

0100885038

Law Offices of
Loritz & Associates
1100 Ravinia Place • Orland Park, Illinois 60462

Richard F. Loritz
Richard E. Nawracaj

(708) 403-2555
Fax (708) 403-9749
Internet: loritz@aol.com
19796
1995

December 5, 1995

Office of the Secretary
Interstate Commerce Commission
Twelfth & Constitution Ave., N.W.
Room 2303
Washington, D.C. 20423

RE: Locomotive Sale Agreement
National Railway Equipment Company, Seller
Catskill Revitalization Corporation, Inc., Buyer

Dear Sir/Madam:

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 U.S. Code.

This document is a sale agreement of locomotive equipment and is a primary document dated August 23, 1995. The names and addresses of the parties to the documents are as follows:

Seller

National Railway Equipment Company
An Illinois Corporation
14400 S. Robey Street
P.O. Box 2270
Dixmoor, IL 60426

Buyer

Catskill Revitalization Corporation, Inc.
P.O. Box 310
Stamford, NY 12167

A description of the equipment covered by the document follows:



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

12/11/95

Office Of The Secretary

Richard F. Loritz
Loritz & Associates
1100 Ravinia Place
Orland Park, Illinois 60462

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 12/11/95 at 11:55AM , and assigned recordation number(s). 19798 and 19799 .

Sincerely yours,

Vernon A. Williams
Secretary

Enclosure(s)

(0100885038)
(0100885039)

\$ 42.00 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

19798

1995

AFFIDAVIT

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

The undersigned states that he has read the attached document and that the document attached is identical to the complete and original Locomotive Sale Agreement.

This Affidavit is made pursuant to the procedures in Section 117.3(2)(b) relative to the recordation of documents with the Interstate Commerce Commission.

Richard F. Jonty
AFFIANT

Subscribed and Sworn to
before me this 5th day
of December, 1995.

Sarah J. Goodnight
NOTARY PUBLIC



Office of the Secretary
December 5, 1995
Page 2

<u>Unit No.</u>	<u>Type</u>	<u>General Description</u>
5107	D&H Alco RS36	Locomotive

A fee of \$21.00 is enclosed. Please return the original after recordation to Richard F. Loritz, 1100 Ravinia Place, Orland Park, IL 60462.

A short summary of the document to appear in the index follows:

A Locomotive Sale Agreement of locomotive equipment identified as one (1) locomotive, D&H Alco RS36, #5017, Locomotives, with National Railway Equipment Co., as Seller, and Catskill Revitalization Corporation, as Buyer.

Also attached is an Affidavit executed by the attorney in fact for National Railway Equipment Co. and appropriately notarized declaring that the enclosed copy is identical to the original document which is also enclosed.

Very truly yours,

NATIONAL RAILWAY EQUIPMENT CO.
an Illinois Corporation

BY: Richard F. Loritz
RICHARD F. LORITZ

ITS: Attorney and Agent in Fact

RFL/sjg

Enclosures

19738

1995

AD

LOCOMOTIVE SALE AGREEMENT

COPY

THIS LOCOMOTIVE SALE AGREEMENT , entered into as of the 23RD day of August ,1995, between NATIONAL RAILWAY EQUIPMENT COMPANY, an Illinois corporation, ("SELLER"), and CATSKILL REVITALIZATION CORPORATION, INC. ("BUYER").

SELLER AND BUYER HEREBY AGREE AS FOLLOWS:

I. PROPERTY

Buyer desires to purchase from Seller the locomotive, D&H Alco RS36 #5017, ("LOCOMOTIVE"), as described in Exhibit A.

II. PAYMENT

Payment for the locomotive shall consist of the following schedule and terms of payments:

- A. Payment of FIFTY THOUSAND DOLLARS (\$50,000.00) at the time of signing this agreement.
- B. Five payments of SIXTEEN THOUSAND SIX HUNDRED AND FIFTY DOLLARS EACH (\$16,650.00) due on the following dates:
 - 1. August 23, 1996
 - 2. August 23, 1997
 - 3. August 23, 1998
 - 4. August 23, 1999
 - 5. August 23, 2000
- C. Payments past due for more than ten (10) days shall bear interest at the rate of eighteen percent (18%) per annum.
- D. All payments shall be paid to Seller at National Railway Equipment Company, 135 LaSalle, Dept. 1473, Chicago, IL 60674-1473 or at such other address as Seller may direct in writing.
- E. The Buyer may elect to prepay all of outstanding payments at any time. The amount due at the time of prepayment will be the sum of all future payments discounted at 12.01% per annum since the last payment.

