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SURFACE TRANSPORTATION BOARD

May 16, 2011

Chief, Section of Administration, Office of Proceedings  
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 and one counterpart of the locomotive lease agreement, as well as a memorandum of lease agreement and a schedule, all of which is dated April 26, 2011, a primary document under the Board's recordation regulations.

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

Lessor: National Railway Equipment Co.  
14400 South Robey Street  
Dixmoor, IL 60426

Lessee: Hudson Bay Railway Company  
252 Clayton Street, 4<sup>th</sup> Floor  
Denver, CO 80206

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

One GP15, EMD Four Axle Locomotive, bearing road # NREX 1498; and one GP40M-2, EMD Four Axle Locomotive, bearing road # NREX 5517.

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

"Locomotive Lease Agreement"



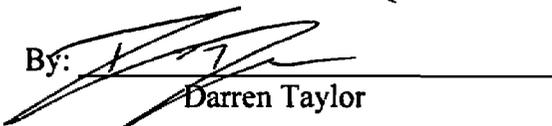
Also enclosed is a check in the amount of \$41.00 payable to the Surface Transportation Board to cover the required recordation fee for the attached agreement.

Please date-stamp and return an original copy after recordation to:

Darren Taylor  
National Railway Equipment Co.  
14400 South Robey Street  
P.O. Box 2270  
Dixmoor, IL 60426

Sincerely,

NATIONAL RAILWAY EQUIPMENT CO.

By: 

Darren Taylor

**LOCOMOTIVE LEASE AGREEMENT**

**SURFACE TRANSPORTATION BOARD**

THIS LOCOMOTIVE LEASE AGREEMENT ("Lease"), entered into as of this 26<sup>th</sup> day of April 2011, between the **NATIONAL RAILWAY EQUIPMENT CO.**, an Illinois corporation, ("Lessor"), and **HUDSON BAY 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 delivered to Lessee ("Commencement Date"). Upon termination of the lease, Lessee shall affect prompt delivery of the locomotive(s) to Lessor at Silvis, Illinois.

**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. Lessee shall operate such locomotive(s) in service only 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:

National Railway Equipment Co.  
8394 Solutions Center  
Chicago, IL 60677

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 reasonable attorney fees and costs) on account of Lessee's failure to do the same. Lessee shall have no responsibility for any taxes on or measured by Lessor's income.

## **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 inspect for compliance on delivery of the locomotive(s) at interchange, The Pas, Manitoba ("Delivery Location"). Lessor shall be notified of non complying items within five (5) business days of the locomotive(s) arrival at the Delivery Location and before locomotive (s) are put into service. Excepted items will be resolved by mutual agreement between Lessor and Lessee. Except as set forth in the Lease, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor at the Return Location, Silvis, Illinois in good order and condition, reasonable wear and tear excepted. Lessee shall bear freight outgoing and 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. 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 Delivery Location in accordance herewith including, without limitation, the obligation to pay rent, which shall increase to 110% of the rent stated on Schedule A for the first 45 days the Locomotive is late, provided however during such time the Locomotive is being shipped and not at Lessee's facility the rent shall be the rate stated on Schedule A and after the 45 days the rent shall increase to 125% of such rate thereafter. Shipment cost and risk of loss during ship shall be Lessee's responsibility.

## **7. WARRANTY DISCLAIMER**

**EXCEPT AS STATED IN SCHEDULE A, 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(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, provincial 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 five million (\$5,000,000) dollars combined single limit per occurrence and ten million (\$10,000,000.00) dollars combined in the aggregate 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 locations in which the locomotive(s) will be used and operated.

- ii. name Lessor and Lessee as additional insured and insured parties, respectively.
- 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 and show Lessor as additional insured.

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. is 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 reasonable legal expenses) of whatsoever kind and nature; resulting from or arising out of the use, condition, operation or ownership of any locomotive; provided, however that the foregoing limitation of liability provisions shall not apply to claims for personal injury (including death) or property damage to the extent caused by Lessor's gross 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.

