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2 1995 PM

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
918 SIXTEENTH STREET, N.W.  
SUITE 200  
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

20006-2973

OF COUNSEL  
URBAN A. LESTER

(202) 393-2266

FAX (202) 393-2156

December 29, 1995

Mr. Vernon A. Williams  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two copies of a Purchase Money Security Agreement, dated December 14, 1995, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

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

Secured Party: Charter Financial, Inc.  
153 East 53<sup>rd</sup> Street  
New York, New York 10022

Debtor: Northern Nevada Railroad Corporation  
1007 Avenue D,  
P.O. Box 150150  
East Ely, Nevada 87315-0150

A description of the railroad equipment covered by the enclosed documents is:

Five (5) Model SD-9 locomotives as listed on Schedule A of the Purchase Money Security Agreement.

Also enclosed is a check in the amount of \$21.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

*Counterpart - Jonathan Williams*



Interstate Commerce Commission  
Washington, D.C. 20423-0001

12/29/95

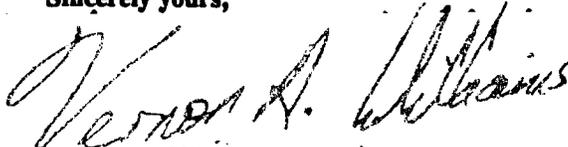
Office Of The Secretary

Robert W. Alvord  
Alvord And Alvord  
918 Sixteenth St., NW., Ste. 200  
Washington, DC., 20006-2973

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 12/29/95 at 1:15PM, and assigned recordation number(s). 19857, 17892-R, 18509-G, 19478-A.

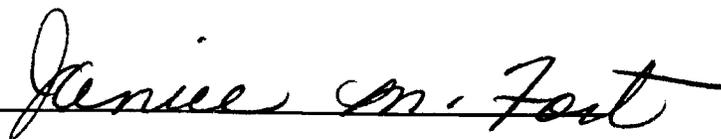
Sincerely yours,

  
Vernon A. Williams  
Secretary

Enclosure(s)  
(0100910008)

\$ 84.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



**PURCHASE MONEY SECURITY AGREEMENT Number: 2540**

**Name of Debtor : Northern Nevada Railroad Corporation**  
**Address : 1007 Avenue D, P. O. Box 150150**  
**East Ely, NV 87315-0150**

**Name of Secured Party : Charter Financial, Inc.**  
**Address : 153 E. 53rd Street**  
**New York, NY 10022**

**Quantity DESCRIPTION OF PERSONAL PROPERTY (Show: Manufacturer, Model No., Serial No., Other Identification)**

Various equipment as more fully described on the attached Schedule "A" annexed hereto and made a part hereof.

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**Location of Equipment: SAME AS ABOVE LOCATION**

**SCHEDULE OF OBLIGATIONS**

Cash Price of Equipment		\$ <u>178,000.00</u>
Less: Cash Down Payment	\$ <u>-0-</u>	
Trade-in Allowance	\$ <u>-0-</u>	
(Description of Equipment Traded-In:		
)		
Unpaid Cash Price Balance		\$ <u>178,000.00</u>
Shipping		\$ <u>2,500.00</u>
Official and Documentary Fees		\$ <u>1,500.00</u>
Sales or Other Applicable Taxes		\$ <u>11,570.00</u>
Insurance Premiums		\$ <u>-0-</u>
Finance Charge		\$ <u>62,427.00</u>
Time Balance		\$ <u>255,997.00</u>

Debtor agrees to pay the Time Balance to Secured Party in forty-nine (49) installments commencing on January 1, 1996 and continuing on the 1st day of each month thereafter until and including January 1, 2000. The first installment shall be in the amount of \$4,930.00, the next forty-seven (47) installments shall each be in the amount of \$4,930.00 and the forty-ninth installment shall be in the amount of \$19,357.00. Said last installment shall be due and payable in advance upon execution of this Agreement.

**ADDITIONAL TERMS AND CONDITIONS**

**1. Grant of Security Interest.** Debtor hereby grants to Secured Party a security interest in the personal property described above (hereinafter with all renewals, substitutions and replacements and all parts, repairs, improvements, additions and accessories incorporated therein or affixed thereto referred to as the "Equipment"), together with any and all proceeds thereof and any and all insurance policies and proceeds with respect thereto.

