

RECORDATION NO. 21211 FILED

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RECEIVED
SURFACE TRANSPORTATION
BOARD

File,

February 5, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are two (2) copies of a Locomotive Lease Agreement, dated as of August 1, 1997, a primary document as defined in the Board's Rules for the Recordation of Documents and two (2) copies of Chattel Paper and Equipment Purchase Agreement (Nonrecourse), a secondary document related thereto.

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

Primary → Locomotive Lease

Lessor: LLX Rail, Inc.
1200 South State St.
Chicago Heights, IL 60411

Lessee: Philips Metals, Inc./Luria Brothers
20521 Chagrin Blvd.
Cleveland, OH 44122

Counterparts -

Vernon A. Williams
February 5, 1998
Page 2

A →

Purchase Agreement

Buyer: Charter Financial, Inc.
153 East 53rd St.
New York, NY 10022

Seller: LLX Rail, Inc.
1200 South State St.
Chicago Heights, IL 60411

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

two (2) locomotives LLX 150 and LLX 151.

Also enclosed is a check in the amount of \$48.00 payable to the order of the Surface Transportation Board covering the required recordation fees.

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

Very truly yours,



Robert W. Alvord

RWA/bg
Enclosures

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CHattel Paper and Equipment Purchase Agreement (NONRECOURSE)

CHattel Paper and Equipment Purchase Agreement (this "Purchase Agreement") is made this 21st day of January, 1998, by and between Charter Financial, Inc. ("Buyer"), a New York corporation with offices located at 153 East 53rd Street, New York, New York 10022 and LLX Rail, Inc. ("Seller"), an Illinois corporation, with principal offices located at 1200 South State Street, Chicago, IL 60411.

Seller has outstanding a lease (the "Lease") with Philips Metals, Inc./Luria Brothers ("Customer"), a corporation, with an address at 205 Chagrin Blvd., Cleveland, OH 44122 for the rental of the locomotives which are more fully herein and on Schedule annexed hereto, (together, the "Locomotive"). The Lease is dated August 1, 1997, and is represented by one or more of the following agreements and instruments: financing statement, loan agreement, conditional sales contract, note, locomotive lease agreement and guaranty (collectively, the "Agreements"). The Agreements are more fully described on the Schedule of Equipment and Agreements annexed hereto and made a part hereof.) Seller wishes to sell and Buyer wishes to purchase the Agreements and all of Seller's right, title and interest in the Locomotive. In consideration of the mutual promises contained herein, Buyer and Seller agree as follows:

1. In reliance upon the warranties and representations herein and subject to the terms and conditions hereof, Seller hereby sells, transfers, conveys and assigns to Buyer, its successors and assigns, without recourse, and Buyer hereby purchases from Seller, all of Seller's rights and interests in and to the Locomotive and the Agreements, including all amounts due and to become due thereunder, together with all of Seller's rights and remedies thereunder. Buyer shall have the right in its own behalf and in its own name to take any action under the Agreements which Seller might have taken, save for this Purchase Agreement. The purchase price to be paid by Buyer to Seller for the Locomotive and the Agreements shall be the amount of \$317,194.50 (the "Purchase Price"). Contemporaneously with execution hereof, Seller shall deliver to Buyer all of the Agreements.
2. Seller warrants and represents to and covenants with Buyer that:
 - a. The Locomotive consists of (i) One (1) SW 120, 1200 Horsepower, 125 ton, 12 cylinder, 567BC engine, 10kw auxiliary generator, 6 BL brake equipment, D77 traction motor, AAR style truck assembly, Roller bearing wheel journal with identifying mark LLX150 and (ii) One (1) SW1200, 1200 Horsepower, 125 ton 12 cylinder 567C engine, 10KW auxiliary generator, 26L brake equipment, D77 traction motor, AAR style truck assembly, Roller bearing wheel journal with identifying mark LLX151.
 - b. The term of the Lease for the Locomotive is sixty (60) months; the term of the Lease commenced on December 17, 1997;
 - c. The monthly rental amount due for the Locomotive is \$6,750.00 per month and shall be due and payable on the 17th day of each month and Seller hereby transfers to Buyer fifty-nine (59) rental payments commencing with the rental payment due January 17, 1998;
 - d. The Lease is genuine and enforceable against Customer (and all others who are parties thereto) and is the only agreement executed with respect to the Locomotive;