III. TAXES

Buyer shall pay all use, excise, ad valorem, stamp, documentary and similar taxes on or relating to this sale of the locomotive, or the use, registration, rental, maintenance, possession or operation thereof, and shall file any returns required therefor, and shall hold Seller harmless against any liability and expense (including attorney fees and costs) on account of Buyer's failure to do the same. Seller shall pay all taxes on income derived from this sale of this locomotive.

IV. OWNERSHIP and RECORDATION OF SELLER'S INTEREST

Buyer agrees to execute all recording documents requested by Seller to show Seller's interest in the locomotive. Buyer further authorizes Seller to execute and file financial statements or other documents evidencing Seller's interest in the locomotive without Buyer's signature. Buyer shall keep the locomotive, at all times, free and clear from all claims, liens and encumbrances other than the claim created by this agreement. Claims, liens and encumbrances that are inferior to this agreement are not prevented by this agreement.

V. DELIVERY

Delivery of the locomotive shall be accepted by Buyer at Seller's plant in Silvis, IL. Buyer shall pay all transportation charges for the shipment of the locomotive.

VI. USE AND MAINTENANCE

- A. Buyer shall be responsible and pay for all registrations, certificates, and permits, and all other similar requirements of governmental authorities, whether required to be obtained in the name of the Buyer or Seller.
- B. The locomotive shall be used and operated only by properly qualified, trained and registered personnel authorized by Buyer.
- C. Buyer shall comply with all federal, state, municipal and local laws, ordinances, and rules, and regulations relating to the possession, insuring, use and operation of the locomotive.
- D. Buyer shall be solely responsible for the payment of any and all fines, penalties or forfeitures (including without limitation the confiscation of the locomotive) levied upon or arising out of the use, operation, maintenance or insuring of the locomotive in violation of any law, ordinance, rule or regulation of any governmental authority.
- E. Buyer shall pay all costs, expenses and charges incurred in connection with the maintenance, lease, use and operation of the locomotive.
- F. Buyer shall maintain the locomotive in good mechanical condition and running order and in compliance with OEM specifications and safety rules and regulations now or hereafter promulgated by applicable governmental authorities.
- G. Buyer shall keep and maintain any and all books and records and make any filings required by any governmental authority with respect to the possession, lease, use or operation of the locomotive.

VII. INSURANCE/INDEMNIFICATION

The following insurance and indemnification terms shall apply:

- A. Public liability insurance providing coverage in an amount not less than one million (\$1,000,000.00) dollars combined single limit per occurrence shall be provided by Buyer at Buyer's sole expense throughout the term of this agreement as to each locomotive. The insurance policy or policies providing the foregoing coverage shall:
- i. be written by an insurance company or companies satisfactory to Seller and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
 - ii. name Seller as an additional insured.
 - iii. protect the interests of Seller and Buyer, including Buyer's authorized operators, with respect to liability for injuries to or the death of third party persons and damage to or loss of use of property of third persons resulting from the ownership, maintenance, use or operation of the locomotive.
 - iv. provide that the insurance company or companies issuing such policy or policies shall notify Seller of any cancellation thereof at least thirty (30) days prior thereto.
- B. Buyer, at Buyer's sole expense, shall provide collision and comprehensive physical damage insurance on each locomotive. The insurance policy or policies providing the foregoing coverages shall:
- i. be written in standard form by an insurance company acceptable to Seller.
 - ii. provide coverage in an amount not less than One Hundred Ten Thousand (\$110,000.00) dollars.
 - iii. provide for losses to be payable to Seller and Buyer as their respective interests may appear.
- C. Buyer shall furnish Seller with a certificate(s) of insurance or other evidence of said insurance coverage.