**2. Obligations Secured.** The aforesaid security interest is granted by Debtor as security for (a) the payment of the Time Balance (as set forth in the Schedule of Obligations) and the payment and performance of all other indebtedness and obligations now or hereafter owing by

obligated to undertake, by litigation or otherwise, the collection of any claim against any person for such destruction, damage, loss, theft, requisition or taking.

**6. Representations and Warranties of Debtor.** Debtor represents and warrants that: it has the right, power and authority to enter into and carry out the terms and provisions of this Agreement; this Agreement constitutes a valid obligation of the Debtor and is enforceable in accordance with its terms; and entering into this Agreement and carrying out its terms and provisions will not violate the terms or constitute a breach of any other agreement to which Debtor is a party.

**7. Affirmative Covenants of Debtor.** Debtor shall (a) cause the Equipment to be kept in good condition and use the Equipment only in the manner for which it was designed and intended so as to subject it only to ordinary wear and tear and cause to be made all needed and proper repairs, renewals and replacements thereto; (b) maintain at all times property damage, fire, theft and comprehensive insurance for the full replacement value of the Equipment, with loss payable provisions in favor of Secured Party and any assignee of Secured Party as their interests may appear, and maintain public liability insurance in amounts satisfactory to Secured Party, naming Secured Party and any assignee of Secured Party as insureds with all of said insurance and loss payable provisions to be in form, substance and amount and written by companies approved by Secured Party, and deliver the policies therefor, or duplicates thereof, to Secured Party; (c) pay or reimburse Secured Party for any and all taxes, assessments and other governmental charges of whatever kind or character, however designated (together with any penalties, fines or interest thereon) levied or based upon or with respect to the Equipment, the Liabilities or this Agreement or upon the manufacture, purchase, ownership, delivery, possession, use, storage, operation, maintenance, repair, return or other disposition of the Equipment, or upon any receipts or earnings arising therefrom, or for titling or registering the Equipment, or upon the income or other proceeds received with respect to the Equipment or this Agreement provided, however, that Debtor shall pay taxes on or measured by the net income of Secured Party and franchise taxes of Secured Party only to the extent that such net income taxes or franchise taxes are levied or assessed in lieu of any other taxes, assessments or other governmental charges hereinabove described; (d) pay all shipping and delivery charges and other expenses incurred in connection with the Equipment and pay all lawful claims, whether for labor, materials, supplies, rents or services, which might or could if unpaid become a lien on the Equipment; (e) comply with all governmental laws, regulations, requirements and rules, all instructions and warranty requirements of Secured Party or the manufacturer of the Equipment, and with the conditions and requirements of all policies of insurance with respect to the Equipment and this Agreement; (f) mark and identify the Equipment with all information and in such manner as Secured Party may request from time to time and replace promptly any such marking or identification which are removed, defaced or destroyed; (g) at any and all times during business hours, grant to Secured Party free access to enter upon the premises wherein the Equipment shall be located and permit Secured Party to inspect the Equipment; (h) reimburse Secured Party for all charges, costs and expenses (including attorneys' fees) incurred by Secured Party in defending or protecting its interests in the Equipment, in the attempted enforcement or enforcement of the provisions of this Agreement or in the attempted collection or collection of any of the Liabilities; (i) indemnify and hold any assignee of Secured Party, and Secured Party, harmless from and against all claims, losses, liabilities, damages, judgments, suits, and all legal proceedings, and any and all costs and expenses in connection therewith (including attorneys' fees) arising out of or in any manner connected with the manufacture, purchase, ownership, delivery, possession, use, storage, operation, maintenance, repair, return or other disposition of the Equipment or with this Agreement, including, without limitation, claims for injury to or death of persons and for damage to property, and give Secured Party prompt notice of any such claim or liability, provided, however, that the foregoing shall not affect or impair any warranty made by Secured Party; and (j) maintain a system of accounts established and administered in accordance with generally accepted accounting principles and practices consistently applied, and, within thirty (30) days after the end of each fiscal quarter, deliver to Secured Party a balance sheet as at the end of such quarter and statement of operations for such quarter, and, within one hundred and twenty (120) days after the end of each fiscal year, deliver to Secured Party a balance sheet as at the end of such year and statement of operations for such year, in each case prepared in accordance with generally accepted accounting principles and practices consistently applied and certified by Debtor's chief financial officer as fairly presenting the financial position and results of operation of Debtor, and, in the case of year end financial statements, certified by an independent accounting firm acceptable to Secured Party.

