

RAVIN, KATCHEN & GREENBERG

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

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NATHAN RAVIN
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*MEMBER OF N. J. & N. Y. BAR
**MEMBER OF N. J. & FLA. BAR

13770
REGISTRATION NO. FILED 1982

AUG 19 1982 - 3 32 PM

INTERSTATE COMMERCE COMMISSION August 17, 1982

No. *2-23A125*
Date *8-19-82*
Fee \$ *50.00*
ICC Washington, D. C.

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

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 United States Code.

This document is a lease, a primary document, dated October 1, 1981.

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

Lessor: Naporano Iron & Metal Company
Post Office Box 5304
Foot of Hawkins Street
Newark, New Jersey 07105

Lessee: Accomack Northampton Transportation
District Commission
Post Office Box 1027
Eastville, Virginia 23347

A description of the equipment covered by the lease follows:

Two GP8 locomotives, identification numbers 1600 and 1603

A fee of \$50.00 is enclosed. Please return the original to the undersigned c/o Ravin, Katchen & Greenberg, P.A., 101 Eisenhower Parkway, Roseland, New Jersey 07068.

REC'D
AUG 19 3 39 PM '82
REGISTRATION RR.

Interstate Commerce Commission

Washington, D.C. 20423

8/19/82

OFFICE OF THE SECRETARY

Jack M. Zackin

c/o Ravin Katchen & Greenberg, P.A.

101 Eisenhower Parkway

Roseland, New Jersey 07068

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 **8/19/82** at **3:40pm**, and assigned re-
recording number (s). **13770**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure (s)

13770

RECORDATION NO. _____ FILED 1982

NAPORANO IRON & METAL CO.
LOCOMOTIVE LEASING AGREEMENT

AUG 19 1982 - 3 20 PM
INTERSTATE COMMERCE COMMISSION

This Agreement, made this 1st day of October , 1981, by and between Naporano Iron & Metal Co., Ft. of Hawkins Street, Newark, New Jersey 07105, a corporation organized and existing under the laws of the State of New Jersey (hereinafter, "NAP"), and Accomack Northampton Transportation District Commission a corporation organized and existing under the laws of the State of Virginia with its principal place of business at Eastville, Virginia

(hereinafter, "Lessee").

1. Scope and Subject Matter of Agreement

NAP agrees to furnish and lease to the Lessee, and Lessee agrees to accept, use and lease upon the terms and conditions hereinafter set forth, the locomotives covered by the riders attached hereto and such additional riders as may be added hereto from time to time by agreement of the parties, and any and all other locomotives delivered to and accepted by Lessee (hereinafter, collectively, "The Locomotives"). Each such rider shall set forth the number of The Locomotives, the rental rate, term of use, locomotive identification numbers, destruct value and other pertinent information that may be reasonably desired by both parties.

2. Delivery and Use.

NAP agrees to deliver The Locomotives to Lessee within a time to be reasonably agreed to by the parties at

Newark, New Jersey . NAP's obligation as to such delivery shall be subject to and excused in the event of any and all delays resulting from causes beyond its control. Lessee agrees to use The Locomotives exclusively in its own service, except as hereinafter provided, at all times complying with all governmental laws, regulations, and requirements, as well as any applicable rules of the Association of American Railroads, and none of The Locomotives shall be used or driven beyond the boundaries of the United States or Canada except with the prior written consent of NAP. Lessee agrees that if any of The Locomotives is used outside of the continental United States, Lessee shall reimburse NAP for any custom duties, taxes, investment tax credit reductions or other expenses resulting from such use. Such reimbursement shall be made forthwith upon written demand for payment by NAP to Lessee.

3. Acceptance.

Each of The Locomotives shall be subject to inspection by Lessee upon notification to Lessee of their availability by NAP. Subsequent to receipt of such notification of availability of The Locomotives, Lessee shall have a period of seven days thereafter in which to inspect The Locomotives and notify NAP of any defects, non-conformities or any other matters whatsoever which would impair or tend to impair the acceptability of The Locomotives. Failure so to notify NAP with respect to The Locomotives, and each of

them, shall constitute acceptance thereof by Lessee, and this shall be conclusive evidence of the fit and suitable condition of The Locomotives for the purposes intended and their conformity to the terms, provisions and representations of this Agreement. It is specifically understood, however, that The Locomotives are not warranted to be suitable for any particular or general purpose or use, and it shall be the duty of Lessee to ascertain the acceptability of The Locomotives upon inspection.

