James E. Fisk

TITLE: President

**LESSEE: POINT COMFORT & NORTHERN RAILWAY CO.**

BY: 

NAME: David A. Besio

TITLE: President

**EXHIBIT P**

Nucor Steel

## **LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 31<sup>st</sup> day of May, 2001, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Nucor Steel, ("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. Lessee may terminate this lease at any time prior to the expiration of the initial term or any renewal period by surrendering the locomotive to the Lessor. There shall be no penalty for early termination by Lessee.

#### **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") at Lessor's facility. Termination of the lease shall be effected upon Lessor's delivery receipt of the locomotive(s) from Lessee at one of Lessor's contiguous United States facilities as designated by Lessor at time of termination.

#### **3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one months rent payable on acceptance of the locomotive(s). Lessee shall operate such locomotive(s) in service on its railroad. 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. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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. 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 during normal business hours to the locomotive(s) at reasonable times for the purpose of inspections.

C. No accessions, additions, alterations or improvements to the locomotive(s) of any nature, shall be made without Lessor's consent, 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**

Lessee shall accept delivery of the locomotive(s) at Lessor's staging area in Dixmoor, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor or to Lessor's end-user(s) at one or more of its designated contiguous United States facilities in good order and condition, reasonable wear and tear excepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

#### **7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER**

A. 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. Lessor hereby warrants that the locomotive(s) and equipment shall be in good and safe working order upon acceptance and delivery of the locomotive to Lessee. Other than the foregoing, 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 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) 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  
GENERAL LIABILITY INSURANCE CERTIFICATE**

A. Public liability insurance providing coverage 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.

B. Lessee shall furnish Lessor with a certificate(s) of insurance or other evidence of said insurance coverage.

C. 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 Lessee's negligence or willful misconduct. 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.

D. 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. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor installments of rent and other amounts payable by Lessee hereunder with respect to such item due an amount equal to the replacement value of the locomotive.

E. 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. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES.** Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to renew the locomotive at the end of the initial lease term. The renewal option(s) are listed on Schedule A. The Lessee shall elect the option(s) with a written notice.

#### **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.

#### **13. 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. Failure of 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 Lessee to Lessor.

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

#### **14. REMEDIES UPON DEFAULT**

A. Upon fifteen (15) days written notice and opportunity to cure such default, 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. 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.
- 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 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease or any one or more leases hereunder.

## **15. 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 Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Nucor Steel  
Rural Route 2  
Box 311  
Crawfordsville, Indiana 47933

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

**LESSOR:**

**LESSEE:**

**NATIONAL RAILWAY EQUIPMENT CO.**

**NUCOR STEEL**

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

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

**NAME:** Patrick C. Frangella

**NAME:** \_\_\_\_\_

**TITLE:** Vice President & General Manager  
& Secretary

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

**ATTEST:** Luis E. Mayor

**ATTEST:**

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

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

**TITLE:** Vice President & Director of Finance

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

(Corporate Seal)

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated this 31<sup>st</sup> day of May 2001 by and between the National Railway Equipment Company (LESSOR) and Nucor Steel (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
NREX 1432	EMD	SW-14 switcher locomotive

**LEASE RATE**

REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
\$215,000.00	6 Months	\$3,650.00	\$120.00

**RENEWAL RATE AND TERM:** At the end of the 183 day initial lease term, Lessee may elect to renew the lease for not less than 30 days at a daily straight lease rate of \$120.00 per day.

**COMMENCEMENT DATE:** June 18, 2001 accepted at Crawfordsville, Indiana.

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

**LESSOR: NATIONAL RAILWAY EQUIPMENT COMPANY**

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

**NAME:** Patrick C. Frangella

**TITLE:** Vice President & General Manager  
& Secretary

**LESSEE: NUCOR STEEL**

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

**NAME:** \_\_\_\_\_

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

**MEMORANDUM OF LEASE AGREEMENT**

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of May 31, 2001, by and between NATIONAL RAILWAY EQUIPMENT COMPANY ("Lessor"), and NUCOR STEEL ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, Locomotive model(s) described as EMD SW-14 Locomotive(s) bearing reporting mark(s): NREX 1432.

Each locomotive is fully described in a certain Lease Agreement dated as of May 31, 2001 (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee. A Schedule of the equipment is attached hereto.

2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.

The Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

**LESSEE:**

NUCOR STEEL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSOR:**

NATIONAL RAILWAY EQUIPMENT COMPANY

By: \_\_\_\_\_

Name:

Title:



## SCHEDULE OF EQUIPMENT

Lessor: NATIONAL RAILWAY EQUIPMENT COMPANY

Lessee: NUCOR STEEL

Approved by: \_\_\_\_\_  
(Lessee to initial each page)

Attached to Bill of Sale dated: not applicable                      Equipment Located at: 14400 South Robey Street, Dixmoor, Illinois in Cook County

Equipment Schedule No.: NREX 1432

<u>Manufacturer and/or Vendor Name &amp; Invoice Number</u>	<u>Equipment Description</u>
National Railway Equipment Company	EMD SW-14 switcher locomotive at 1200 horsepower

**EXHIBIT Q**

Utah Railway Company

**GP40**

**LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT ("Lease")**, entered into as of this 30<sup>th</sup> day of March, 2001, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Utah Railway Company, a Utah corporation, ("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, 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 each locomotive is Accepted (as hereinafter defined) by Lessee ("Commencement Date"). Upon termination of the lease, Lessee shall affect prompt delivery of the locomotive(s) to Lessor at one of its contiguous United States facilities as designated by Lessor at time of termination.

**3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one months rent payable on acceptance of the locomotive(s) and one months rent to be held as security. If the Commencement Date for any locomotive does not fall on the first day of the calendar month, the first rental payment shall be prorated accordingly.

B. Payments past due for more than thirty (30) days shall bear interest at the rate of eighteen percent (18%) per annum.

C. All rentals shall be paid to Lessor at:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

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, (excluding any and all taxes imposed on Lessor's income from this Lease or any other source of income), 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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent. If any are made without Lessors consent, 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**

A. Prior to and after shipment from Lessor's facility, Lessee shall have the right, but not the obligation, to inspect and observe the operation of each locomotive. Upon Lessee's approval, Lessor will ship the locomotive at Lessee's expense and as directed by Lessee. Delivery of the locomotive(s) shall be to the Lessee's Provo, Utah Yard. Upon arrival at Lessee's Provo, Utah Yard, the locomotive shall be put into service as promptly as possible.

B. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor at one of its designated contiguous United States facilities in good order and condition, reasonable wear and tear accepted. Prior to shipment from Lessee's facility, Lessee and Lessor shall jointly inspect each locomotive and Lessee shall, subject to the preceding sentence, cause any repairs that are necessary and reasonable to be made to the locomotive at Lessee's expense. Lessee shall bear freight return costs. If repairs are not made as required as set forth in the preceding sentences, then 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, reasonable wear and tear excepted

#### **7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER**

A. Lessee hereby acknowledges that Lessee will have the right, but not the obligation to inspect and test each locomotive prior to and/or after delivery of same. The completion of an Acceptance Certificate for each locomotive by Lessee will constitute acknowledgment that they have been received in good condition and repair except as thereon noted by Lessee.

B. Inspection of the locomotive(s) prior to and/or after shipment, 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. Lessor, to the extent permitted by law or contract, hereby assigns to Lessee any and all manufacturer's warranties. In addition, Lessor warrants the engine crankshaft, alternator/generator, air compressor and traction motors for one hundred eighty (180) days from date of Acceptance as specified in 7C below. This warranty shall cover the cost of repair or replacement of the component only (the decision on repair versus replacement shall be at Lessor's discretion after consultation with Lessee) and will not include the cost of labor associated with the component without the written authorization of Lessor. LESSOR MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE (S), AFTER ACCEPTANCE BY LESSEE and Lessor hereby disclaims all such representation and warranties.

C. Lessee shall complete a Certificate of Acceptance (Acceptance) for each locomotive after it has been delivered and inspected by Lessee at Lessee's yard at Provo, Utah.

## **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, pertaining to the use and operation of the locomotives.

B. The locomotive(s) shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee.

C. Lessee shall materially comply with all federal, state, municipal and local laws, ordinances, and rules, and regulations relating to the 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) in violation of any law, ordinance, rule or regulation of any governmental authority, by Lessee or its agents.

E. Lessee shall pay all costs, expenses and charges incurred in connection with the maintenance, lease, use and operation of the locomotive(s) following Acceptance as described in 7C above, and subject to the terms of 6B above pertaining to reasonable wear and tear.

F. Lessee shall maintain the locomotive(s) in good mechanical condition and running order in compliance with OEM specifications and safety rules and applicable 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 of Lessee, in accordance with 8A above, 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. The insurance policy or policies providing the foregoing coverage shall:

- i. be written by an insurance company or companies authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor, as additional, insured party.
- 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).
- iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.
- v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

- i. be written in standard form by an insurance company acceptable to Lessor.
- ii. provide coverage in an amount not less than the replacement value 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.

