



RECORDATION NO 28009 FILED

JUL 07 '09

2-10 PM



June 30, 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

SURFACE TRANSPORTATION BOARD

Secretary, Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423-0001

Re: Documents for Recordation for LSM Locomotives, LLC

Dear Secretary:

I have enclosed two (2) originals of the documents described below to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code.

- 1) **Equipment Sale Agreement.** This document is a sales agreement which is a primary document, dated May 14, 2009, by and between 564109 B.C. Ltd d/b/a J&L Consulting, and MIPM, LLC.
- 2) **Security Agreement.** This document is a security agreement which is a secondary document, dated as of May 24, 2009, by and between LSM Locomotives, LLC, and MIPM, LLC, which is to be recorded along with the Equipment Sale Agreement.

The names and addresses of the parties to these documents are as follows:

Seller 564109 B C Ltd
5785 244b St
Langley
B.C. Canada V2Z 1c37

Buyer/Lender MIPM, LLC
c/o Phillip Mervis
4265 N. Pennsylvania
Indianapolis, IN 46205

Debtor LSM Locomotives, LLC
c/o Thomas G. Burroughs
334 N. Senate Avenue
Indianapolis, IN 46204

A description of the equipment covered by these documents is as follows:

The following locomotive cars and parts and scraps therefrom, as well as all proceeds generated from the sale, lease, transfer, or other conveyance of said collateral:

JLCX 630 RS18 CAT powered
JLCX 617 RS18 CAT powered
JLCX 604 RS18 CAT powered
JLCX 762 SD40-2
JLCX 754 SD40-2
JLCX 5294 SD40-2
JLCX 5401 SD50
JLCX 1813 RS18 ALCO
JLCX 1814 RS18 ALCO
JLCX 1816 RS18 ALCO
JLCX 1818 RS18 ALCO
JLCX 1834 RS18 ALCO
JLCX 1840 RS18 ALCO
JLCX 1851 RS18 ALCO
JLCX 1854 RS18 ALCO

A fee of \$82.00 payable to Secretary, Surface Transportation Board, is enclosed. Please return the original and any extra copies not needed by the Board for recordation to:

Michael J. Gabovitch
KATZ & KORIN, PC
334 N. Senate Avenue
Indianapolis, Indiana 46204

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

- 1) **Equipment Sales Agreement**. This document is a sales agreement, dated May 14, 2009, by and between 564109 B C Ltd d/b/a J&L Consulting and MIPM, LLC. This agreement describes the terms and conditions of a sale and purchase of locomotive equipment identified as:

JLCX 630 RS18 CAT powered
JLCX 617 RS18 CAT powered
JLCX 604 RS18 CAT powered
JLCX 762 SD40-2

JLCX 754 SD40-2
JLCX 5294 SD40-2
JLCX 5401 SD50
JLCX 1813 RS18 ALCO
JLCX 1814 RS18 ALCO
JLCX 1816 RS18 ALCO
JLCX 1818 RS18 ALCO
JLCX 1834 RS18 ALCO
JLCX 1840 RS18 ALCO
JLCX 1851 RS18 ALCO
JLCX 1854 RS18 ALCO

Mervis Industries, Inc. is purchasing the above-described equipment as an advance to LSM Locomotives, LLC.

- 2) **Security Agreement.** This document is a security agreement, dated as of May 24, 2009, by and between MIPM, LLC, and LSM Locomotives, LLC. This agreement describes the terms of a security interest on, among other things, the locomotive equipment described as:

JLCX 630 RS18 CAT powered
JLCX 617 RS18 CAT powered
JLCX 604 RS18 CAT powered
JLCX 762 SD40-2
JLCX 754 SD40-2
JLCX 5294 SD40-2
JLCX 5401 SD50
JLCX 1813 RS18 ALCO
JLCX 1814 RS18 ALCO
JLCX 1816 RS18 ALCO
JLCX 1818 RS18 ALCO
JLCX 1834 RS18 ALCO
JLCX 1840 RS18 ALCO
JLCX 1851 RS18 ALCO
JLCX 1854 RS18 ALCO

which was given to secure the purchase advance of the locomotives by MIPM, LLC for the benefit of LSM Locomotives, LLC.



