

4/20/94

36-R-94

A Resolution

Authorizing the City Manager to Execute
an Intergovernmental Cooperation Agreement
with the Chicago and Northwestern
Transportation Company

WHEREAS, The Chicago and Northwestern Transportation Company ("Company") operates trains which travel through the City in a northerly direction between Howard and Isabella Streets; and

WHEREAS, the Company's right-of-way along the aforesaid train tracks includes embankments which the Company and the City are desirous of landscaping; and

WHEREAS, the landscaping will improve and beautify the embankments with trees, shrubs, flowers, ground cover and other plantings suitable to the premises; and

WHEREAS, said beautification is in the interests of the citizens of Evanston; and

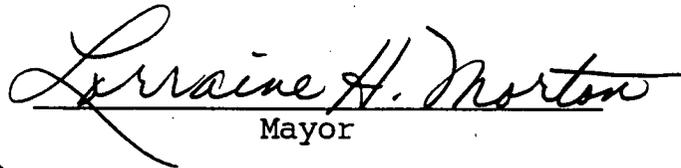
WHEREAS, the City and the Company are desirous of entering into an agreement whereby the City will lease for beautification purposes only, the said embankments from the Company and undertake the landscaping at its own expense,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to execute, and the City Clerk directed to attest,

the Beautification Lease Agreement between the City and the Company to allow the City to landscape the Company's embankments. Said Agreement shall be in substantial conformity with that in Exhibit A attached hereto and made a part hereof.

SECTION 2: That this Resolution shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.



Mayor

ATTEST:



City Clerk

Adopted: April 25, 1994

Lease No. 88411

**EXHIBIT A
BEAUTIFICATION LEASE AGREEMENT**

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY (hereinafter called "Company") hereby leases to the City of Evanston (hereinafter called "Lessee") to use, for beautification purposes only, the real estate of the Company on the embankments of the C&NW railway between Howard Street on the south and Isabella Street on the north, within the boundaries of the City of Evanston (the "Premises"). This Lease shall become effective April 1, 1994, and shall run for a period of ten (10) years and thereafter unless terminated as hereinafter provided.

The Lessee agrees to pay as rent the sum of **TEN DOLLARS (\$10.00)** and other good and valuable consideration, the receipt of which is hereby acknowledged.

This Lease is given upon the following express terms and conditions and the specifications on the attached sheet and should the Lessee at any time violate any of said terms, conditions or specifications, or use or attempt to use the property for any other or different purpose than that shown above, then the Company may, at its option, immediately terminate the Lease.

For purposes of this Lease, "beautification" means that Lessee may but is not required to, improve the Premises with plantings deemed suitable to the Premises. Such plantings include, but are not limited to, trees shrubs, flowers, and ground cover. All plantings will be in accordance with **SPECIFICATIONS (EXHIBIT B)** attached hereto.

All plantings shall remain the property of Lessee.

The Company hereby grants Lessee, and to persons performing work at its discretion, a right of entry to the Premises for purposes of effectuating the aforesaid beautification. A flagman will be required per **SPECIFICATIONS (EXHIBIT B)** attached hereto.

As a material consideration for entering into this Lease and without which the Company would not enter into same, the Lessee covenants and agrees to indemnify, save harmless and protect the Lessor and the Commuter Rail Division of the Regional Transportation Authority ("METRA") from and against any and all loss, damage, claim, demand, fine, lawsuit and/or violation of any law, ordinance or regulation arising or growing out of or connected with this Lease, the premises, and/or (ii) any other person performing any work or service for or on behalf of the Lessee on or about said premises or arising out of their presence on said premises.

Likewise, the Company shall indemnify, protect and save harmless the city of Evanston, its agents, officials and employees against all injuries, deaths, loss damages, claims, patents claims, suits, judgements, costs and expenses which may in anywise accrue against the City in consequence of the granting of this agreement or which may in anywise result therefrom, whether or not it shall be alleged or determined that the act was caused through the negligent act or omission of the Company or its employees; and the Company shall, at its own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and, if any judgements shall be rendered against the City in any such act, the Company shall, at its own expense, satisfy and discharge same.

The Company reserves the right to use, occupy and enjoy its tracks, property and right-of-way, for such purpose, in such manner, and at such time as it shall desire, the same as if this instrument had not been executed by it.

Lessee accepts the property subject to the rights of any party, including the Company, in and to any existing roadway, easements, permits or licenses. Lessee accepts the property subject to right of any party, including the company, in and to any existing telephone, telegraph, or wires, and poles and facilities of any kind whatsoever, whether or not of record.

The Company reserves the right to maintain or relocate its existing facilities, or to construct and thereafter maintain new facilities, in the vicinity of the property with no liability for damages to Lessee's interests or property resulting from such beautification activities.

Either party hereto shall have the right at any time to cancel this Lease by giving ten (10) days' notice in writing.

Lessor will give five (5) days' written notification, unless in case of emergency, to Lessee of activities or work on the Premises which may effect Lessee's plantings or Lessee's personnel or activities on the Premises. For purposes of this paragraph, notification via facsimile transmission is acceptable.

Notice hereunder shall be in writing, postage prepaid, first-class mail, and directed to:

Lessee:

City Manager
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Tel: 708/866-2936
FAX: 708/328-0267

Director Public Works
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Tel: 708/866-2956
FAX: 708/866-9496

Lessor:

**Ms. Trudy Homer
Assistant Vice President
Leasing & Office Services
165 North Canal Street
Chicago, IL 60606
Tel: 312/559-6705
FAX: 312/559-7085**

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first written above.

Witness:

**CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY**

(For C&NW)

By: _____

Witness:

CITY OF EVANSTON

(For City of Evanston)

By: _____

EXHIBIT B**SPECIFICATIONS**

1. **No planting or other landscape material shall be allowed within 15 feet of the edge of the nearest tie other than grass or ground cover, which will not exceed three (3) feet in height.**
2. **Any planting or other landscape material done within 500 feet of any grade crossing shall be maintained so as not to exceed a height of three (3) feet.**
3. **Any grading or future planting done on Company's property must be approved in writing by Company's Engineering Department located at 165 North Canal, Chicago, Illinois 60606.**
4. **Any work done on Company's property closer than 15 feet from the edge of the nearest tie will require a flagman provided by Company at Lessee's expense.**
5. **There is to be no interference with Company facilities, including pole lines, drainage structures and signal apparatus.**
6. **There is to be no adverse effect to visibility or drainage on Company property.**
7. **Lessee shall not construct or permit to be constructed any building, structure, excavation or any other obstruction without the written consent of Company's Engineering Department.**
8. **The Chicago and North Western Transportation Company will not, in any way, share in the cost of landscaping or for any improvements to the area covered by this lease.**