

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

J. S. Edwards
Chicago & Northwestern Transp. Co.
One North Western Center
Chicago, Illinois 60606

May 23, 1983

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/23/83 at 9:30AM , and assigned re-
recording number(s) . 6593-D

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 6593 Filed 1425

MAY 23 1983 -9 30 AM

INTERSTATE COMMERCE COMMISSION

SUBLEASE OF DIESEL-ELECTRIC LOCOMOTIVE UNITS

THIS SUBLEASE AGREEMENT (the "Lease"), made this 12th day of May, 1983 between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY successor in interest to Chicago and North Western Railway Company, a Delaware Corporation (hereinafter called "C&NW") and NJ TRANSIT RAIL OPERATIONS, INC., a subsidiary of the New Jersey Transit Corporation (hereinafter called "Lessee"):

W I T N E S S E T H:

1. C&NW, for and in consideration of the rents, covenants and conditions hereinafter mentioned, agrees to lease to Lessee:

6 EMD F7 diesel locomotives with head end hotel power, CNW numbered 417, 418, 420, 423, 424, 425 (the "Locomotive Units" or "Units" or individually a "Locomotive Unit" or "Unit").

2. C&NW agrees to deliver said Locomotive Units to Lessee on mutually agreed dates at C&NW's yard at Proviso, Illinois. Following such delivery, subject to the inspection provided in paragraph 14, the term of this Lease shall begin with respect to each Locomotive Unit on the day each such locomotive is delivered to Lessee. It is agreed that Lessee shall have the right to return to C&NW any of the Locomotive Units at any time

after 365 days of paid use. This Lease shall thereupon terminate as to the Locomotive Units being returned when such Locomotive Unit has been received and accepted by C&NW at C&NW's yard at Proviso, Illinois, or, if mutually agreed upon, at any other terminal on C&NW's lines. From the time a Locomotive Unit is received and accepted by Lessee at C&NW's yard at Proviso, Illinois, until the time any such Locomotive Unit has been received and accepted by C&NW, such Locomotive Unit shall be deemed to be in possession of the Lessee.

3. Unless terminated pursuant to the terms of paragraph 2 hereof, this Lease shall terminate on November 1, 1984.

4. For the Locomotive Units delivered by C&NW to Lessee in accordance with paragraph 2, Lessee agrees to pay to C&NW a daily rental of \$100.00 per day from and including the date on which such Locomotive Unit or Units are delivered to Lessee to and including the date of redelivery to C&NW. Lessee shall pay to C&NW within 15 days after the end of each calendar month an amount equal to \$600 times the number of days in such month, or with respect to any month in which fewer than all of the Locomotive Units have been in the possession of Lessee or in which Lessee has had possession for fewer than all of the days of such month, or both, an amount equal to \$100 times the number of days in such month Lessee has had possession of each Locomotive Unit. Any rental payment not received by C&NW within 15 days after the

end of the applicable month shall bear interest at a rate of 12% per annum.

5. Lessee further agrees that, while the Locomotive Units are in its possession, it will, at its own expense, maintain and keep the Locomotive Units in good order and proper repair, ordinary wear and tear excepted, in accordance with the provisions of Schedule A attached to and made a part hereof. Lessee further agrees to keep and maintain, and to make available to C&NW such records of Lessee's use, operation, inspection, repairs and maintenance of Locomotive Units, while in its possession, as shall be reasonably required by C&NW. C&NW shall have the right at all reasonable times to enter upon the property of Lessee to inspect the Locomotive Units and records while in the possession of Lessee. Lessee shall not, without the prior written consent of C&NW, change or remove C&NW's numbers from the Locomotive Units.

6. In case any Locomotive Unit, while in the possession of Lessee, should become lost, destroyed or damaged beyond repair from any cause whatsoever, rental with respect to such Locomotive Unit shall cease immediately, but in such case, Lessee agrees to pay C&NW the casualty value of such Locomotive Unit on the Casualty Payment Date next occurring, as set forth in Schedule B hereto.

7. Lessee shall comply with all governmental laws, regulations, and requirements, and with all rules of the Associa-

tion of American Railroads, or any successor thereto, with respect to use, maintenance and operation of the Locomotive Units while in the possession of Lessee.

8. Lessee shall promptly pay or reimburse C&NW for all taxes, assessments and other governmental charges levied or assessed upon the interest of the Lessee in the Locomotive Units or upon the use or operation thereof while in the possession of Lessee. Lessee shall have no obligation for any taxes imposed or assessed on the rentals under this Lease or C&NW's income derived therefrom.

