

Comerica Bank-Detroit  
211 West Fort Street  
Detroit, Michigan 48226

**Comerica** Bank-Detroit

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**MAR 25 1987 11-20 AM**

**INTERSTATE COMMERCE COMMISSION**

AMENDMENT TO THE FINANCE AGREEMENT  
between D.M.L., INC. and Detroit &  
Mackinac Railway Company and  
Comerica Bank - Detroit

Interstate Commerce Commission  
Washington, D.C.

Gentlemen:

On March 1, 1982 The Detroit Bank and Trust Company (now Comerica Bank-Detroit) agreed to finance the equipment of Detroit and Mackinac Railway Company D & MR). Comerica took title to the equipment and resold it to D & MR pursuant to a Conditional Sales Agreement dated March 1, 1982. D & MR has undergone a corporate reorganization and as a result, has transferred its interest in the equipment to D.M.L., Inc. Comerica has consented to this assignment subject to the guarantee of D & MR and The Straits Corporation. This Amendment (dated March 4, 1987) to the Finance Agreement (FA) of March 1, 1982, is to reflect the assumption of the rights to the equipment and the obligations, and indebtedness of the FA by D. M. L. The Amendment deletes the old subsections 4.1 through 4.13 and replaces them with the ones included in Article II.

This document is being sent to you for recording. Please let either Federal Research Associates or the Bank know if you have any questions or problems.

Sincerely,

*John M. Gabbert*  
John M. Gabbert  
Loan Administration Analyst

100 OFFICE OF  
THE SECRETARY  
MAR 25 11 23 AM '87  
MOTOR OPERATIONS UNIT

Mar, MAR 25 1987  
Date .....  
Fee \$ ..12.00  
ICC Washington, D. C.

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INTERSTATE COMMERCE COMMISSION  
AMENDMENT TO FINANCE AGREEMENT

This Amendment (the "Amendment") to the Finance Agreement dated March 1, 1982 ("FA"), by and between D. M. L., Inc. ("D. M. L.") Detroit and Mackinac Railway Company ("D & MR") and Comerica Bank-Detroit, (formerly The Detroit Bank and Trust Company) (the "Bank") is delivered and executed as of this 4<sup>th</sup> day of MARCH, 1987, and shall be effective as of the 30th day of December, 1985.

WHEREAS D & MR entered into a Conditional Sale Agreement dated March 1, 1982, as amended May 13, 1983 ("CSA"), with the Bank to finance the purchase of certain equipment; and

WHEREAS, pursuant to that CSA, the Bank acquired title to the equipment; and

WHEREAS, D & MR has undergone a corporate reorganization and desires to have its obligations reflect its new structure; and

WHEREAS, D & MR has assigned, conveyed and transferred its right to the equipment and its obligations and indebtedness under the CSA and FA to D. M. L. pursuant to an Assignment, Assumption and Consent Agreement ("Agreement"); and

WHEREAS, D. M. L. has assumed the rights to the equipment and the obligations and indebtedness of D & MR under the CSA and FA; and

WHEREAS, the Bank, pursuant to the Agreement, acknowledges and consents to the assignment by D & MR and the assumption by D. M. L. of D & MR's rights to the equipment and, obligations and indebtedness pursuant to the CSA and FA; and

WHEREAS, to reflect the assumption of the rights to the equipment and the obligations, and indebtedness of the FA by D. M. L., the Bank and D. M. L. desire to amend the FA; and

WHEREAS, to further induce the Bank to enter into this Amendment, D & MR and The Straits Corporation have each entered into a guaranty (the "Guaranties") of the indebtedness of D. M. L., pursuant to the FA and the CSA; and

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements hereinafter set forth, the parties do hereby agree as follows:

## ARTICLE I

Section 4 of the FA is hereby amended in its entirety to delete subsections 4.1 through 4.13.

## ARTICLE II

Section 4 of the FA is hereby amended in its entirety to add the following subsections:

4.1 Annual Financial Reports. Furnish to the Bank in form satisfactory to the Bank not later than 150 days after the close of each fiscal year of D. M. L. and D & MR beginning with D. M. L.'s and D & MR's fiscal year ending December 31, 1986 on a consolidated and consolidating basis, a balance sheet as at the close of each such fiscal year, statements of income and retained earnings and changes in financial position for each such year, and such other comments and financial details as are usually included in similar reports. The annual statements shall be prepared by independent certified public accountants selected by D & MR and D. M. L. and acceptable to the Bank and shall contain unqualified opinions as to the fairness of the statements contained therein. The annual statements shall be in such detail as the Bank may require.