**8. Negative Covenants of Debtor.** Debtor shall not (a) create, incur, assume or suffer to exist any mortgage, lien, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Equipment or this Agreement or any of Debtor's interests hereunder; (b) make any changes or alterations in or to the Equipment except as necessary for compliance with clause (a) of paragraph 7 above; (c) permit the name of any person, association or corporation other than Secured Party to be placed on the Equipment as a designation that might be interpreted as a claim of interest in the Equipment; (d) part with possession or control of or suffer or allow to pass out of its possession or control any of the Equipment or change the location of the Equipment or any part thereof from the location shown above; (e) assign or in any way dispose of all or any part of its rights or obligations under this Agreement or enter into any lease of all or any part of the Equipment; or (f) change its name or address from that set forth above unless it shall have given Secured Party no less than thirty (30) days prior written notice thereof.

**9. Equipment Personalty.** The Equipment is, and shall at all times be and remain, personal property notwithstanding that the Equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon, real property or attached in any manner to real property by cement, plaster, nails, bolts, screws or otherwise. If requested by Secured Party with respect to any item of Equipment, Debtor will obtain and deliver to Secured Party waivers of interest or liens in recordable form, satisfactory to Secured Party, from all persons claiming any interest in the real property on which such item of Equipment is installed or located.

(after giving effect to any credit for unearned interest pursuant to clause (1) above) and of all or a part of any Other Liabilities. Any personalty in or attached to the Equipment when repossessed may be held by Secured Party without any liability arising with respect thereto, and any and all claims in connection with such personalty shall be deemed to have been waived unless notice of such claim is made by certified or registered mail upon Secured Party within three business days after repossession.

Secured Party shall apply the cash proceeds from any sale or other disposition of the Equipment first, to the reasonable expenses of re-taking, holding, preparing for sale, selling, leasing and the like, and to reasonable attorneys' fees and other expenses which are to be paid or reimbursed to Secured Party pursuant hereto, and second, to all outstanding portions of the Liabilities (after giving effect to any credit for unearned interest pursuant to clause (1) above) and to any Other Liabilities in such order as Secured Party may elect, and third, any surplus to Debtor, subject to any duty of Secured Party imposed by law to the holder of any subordinate security interest in the Equipment known to Secured Party; provided however, that Debtor shall remain liable with respect to unpaid portions of the Liabilities owing by it and will pay Secured Party on demand any deficiency remaining with interest as provided for in paragraph 15 below.

**11. Secured Party's Right to Perform for Debtor.** If Debtor fails to perform or comply with any of its agreements contained herein Secured Party may perform or comply with such agreement and the amount of any payments and expenses incurred by Secured Party in connection with such performance or compliance, together with interest thereon at the rate provided for in paragraph 15 below, shall be deemed a part of the Liabilities and shall be payable by Debtor upon demand.

**12. Further Assurances.** Debtor will cooperate with Secured Party for the purpose of protecting the interests of Secured Party in the Equipment, including, without limitation, the execution of all Uniform Commercial Code financing statements requested by Secured Party. Secured Party and any assignee of Secured Party are each authorized to the extent permitted by applicable law to file one or more Uniform Commercial Code financing statements disclosing any security interest in the Equipment without the signature of Debtor or signed by Secured Party or any assignee of Secured Party as attorney-in-fact for Debtor. Debtor will pay all costs of filing any financing, continuation or termination statements with respect to this Agreement, including, without limitation, any documentary stamp taxes relating thereto. Debtor will do whatever may be necessary to have a statement of the interest of Secured Party and of any assignee of Secured Party in the Equipment noted on any certificate of title relating to the Equipment and will deposit said certificate with Secured Party or such assignee. Debtor shall execute and deliver to Secured Party, upon request, such other instruments and assurances as Secured Party deems necessary or advisable for the implementation, effectuation, confirmation or perfection of this Agreement and any rights of Secured Party hereunder.

