

**NATIONAL  
RAILWAY EQUIPMENT CO.**



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

May 18, 2007

RECORDATION NO. 27082 FILED

JUL 23 '07

12-42 PM

**SURFACE TRANSPORTATION BOARD**

RECEIVED  
MAY 22 2007  
MANAGEMENT  
SIS

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

Attn: Equipment Recordation

To Whom It May Concern:

I have enclosed for recordation, pursuant to the provisions of 49 U.S.C. 11301, an original of the memorandum of lease agreement and the schedule of equipment for a locomotive lease agreement dated Jan. 1, 2007, a primary document under the Board's recordation regulations.

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

Lessor: National Railway Equipment Co.  
14400 S. Robey St.  
Dixmoor, IL 60426

Lessee: Delta Southern Railroad  
P.O. Box 1709  
Madison Parish Port  
Tallulah, LA 71282

A description of the equipment covered by the Lease Agreement is as follows:

Five, originally, EMD GP-<sup>7</sup>~~7~~ that were made into CF 7 by The Atchison, Topeka & Santa Fe Railway Co., bearing road #'s DSSR 100, DSSR 200, DSSR 300, DSSR 400, DSSR 500.

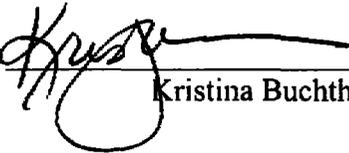
A short summary of the document to appear in the index is as follows:

“Locomotive Lease Agreement”

Also enclosed is a check in the amount of \$34 payable to the Surface Transportation Board to cover the required recordation fee for the attached agreement.

Sincerely Yours,

NATIONAL RAILWAY EQUIPMENT CO.

By  \_\_\_\_\_  
Kristina Buchthal

JUL 23 '07

12-42 PM

**LOCOMOTIVE LEASE AGREEMENT**

SURFACE TRANSPORTATION BOARD

**WHEREAS**, Delta Southern Railroad, Inc. has been leasing the Locomotives from National Railway Equipment Co. since February 2006 on a month to month operating and on a true lease basis and the parties wish to continue a month to month lease based upon the terms contained in this Lease.

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 1st day of January 2007, between the National Railway Equipment Co., an Illinois corporation, ("LESSOR"), and **DELTA SOUTHERN RAILROAD, INC.** ("LESSEE").

**LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:****1. LEASE AND LEASED PROPERTY**

Lessee hereby leases from Lessor, the locomotive(s), ("Locomotive(s)" or "locomotive(s)"), together with the parts, accessories, attachments and devices, if any, now or hereafter affixed thereto, as described in Schedule "A" attached to and made part hereof.

**2. TERM**

The term of this Lease for each locomotive shall be the month to month term set forth in Schedule "A", commencing on January 1, 2007 ("Commencement Date"). In the event of default of the lease, Lessee shall affect prompt delivery of the locomotive to Lessor at a facility as directed by Lessor.

**3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments. Lessee shall only operate such locomotive 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. *\* U.P + KCS FOR INTERCHANGE W/P*

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:

National Railway Equipment Co.  
1473 Paysphere Circle  
Chicago, IL 60674

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 Lessee 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 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 at reasonable times for the purpose of inspections.

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

D. Lessee shall keep the locomotive, 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 and shall be not be construed as creating a sale of the locomotive to Lessee.

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

In the event of default or expiration of the Lease, Lessee shall return such locomotive to Lessor at a facility selected by Lessor ("Inspection Location") in good order and condition. Lessee shall bear freight delivery and return costs. Lessee shall pay or reimburse Lessor for any reasonable and ordinary expenses incurred by Lessor in returning the locomotive to good order and condition, in delivering the locomotive to Lessor or effecting return of the locomotive from Lessee as provided herein. All obligations of Lessee under this Lease shall continue with respect to any locomotive not returned by the expiration or earlier termination as permitted herein until such locomotive is returned to the Inspection Location in accordance herewith, including, without limitation, the obligation to pay rent, which shall increase to 150% of such existing Lease Rate in Exhibit A for the first 45 days the locomotive is late and to 200% of such existing Lease Rate thereafter.

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

##### **A. Acceptance**

- i. Lessee has accepted delivery of the locomotives and such acceptance 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 during the term of this Lease.

B. Delivery to and acceptance of the locomotives by Lessee shall constitute Lessee's acknowledgment and agreement 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. **LESSOR MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE, and Lessor hereby disclaims all such representation and warranties. LESSOR SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES.**

## 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 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.

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) levied upon or arising out of the use, operation, maintenance or insuring of the locomotive 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.

F. Lessee shall maintain the locomotive 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.

## 9. INSURANCE/INDEMNIFICATION

*45,000,000*  
A. Railroad liability insurance providing coverage in an amount not less than ~~three million~~ *FIVE HUNDRED THOUSAND* (~~\$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 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.

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.

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.