Secretary, Surface Transportation Board

June 30, 2009

Page 4 of 4

Please record these documents pursuant to Section 11301 of Title 49 of the U.S. Code. If there are any questions regarding these documents, please feel free to call me at (317) 464-1100. Thank you.

Very truly yours,

KATZ & KORIN, PC

A handwritten signature in black ink that reads 'Michael J. Gabovitch'.

Michael J. Gabovitch

JUL 07 '09

2-10 PM

EQUIPMENT SALE AGREEMENT

SURFACE TRANSPORTATION BOARD

This **Equipment Sale Agreement** dated May 14, 2009 (the "Agreement") is entered into by and between 564109 B.C. LTD d/b/a J&L Consulting with offices at 5785 244B st Langley B.C. Canada V2Z 1c37 ("Seller") and MIPM, LLC, 4265 N. Pennsylvania, Indianapolis, IN 46205 ("Buyer").

1. **Equipment.** Subject to the terms and conditions specified in this Agreement, Seller agrees to sell transfer and convey to Buyer, and Buyer agrees to purchase from Seller, all of Seller's rights, title, and interest in and to certain used Equipment consisting of the Machines and Features described below (all such machines and features hereinafter collectively (the "Equipment")).

Equipment Description

- JLCX 630 RS18 CAT powered
- JLCX 617 RS18 CAT powered
- JLCX 604 RS18 CAT powered
- JLCX 762 SD40-2
- JLCX 754 SD40-2
- JLCX 5294 SD40-2
- JLCX 5401 SD50
- JLCX 1813 RS18 ALCO
- JLCX 1814 RS18 ALCO
- JLCX 1816 RS18 ALCO
- JLCX 1818 RS18 ALCO
- JLCX 1834 RS18 ALCO
- JLCX 1840 RS18 ALCO
- JLCX 1851 RS18 ALCO
- JLCX 1854 RS18 ALCO

2. **Delivery and Title.** Seller shall arrange to have the Equipment shipped at Seller's sole cost and expense in "as inspected" condition to its final destination. Buyer agrees to take delivery, possession, and control of the Equipment in "as inspected" condition upon delivery to S.I.E. Demolition, LLC, 2710 State Str., Chicago Heights, IL 60411. Title to the Equipment shall pass to Buyer upon payment of the Purchase Price for Equipment on or prior to the Closing Date set forth below in Section 3. Risk of loss shall remain with Seller until acceptance by Buyer. All shipping, rigging, drayage, transportation, de-installation, clean-up, removal, and transportation insurance costs shall be borne and promptly paid by Seller. It is agreed Seller will provide the Equipment in "as inspected" condition. Units will ship immediately upon completion of prep for Interchange to SIE (Jabco) yard in Chicago Heights, Illinois.
3. **Purchase Price.** The aggregate Purchase Price for the Equipment shall be **\$1,035,000.00 USD** (the "Purchase Price"), and Buyer agrees the Purchase Price will be due and payable on May 14, 2009 (the "Closing Date") by wire to Seller's account. If Buyer fails to remit the

Purchase Price to Seller's account on or before the Closing Date, this Agreement will be null and void and Seller shall be free to sell the Equipment to any third party. If Buyer remits the Purchase Price to Seller's account on or prior to the Closing Date, promptly after receipt of the Purchase Price, Seller will provide a Bill of Sale and Title by overnight mail.

4. **Seller Warranties.** Seller makes no warranties express or implied, of any kind or nature arising by law or otherwise (including any warranty, obligation or liability of Seller with respect to fitness for a particular purpose, merchantability, or fitness of use of the Equipment) except that: (1) Buyer acknowledges and agrees that Seller is transferring the equipment referred to in this Agreement on an as-is, where-is basis with all faults, and Buyer will acquire by the terms of this Agreement and attendant Bill of Sale Good title to the Equipment referred to above free from all liens, claims and encumbrances; and (2) Seller has title and the right to sell Equipment. Without limiting the generality of the foregoing, Seller makes no warranties with respect to the quality, contents, design, value, marketability, maintenance, operation or condition of the Equipment, including any hidden and/or latent defects. No warranties regarding facts, circumstances, or conditions of the past or standards of conduct for or natural resource and no warranties against patent infringement or the like.

