

Law Offices of  
**Loritz & Associates, Ltd.**  
1100 Ravinia Place • Orland Park, IL 60462

RECORDATION NO. 24887 FILED

APR 01 '04

2-09 PM



(708) 403-2555  
Fax: (708) 403-9749  
E-mail: loritz@aol.com

Richard F. Loritz

Of Counsel:  
David Dineff  
Patrick Dwyer  
Thomas Murphy

**SURFACE TRANSPORTATION BOARD**

March 10, 2004

Office of the Secretary  
Surface Transportation Board  
12<sup>th</sup> Street & Constitution Ave., N.W.  
Washington, D.C. 20423-0001

Re: Lease of Locomotive Equipment  
National Railway Equipment Co., Lessor  
Point Comfort & Northern Railway Co., Lessee

Dear Secretary:

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

This document is a lease of locomotive equipment and is a primary document dated January 30, 2003. The names and addresses of the parties to the documents are as follows:

Lessor: National Railway Equipment Co.  
14400 South Robey  
P.O. Box 2270  
Dixmoor, IL 60426

Lessee: Point Comfort & Northern Railway Co.  
Farm to Market Route 616 at Corner Jackson Street  
Lolita, TX 77971

A description of the equipment covered by the document follows:

<u>UNIT NO.</u>	<u>TYPE</u>	<u>GENERAL DESCRIPTION</u>
NREX 5979	EMD	SD40-2 Locomotive

Surface Transportation Board  
March 10, 2004  
Page 2

A fee of \$30.00 is enclosed. Please return the original after recordation to:

Richard F. Loritz  
Loritz & Associates  
1100 Ravinia Place  
Orland Park, IL 60462

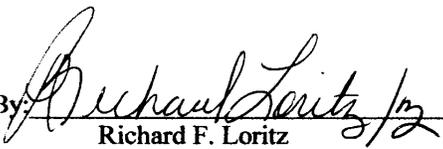
A short summary of the document to appear in the index follows:

A lease of locomotive equipment identified as one (1) locomotive,  
with National Railway Equipment Co., as Lessor and Point Comfort  
& Northern Railway Co., as Lessee

I certify under my oath and state that I have compared the copy with the original and I found the  
copy to be complete and identical in all respects to the original document.

Very truly yours,

LORITZ & ASSOCIATES

By:   
Richard F. Loritz

RFL/mj  
nrec#310.04a

Enclosures

**LOCOMOTIVE LEASE AGREEMENT SURFACE TRANSPORTATION BOARD**

**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:

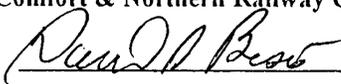
National Railway Equipment Co.

Point Comfort & Northern Railway Co.

BY:



BY:



NAME: James E. Fisk

NAME: David A. Besio

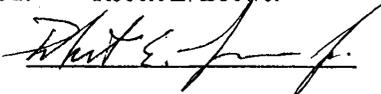
TITLE: President

TITLE: President

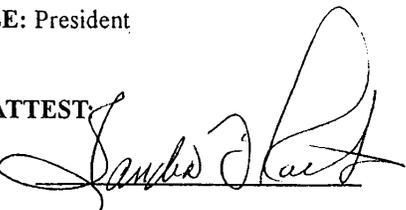
ATTEST: Robert E. Loewer

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**

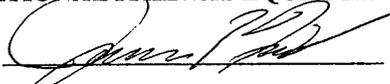
REPLACEMENT VALUE	LEASE TERM	LEASE RATE PER LOCOMOTIVE	
		<u>MONTHLY</u>	<u>DAILY</u>
\$485,000.00	12 Months	\$5,627.09	\$185.00

**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.

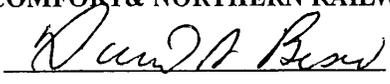
**LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY**

BY: 

NAME: James E. Fisk

TITLE: President

**LESSEE: POINT COMFORT & NORTHERN RAILWAY CO.**

BY: 

NAME: David A. Besio

TITLE: President