

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

RECORDATION NO. 24918 FILED

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SURFACE TRANSPORTATION BOARD

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Of Counsel:
David Dineff
Patrick Dwyer
Thomas Murphy

March 10, 2004

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



Re: Lease of Locomotive Equipment
National Railway Equipment Co., Lessor
APM S.A. de C.V., a Mexican Corporation, 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 March 19, 2001. 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: APM S.A. de C.V.
Av. Churubusco Nte. No. 1000
Apdo. Postal 1194 C.P. 64560
Monterrey, N.L. Mexico

A description of the equipment covered by the document follows:

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

Surface Transportation Board
March 8, 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 three (3) locomotives,
with National Railway Equipment Co., as Lessor and APM S.A. de
C.V., 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#310.04f

Enclosures

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

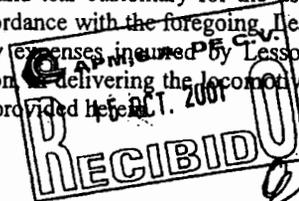
Each party shall be responsible to pay its corresponding taxes as set forth by applicable tax laws. Lessor shall pay its applicable taxes in accordance with the laws of the United States and Lessee shall pay its applicable taxes in accordance with the laws of Mexico. Import duties and other associated 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 or 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.

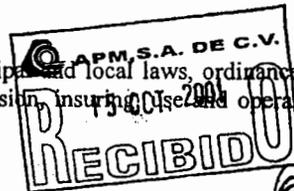
- i. Lessor hereby acknowledges that Lessee will have the opportunity to inspect and review in detail the locomotive(s) prior to accepting delivery of same, and that acceptance of delivery of the locomotive(s) by Lessee constitutes acknowledgment that Lessee agrees that the locomotive(s) have been received 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:

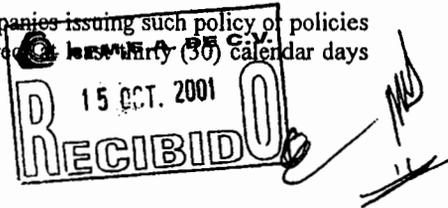
- A. Lessee shall be responsible and pay for all registrations, certificates, and permits, and all other similar requirements of governmental authorities, required to be obtained in the name of the Lessee.
- B. The locomotive(s) shall be used and operated only by properly qualified, trained and registered 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, 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.
- 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 ^{by 30 C.V.} 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

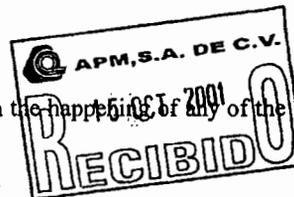
Lessor shall have the unconditional right to assign this lease, in whole or in part. Lessee shall have no right to assign or sub-lease this lease or any other of the locomotive(s) or any interest therein, except if to any subsidiary or affiliated company.

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"):

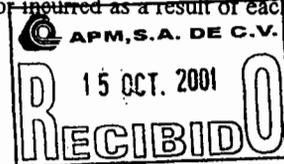


- i. Default in the payment when due of any installment of rental hereunder or of any other obligation for the payment of money now or hereafter owed by Lessee to Lessor.
- ii. Default in the timely performance of any other liability, obligation, covenant or agreement hereunder of Lessee

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

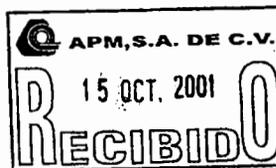
Lessee agrees to execute all recording documents requested by Lessor to show Lessor's interest in the locomotive(s). Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the locomotive(s) without Lessee's signature.

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.

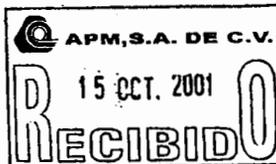


16. MISCELLANEOUS

- 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 Rules of 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

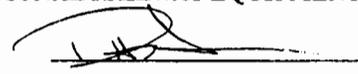
If to Lessee: APM S.A. de C.V.
Av. Churubusco Nte. No. 1000
Apdo. Postal 1194 C.P. 64560
Monterrey, N.L. México



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

LESSOR:

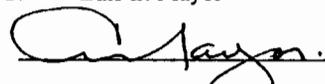
NATIONAL RAILWAY EQUIPMENT CO.

BY: 

NAME: Patrick C. Frangella

TITLE: Vice President & General Manager

ATTEST: Luis E. Mayor

BY: 

TITLE: Vice President & Director of Finance

(Corporate Seal)

LESSEE:

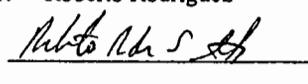
APM S.A. DE C.V.

BY: 

NAME: Mario Tijerina Molina

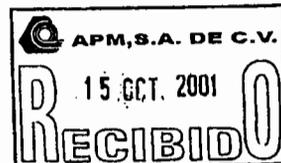
TITLE: Administration Manager

ATTEST: Roberto Rodríguez

BY: 

TITLE: Materials Manager

(Corporate Seal)



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

LESSOR: THE NATIONAL RAILWAY EQUIPMENT COMPANY

BY: [Signature]

NAME: Patrick C. Frangella

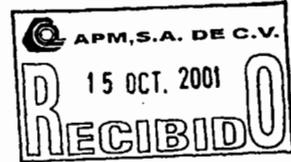
TITLE: Vice President & General Manager

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

BY: [Signature]

NAME: Juan Carlos Marquinez

TITLE: Logistics Manager



112 and 108 started
on Oct/15/01