9. Subject to the provisions of paragraphs 6 hereof, Lessee agrees to, and does hereby release, indemnify, protect and save harmless C&NW, its successors and assigns, from and against all costs or expenses resulting from any and all injury to or death of any person, or loss or damage to any person, firm or corporation, and from any and all claims, demands, or actions for such injury, death, loss or damage, caused by, growing out of, or in any way connected with the possession, use, maintenance or operations of the Locomotive Units by Lessee and without regard to whether the negligence of C&NW causes or contributes or is alleged to cause or contribute to the injury, death, loss or damage. The foregoing release and indemnification shall apply to matters or things occurring only between the time the Locomotive Units are delivered to Lessee and redelivered to C&NW in accordance with paragraph 2 of this Lease; provided, however,

Lessee shall continue to be liable for any liability, cost or expense which is accrued as of the date of redelivery.

10. The rights and obligations of the parties are in all respects subject to the terms of a Lease of Railroad Equipment (the "Lease of Railroad Equipment") dated as of February 1, 1972 between Chicago and North Western Railway Company and Bankers Trust Company and a Reconstruction and Conditional Sale Agreement (the "Conditional Sale Agreement") dated as of February 1, 1972 among The First Pennsylvania Banking and Trust Company, Bankers Trust Company and Chicago and North Western Railway Company. In recognition thereof, Lessee agrees that its rights to possession of the Locomotive Units are in all respects subordinate to the interests of Bankers Trust Company, as Lessor under the Lease of Railroad Equipment and of The First Pennsylvania Banking and Trust Company as the Vendor under the Conditional Sale Agreement. With respect to the Lease of Railroad Equipment and Conditional Sale Agreement, Bankers Trust Company, as Lessor and The First Pennsylvania Banking and Trust Company, as Vendor have consented to this Lease and a copy of such consent has been provided to the C&NW and Lessee. C&NW represents that it is current with respect to all payments due under the Lease of Railroad Equipment. Lessee further agrees to comply with all applicable provisions of the Lease of Railroad Equipment with respect to the use and maintenance of and reporting of casualties to such Locomotive Units; provided, however that Lessee shall

have no obligation with respect to any equipment other than the Locomotive Units.

11. C&NW MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT, OR WORKMANSHIP IN THE LOCOMOTIVE UNITS. C&NW does not regularly deal in the lease of locomotives or hold itself out as having knowledge or skill peculiar to the lease of locomotives and Lessee acknowledges that its the expertise, in respect of the Locomotive Units, of Lessee's personnel and representatives involved, is as great as such expertise on the part of personnel and representatives of C&NW; it being agreed that all such risks, as between C&NW and Lessee with respect to any defects in such Locomotive Units are to be borne by Lessee.

12. If Lessee shall fail to observe and perform any covenant, condition, or agreement herein on its part to be performed or observed or any applicable covenant, condition or agreement of the Lease of Railroad Equipment, and such failure shall continue for ten (10) days after receipt of written notice from C&NW specifying the failure and demanding the same to be remedied; or Lessee terminates railroad passenger service or any proceeding shall be commenced by or against the Lessee under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrange-

ments or extensions; or any representation or warranty of Lessee shall prove to be untrue when made (any such event hereinafter called an "event of default"), then, in any such case, the C&NW, at its option may:

- (a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance of the applicable covenants, conditions, or agreements of this instrument or to recover damages for the breach thereof; or
- (b) by notice in writing to Lessee, immediately terminate this Lease, and thereupon said Locomotive Units then in the possession of Lessee shall be redelivered promptly to C&NW under the provisions of paragraph 2 of this Lease, and in the event Lessee shall not promptly redeliver said Locomotive Units to C&NW, C&NW shall have the right to enter upon the premises of Lessee and take possession thereof.

The aforesaid remedies shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies existing at law or in equity in favor of C&NW.

13. Lessee shall not without the prior written consent of C&NW assign or transfer its interest in the Lease to any Locomotive Unit and Lessee shall not without the prior written con-

sent of C&NW part with the possession or control of or suffer to allow to pass out of its possession or control, any Locomotive Unit. Lessee shall not permit the use of any Locomotive Unit outside of the United States.

14. At the beginning and termination of this Lease, there will be a joint inspection of Locomotive Units, so as to determine that all such Units will be received by the Lessee in good operating condition, and that such Locomotive Units will be returned to C&NW in good operating condition, normal wear and tear excepted. C&NW will not unreasonably withhold its acceptance of Locomotive Units returned meeting the requirements of this paragraph.

15. C&NW agrees to the extent of its interest, and subject in all respects to the terms of the Lease of Railroad Equipment, to assign to Lessee its rights to the purchase option covering said Locomotive Units as contained in Section 21 of the Lease of Railroad Equipment.