4. Payment of Rent.

Lessee agrees to pay the rental charges with respect to each of The Locomotives at the rate set forth in the applicable rider from the date of delivery of such locomotives until they are redelivered to and accepted by NAP. Such rental charges shall be paid to NAP at its principal place of business, Ft. of Hawkins Street, Newark, New Jersey 07105, in advance on the first day of each and every month, prorating, however, any period which is less than a full month. Periods of time of less than one day shall count as a full day for the purposes of accruing rental charges. Any late payments shall incur interest at the rate of 1-1/2% per month upon any unpaid balance, computed from the due date thereof, which interest shall be due, owing and payable to NAP on demand.

5. Maintenance and Repairs.

Lessee shall promptly notify NAP upon receipt by Lessee of any knowledge of any damage to any of The Locomo-

tives. Lessee agrees to pay for all maintenance and repairs of The Locomotives, of whatever kind or however caused, at all times keeping the same maintained in accordance with the requirements, standards and suggestions of the original equipment manufacturer as well as any federal, state or local regulatory agency. Lessee further agrees to keep and maintain and to make available to NAP such records of Lessee's use, operation, inspection, repairs and maintenance of each Locomotive while in its possession as shall be necessary to effectuate and document all conditions of this Agreement. NAP, by such agents and individuals as it may designate, shall have the right, at all reasonable time periods to go upon the property of Lessee or the property of anyone else where The Locomotives or records may be located to inspect said Locomotives and records. Lessee agrees to use its reasonable and best efforts to assist NAP in making any such inspection or examination while either The Locomotives or the records thereof are in the possession of any third party. No letterings or markings of any kind shall be placed upon any of The Locomotives by Lessee, except with the prior written consent of NAP.

6. Casualties to The Locomotives.

In the event that in NAP's sole and unrestricted opinion, any of The Locomotives is damaged beyond repair, destroyed, stolen, lost or otherwise rendered unusable, the rental charge with respect to each such Locomotive shall

terminate upon receipt by NAP of written notification thereof, and payment to NAP of the destruct value as set forth in the rider(s) attached hereto. In the event that any of The Locomotives, or the fittings, parts, appliances or appurtenances thereto, shall be damaged, ordinary wear and tear excepted, or destroyed either as a result of the acts of any of the Lessee's employees, agents or representatives or other causes beyond the direct control of NAP, Lessee agrees to assume financial responsibility for such damage or destruction and to pay NAP therefor upon demand. Lessee, at its own expense, shall either replace, or reimburse NAP for the cost of replacing, any appliance or removable part, if destroyed, damaged, lost, removed or stolen upon demand by NAP, unless such loss or damage results from the exclusive negligence or omission of NAP.

7. Indemnities.

Lessee will defend, indemnify and hold harmless NAP from and against: (1) any and all loss or damage of or to The Locomotives, usual wear and tear excepted, unless occurring through the exclusive fault of NAP while NAP has physical possession of The Locomotives; and (2) any claim, cause of action, damage, liability, cost or expense (including legal fees and costs) to which The Locomotives or NAP may be subject on account of damage to or destruction of any other property or for or on account of personal injuries (whether or not resulting in death or otherwise) or which may be

incurred in any manner by or for the account of any such Locomotive (unless occurring through the sole and exclusive fault of NAP) relating to the Locomotives or any part thereof, including but not by way of limitation, the construction, delivery of The Locomotives to Lessee's railroad line or siding, leasing or return of The Locomotives, or as a result of the use, maintenance, repair, replacement, operation or other condition thereof (whether defects, if any, are latent or are discoverable by NAP or Lessee).

8. Insurance.

Lessee will maintain, at its sole cost and expense, at all times during the lease term of any Locomotives, and until all Locomotives have been returned to NAP in accordance with the provisions of this Agreement, with reputable insurers acceptable to NAP:

A. Insurance in an amount not less than the value specified on the attached rider on each Locomotive arising out of all risks of physical loss or damage from any cause whatsoever and against such other risks as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by Lessee, and

B. Comprehensive public liability and property damage insurance insuring against liability resulting from ownership, maintenance, use or operation of The Locomotives in an amount of \$5,000,000 per occurrence insuring against

liability for death and bodily injury and \$500,000 property damage. All insurance policies shall (i) name NAP as an additional insured with losses under the loss and/or damage policies to be payable to NAP and Lessee as their respective interests may appear; (ii) provide that the policies will not be invalidated as against NAP or any of its successors because of any violation of a condition or warranty of the policy or application therefor by Lessee, and (iii) provide that the policies may only be altered or canceled by the Lessee with prior written consent of NAP or its successors, (iv) provide that there shall be no recourse against NAP for the payment of premiums and shall provide for at least ten (10) days prior written notice to be given to NAP by the underwriters in the event of cancellation.

