

RECORDATION NO. 27197A FILED

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SURFACE TRANSPORTATION BOARD

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OF COUNSEL
URBAN A. LESTER

October 9, 2007

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 Settlement Agreement and Stipulation for Entry of Judgment, dated as of July 20, 2007, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Judgment being filed with the Board under Recordation Number 27197.

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

Plaintiff:	Helm Financial Corporation 505 Sansome Street, Suite 1800 San Francisco, CA 94111
Defendant:	Carrizo Gorge Railway, Inc. 2295 Fletcher Parkway, Suite 101 El Cajon, CA 92020

Mr. Vernon A. Williams
October 9, 2007
Page 2

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

All property of Defendant, including, but not limited to 14 open top hopper cars HATX 45170 – HATX 45183.

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

Agreement and Stipulation for Entry of Judgment of the Superior Court of the State of California, County of San Diego, East County Division, on behalf of Helm Financial Corporation, Plaintiff, against Carrizo Gorge Railway, incl., Defendant, covering all property of Defendant.

Also enclosed is a check in the amount of \$35.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/sem
Enclosures

RECORDATION NO. 27197-A **RED**

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SURFACE TRANSPORTATION BOARD

2007 OCT 2 10:15
SAN DIEGO COUNTY

1 Niles R. Sharif (SBN 135864)
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3 La Mesa, CA 91941
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8 HELM FINANCIAL CORPORATION

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO
11 EAST COUNTY DIVISION

12 HELM FINANCIAL CORPORATION,
13 a California corporation;
14 Plaintiff,
15 vs.
16 CARRIZO GORGE RAILWAY, INC.,
17 a California corporation; and DOES 1-
18 10, inclusive,
19 Defendants.

Case No. GIE036664
SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
JUDGMENT

20 The Parties hereby stipulate and agree as follows:

21 **RECITALS**

- 22 1. This stipulation is made with reference to the following facts:
23 a. On or about March 5, 2007, Plaintiff HELM FINANCIAL
24 CORPORATION ("HELM") filed its unverified Complaint for
25 Damages on Default of Lease Agreement and Nonpayment of Rent
26 ("Complaint") in this matter against Defendant CARRIZO GORGE
27 RAILWAY, INC. ("CZRY"), in which HELM alleges causes of
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action against CZRY for breach of contract and conversion, as well as a common count for material and services provided.

b. On or about April 9, 2007, CZRY filed its Answer to Unverified Complaint in which CZRY generally denied HELM's claims and set forth various affirmative defenses thereto.

c. In order to avoid the time, expense and uncertainty of litigation, HELM and CZRY ("Parties") have now reached agreement as to the terms and conditions upon which they wish to settle their dispute. The terms and conditions of the settlement are contained herein below.

NATURE OF THE STIPULATED SETTLEMENT

2. The terms of this Settlement Agreement and Stipulation for Entry of Judgment ("Stipulated Settlement") are as follows:

a. Continuing Jurisdiction of the Court -- This Stipulated Settlement is a stipulation for entry of judgment. As set forth below, this Stipulated Settlement will be filed with the court upon its execution and the court will retain jurisdiction to enforce the terms of the Stipulated Settlement pursuant to Code of Civil Procedure section 664.6.

b. Stipulation for Entry of Judgment -- CZRY hereby acknowledges and agrees that because this Stipulated Settlement is a stipulation for

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

1 entry of judgment, if CZRY breaches any term of this Stipulated
2 Settlement, HELM has the right to move the court for the immediate
3 entry of judgment according to the terms and conditions of this
4 Stipulated Settlement.
5

- 6 o. No Notice Required - The Parties hereby acknowledge and agree
7 that in the event HELM is required to apply for entry of a judgment
8 by the court pursuant to this Stipulated Settlement, such application
9 may be made to the court on an ex parte basis without notice to
10 CZRY.
11
12

13 **TERMS AND CONDITIONS**

14 3. Terms of Judgment

- 15 a. Breach - In the event of CZRY's breach of any term of this
16 Stipulated Settlement, HELM shall have the right to move the court
17 - on an ex parte basis and without notice to CZRY - for the
18 immediate entry of judgment on the following terms:
19
20

- 21 i. Money Judgment - Judgment shall be entered in the amount of
22 \$470,000; provided, however, that upon return of the Sand Cars
23 (as defined in Section 3.c. below), CZRY will be credited the
24 sum of \$207,000 against the amount of the judgment. In
25 addition, CZRY shall receive credit for any payments made to
26 HELM pursuant to this Stipulated Settlement.
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SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