**13. Non-Waiver; Etc.** No course of dealing by Secured Party or Debtor or any delay or omission on the part of Secured Party in exercising any rights hereunder shall operate as a waiver of any rights of Secured Party. No waiver or consent shall be binding upon Secured Party unless it is in writing and signed by Secured Party. A waiver on any one occasion shall not be construed as a bar to or a waiver of any right and/or remedy on any future occasion. To the extent permitted by applicable law, Debtor hereby waives the benefit and advantage of, and covenants not to assert against Secured Party, any valuation, inquisition, stay, appraisement, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or other disposition made under the judgment, order or decree of any court or under the powers of sale and other disposition conferred by this Agreement or otherwise. Debtor hereby waives any right to a jury trial with respect to any matter arising under or in connection with this Agreement.

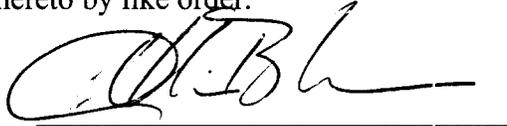
**14. Entire Agreement; Severability; Etc.** This Agreement constitutes the entire agreement between Secured Party and Debtor and all conversations, agreements and representations relating to this Agreement or to the Equipment are integrated herein. If any provision hereof or any remedy herein provided for shall be invalid under any applicable law, such provision or remedy shall be inapplicable and deemed omitted, but the remaining provisions and remedies hereunder shall be given effect in accordance with the intent hereof. Neither this Agreement nor any term hereof may be changed, discharged, terminated or waived except in an instrument in writing signed by the party against which enforcement of the change, discharge, termination or waiver is sought. This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of New York, including all matters of construction, validity and performance, and shall be deemed a purchase money security agreement within the meaning of the Uniform Commercial Code. The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. This Agreement shall inure to the benefit of and be binding upon Secured Party and Debtor and their respective successors and assigns, subject, however, to the limitations set forth in this Agreement with respect to Debtor's assignment hereof. No right or remedy referred to in this Agreement is intended to be exclusive but each shall be cumulative and in addition to any other right or remedy referred to in this Agreement or otherwise available to Secured Party at law or in equity, and shall be in addition to the provisions contained in any instrument referred to herein and any instrument supplemental hereto. Debtor shall be liable for all costs and expenses, including attorneys' fees and disbursements, incurred by reason of the occurrence of any Event of Default or the exercise of Secured Party's remedies with respect thereto. Time is of the essence with respect to this Agreement and all of its provision.

**15. Prepayment; Rebate; Interest.** Except for the installment payments of the Time Balance as set forth in the Schedule of Obligations, the Debtor may not prepay the Time Balance, in whole or in part, at any time. In the event Secured Party declares all of the Time Balance to be due and payable pursuant to clause (1) of paragraph 10 above, Debtor shall be entitled to a credit against such Time Balance of an amount equal to (a) that portion of the Finance Charge (as shown in the Schedule of Obligations) unearned by Secured Party as of the Declaration Date computed in accordance with the Rule of 78's, less (b) a sum equal to 7.5% of the Unpaid Cash Price Balance, provided that the amount of

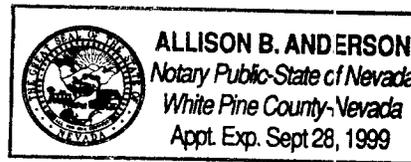
STATE OF NEVADA, COUNTY OF WHITE PINE

SS:

On the 14 day of Dec., 1995 before me personally came Bryan R. Whipple to me known, who, being by me duly sworn, did depose and say that he is the President of Northern Nevada Railroad Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.



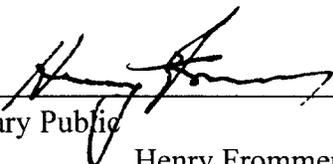
Notary Public



STATE OF NEW YORK, COUNTY OF NEW YORK

ss:

On the 28th day of December, 1995 before me personally came Stewart Abramson to me known, who, being by me duly sworn, did depose and say that he is the Vice President of Charter Financial, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

  
\_\_\_\_\_  
Notary Public

Henry Frommer  
Registration No. 02FR5039738  
Expires 2/21/97

**SCHEDULE B TO**  
**PURCHASE MONEY SECURITY AGREEMENT NO. 2540**  
**DATED December 14, 1995, BY BETWEEN**  
**CHARTER FINANCIAL, INC. AS SECURED PARTY AND**  
**NORTHERN NEVADA RAILROAD CORPORATION**  
**AS DEBTOR (THE "AGREEMENT")**