VII. INSURANCE/INDEMNIFICATION (continued)

- D. Notwithstanding that Buyer shall provide certain insurance hereunder and irrespective of any responsibility for negligence, except for the seller's negligence. Buyer does hereby agree to defend, indemnify, protect and hold harmless Seller and any assignees or successors of Seller, and their respective employees and agents, from and against any and all losses, liabilities (including without limitation strict liability imposed by law), damages, injuries, claims, demands and expenses (including legal expenses) of whatsoever kind and nature, resulting from or arising out of the use, condition, operation or ownership of any locomotive. This covenant of indemnity shall continue in full force and effect notwithstanding the termination of this agreement. Upon payment in full of all amounts all covenants of this agreement shall end.
- E. Buyer assumes and agrees to indemnify, protect and hold free and harmless Seller, any assignee or successor of Seller, and their respective employees or agents, irrespective of any responsibility for negligence, except for the seller's negligence, from any loss, damage, theft or destruction of any locomotive.
- F. If Buyer shall fail to obtain or maintain the insurance coverage required in this agreement, or shall fail to furnish Seller with evidence thereof, Seller at its option, may obtain such required insurance coverage on behalf of Buyer and Buyer's expense.

VIII. ASSIGNMENT AND LIENS

Seller shall have the unconditional right to assign this agreement, in whole or in part. Buyer shall have no right to sell, assign, or sub-lease this the locomotive(s) or any interest therein without prior approval of Seller.

IX. DEFAULT

Buyer shall be in default under this agreement upon the happening of any of the following events or conditions ("Event of Default"), Buyer shall be notified by "Certified Mail" that default conditions exist, Buyer will have a period not greater than 10 days after the receipt of notification to remedy:

- A. Default in the payment when due of any installment hereunder or of any other obligation for the payment of money now or hereafter owed by Buyer to Seller.
- B. Default in the timely performance of any other obligation, covenant or agreement hereunder of Buyer.

X. REMEDIES UPON DEFAULT

- A. Upon the occurrence of any Event of Default or at any time hereafter, Seller, in its sole discretion, may take any one or more of the following actions with respect to the locomotive(s):
- i. Declare all unpaid amounts to be immediately due and payable.
 - ii. Terminate the agreement by written notice to Buyer.
 - iii. Whether or not the agreement is terminated, take possession of the locomotive wherever found, and for this purpose Seller may at Seller's option enter upon the premises where such locomotive is located and take immediate possession of and remove the same, all without liability to Buyer for damage to property or otherwise.
 - iv. Require that Buyer shall, upon written demand by Seller and at Buyer's expense, promptly make available to Seller at Buyer's expense, the locomotive at a place designated by Seller.
 - v. Use, hold, sell, lease or otherwise dispose of the locomotive as Seller in its sole discretion may decide, without affecting the obligations of Buyer.
 - vi. Sell or lease the locomotive, at public or private sales or proceedings, at such time or times and upon such terms as Seller may determine, free and clear of any rights of Buyer and, if notice thereof is required by applicable law, any notice in writing of any such sale or Lease by Seller to Buyer not less than five (5) days prior to the date thereof shall constitute reasonable notice to Buyer.
 - vii. Proceed by appropriate action either at law or in equity to enforce performance by Buyer of the applicable covenants of this Agreement or to recover damages for the breach thereof or to rescind the agreement hereunder of the locomotive.
 - viii. Exercise any and all rights and remedies available to Seller under any applicable law. In addition, Buyer shall be charged with and shall pay to Seller all reasonable costs and expenses of Seller incurred as a result of each Event of Default by Buyer.
- B. None of the rights and remedies under or referred to in this paragraph is intended to be exclusive, but each such right or remedy shall as to each locomotive be cumulative and may be availed of separately or concurrently with or in addition to any other right or

X. REMEDIES UPON DEFAULT (continued)

remedy provided or referred to herein or otherwise available to Seller at law or in equity.

Any repossession or subsequent sale or lease by Seller of the locomotive shall not bar an action against Buyer for a deficiency. To the extent permitted by applicable law, BUYER WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF EQUIPMENT BY SELLER AS A RESULT OF ANY EVENT OF DEFAULT HEREUNDER BY BUYER.

- C. Without limitation of any rights of Seller otherwise existing or otherwise available to Seller, it is expressly covenanted and agreed by the parties hereto that in the event of any assignment by operation of law of this Agreement or of any agreement thereunder, or of a bankruptcy of Buyer within the meaning of the Federal Bankruptcy Act, then Seller may, at Seller's election, terminate this Agreement.

XI. MISCELLANEOUS

- A. Neither this Agreement nor any schedule shall be amended, and no provision hereof or of any Schedule shall be waived or varied unless by a writing signed by the parties.
- B. No delay or omission by Seller in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Seller of any Event of Default by Buyer shall not be construed as a waiver of any future occasion.
- C. In case any provision (or portions thereof) in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions (or portions thereof) hereby shall not in any way be affected or impaired thereby.
- D. This Agreement shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors.