1 ii. Writ of Possession for Sand Cars – In the event CZRY has not
2 returned the Sand Cars to HELM at the time HELM seeks entry
3 of judgment pursuant to this Stipulated Settlement, HELM shall
4 also be entitled to obtain a writ of possession directing the sheriff
5 of the county in which the Sand Cars are located to return
6 possession of the Sand Cars to HELM.
7

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9 iii. Interest on Money Judgment – Any money judgment entered
10 pursuant to this Stipulated Settlement shall bear interest at the
11 rate of 10% per year on any unpaid balances owed to HELM
12 until such time as the judgment has been satisfied.
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14 iv. Consideration in Lieu of Judgment – HELM has willingly agreed
15 that in lieu of proceeding with its claims and causes of action
16 against CZRY, it would prefer to settle the matter on terms
17 mutually satisfactory to CZRY and HELM. Both sides find the
18 following terms to be agreeable:
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21 b. Monetary Consideration

22 i. Cash – Concurrently with the execution of this Stipulated
23 Settlement, CZRY agrees to pay HELM the sum of \$5,000.
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25 ii. Installment Payments – Thereafter, commencing on August 1,
26 2007, CZRY agrees to pay HELM five monthly installments of
27 \$10,000 each. These five payments will be made on the first of
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SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

1 the month by federal wire transfer in immediately available
2 funds and without cost to HELM as follows:

3 **Bank:** Bank of America, 1850 Gateway Boulevard, Concord,
4 CA 94520

5 **Account Name:** Helm Financial Corporation

6 **Account Number:** 1233-2-11534

7 **ABA Number:** 121-00035

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9
10 In the event CZRY fails to make any scheduled payment within (five)
11 5 days from the date HELM provides written notice of default, and not
12 until that time, CZRY shall be deemed in breach of this Stipulated
13 Settlement entitling HELM to move for entry of judgment pursuant to
14 Section 3 herein.
15
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17 c. Transfer and Delivery of Sand Cars From CZRY to HELM

- 18 i. Covenant to Transfer and Deliver – CZRY represents and
19 warrants to HELM that it is currently in possession of 14 railcars
20 used for the transportation of sand and gravel as more
21 particularly described in Exhibit A hereto (the "Sand Cars"), and
22 further represents and warrants to HELM that said Sand Cars are
23 the rightful property of HELM. As a material term of this
24 Stipulated Settlement, CZRY hereby covenants and agrees to
25 transfer and deliver the Sand Cars to HELM within 20 days after
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SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

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the effective date of this Stipulated Settlement. CZRY further represents and warrants to HELM that CZRY has not sold, assigned, transferred or otherwise conveyed any interest in or to the Sand Cars to any third party.

ii. Location of Transfer and Delivery -- Transfer and delivery of the Sand Cars as set forth above shall be made at the Union Pacific Railroad Company ("Union Pacific") interchange with CZRY in El Centro, California.

iii. Condition of Sand Cars at the Time of Transfer and Delivery - CZRY hereby represents and warrants to HELM that at the time it transfer and delivers the Sand Cars to HELM, the said Sand Cars will be empty of all cargo, in interchange condition and in compliance with the regulations of the Federal Railroad Administration and the rules of the Association of American Railroads ("FRA/AAR Interchange Condition").

iv. Inspection of Sand Cars -- Prior to their transfer and delivery to HELM, the Sand Cars shall be inspected - at CZRY's sole expense - by a person qualified to determine if the Sand Cars are in fact in FRA/AAR Interchange Condition. The parties hereby express their mutual preference that such inspection be conducted by a qualified representative of Union Pacific. If for

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any reason it is not possible for the inspection to be conducted by a qualified representative of Union Pacific, HELM may appoint another qualified inspector.

v. Covenant Not to Seek Entry of Judgment Except Upon Breach By CZRY - HELM hereby covenants that it shall not seek entry of judgment unless and until such time, if ever, that CZRY breaches the terms of this Stipulated Settlement.

OTHER TERMS

4. Agreement to Indemnify HELM - CZRY agrees to defend and indemnify HELM against any claims of right, title and/or ownership of the Sand Cars, or any claims of a lien, security interest or other similar encumbrance in the Sand Cars, asserted by any person or entity, including but not limited to any such claims asserted against HELM or CZRY by Carrizo Gorge International Aggregates ("CGIA"), Mr. Gary Sweetwood, Mr. Mike Redding and/or anyone purporting to act as the successors, agents, or assigns of CGIA, Mr. Sweetwood and/or Mr. Mike Redding, or otherwise asserting any claim of right, title and/or ownership of the Sand Cars, or any claims of a lien, security interest or other similar encumbrance in the Sand Cars.