16. Lessee represents and warrants that: (i) Lessee is duly authorized and existing in good standing under the laws of the State of New Jersey; (ii) Lessee has full power, authority and legal right to enter into and perform this Lease, and execution, delivery and performance of this Lease has been duly authorized by all necessary action on the part of the Lessee, and does not violate any judgment, order, law or regulation applicable to

Lessee or any provision of Lessee's charter, statutory authority or by-laws; (iii) this Lease constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with the terms hereof, subject as to enforceability to any applicable bankruptcy, insolvency or other laws affecting creditors' rights generally; (iv) except for the recording of this Lease with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act, no recording or filing of this Lease, or of any financing statement with respect thereto, is necessary under the laws of the United States of America or any State thereof in order fully to protect C&NW's interest in each Locomotive Unit as against Lessee and any third parties in any applicable jurisdictions within the United States; (v) neither the execution and delivery by Lessee of this Lease nor any of the transactions by Lessee contemplated hereby require the consent, approval or authorization of the Interstate Commerce Commission or any other federal or state governmental authority.

17. The obligations of C&NW to lease the Locomotive Units to the Lessee hereunder are subject to the fulfillment of the following conditions precedent prior to or at the time of the delivery of the first Locomotive Unit to the Lessee (the "delivery date"):

- (a) The Lease shall have been duly executed and delivered by the parties thereto and shall be in full force and effect;

(b) The representations and warranties of the Lessee contained in paragraph 16 hereof shall be true and correct on and as of such delivery date with the same effect as though made on and as of such delivery date. At such delivery date there shall be no event of default or event which, with notice or lapse of time or both, would become an event of default;

(c) C&NW shall have received a favorable opinion of counsel for Lessee, dated such delivery date, addressed to and in form and substance satisfactory to C&NW, to the effect that: (i) the Lessee is duly authorized and existing in good standing under the laws of the State of New Jersey; (ii) the Lessee has full power, authority and legal right to enter into and perform the Lease, and the execution, delivery and performance of such agreement have been duly authorized by all necessary action on the part of the Lessee, does not violate any judgment, order, law or regulation applicable to Lessee, and does not violate any provisions of Lessee's charter, statutory authority or by-laws; (iii) the Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its respective terms subject as to enforceability to any applicable bankruptcy, insolvency or other laws affecting creditors' rights generally; (iv) neither the execution and delivery by the Lessee of the Lease, nor any of the transactions contemplated thereby require the consent,

approval, or authorization, or the giving of notice to the Interstate Commerce Commission or any other governmental authority; and (v) except for the filing and recording with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act, no recording or filing of the Lease, or of any financing statement with respect thereto, is necessary under the laws of the United States of America or any state thereof in order to protect C&NW's interest in, any of the Locomotive Units as against the Lessee and any third parties in any applicable jurisdictions within the United States.

18. C&NW recognizes that all of the Lessee's obligations in this Agreement for the payment of any monies due hereunder are subject to and limited by the laws of the State of New Jersey as in effect from time to time, including the Constitution thereof and Section 27:25-17 of the New Jersey Statutes Annotated, which laws require that said obligations be satisfied solely from funds which are or may be legally available to the Lessee for those purposes and which provide that no debt or liability of the Lessee shall be deemed or construed to create or constitute a debt, liability, loan or pledge of the credit of the State of New Jersey.

19. Notices, either written or telephonic, shall be made to Assistant Vice President-Motive Power, Chicago and North Western Transportation Company, 165 N. Canal Street, Chicago, Illinois 60606 and Vice President and General Manager NJ Transit Rail Operations, Inc., 95 Orange Street, P.O. Box 720, Newark, NJ 07101.

20. Except to the extent of the applicability of the Interstate Commerce Act or the provisions of New Jersey law provided in paragraph 18 hereof, this agreement shall be governed by the laws of the State of Illinois.

21. Time shall be of the essence of this Lease.

IN WITNESS WHEREOF, C&NW and Lessee have caused these presents to be duly executed, as of the day and year first above written.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

BY: *E. A. Burkhardt*

ATTEST: *[Signature]*

ASSISTANT SECRETARY

NJ TRANSIT RAIL OPERATIONS, INC.

BY: *Jerome C. Premo*

JEROME C. PREMO

ATTEST: *John C. Tone*

JOHN C. TONE

L/P71-610

APPROVED
AS TO FORM
IRWIN I. KIMMELMAN
ATTORNEY GENERAL

BY: *[Signature]*

DEP. ATTY. GEN.

SCHEDULE A

The following services should be performed in addition to Lessee's normal servicing policy:

WEEKLY

Spectrographic analysis of lube oil. Lessor will furnish plastic containers for shipping samples to D. H. Hemenway, Manager of Testing, 423 No. Sacramento Blvd., Chicago, Illinois. 60612.

90 DAYS

1. Change lube oil and fuel filters.
2. Check traction motor and main generator brushes.
3. Perform an air box inspection.

SCHEDULE B

<u>CASUALTY PAYMENT DATE</u>	<u>PERCENTAGE OF PURCHASE PRICE*</u>
November 1, 1983	32.35607
May 1, 1984	26.75401
November 1, 1984	20.99831

*Purchase Price Per Locomotive Unit \$135,741.90