- e. Seller is transferring to Buyer good and marketable title to the Locomotive; the Locomotive is free and clear of all security interests, claims, liens and encumbrances of any kind or nature whatsoever (except those in favor of Buyer);
- f. Seller has the full legal right, power and authority to enter into this Purchase Agreement and to consummate all of the transactions contemplated by this Purchase Agreement, the execution and delivery of this Purchase Agreement by Seller has been approved by all necessary corporate or other action, and none of Seller's obligations hereunder will result in any breach of any provision of any agreement or instrument to which Seller is a party or by which Seller is bound;
- g. all signatures, names, addresses, amounts and other statements contained in the Agreements are true and correct;
- h. each of the Agreements conform to all applicable laws and regulations and is legally enforceable in the state or states where the Customer and the Locomotive are located, and if filing or recording of the Agreements or any chattel mortgage, mortgage, trust deed, financing statement or similar instrument is required or permitted by law, the same has been so filed or recorded as to be effective against all persons;
- i. the Locomotive has been delivered to and accepted by Customer in a condition satisfactory to Customer;
- j. Seller has complied and will continue to comply with all its representations, warranties, covenants and all other obligations to Customer under the Agreements and otherwise;
- k. Seller will indemnify and hold Buyer harmless from and defend Buyer against (i) any liability or expense under, on account of or relating to any of the Agreements and Locomotive; (ii) any payment not made by Customer due to claims by Customer that the Locomotive is out of service, has not been maintained or has been improperly maintained or unavailable for use by Customer; or (iii) any other damages, costs, expenses or claims by Customer or any third party arising out of or related to Seller's use, possession, repair or improper servicing or maintenance of the Locomotive.
- l. Customer has received the terms of each of the Agreements and has neither disputed any obligation arising under any of the Agreements nor shall Customer have any claim, defense or right of offset or abatement with respect to any of the payments set forth in the Agreements or any of Customer's obligations thereunder;
- m. Customer's obligation to make all of the payments in the amounts set forth in the Agreements is absolute, irrevocable and unconditional and shall not be affected by any circumstances whatsoever;
- n. no amount due under any of the Agreements has been prepaid by Customer, and no deposit has been paid by Customer except as specifically stated herein;
- o. Seller has not made any prior sale or assignment of the Agreements or any item of Locomotive to any person, firm or corporation, or granted any waiver under or agreed to any modification or amendment of the Agreements or any of them;

- p. Customer has complied with all of its obligations to Seller under the Agreements and all other agreements with Customer whether written or oral, and Customer is not now and has not been in default of such obligations; and
- q. if the Locomotive Lease Agreement is a true lease, Seller is the lawful owner of the Locomotive thereunder and hereby conveys its absolute right and title to each and every Locomotive to Buyer.
3. Buyer shall not be responsible to perform any of Seller's obligations under the Agreements, and nothing herein shall relieve Seller of any of its obligations under such Agreements.
4. Seller shall have no authority to, and will not, without Buyer's prior written consent, accept collections, repossess or consent to the return of the Locomotive, or modify or amend, in any respect, the terms of the Agreements.
5. At all times until such time as the obligations of the Customer under the Lease have been performed and satisfied in full, Seller shall maintain general liability insurance in amounts satisfactory to Buyer naming Buyer and any assignee of Buyer as insureds with all of said insurance and loss payable provisions to be in form, substance and amount and written by companies approved by Buyer, and deliver policies therefore, or duplicates thereof, to Lessor.
6. Upon the expiration of the term of the Lease, Seller hereby irrevocably agrees to purchase the Locomotive from the Buyer at the price of \$1.00 (hereinafter the "Locomotive Repurchase Price") and Buyer shall be obligated to sell Locomotive to Seller at such Locomotive Repurchase Price, provided that Customer has paid all amounts due and fulfilled all of its other obligations under the Agreements. Upon payment of the Locomotive Repurchase Price, Locomotive shall be sold to Seller, free and clear of all encumbrances by or through Buyer, "AS IS," "WHERE IS" WITHOUT ANY REPRESENTATION OR WARRANTIES.
7. Any failure or delay by Buyer in enforcing any right hereunder shall not be deemed a waiver of such right or of any subsequent default by Seller or of Buyer's right to require strict performance of this Purchase Agreement.
8. Notwithstanding anything to the contrary contained herein or in any other agreement, if Seller shall breach any of its warranties, covenants or other obligations to Buyer under this Purchase Agreement or any representation made to Buyer under this Purchase Agreement shall be false, Seller shall repurchase the Agreements and the Locomotive from Buyer, as is, where is and without any representation or warranty from Buyer, for the total amount of all unpaid payments thereunder plus the Locomotive Repurchase Price, discounted using the simple interest method and a discount rate of six percent (6%), together with any other charges, costs or breakage fees incurred by Buyer, and all costs of enforcement, including but not limited to attorney's fees. Seller shall pay said amounts to Buyer within ten (10) days after receipt of notice that such breach or misrepresentation has occurred.
9. This Purchase Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective successors and assigns.
10. If Buyer shall retain an attorney for the purpose of enforcing any of its rights against Seller under this Purchase Agreement, Seller shall be responsible for and reimburse Buyer for all such