5. Agreement to Execute Necessary Documents - In addition, CZRY agrees to execute any and all documentation and to take any such

1 action necessary to effectuate the terms and conditions of this
2 Stipulated Settlement, including but not limited to the return of any
3 original Bills of Sale or copies thereof purporting to transfer title to any
4 of the Sand Cars from HELM to CZRY and such other documentation
5 or action as may be necessary to accomplish transfer and delivery of
6 the Sand Cars to HELM.
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9 6. No Other Claims — The Parties each represent and warrant to the other
10 that they know of no claims, charges, complaints, petitions, or any
11 other accusatory pleadings which have been filed or are contemplated
12 to be filed against any of the others, or against any of the others'
13 predecessors, successors, heirs, assigns, agents, administrators,
14 servants, employees, insurers, beneficiaries, partners, associates,
15 affiliates, parent corporations, officers, directors, subsidiaries,
16 stockholders, attorneys, legal or other representatives, and any and all
17 other persons acting by, through, under, and/or in concert with any of
18 them, and each of them, other than those set forth in the pleadings in
19 this matter, or which could have been joined with those set forth in the
20 pleadings in this matter under the statutes and case law of this state
21 pertaining to joinder of claims. CZRY represents and warrants to
22 HELM that to the best of its knowledge no dispute, claim, litigation or
23 threat of litigation exists in connection with or relating to the Sand
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SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

1 Cars, including any dispute, claim, litigation or threat of litigation by
2 CGIA, Mr. Gary Sweetwood and/or Mr. Mike Redding and/or any
3 party purporting to act as the successors, agents, or assigns of same.
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5 7. Mutual General Releases and Dismissal With Prejudice – Upon
6 CZRY's satisfaction of the settlement terms as set forth herein, the
7 Parties shall execute mutual general releases including waivers of the
8 rights set forth in Civil Code section 1542. In addition, HELM shall
9 file a Request for Dismissal with Prejudice of its entire action against
10 CZRY – within (ten) 10 days of CZRY's satisfaction of the Stipulated
11 Settlement. In the unlikely event the court in which this matter is
12 pending requires dismissal of the complaint before final payment is
13 made by CZRY, the complaint shall be dismissed without prejudice
14 while reserving the court's power to set aside the dismissal and order
15 entry of judgment upon the terms set forth herein.
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17 8. Satisfaction of Judgment – In the event it becomes necessary for
18 HELM to apply to the court for entry of judgment pursuant to this
19 Stipulated Settlement, HELM shall file a Satisfaction of Judgment form
20 upon CZRY's satisfaction of the judgment so entered.
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22 9. Attorneys' Fees and Costs – Except as otherwise specifically provided
23 herein, the Parties shall each bear their own costs and attorneys' fees
24 incurred in connection with the above-referenced dispute, the
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SETTLEMENT AGREEMENT AND RTIPULATION FOR ENTRY OF JUDGMENT

1 negotiation of its settlement, and the preparation and/or execution of
2 any and all settlement and release documents, including but not limited
3 to this Settlement Agreement. However, if either Party reasonably
4 incurs attorneys' fees to enforce this Stipulated Settlement, then the
5 prevailing party in any such enforcement action shall be entitled to and
6 shall be awarded any such reasonable attorneys fees and costs incurred
7 therefore.
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10 10. Entire Agreement - This Stipulated Settlement contains the entire
11 understanding concerning the subject matter hereof between the Parties,
12 and is intended as a final, complete, and exclusive expression of the
13 terms of the Parties' agreement within the meaning of California Code
14 of Civil Procedure sections 1856(a) and 1856(b). This Stipulated
15 Settlement supersedes and replaces all prior negotiations and proposed,
16 but unexecuted agreements, either written or oral. Any prior
17 agreements, promises, negotiations, or representations, either written or
18 oral, relating to the subject matter of this Stipulated Settlement, are of
19 no force or effect. To be effective, any amendments or modifications
20 to this Stipulated Settlement must be in writing, signed by all the
21 Parties, and filed with the court.
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26 11. No Other Representations - The Parties acknowledge, understand, and
27 agree, except as expressly set forth herein, that no promises,
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SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

1 representations, or warranties of any kind or character, express or
2 implied, have been made by the other Party, or by any agent,
3 representative, or attorney of any of the other Party, to the other to
4 induce any of the Parties to execute this Stipulated Settlement. Each
5 Party acknowledges that the other Party has executed this Stipulated
6 Settlement in reliance on any such promises, representations, or
7 warranties, not expressly covered herein.

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10 12. Successors Bound -- This Stipulated Settlement shall be binding upon,
11 and shall inure to the benefit of each Party hereto, and to their
12 respective predecessors, successors, heirs, assigns, agents,
13 administrators, servants, employees, insurers, beneficiaries, partners,
14 associates, affiliates, parent corporations, officers, stockholders,
15 subsidiaries, directors, attorneys, legal or other representatives, and any
16 and all other persons acting by, through, under, and/or in concert with
17 any of them, and each of them.