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, except to the extent caused by Lessor's gross negligence or willful misconduct, 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 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 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. 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. 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.

#### **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 anyone or more of the following actions with respect to the locomotive(s):

- i. Declare all unpaid lease payments 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.
- iv. Termination of this Lease does not terminate, limit, or restrict the rights and remedies of Lessor or Lessee. In addition to Lessor's right under common law to redress for any breach or violation, Lessee shall indemnify and defend Lessor against all losses, damages, cost and expenses (including, without limitation, interest, penalties, court costs, and reasonable attorney's fees and expenses) asserted against, imposed upon, or incurred by Lessor, directly or indirectly, arising out of or resulting from any breach or violation.
- v. Require that Lessee shall, upon demand by Lessor and at Lessee's expense, promptly make available to Lessor at Lessee's expense, any or all locomotives at a place designated by Lessor which is reasonably convenient to both parties.
- vi. 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.
- 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 damages resulting from the ordinary course of events from the Lessee's default as determined in any reasonable manner less expenses saved in consequence of each Event of Default by Lessee.

B. None of the rights and remedies under or referred to 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.

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. 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. Illinois shall be choice of forum for all litigation.

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 writing signed by the parties.

C. No delay or omission by either party in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by either party 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 each other.

If to Lessor: Attn: Vice President Marketing & Sales  
National Railway Equipment Co.  
200 Aviation Drive  
Mt. Vernon, Illinois 62864

If to Lessee: Attn: Executive Vice President - Mechanical  
Hudson Bay Railway Company  
252 Clayton Street, 4<sup>th</sup> Floor  
Denver, CO 80206

With a copy to: General Counsel  
Hudson Bay Railway Company  
252 Clayton Street, 4<sup>th</sup> Floor  
Denver, CO 80206

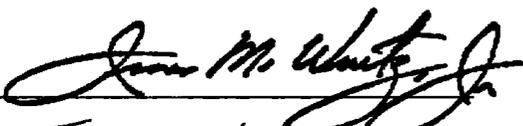
**WITNESS WHEREOF**, the parties have executed this Lease the day and year first mentioned above.

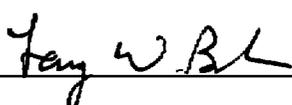
Lessor:

Lessee:

**NATIONAL RAILWAY EQUIPMENT CO.**

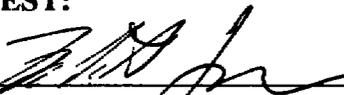
**HUDSON BAY RAILWAY  
COMPANY**

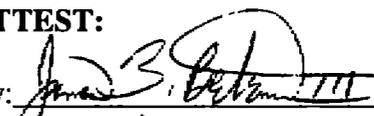
By:   
Name: JAMES M. WURTZ JR  
Title: VP MARKETING & SALES

By:   
Name: Larry W Bush  
Title: CFO

**ATTEST:**

**ATTEST:**

By:   
Title: General Counsel

By:   
Title: VP Contract Development

**SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 26<sup>th</sup> day of April 2011, by and between the **NATIONAL RAILWAY EQUIPMENT CO.** ("Lessor") and **HUDSON BAY RAILWAY COMPANY** ("Lessee").

Lessor warrants the following equipment for a period of ninety (90) days from date unit is placed in service:

Lessor warrants the Crankshaft, Turbocharger and AR Alternator for a period of ninety (90) days. Failure of Crankshaft or AR Alternator/ Main Generator cause for Lease suspension, return to Silvis or designated location for repair/ change-out. Lease Terms resume on return to Property. Turbocharger failure material only, FOB HBR.

On the foregoing Warranty items for which Lessor is responsible Rental abatement applies until such time Warranted component is replaced and locomotive returned to Lessee's property. At Lessor's option, like kind substitution will be accepted.