D. Notwithstanding that Lessee shall provide certain insurance hereunder, 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, demands and expenses (including legal expenses) of whatsoever kind and nature, resulting from or arising out of the use, operation or ownership by Lessee of any locomotive, and the condition of any locomotive not maintained by Lessee in accordance with this Lease. 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. In the event of damage to a Locomotive, Lessee shall

immediately place the same in good repair (ordinary wear and tear excepted). If Lessee, to the extent not covered by insurance, in the exercise of its reasonable judgment, determines that any item of Equipment is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Stipulated Loss Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer.

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 at Lessee's expense.

#### **10. ASSIGNMENT.**

**WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES.** Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

#### **11. RENEWAL/PURCHASE OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to renew the Lease or purchase the locomotive at the end of the initial lease term. The renewal/purchase options are listed on Schedule A. The Lessee shall elect either option with a written notice.

#### **12. FINANCIAL DATA**

Upon the written request of Lessor, Lessee shall furnish to Lessor, the audited financial statements of Lessee's parent company, Mueller Industries, Inc. and such other reports and statements concerning this Lease and the locomotive(s) as Lessor reasonably may request.

#### **13. DEFAULT**

Failure by Lessee to perform as outlined in (i) and (ii) below shall be reason for Lessor to begin default actions, however, Lessee shall not be in default until the time and events described in (iii)

below shall have elapsed ("Reason for Default").

- i. Failure to make 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 Lessee to Lessor.
- ii. Failure to timely perform any other liability, obligation, covenant or agreement hereunder.
- iii. In the event Lessee fails to perform as described in (i) and (ii) above, Lessor shall give written notice of Default to Lessee by US Postal Certified Mail or Commercial Courier, return receipt requested, at the address listed herein. Lessee shall thereafter have fifteen (15) business days to cure such Reason for Default or Lessee will be declared in Default. "Business days" as used herein means all weekdays except for federal and Utah State holidays.

#### **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. 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 Equipment at places designated by Lessor, which is reasonably convenient to both parties.
- iv. 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.
- 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 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 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, 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. OBLIGATIONS OF LESSOR**

A. Lessor shall deliver the locomotives to Lessee in good operating condition and in compliance with all applicable laws and regulations, and licensing requirements.

B. Lessor shall indemnify and hold harmless Lessee, its affiliates, parcels and assigns, of and from any and all claims and liabilities caused by or arising out of its negligence or intentional actions, and its violation of 16A, including, but not limited to, personal injury, property damage, death, whether to Lessee, its employees or agents, or third parties.

C. Lessor shall indemnify and hold harmless Lessee, its affiliates, parents and assigns, from and of any claims and liabilities for alleged infringement of any intellectual property.

D. Lessor shall name Lessee as an additional insured of its insurance policies.

#### **17. 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 or Lessee in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Lessor or Lessee of any Event of Default by the other party 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 U.S. Postal Certified Mail or Commercial Courier, 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: The National Railway Equipment Co.  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Utah Railway Company  
340 Hardscrabble Road  
Helper, Utah 84526

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

LESSOR:

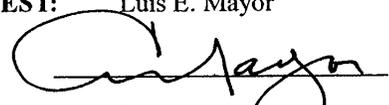
NATIONAL RAILWAY EQUIPMENT CO.

BY: 

NAME: Patrick C. Frangella

TITLE: Vice President & G.M.

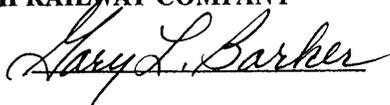
ATTEST: Luis E. Mayor

BY: 

TITLE: Vice President &  
Director of Finance

LESSEE:

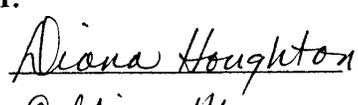
UTAH RAILWAY COMPANY

BY: 

NAME: Gary L. Barker

TITLE: President

ATTEST:

BY: 

TITLE: Office Mgr.

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 30th day of March, 2001 by and between the National Railway Equipment Co. (LESSOR) and Utah Railway Company (LESSEE).