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21 13. No Admission of Liability -- The Parties understand and agree that this
22 Stipulated Settlement relates to the compromise of disputed claims and
23 is entered into because they desire to avoid the expense, burden, and
24 uncertainty of protracted litigation, and that neither the fact of
25 settlement nor any term of this Stipulated Settlement will be construed
26 as an admission of liability by either of the Parties.
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SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

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14. California Law to Govern – This Stipulated Settlement is entered into in the State of California and shall in all respects be construed, governed, enforced, and interpreted exclusively under and pursuant to the laws of the State of California.

15. Savings Clause – Should any provision of this Stipulated Settlement be declared or determined by the court to be illegal, invalid, or unenforceable, the validity of the remaining parts shall not be affected thereby. Any such illegal, invalid, or unenforceable parts, terms, or provisions of the Stipulated Settlement shall be deemed stricken and severed from same. The balance of the Stipulated Settlement shall then be interpreted and construed according to its apparent fair meaning in light of such circumstance, and shall otherwise remain binding and in full force and effect.

16. Construction/Ambiguities – It is understood and agreed that this Stipulated Settlement is the product of negotiation by the Parties, who have been represented by counsel throughout those negotiations; therefore, the general rule of interpretation to the effect that ambiguities are to be construed strictly against the drafter shall not apply to this Stipulated Settlement. Rather, this Stipulated Settlement shall be construed against each of the Parties equally, and no presumptions of interpretation shall apply.

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17. Title and Headings -- The titles and headings of the various provisions of this Stipulated Settlement are used for convenience and reference only, and are not intended to, and shall not in any way, enlarge or diminish the rights or obligations of the Parties or affect the meaning or construction of this document.

18. Representation by Counsel -- The Parties acknowledge, understand, and agree that they have been represented by, or had the opportunity to be represented by, independent legal counsel of their own choice throughout the negotiations which preceded the execution of this Stipulated Settlement, that each Party has executed this Stipulated Settlement with the consent or the advice of such independent counsel, and that this Stipulated Settlement is the result of arms'-length negotiation and compromise by the Parties and their counsel. The Parties further acknowledge, understand, and agree that they and their counsel have had a reasonable and adequate opportunity to make whatever investigations or inquiries they have deemed necessary or desirable in connection with the subject matter of this Stipulated Settlement prior to its execution.

19. Waiver -- No waiver by either Party of any breach of any term of this Stipulated Settlement shall be construed to be, nor shall it be, the waiver of any preceding, concurrent, or succeeding breach of the same

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

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or any other term or provision hereof.

20. Hold Harmless - In the event that any representation, warranty, provision, term, or assurance contained in this Stipulated Settlement has been or is subsequently breached, the breaching party shall indemnify and hold harmless the other Party to this Stipulated Settlement for any loss or damage resulting from such breach.

21. Effective Date - The effective date of this Stipulated Settlement shall be the date it is first filed with the court.

Dated: July
June 11, 2007

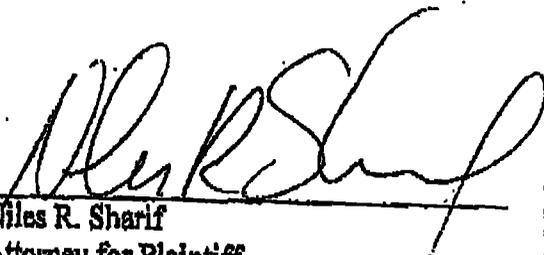
CARRIZO BORGE RAILWAY, INC.
By: [Signature]
Its CEO

Dated: July
July 18, 2007

HELM FINANCIAL CORPORATION
By: [Signature]
Its: SVP, Secretary, & General Counsel

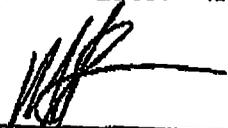
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DATED: June _____, 2007

By: 
Niles R. Sharif
Attorney for Plaintiff
HELM FINANCIAL CORPORATION

DATED: ~~June~~ ^{July 19} _____, 2007

sig via email

By: 
MIGUEL SMITH
Attorney for Defendant
CARRIZO GORGE RAILWAY, INC.

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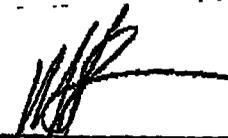
DATED: ^{July}~~June~~ 26, 2007

email

By: 
Niles R. Sharif
Attorney for Plaintiff
HELM FINANCIAL CORPORATION

DATED: ^{July 19}~~June~~ _____, 2007

sig via email

By: 
MIGUEL SMITH
Attorney for Defendant
CARRIZO GORGE RAILWAY, INC.

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated:

10/9/07



Robert W. Alvord