reasonable attorney's fees and costs.

- 11. Seller shall execute and deliver to Buyer, on demand and from time to time, such other and additional documents and instruments as Buyer shall deem necessary to vest in Buyer full right, title and interest in the Agreements and all of Seller's rights and interests in the Locomotive including title or a security interest as applicable).
- 12. Seller hereby waives notice of the amendment or modification of any of the Agreements, the granting to Customer of any indulgences or extensions of time for payment and all other notices or formalities to which Seller might otherwise be entitled.
- 13. Seller waives any right it may have to assert by way of counterclaim or affirmative defense in any action to enforce Seller's obligations hereunder any claim whatsoever against Buyer.
- 14. Seller warrants and represents to and covenants with Buyer that this Purchase Agreement contains the entire agreement of the parties; all prior agreements, commitments, understandings, representations, warranties and negotiations in connection herewith, if any, are hereby merged into this Purchase Agreement, and no oral representations shall in any manner whatsoever modify or explain any of the terms and conditions of this Purchase Agreement or any of the Agreements.
- 15. This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of New York. Seller hereby agrees that all actions or proceedings arising, directly or indirectly, in connection with, out of or related to this Purchase Agreement may be litigated, at Buyer's sole discretion and election in courts in New York, and Seller hereby subjects itself to the jurisdiction of any local, state or federal court located within New York. Seller waives the right to a jury trial in connection with any action arising under or in connection with this Purchase Agreement.
- 16. Except for the obligation of Seller to repurchase the Agreements indemnify Buyer and pay Buyer's costs of collection as set forth above, this is a non-recourse agreement as to Seller with regard to Customer's financial ability to make payment.

IN WITNESS WHEREOF, Buyer and Seller have duly executed this Purchase Agreement as of the date first above written.

Attest: [Signature]

CHARTER FINANCIAL, INC.

By: [Signature]
Brian Twomey
Title: Vice President

(SEAL)

LLX RAIL, INC.

ATTEST:
[Signature]
Secretary

By: [Signature]
Title: President

Description of Agreements and Equipment

Re: Chattel Paper and Equipment Purchase Agreement (Non-Recourse) made the 21st day of January, 1998 and between LLX Rail, Inc. ("Seller") and Charter Financial, Inc. ("Buyer").

Equipment (describe by type, model no., serial no.)

The Locomotive consists of (i) One (1) SW 120, 1200 Horsepower, 125 ton, 12 cylinder, 567BC engine, 10kw auxiliary generator, 6 BL brake equipment, D77 traction motor, AAR style truck assembly, Roller bearing wheel journal with identifying mark LLX150 and (ii) One (1) SW1200, 1200 Horsepower, 125 ton, 12 cylinder 567C engine, 10kw auxiliary generator, 26L brake equipment, D77 traction motor, AAR style truck assembly, Roller bearing wheel journal with identifying mark LLX151.

Agreements (describe by title, date and signing parties)

Locomotive Lease Agreement dated August 1, 1997

Guaranty Agreement of Mobile Locomotive Services

Guaranty Agreement of Robert G. Biscan

Guaranty Agreement of B. Ken Forgey III

Notice of Acknowledgment of Assignment

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