Rent shall abate on the date such Unit is interchanged off Lessee's lines for movement to the repair facility and shall be reinstated effective on the date such Unit is redelivered to Lessee at a mutually agreed to interchange point located on the lines of Lessee. Any transportation expenses off Lessee's lines in connection with the catastrophic failure of a Warranty Item shall be for the account of Lessor.

**Type and General Description of Locomotive Unit(s), Marks and Numbers:**

<u>Unit No:</u>	<u>Type:</u>	<u>General Description:</u>
NREX 1498	GP15	EMD Four Axle
NREX 5517	GP40M-2	EMD Four Axle

**RATE AND TERM:** Subject locomotive is a portal to portal lease for six months. Outbound and return freight is to the account of the Lessee.

**COMMENCEMENT DATE:** Upon ex-works shipment Silvis and Ottawa, Illinois  
Subject locomotive is a portal to portal lease.

**WITNESS WHEREOF**, the parties have executed or caused this **SCHEDULE "A"** to be executed as of the day and year first mentioned above.

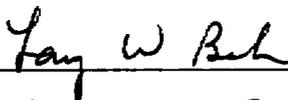
Lessor: **NATIONAL RAILWAY EQUIPMENT CO.**

By: 

Name: JAMES M. WORTH JR.

Title: VP MARKETING + SALES

Lessee: **HUDSON BAY RAILWAY COMPANY**

By: 

Name: Larry W Bush

Title: CFO

**MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT**

THIS MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT has an effective date of the 26<sup>th</sup> day of April, 2011, and is by and between National Railway Equipment Co. ("Lessor"), and Hudson Bay Railway Company ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor the Locomotive model(s) described herein. This MEMORANDUM OF LEASE AGREEMENT evidences a lease.

Each locomotive is fully-described in a certain Lease Agreement with an effective date of April 26, 2011, (the "Lease"), between Lessor and Lessee. A schedule of the equipment is attached hereto.

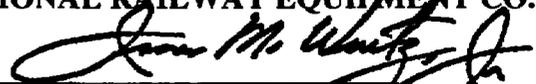
2. All terms of the LOCOMOTIVE LEASE AGREEMENT are hereby referred to and incorporated in this memorandum by reference.

The MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT may be 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.

Lessor:

**NATIONAL RAILWAY EQUIPMENT CO.**

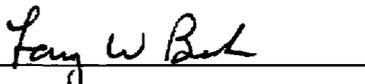
By: 

Name: JAMES M. WURTZ JR

Title: VP MARKETING & SALES

Lessee:

**HUDSON BAY RAILWAY COMPANY**

By: 

Name: Larry W Bush

Title: CFO

STATE OF Colorado )  
 ) SS.  
COUNTY OF Denver )

On 7 this April day of April, 2011, before me appeared John W. Smith, the person who signed this instrument who acknowledged that (s) he is the CFO of Colorado State University and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

[Signature]

Notary Public



[Seal]

My Commission Expires:  
2/28/2012

STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

On this 3rd day of May, 2011, before me appeared James M. Wurtz the person who signed this instrument who acknowledged that (s) he is the VP Marketing & Sales of National Railway Equipment Co and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

[Signature]

Notary Public



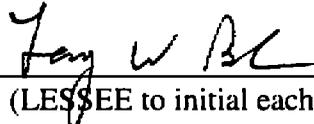
[Seal]

My Commission Expires:  
9-4-2011

**SCHEDULE OF EQUIPMENT**

**LESSOR: NATIONAL RAILWAY EQUIPMENT CO.**  
**LESSEE: HUDSON BAY RAILWAY COMPANY**

Approved by:

  
\_\_\_\_\_  
(LESSEE to initial each page)

Equipment Schedule No.:

Type and General Description of Locomotive Unit(s). Marks and Numbers:

Unit No:

Type:

NREX 1498  
NREX 5517

GP15  
GP40M-2

EMD Four Axle  
EMD Four Axle