Lessee shall deliver to NAP prior to the execution of this Agreement a policy of such insurance for NAP's approval.

If Lessee shall default in the payment of any premium in respect of any such insurance policies, NAP may, but shall not be obliged to, pay such premium and if NAP does so, Lessee shall repay the amount thereof to NAP on demand.

9. Assignment by Lessee.

Lessee shall make no transfer or assignment of its interest under this Agreement in and to The Locomotives without NAP's prior written consent. No right, title or

interest in any of The Locomotives shall vest in Lessee by reason of this Agreement or by reason of the delivery to or the use by Lessee of The Locomotives, except the right to use The Locomotives in accordance with the terms of this Agreement. Lessee shall not pledge, mortgage or otherwise encumber or dispose of The Locomotives, and shall not allow any lien or encumbrance to attach or remain thereon.

10. Remedies Upon Default.

If Lessee shall fail to perform any of its obligations hereunder, NAP at its sole and unrestrained election may either (a) terminate this Agreement immediately and repossess The Locomotives or any thereof, or (b) withdraw The Locomotives from the service of Lessee and deliver the same, or any thereof, to others upon such terms as NAP may see fit. Lessee agrees to take all reasonable steps to assist NAP in redelivering The Locomotives to NAP, and will pay on demand all costs incurred in redelivery. If NAP shall elect to proceed in accordance with clause (b) above and if NAP during the balance of the term of this Agreement shall fail to collect for the use of The Locomotives a sum at least equal to all unpaid rentals hereunder to the stated date of termination hereof plus an amount equal to all expenses of withdrawing the Locomotives from the service of Lessee and collecting the earnings thereof, Lessee agrees to pay from time to time upon demand by NAP the amount of any such deficiency. It is expressly understood that NAP at its

sole and unrestricted option may terminate this agreement in the event that a petition in bankruptcy or a petition for a trustee or receiver be filed by or against Lessee or in the event that Lessee shall make an assignment for the benefit of creditors, or if there occurs any other event which in NAP's opinion impairs the solvency of Lessee or its continuing ability to pay rent for The Locomotives.

11. Redelivery.

Upon the termination of each rider or part thereof, or upon the failure of Lessee to cure any breach of any condition or covenant herein contained within ten (10) days of written notice by NAP, Lessee agrees, subject to the provisions of paragraph 6 above, to return The Locomotives at Lessee's expense to NAP at Newark, New Jersey

or to any other point of NAP's choice with Lessee reimbursing NAP for an amount equal to the freight it would have paid to move The Locomotives to the first mentioned point should NAP's alternate redelivery point be a greater freight cost than the first mentioned point. Lessee shall also permit prior to redelivery a joint inspection of The Locomotives by both Lessee and NAP. Lessee will also immediately cause to be repaired any damage disclosed by such inspection. The Locomotives are to be redelivered in the same or as good condition as received, ordinary wear and tear excepted, in a condition suitable for interchange movement as defined by the Association of American Railroads,

free from all charges and liens which may result from any act or default of Lessee, and free from all accumulations or deposits resulting from commodities transported by or with The Locomotives while in the service of Lessee. If any Locomotive is not returned to NAP free from such accumulations or deposits or not suitable for interchange movement, Lessee shall reimburse NAP for any expense incurred in cleaning such Locomotive or making same suitable for interchange movement. If Lessee shall fail or refuse to deliver said Locomotives or permit or join in an inspection as aforesaid, NAP shall have the right without further notice or demand, and in addition to, and without constituting a waiver of, any other remedy, claim or right hereunder or at law, to terminate this Agreement and to take possession of said Locomotives wherever found and remove them at Lessee's expense, and for such purpose only, Lessee authorizes NAP or its duly authorized agent to enter any premises occupied by Lessee.

12. Taxes and Reports.

Lessee will prepare and file at its own expense, all schedules, reports or statements as required by any local, State, Federal or other governmental regulating authority with respect to The Locomotives. Lessee agrees to assume responsibility for and to pay any applicable Federal, State or local sales, use, personal property or similar taxes resulting from the lease or use of The Locomotives, as

well as all permits, licenses and the like. In the event that Lessee fails to take any action required by this paragraph, NAP, at its option may perform same, and Lessee will reimburse NAP on demand for the costs of same.