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

UNIT NO.	TYPE	GENERAL DESCRIPTION
6615	EMD GP40	Four Axle 3,000 Horsepower
6621	EMD GP40	Four Axle 3,000 Horsepower

**LEASE RATE**

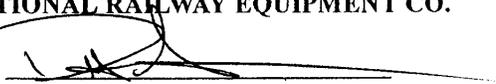
UNIT NO.	REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
			MONTHLY	DAILY
6615	\$315,000.00	60 Months	\$4,562.50	\$150.00
6621	\$315,000.00	60 Months	\$4,562.50	\$150.00

**PURCHASE OPTION:** Subject locomotives may be purchased at the end of the 60 month lease period at a buyout price of \$150,000.00 per locomotive (each).

**COMMENCEMENT DATE:** March 30th, 2001

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the lease.

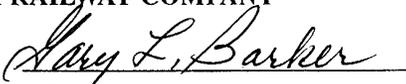
**LESSOR: THE NATIONAL RAILWAY EQUIPMENT CO.**

BY: 

NAME: Patrick C. Frangella

TITLE: Vice President & G.M.

**LESSEE: UTAH RAILWAY COMPANY**

BY: 

NAME: GARY L. BARKER

TITLE: PRESIDENT

## **The National Railway Equipment Company**

### **QUALIFICATION WORK SCOPE FOR GP40 LOCOMOTIVES**

#### **A. ENGINES**

1. Cylinders to be inspected for scoring, scuffing, broken rings, and high ring land wear per OEM specifications. Any assembly with a .090+ lead reading will be replaced.
2. Leads to be taken on each assembly. All defects will be corrected.
3. Lube oil samples taken prior to start up and after load test.
4. Rods and main bearings visually inspected and spot checks made. Bearings replaced as required.
5. Injectors, rockers and valve bridges replaced as required.
6. Turbochargers inspected. Defects corrected or replaced as necessary.
7. Engine load tested and governors and racks set to gain proper horsepower.
8. Oil leaks corrected.
9. Check exhaust for leaks and repair or replace as necessary.

#### **B. TRUCKS**

1. All wheels to be a minimum of 1 1/2" inch wheel thickness above the witness mark and flanges to be no more than 0 to 6.
2. Bad order brake shoes to be renewed.
3. Bent or off running shoes and rigging to be repaired.
4. Bad order pedestal liners replaced when cracked or out of limits.

5. Traction motors will be inspected and repaired or replaced as necessary.
6. Motor supports, wicks and journal boxes will be serviced and inspected.
7. Gear case leakage will be corrected and all relubed per standards.
8. Sander at present combination between single and inboard will be repaired in kind.
9. Center bearing and side bearing clearances to be within specification.
10. Trucks cleaned as necessary.
11. Axles shall be roller bearing equipped.

#### **C. ALTERNATOR**

1. Electrically qualified for service.
2. Brushes renewed as required.
3. Commutators and Slip Rings to meet specification.
4. Interior cleaned as practical.
5. Armature bearing monitored for noise and repaired as necessary.
6. Diodes checked and replaced as necessary.

#### **D. ELECTRICAL SYSTEM**

1. Will be inspected for defects and corrected.
2. Free locomotive of grounds.
3. System function test all circuits.
4. Cycle and recalibrate transition circuits.
5. Install good batteries.
6. Set voltage regulation.

7. Apply all missing covers.
8. Apply all light bulbs as necessary.
9. Load test system.
10. Replace brushes as required.
11. Install Ditch Lights if not already equipped (front only).
12. Install Dummy Receptacles on both end if not so equipped.

#### **E. AIR SYSTEM**

1. Perform a fresh 92-day inspection per FRA requirements.
2. Inspect air compressor for pumping oil. Repair or replace as necessary.
3. Renew air intake filters.

#### **F. COOLING SYSTEM**

1. Inspect for leaks while under hydro test and correct defects.
2. Load test and monitor all systems.

#### **G. LUBE OIL SYSTEM**

1. Repair leaks as necessary.
2. Load test and monitor temperature difference on lube oil cooler, repair as necessary.

#### **H. FUEL SYSTEM**

1. 60 lb. test to engine fuel lines and injectors for leakage.
2. Change all filters.
3. All units to be equipped with fuel gauges, check for accuracy and repair if necessary.