4.2 Monthly Financial Statements. Furnish to the Bank not later than forty-five (45) days after the close of each month of D & MR, financial statements containing the balance sheet of D & MR as of the end of each such period, statements of income and retained earnings and changes in financial position for the end of such period. These statements shall be prepared on substantially the same accounting basis as the statements required in Section 4.1 and shall be in such detail as the Bank may require, and the accuracy of the statements (subject to audit and year-end adjustments) shall be certified by the chief executive or financial officer of D & MR .

4.3 Quarterly Financial Statements. Furnish to the Bank not later than forty-five (45) days after the close of each quarter of each fiscal year for D. M. L., financial statements containing the balance sheet of D. M. L. as of the end of each such period, statements of income and retained earnings and changes in financial position for the portion of the fiscal year up to the end of such period. These statements shall be prepared on substantially the same accounting basis as the statements required in Section 4.1 and shall be in such detail as the Bank may require, and the accuracy of the statements (subject to audit and year-end adjustments) shall be certified by the chief executive or financial officer of D. M. L.

4.4 Compliance Certificate. Together with each delivery of the financial statements required by Sections 4.1, 4.2 and 4.3 above, furnish to the Bank a certificate of its chief financial officer evidencing the compliance by D & MR and D. M. L., as applicable, with the covenants set forth in Sections 4.9, 4.10 and 4.11, and stating that no Event of Default has occurred nor has any event occurred which, with notice and/or passage of time, would constitute such an Event of Default, or if any such Event of Default exists or would exist with notice and/or the passage of time, stating the nature thereof, the period of existence thereof and what action D & MR or D. M. L. proposes to take with respect thereto.

4.5 Adverse Events. Promptly inform the Bank of the occurrence of any Event of Default or of any event which, with notice and/or the passage of time would become an Event of Default, or of any occurrence which has or could reasonably be expected to have a materially adverse effect upon D & MR's or D. M. L.'s business, properties, financial condition or ability to comply with their obligations hereunder.

4.6 Inspection. Permit the Bank, its employees, its attorneys and its agents, to inspect all of the books, records and properties of D & MR or D. M. L. at any reasonable time.

4.7 Insurance. Keep their insurable properties adequately insured in such amounts and against such risks and hazards as are customarily insured against by companies engaged in the same or a similar business to that of D & MR and D. M. L., with the approval of the Bank, which insurance shall include, but not be limited to, coverage against injury to persons or property by reason of the use, operation or condition of the equipment. D & MR and D. M. L. will deliver to the Bank, at its request, evidence satisfactory to the Bank that such insurance has been so provided and as to the amounts and terms thereof and that it has been made payable to the Bank.

4.8 Taxes. Pay promptly and within the time that they can be paid without interest or penalty, all taxes, assessments and similar imposts and charges of every kind and nature lawfully levied, assessed or imposed upon D. M. L. and D & MR and/or their property, except to the extent being contested in good faith.

4.9 Maintain Net Current Assets. (a) On a consolidated statement basis, D & MR and D.M.L. shall maintain Net Current Assets of not less than the amounts during the periods specified below:

(i) (\$4,000,000) on an annual statement basis.

(ii) (\$2,500,000) on an interim statement basis.

(b) On a D & MR only financial statement basis, maintain Net Current Assets of not less than the amounts during the period specified below:

(i) (\$3,500,000) on an annual statement basis.

(ii) (\$2,200,000) on an interim statement basis.

(c) "Net Current Assets" shall mean current assets less current liabilities. Current assets shall include only cash, non-affiliated customer accounts receivable, United States Government Securities, claims against the United States Government and inventories to the extent classified as current in accordance with generally accepted accounting principles consistently applied. Current liabilities shall include all affiliated indebtedness, in addition to all liabilities classified as current in accordance with generally accepted accounting principles, consistently applied.

4.10 Maintain Net Worth. (a) On a consolidated annual statement basis, maintain a Tangible Net Worth of not less than:

(i) \$4,250,000 from December 31, 1986 to December 30, 1987.

(ii) \$4,650,000 from December 31, 1987 and thereafter.

(b) On a consolidated interim statement basis, maintain a Tangible Net Worth of not less than:

(i) \$4,550,000 from January 1, 1987 to December 31, 1987.

(ii) \$4,950,000 from January 1, 1988 and thereafter.