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 Lessor's option) (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 Replacement 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.** THIS LEASE HAS BEEN COLLATERALLY ASSIGNED BY LESSOR TO LASALLE BANK NATIONAL ASSOCIATION (the "Bank"). Lessee expressly agrees that Lessor shall remain liable under this Lease to perform all of the conditions and obligations provided herein to be observed and performed by it, and neither the collateral assignment of this Lease to Bank by Lessor nor any action taken pursuant to such assignment shall cause Bank to be under any obligation or liability in any respect to any party to this Lease, including, without limitation, Lessee, for the performance or observance of any of the representations, warranties, conditions, covenants, agreements or other terms of this Lease. Notwithstanding any provision to the contrary herein, this Lease may not be amended or modified without the prior written consent of Bank. 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.

#### **11. 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 as Lessor reasonably may request.

#### **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:

- i. Declare all unpaid amounts of rental to be immediately due and payable.
- ii. Terminate the lease of any or all locomotive by written notice to Lessee.
- iii. Whether or not the lease is terminated, take possession of any or all locomotive wherever found, and for this purpose Lessor may at Lessor's option enter upon the premises where such locomotive 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 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, 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.
- 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, including but not limited to legal fees.

B. 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 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.

**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 any 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. Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the locomotive without Lessee's signature.

#### **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 Co.  
14400 S. Robcy  
Dixmoor, Illinois 60426

If to Lessee: DELTA SOUTHERN RAILROAD  
P.O. BOX 1709  
MADISON PARISH PORT  
TALLULAH LA 71282

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

LESSOR:

LESSEE:

NATIONAL RAILWAY EQUIPMENT CO.

DELTA SOUTHERN RAILROAD, INC.

BY:

L. J. Beal

BY:

William P. Wainwright

NAME:

L. J. BEAL

NAME:

WILLIAM P. WAINWRIGHT

TITLE:

Vice President

TITLE:

PRESIDENT

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 1<sup>st</sup> day of January, 2007 by and between the National Railway Equipment Co. (LESSOR) and DELTA SOUTHERN RAILROAD, INC. (LESSEE).

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

<b>UNIT NO.</b>	<b>TYPE</b>
DSSR 100, DSSR 200, DSSR 300, DSSR 400, DSSR 500	CF 7

**GENERAL DESCRIPTION OF LOCOMOTIVES: 1,500 Horse Power. Originally, EMD GP-7 that were made into CF 7 by The Atchison, Topeka & Santa Fe Railway Co.**

STATE OF LOUISIANA )  
PARISH OF MADISON ) SS.

W. R. [Signature] On this 13<sup>th</sup> day of MARCH, 2007, before me appeared the person who signed this instrument who acknowledged that (s) he is the PRES of DELTA SO RR. and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

E. H. Lancaster Jr.

Notary Public

[Seal]

My Commission Expires:

\_\_\_\_\_

E. H. LANCASTER, JR.  
NOTARY PUBLIC, BAR ROLL # 7952  
MADISON PARISH, LOUISIANA  
MY COMMISSION EXPIRES AT DEATH

STATE OF ILLINOIS )  
COUNTY ~~COOK~~ Jefferson ) SS.

On this 11<sup>th</sup> day of May, 2007, before me appeared Lawrence J. Beal the person who signed this instrument who acknowledged that (s) he is an officer of **NATIONAL RAILWAY EQUIPMENT CO.** and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

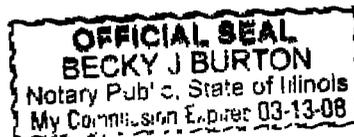
Becky J. Burton

Notary Public

[Seal]

My Commission Expires:

03-13-08





# ESSEX RAILROAD DIVISION

4521 Tighwoods Parkway, Glen Allen, VA 23060-6148 (804) 273-1400 FAX (804) 273-1435

DATE Apr. 27 2007  
 CONFIRMATION Binder  
 PRODUCER Empire Insurance Services, LLC  
 ATTENTION Lisa Bridges  
 REGARDING Delta Southern Railroad Inc

1	LIMITS OF LIABILITY	\$500,000 per schedule per occurrence
2	COVERAGE	(5) Leased Locomotives valued at \$100,000 each
3	PERILS INSURED	All Risk as per Essex Railroad Rolling Stock Form
4	DEDUCTIBLES	\$5,000 per occurrence
5	POLICY FORM	Essex Railroad Rolling Stock Form
6	VALUATION	Actual Cash Value
7	SUBLIMITS	N/A
8	TERM	04/27/2007 - 04/27/2008
9	TOTAL INSURABLE VALUES	\$500,000
10	PREMIUM	\$4,750
11	POLICY NUMBER	<b>RRP1393</b>

ADDED COMMENTS

**Essex Terrorism, Mold, and Cyber Risk Exclusions apply to all coverages.**

We use Essex Insurance Company & Essex Forms unless noted above. A 25% minimum earned premium is applicable, unless noted above. All taxes, fees and filings (if applicable) are the responsibility of the broker. In addition to more common policy exclusionary language, our quotes and policies exclude Boiler & Machinery, all Foreign Locations & Exposures, Asbestos, Terrorism, Mold, Electronic Data / Cyber Risk Losses and related computer losses unless noted above.

Chuck Brehmer  
Underwriter, Railroad Division