**I. ENGINE AIR FILTERS**

1. Renew all filters on engine air intake.
2. Car body filters, if equipped, will be renewed.

**J. LOAD TEST**

1. Do standard 4-hour load test.
2. Adjust and correct defects.

**K. CAB AND MISCELLANEOUS**

1. Install side wall heaters if not so equipped.
2. Install high back seats with armrests.
3. Provide radio and head-end device brackets, antennae and electrical connections.
4. Vent Automatic Brake air outside the cab if not so equipped.
5. Provide mirrors on both sides.
6. Equip with locomotive alerter/event recorder system.
7. Equip with axle generator and associated wiring and hardware AND Speed Control kit, cable bracket and wiring for Model Q-88200/5 Q- Tron Speed Control II Pace Setter.
8. Install Retention Tanks if not so equipped.

**EXHIBIT R**

Holnam, Inc.

**LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 3<sup>rd</sup> day of April, 2000, between the National Railway Equipment Company, an Illinois corporation, ("LESSOR"), and Holnam, 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 one of its contiguous United States facilities as designated by Lessor at time of termination.

**3. RENTAL**

A. The rental payable shall be the sum identified in Schedule A payable in advance monthly installments, with one months rent payable on acceptance of the locomotive(s) and one months rent to be held as security. Lessee shall operate such locomotive(s) in service on its railroad. 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:

The National Railway Equipment Company  
135 South LaSalle Street  
Department 1473  
Chicago, IL 60674-1473

*4/3/2000*

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. 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 accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, 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 staging area in Dixmoor, Illinois. Except as set forth in Paragraph 11, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor at one of its designated contiguous United States facilities in good order and condition, reasonable wear and tear excepted. Lessee shall bear freight return costs. 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 delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein.

#### **7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER**

A. 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 good condition and repair.

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 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 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) 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. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.

ii. name Lessor and Lessee as insured parties.

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).

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor.

v. provide that the insurance company or companies issuing such policy or policies shall

notify Lessor of any cancellation thereof at least thirty- (30) days prior thereto.

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 coverages shall:

- i. be written in standard form by an insurance company acceptable to Lessor.
- ii. provide coverage in an amount not less than the replacement value 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.

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. 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, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive.

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 no right to assign or sub-lease this lease or any other of the locomotive(s) or any interest therein.

#### **11. RENEWAL OPTION**

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 90 days notice, elect the option to renew the locomotive at the end of the initial lease term. The renewal option is listed on Schedule A. The Lessee shall elect this option with a written notice.

#### **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.

### 13. 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 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.

### 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 available to Lessor at Lessee's expense, any or all Equipment 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 reasonable 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. 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 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 any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, 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.

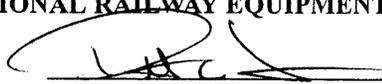
If to Lessor: The National Railway Equipment Company  
P.O. Box 2270  
Dixmoor, Illinois 61282

If to Lessee: Holnam Inc.  
P.O. Box 1008  
Mason City, Iowa 50402

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

LESSOR:

NATIONAL RAILWAY EQUIPMENT CO.

BY: 

NAME: Patrick C. Frangella

TITLE: Vice President Operations

ATTEST: Jerry J. Massie

BY: 

TITLE: Assistant Secretary

(Corporate Seal)

LESSEE:

HOLNAM INC.

BY: 

NAME: Michael J. Moorehead

TITLE: Quarry Supervisor

ATTEST: \_\_\_\_\_

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

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

(Corporate Seal)

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 3<sup>rd</sup> day of April, 2000 by and between the National Railway Equipment Company (LESSOR) and Holnam Inc. (LESSEE).

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

<b>UNIT NO.</b>	<b>TYPE</b>	<b>GENERAL DESCRIPTION</b>
NREX 128	EMD	SW-900 Switcher Locomotive
NREX 129	EMD	SW-800 Switcher Locomotive

**LEASE RATE**

<b>REPLACEMENT VALUE</b>	<b>LEASE TERM</b>	<b>LEASE RATE PER LOCOMOTIVE</b>	
		<b>MONTHLY</b>	<b>DAILY</b>
\$255,000.00	7 Years	\$3,345.84	\$110.00
\$235,000.00	7 Years	\$3,102.50	\$102.00

**RENEWAL RATE, TERM AND PURCHASE OPTION:** At the end of the 7 year initial lease term, Lessee may elect to renew the lease for not less than one year at the same daily straight lease rates.

**COMMENCEMENT DATE:** April 3, 2000 accepted at Mason City, Iowa.

Lessee agrees to pay the first month of rent and one month's rent to be held as security with their execution of the lease.

**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

BY: 

NAME: Patrick C. Frangella

TITLE: Vice President Operations

**LESSEE: HOLNAM INC.**

BY: 

NAME: MICHAEL J. MOOREHEAD

TITLE: QUARRY SUPERVISOR