XI. MISCELLANEOUS (continued)

E. All notices permitted or required to be given pursuant to this Agreement shall be mailed by Certified or Registered Mail, Return Receipt Requested to the parties at the following addresses or at such other addresses as each party may notify the other.

If to Seller: National Railway Equipment Co.
P.O. Box 2270
Dixmoor, IL 61282

If to Buyer: Catskill Revitalization Corporation, Inc.
P.O. Box 310
Stamford, NY 12167

WITNESS WHEREOF, the parties have executed this Agreement the day and year first mentioned above.

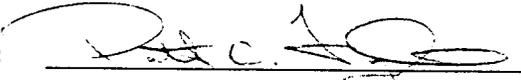
Seller:

Buyer:

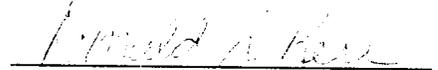
NATIONAL RAILWAY EQUIPMENT CO.

CATSKILL REVITALIZATION
CORPORATION, INC.

BY:



BY:



NAME: Patrick C. Frangela

NAME: Donal L. Kerr

TITLE: Vice President

TITLE: Executive Director

D&U, CSA

EXHIBIT A

NATIONAL
RAILWAY EQUIPMENT CO.



HOME OFFICE: 14400 S. ROBEY STREET - P. O. BOX 2270 - DIXMOOR, ILLINOIS 60426
TELEPHONE (708) 388-6002 FAX (708) 388-2487

January 31, 1995

VIA FAX# 914-586-3232

Mr. Vic Stevens, Chief Mechanical Officer
DELAWARE & ULSTER RAILROAD, INC.
Arkville, New York 12406

OFFER: REVISION III

Dear Mr. Stevens: *

Pursuant to our previous telephone conversations about the possible purchase of our former CP/D&H ALCO RS36 locomotives 5017, please find the REVISED details of our proposal below.

EX-CP/D&H RS36 ALCO LOCOMOTIVE 5017
MANUFACTURER:.....ALCO - REMANUFACTURED BY MK 1976/1977
ENGINE!.....ALCO 251C1 12 CYLINDER 1800 H.P.
MAIN GENERATOR:.....5GT564F1
AIR COMPRESSOR:.....WABCO 3CDC AIR COOLED
AIR BRAKE SCHEDULE:.....26L
NOSE CONFIGURATION:.....LOW SHORT NOSE
AUX.GEN/EXCITER.....GY27 OR GTA6
DYNAMIC BRAKES.....YES - EQUIPPED
TURBOCHARGER.....520 TYPE WATER COOLED
GOVERNOR.....GE TYPE M88
WHEELS.....QUALIFIED WITH 1 1/2" RIM OR BETTER
AXLE BEARINGS:.....ALL 6 1/2" X 12" ROLLER BEARINGS
TRACTION MOTORS.....QUALIFIED TRACTION MOTORS
GEAR RATIO:.....18:74
TOILET:.....NONE
SPEEDRECORDER:.....BARCO MECHANICAL TYPE
FRA GLAZING!.....YES
BATTERIES:.....NEW BATTERIES
MU CAPABILITIES:.....YES

These units are offered in "Qualified" condition with the above equipment. They will receive a requalification process at our Silvis, IL facility to ensure their proper operation and conformance with all FRA standards. The engines will be load tested at full potential for at least four hours to ensure proper horsepower. All major mechanical and electrical systems will be checked for operation according to the attached Qualification Procedures.

EXHIBIT A

DURR
January 31, 1995
Page #2

LOCOMOTIVE QUALIFICATION PROCEDURES

ENGINES

- ◆ All cylinders will be examined and qualified under the following evaluation procedures;
 - ① liners will be inspected from the bottom crankcase side for scoring and defects, deficiencies will be corrected.
 - ② pistons, piston rings, valves, and cylinder heads will be blow-by air tested at 90 psi air pressure, any which do not meet blow-by minimum requirements will be repaired accordingly and in those cylinders, new rings will be installed.
 - ③ Note: only those power assemblies which fail the two step qualification previously mentioned will be disassembled.
- ◆ All fuel injectors will be checked for operation, defects corrected.
- ◆ Connecting rod and #2 & 5 main bearings will be visually inspected and spot checked for wear. Crank lateral will be checked, all removed connecting rod or main bearing cap bolts will be re-stretched to the proper values.
- ◆ The existing air cooled turbocharger will be replaced by another qualified used 520 Model water cooled turbo and will be inspected for proper operation & boost.
- ◆ Engine governor and racks will be adjusted to gain proper horsepower.
- ◆ Major oil, water, and fuel leaks will be corrected.