13. Assignment by Lessor.

It is understood that some of The Locomotives furnished Lessee under this Agreement and NAP's rights under this Agreement may, at the time of delivery to Lessee or at some future time during the term of this Agreement, be subject to the terms of a mortgage, deed of trust, equipment trust, pledge or assignment or similar security arrangement. Lessee agrees that The Locomotives may be stenciled or marked to set forth the ownership of any such Locomotives in the name of a mortgagee, trustee, pledgee, assignee or security holder. Lessor agrees to provide to Lessee a release of any such mortgage or other costs at the time this agreement is paid for in full as provided in this rider and agrees thereafter to convey same to Lessee free and clear of any such liens forever. As to The Locomotives subject hereto, this Agreement and the rentals hereunder may have been assigned and may after notice to Lessee in the future be assigned to the holder, if any, of the mortgage lien from time to time on each Locomotive as determined with reference to the filings under Section 20 (c) of the Interstate Commerce Act; however, until notified to the contrary by NAP, Lessee is to pay all rentals to the order of NAP. Lessee hereby consents to and accepts such assignment. Lessee agrees that no claim or

defense which Lessee may have against NAP shall be asserted or enforced against any assignee of this Agreement.

14. Miscellaneous

This Agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives, and shall remain in full force and effect from the date hereof until the completion of the leasing arrangement shown on attached riders of the last Locomotive or Locomotives hereunder, and all such Locomotives are returned to NAP.

Any dispute between NAP and Lessee pertaining to, either directly or indirectly, The Locomotives or this Agreement shall be governed by the law of the State of New Jersey. The contract is stipulated by the parties to have been made in the State of New Jersey and venue and location for any proceeding, either by arbitration or court action, is also stipulated by the parties to be in the State of New Jersey. Additionally, any dispute between NAP and Lessee as to any of NAP's obligations under this Agreement of any nature whatsoever shall not excuse the payment of rent or other performance by Lessee pending resolution of such dispute whether by arbitration, court action or otherwise, and Lessee expressly waives its rights, if any, to counter-claim for, set-off or seek a recoupment in connection with any obligation to it of NAP. It shall be an absolute condition precedent to the maintenance or defending of any action

either in arbitration or court that such rental payments are continued during the pendency of such action. Said payments shall be binding upon any trustee, receiver or successor in interest of any nature whatsoever of Lessee. Failure to continue such payments shall entitle NAP to a dismissal of any action or defense of any such action with prejudice maintained by Lessee at any time default occurs.

This Agreement constitutes the whole agreement between NAP and Lessee, and no other promises, agreements or representations have been made. All notices required by this Agreement shall be sent certified mail, return receipt requested, to the principal addresses above noted.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in two counterparts (each of which shall be deemed an original) the day and year first above written.

NAPORANO IRON & METAL CO.

ATTEST:

Raymond Mitchell
ASST. Secretary

By Paul Naporano
President

ACCOMACK-NORTHAMPTON TRANSPORTATION
DISTRICT COMMISSION

ATTEST:

Edward A. Perry

By J. H. Haines
Chairman

SEPTEMBER 25 , 19 81

DM
 This rider is to a lease between Naporano Iron & Metal Co., and Accomack-Northampton Transportation District Commission, dated OCTOBER 1, 1981, and is to define the number of locomotives, rental rate, term of use, locomotive identification numbers and destruct value of the locomotives subject to said lease.

NUMBER OF LOCOMOTIVES	LOCOMOTIVE IDENTIFICATION NUMBER(S)	TERM OF USE	DESCRIPTION	RENTAL RATE	DESTRUCT VALUE OR OUTRIGHT SALE PRICE
1	1600	77 MONTHS	GP8	\$136.21 PER DAY	\$158,000.00
1	1603	77 MONTHS	GP8	\$163.79 PER DAY	\$190,000.00
	1 MONTH RENTAL IN ADVANCE				
	1 YEAR PARTS WARRANTY ON	LOCOMOTIVE	1600		
	6 MONTH PARTS WARRANTY ON	LOCOMOTIVE	1603		
	AT THE END OF THE 77 MONTHS AND UPON ALL TERMS AND CONDITIONS OF THIS LEASE BEING PERFORMED, BOTH LOCOMOTIVES SHALL BECOME THE PROPERTY OF THE ACCOMACK-NORTHAMPTON TRANSPORTATION DISTRICT COMMISSION.				

NAPORANO IRON & METAL CO.

ATTEST:

Raymond Marshall
 ASST. Secretary

By

Joseph Naporano Pres
 President

ACCOMACK-NORTHAMPTON TRANSPORTATION DISTRICT COMMISSION

ATTEST:

Edward Barry
 Secretary

By

J. H. Hadden
 Chairman