(c) "Tangible Net Worth" shall mean the excess of (i) the net book value of the assets of D & MR and D. M. L. (other than (i) patents, patent rights, trademarks, trade names, franchises, copyrights, licenses, goodwill and similar intangible assets, (ii) treasury stock and notes or accounts receivable arising from the sale of treasury or unissued stock, and (iii) revaluation of real property owned by D & MR or D. M. L. after all appropriate deductions in accordance with generally accepted accounting principles, consistently applied (including, without limitation, reserves for doubtful receivables, obsolescence, depreciation and amortization)) over (ii) all liabilities of D & MR or D. M. L.

4.11 Maintain Debt Ratio. (a) On an annual consolidated statement basis maintain a ratio of Debt to Tangible Net Worth of less than 2.5 to 1.0. (b) On a consolidated interim statement basis maintain a ratio of debt to tangible net worth of less than 2.0 to 1.0. (c) The term "Debt" means all liabilities of D & MR and D. M. L. as defined in accordance with generally accepted accounting principles, consistently applied.

4.12 ERISA. (a) At all times meet the minimum funding requirements of ERISA with respect to D. M. L.'s and D. & MR's employee benefit plans subject to ERISA; (b) as soon as possible and in any event within thirty (30) days after D. M. L. or D & MR knows or has reason to know (i) of the occurrence of any event which would constitute a reportable event under Section 4043(b) of Title IV of ERISA, or (ii) that the PBGC or D. M. L. or D. & MR has instituted or will institute proceedings under such Title to terminate an employee pension plan, deliver to the Bank a certificate of the chief financial officer of D & MR and D. M. L. setting forth details as to such reportable event and the action which D & MR and D. M. L. propose to take with respect thereto, together with a copy of any notice of such reportable event which may be required to be filed with the PBGC, or any intent to institute such proceedings, or any notice to the PBGC that the plan is to be terminated, as the case may be (for all purposes of this Section 4.12, shall be deemed to have knowledge of all facts attributable to the plan administrator under such Title); and (c) furnish to the Bank (or cause the plan administrator to furnish the Bank) a copy of the annual return (including all schedules and attachments) for each plan covered by Title IV, and filed with the Internal Revenue Service by D & MR or D. M. L., not later than ten (10) days after such report has been so filed.

4.13 Contracts and Other Information. Provide such details as the Bank may require of the terms and conditions of any lease, purchase, lease-purchase or similar agreements which D & MR or D. M. L. may desire to enter into. D & MR and D. M. L. further agree to furnish such other information

as the Bank may reasonably request and to permit the Bank to inspect all of the books, records and properties of D & MR or D. M. L. at any reasonable time.

### ARTICLE III

The introductory paragraph to Section 5 of the FA on pages 9 and 10, Sections 5.1, 5.2 and 5.3 are hereby deleted in their entirety.

### ARTICLE IV

Section 5 of the FA is hereby amended in its entirety to add the following subsections:

From the date hereof until the fulfillment by D.M.L. and D & MR of all of their obligations under the CSA, D.M.L. and D & MR covenant and agree that they will not:

5.1 Liens, etc. Create, incur, assume or suffer to exist any mortgage, pledge, encumbrance, security interest, lien or charge of any kind (including any charge upon property purchased under a conditional sales or other title retaining agreement) upon any of D. M. L.'s or D & MR's property or assets whether now owned or hereafter acquired other than in favor of the Bank, except: (a) as required or permitted herein; (b) liens for taxes not delinquent, or being contested in good faith, and, if requested by the Bank, bonded in a manner satisfactory to the Bank; (c) liens not delinquent created by statute in connection with workmen's compensation, unemployment insurance, social security and similar statutory obligations; (d) items listed in Exhibit F, attached to the FA, and made a part thereof, and (e) liens or encumbrances of D & MR only in aggregate amounts not exceeding \$700,000 at any one time outstanding arising from leasing transactions, excluding any such transactions listed in said Exhibit F.

5.2 Extension of Credit. Make loans, advances or extensions of credit to any Person, except for (i) sales on open account and in the ordinary course of business and (ii) loans, advances or extensions of credit up to \$100,000 in the aggregate at any one time outstanding. For the purpose of this Agreement, the word "Person" means any individual, corporation, partnership, trust, unincorporated association, joint stock company or other entity.