TRUCKS

- ◆ All wheels will be a minimum of 1 1/2" rim size with flange dimensions of no more than 1 3/8" in flange height and 1 5/32" minimum flange width.
- ◆ All brake shoes will be renewed and of the A-34 style.
- ◆ All brake heads will be of the same A-34 shoe type.
- ◆ Bent or misaligned brake rigging will be repaired.
- ◆ Pedestal liners will be repaired & replaced if out of limits.
- ◆ All springs will be examined and replaced if broken, and will comply with FRA standards.
- ◆ All slack adjusters will be of the same Model 22A-1 pin type.

TRACTION MOTORS

- ◆ All traction motors will be qualified and rebrushed as needed with interiors cleaned as necessary.
- ◆ All traction motor wicks will be examined and replaced as required.
- ◆ All gear cases will be examined and repaired as necessary.
- ◆ Side bearing clearances will be adjusted according to FRA requirements.
- ◆ Trucks will be cleaned as necessary.

EXHIBIT A

DURR
January 31, 1995
Page #3

MAIN GENERATOR

- Main generator will be cleaned, qualified, rebrushed as necessary and free of grounds.
- Armature bearing will be examined for noise and rear gear train teeth checked for wear and sump for proper oil levels.

ELECTRICAL SYSTEM

- System will be free of grounds.
- Charging system will be set to proper voltages.
- Lighting systems will be repaired as necessary.
- Install new batteries.
- Apply all missing covers.
- Apply all danger decals.
- Load engine statically to test movement in both directions.
- Electrical cabinet will be blown clean with clean dry air pressure, but not with any liquid cleaners or other method.
- Dynamic braking will be checked for proper operation and the unit will be self-load boxed for 20 minutes on its own braking grid system to ensure integrity.

AIR BRAKE SYSTEM

- Qualify air compressor for proper operation, repair water, oil and air leaks.
- Inspect and test air brake valves to conform to an FRA air test date legal for service having at least one year remaining on the three year test dates. Air change will be done according to the FRA Blue Form requirements including all storage credits taken into account and credited.

COOLING SYSTEM

- Water hydro pressure test cooling system and repair water leaks. New seals will be installed on the piping from the radiator discharge to the engine.
- Test and set all engine temperature settings.
- A borate base water conditioning additive will be added to the cooling water system prior to dispatching to the customer.
- The low water shut down device and piping will be removed.

LUBE OIL & FUEL OIL SYSTEMS

- Inspect all systems and repair leaks as necessary.
- Renew all fuel and oil filters.
- Install "Square D" pressure switch #9012AEW5 in oil system as specified by C.G. McDermot, installation design and instructions to be provided by customer.
- Engine lube oil will be sampled and renewed only upon recommendation of lab analysis results.

ENGINE AIR INTAKE SYSTEM

- Renew all air intake filters.

EXHIBIT A

DURR
January 31, 1995
Page #4

CAB FLOOR

• The cab floor will be removed and renewed with new one inch solid ply flooring and covered with a special "diamond pattern" skid-proof surface of the trade name "LOUSEAL", a water proof covering used on all of our customers cab floor change-outs.

Under the above guidelines, the 5017 locomotive will be available for outright sale at a cost of.....\$100,000 each.

Locomotive offered the same as above but including sandblasting, priming, body preparations, and a two color paint and detail scheme using Centari paint is a cost of.....\$110,000 each.

If painting is not desired, unit will be cleaned and spot primed where bare metal is present. All sales are subject to final agreement by NREC and to prior sale and availability.

Warranty for this unit will be limited to defective material for a period of 90 days on all major components which are defined as the engine/turbocharger, main generator, traction motors, and the air compressor. All charges for freight and labor of warranty material are not included in our warranty. Our warranty will be broadened to cover the above specified major items for 90 days of "operational use" or until the end of your 1996 tourist season in November 1996, whichever ever occurs first. A log of in-service days would be requested to track warranty days remaining available.

All sales are F.O.T. our Silvis, Illinois facility, all transportation charges are for the account of the purchaser.

Thank you for your interest in our locomotives, we look forward to concluding this transaction with you and your company. Please feel free to contact us at any time for further information.

Sincerely,



David L. Powell
Vice President