1. Debtors will cause each item of Railroad Equipment to be kept numbered with the "Road Number" set forth in Schedule A to the Agreement for each such item of Railroad Equipment. Debtor will not change the Road Number of any item of Railroad Equipment unless and until (i) a statement of new number to be submitted therefor shall have been filed with the Secured Party and filed by the Debtor in all public offices where the Agreement shall have been filed, recorded and deposited; and (ii) the Debtor shall have furnished to the Secured Party an opinion of counsel to the effect that such filing, recordation and deposit will protect the Secured Party's interest in such Railroad Equipment and that no filing, recording, depositing or giving notice with or to any other federal, state or local government or agency is necessary to protect the interest of the Secured Party in such items of Railroad Equipment.

2. In the second line of Section 7 of the Agreement, after the words "ordinary wear and tear", add the words "and in compliance with all laws, ordinances and regulations relating to the use, operation or maintenance of the Railroad Equipment, including, but not limited to, all applicable government rules and regulations and laws pursuant to the standards in effect under the Interchange Rules of the Association of American Railroads or other governmental, regulatory or other authorities having jurisdiction with respect to the Railroad Equipment, and shall only permit the Railroad Equipment to be used on railroad lines owned and operated by Debtor and shall not use or permit the use of any Railroad Equipment for any unlawful purpose whatsoever, nor shall the Railroad Equipment knowingly be used to transport materials which are or upon release would be deemed to be a "hazardous substance" subject to state or environmental laws".

3. In the third line of Section 7 of the Agreement, after the word "thereto", add the words "and maintain and keep the Railroad Equipment in compliance with all applicable laws and regulations for Class 1 Railroads and in accordance with all manufacturers' suggested guidelines and insurance requirements, and Debtor shall at all times maintain all records, logs and other materials required by the Association of American Railroads or the Department of Transportation, or any other governmental authority having jurisdiction over Debtor or the Railroad Equipment".

**Northern Nevada Railroad Corporation**

**Charter Financial, Inc.**

By: Bryan R. R. Whipple

By: Ataul Alam VI

Title: President

Title: Vice President

Date: December 14, 1995

Date: December 28, 1995

RMC:s-ldd-nor-nevada.rsb

Debtors: Northern Nevada Railroad Corporation  
1007 Avenue D  
P. O. Box 150150  
East Ely, Nevada 89315-0150

Page #1

Secured Party: Charter Financial, Inc.  
153 E. 53rd Street  
New York, New York 10022

PMSA #: 2540

SCHEDULE "A"

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<u>QTY.</u>	<u>MODEL #/DESCRIPTION</u>
5	SD-9 LOCOMOTIVES CARS Nos. <del>4304</del> , 4352, 4412, 4418, 4426 4303

NOTE: Each marked ~~with~~ SP

NORTHERN NEVADA RAILROAD CORPORATION

By: Bryan R.R. Whipple, Pres.  
RMC:s-kdd-nor-nevada.sa2

AND ALL ADDITIONS, ATTACHMENTS, ACCESSORIES, SUBSTITUTIONS, REPLACEMENTS, REPAIRS, IMPROVEMENTS, BETTERMENTS AND APPURTENANCES OF WHATEVER DESCRIPTION OR NATURE WHETHER NOW OWNED OR HEREAFTER ACQUIRED, AND ALL PROCEEDS, INCLUDING WITHOUT LIMITATION, INSURANCE PROCEEDS.

Mr. Vernorr A. Williams  
December 29, 1995  
Page 2

Kindly return one stamped copy of the enclosed documents to the undersigned.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert W. Alvord", written in black ink.

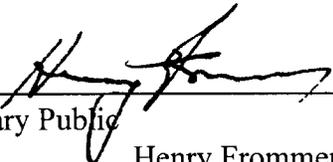
Robert W. Alvord

RWA/bjg  
Enclosures

STATE OF NEW YORK, COUNTY OF NEW YORK

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\_\_\_\_\_  
Notary Public  
Henry Frommer  
Registration No. 02FR5039738  
Expires 2/21/97

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**Charter Financial, Inc.**

By: Bryan R. R. Whipple

By: Atank Allen VI

Title: President

Title: Vice President

Date: December 14, 1995

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RMC:s-ldd-nor-nevada.rs

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