5.3 Guarantee Obligations. Guarantee or otherwise in any way become or be responsible for obligations of any other Person, whether by agreement to purchase the indebtedness of

any other Person, or agreement for the furnishing of funds to any other Person through the purchase of goods, supplies or services (or by way of stock purchase, capital contribution, advance or loan) for the purpose of paying or discharging the indebtedness of any other Person, or otherwise, except for guarantees running in favor of the Bank, in an aggregate amount not to exceed \$100,000 at any one time outstanding.

5.6 Acquire Fixed Assets. On a combined basis, D & MR and D. M. L. shall not acquire or expend for, or commit themselves to acquire or expend for by lease, purchase or otherwise, fixed assets in excess of seventy-five percent of their prior year's combined depreciation.

#### ARTICLE V

Section 6.1 of the FA is hereby amended to substitute "D .M. L. and D & MR" for "Borrower."

#### ARTICLE VI

Sections 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.1.5 and 6.2 are hereby amended in part to substitute "D. M. L. and D & MR" for "Railroad."

#### ARTICLE VII

A. Amendments and Waivers. This Amendment may be amended or waived only by a written agreement signed by the parties hereto. No forbearance on the part of any party to this Amendment in enforcing any of its rights under this Amendment shall constitute a waiver of any of the terms of this Amendment or of any such right.

B. Binding Effect. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; provided, however, that no party to this Amendment may assign or transfer its rights or obligations hereunder without the written consent of the other parties to this Amendment.

C. Entire Agreement. This Amendment, together with the agreements and instruments referred to herein, contains the entire agreement of the parties hereto with respect to the transactions contemplated herein.

D. Headings. The headings in this Amendment are inserted for convenience of reference only and will not in any way affect the meaning or interpretation of this Amendment.

E. Governing Law. This Amendment shall be governed, construed and enforced in accordance with the internal laws of the State of Michigan, as applicable to contracts made between residents of and to be wholly performed within the State of Michigan.

F. Survival of Warranties. Etc. The respective representations, warranties, covenants and agreements of the parties to this Amendment made in connection with the FA and any agreement or instrument contemplated hereby shall survive the closing of the transactions contemplated hereunder and shall not be deemed waived (except by an instrument in writing by the party to whom such waiver is charged) or otherwise affected by any investigation made by any party hereto.

G. Counterparts. This Amendment may be executed in multiple copies, each of which shall for all purposes be deemed an original and all of which together shall constitute a single agreement binding on all parties.

H. No Third Party Beneficiaries. This Amendment does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Amendment.

In WITNESS WHEREOF, D. M. L., D & MR and the Bank have caused this Amendment to be executed by their duly authorized officers as of the day and year first written above.

D.M.L., INC.

By Charles A. Pinkerton  
Charles A. Pinkerton, Inc.  
Its President

By R. C. Moffatt  
Roger C. Moffatt  
Its Executive Vice President

DETROIT AND MACKINAC RAILWAY  
COMPANY

By Charles A. Pinkerton, III  
Charles A. Pinkerton, III  
Its President

By R. C. Moffatt  
Roger C. Moffatt  
Its Executive Vice President

COMERICA BANK-DETROIT

By Robert C. Robinson  
Robert C. Robinson  
Its Vice President

State of Michigan )  
 ) ss.  
County of WAYNE )

On this 25<sup>th</sup> day of FEBRUARY, 1987, before me personally appeared ROBERT C. ROBINSON to me personally known, who being by me duly sworn, say that he/she is the VICE PRESIDENT, of Comerica Bank-Detroit, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

JORGE H. LASTRA  
Notary Public, Macomb County, Mich  
Acting In WAYNE County, Mich  
My Commission Expires September 24, 1990

Jorge H. Lastra  
Notary Public, \_\_\_\_\_ County, Michigan  
My commission expires:

(Notarial Seal)

State of Michigan )  
 ) ss.  
County of Wasco )

On this 4<sup>th</sup> day of March, 1987, before me personally appeared Charles A. Pinkerton III and Roger C. Moffett to me personally known, who being by me duly sworn, say that they are the President and Executive Vice Pres. respectively, of D.M.L. Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Shirley R. Luedtke  
Notary Public, Wasco County, Michigan  
My commission expires: March 21, 1989

(Notarial Seal)

State of Michigan )  
County of Josco ) ss.

On this 4<sup>th</sup> day of March, 1987, before me personally appeared Charles A. Pinkerton III and Roger C. Moffatt, to me personally known, who being by me duly sworn, say that they are the President and Executive Vice Pres. respectively, of Detroit and Mackinac Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Shirley R. Luedtke  
Notary Public, Josco County, Michigan  
My commission expires: March 21, 1989



(Notarial Seal)