Buyer acknowledges that the Equipment sold hereunder is used and Buyer acknowledges that it has not relied and is not relying on any representation or statement of condition of the Equipment made by Seller in connection with Buyer's purchase of the Equipment and has inspected the Equipment and has full knowledge as to the Equipment's condition.

Any terms of any purchase order submitted by Buyer which are different from conflicting with the terms of this Agreement, including any preprinted terms and conditions on the face or reverse side of any purchase shall be of no force and effect with respect to any purchase or sale hereunder, unless accepted by Seller in writing.

5. **Buyer Warranties and Covenants.** The execution and performance of this Agreement and any certification require by Seller, and the purchase of Equipment hereunder by Buyer are all in the ordinary course of Buyer's business and will not: (i) conflict with Buyer's constituent documents; (ii) violate any law, statute, or rule, or any judgment, order, or decree of any court, administrative agency, or governmental body, to which Buyer is or maybe subject; or (iii) conflict with or result in the breach of, or constitute a default under any other agreement or contract to which Buyer is a party or is otherwise bound, Buyer will use, operate, store maintain, recycle, de-install, remove, re-sell, destroy, and otherwise handle and/or dispose of the equipment and all component materials in full compliance with all applicable federal, state and local laws and all lawful standards, permits, licenses, approvals, orders, rules and regulations promulgated pursuant to such laws including without limitation, Interchange Rules of the Association of American Railroads, any relating to handling and disposition of the Equipment, any environmental laws or regulations, and any US Export laws (collectively, "Applicable Law"). Buyer represents any certification provided to Seller will be true, accurate and correct to the best of our knowledge.

6. **Indemnity.** Buyer agrees to indemnify Seller and hold it harmless from and against any and all claims, actions, suits, proceedings, liabilities, obligations, damages, personal and/or bodily injuries, penalties, costs and expenses (including reasonable attorneys' fees) (collectively, the "Claims"), resulting from, arising out of, or in connection with the sale of the Equipment to, or the de-installation, removal, ownership, possession, transportation, operation, maintenance, or use of the equipment by, Buyer or any other third party. This indemnity is absolute and unconditional and includes claims of negligence, strict liability, and breach of warranty. Buyer additionally agrees that it shall save and hold harmless Seller from and against any and all federal, state, municipal, and local license fees and taxes other than corporate or personal income tax, personal property taxes, and use of sales taxes. Seller will notify Buyer of any event requiring indemnification hereunder as soon as practicable following the receipt of notice of the commencement of any action or proceeding by any third party giving rise to such indemnification, and Buyer will, at Seller's option, assume the defense or settlement of any such action or proceeding, in which event Seller (and its counsel) may continue to participate at its own expense in any such action or proceeding. Buyer shall not settle, compromise, decline to appeal, or otherwise dispose of any action, proceeding, or claim with respect to which indemnification hereunder is sought, without the consent of Seller.
7. **Waivers, Limitation on Liability.** Each of the Seller and Buyer unconditionally waives its right to a jury trial of any claim or cause of action based upon or arising out of, directly or indirectly, this Agreement and the transactions contemplated hereby. In no event shall either party be responsible to the other for incidental, indirect, exemplary, consequential, or punitive damages arising under or in a way connected with this Agreement, the performance hereof, or the Equipment, except that the foregoing limitation shall not apply to any third party claim covered by the indemnification provisions of Section 7 herein. The liability of either party under this Agreement shall in no event exceed the Purchase Price of the Equipment.
8. **Notices.** All notices, requests, demands, and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been adequately given if: (i) sent by electronic mail; (ii) deposited in Canadian Mail, certified with return receipt requested, postage prepaid; (iii) sent by telecopy with confirmation of transmission; or (iv) delivered by nationally recognized overnight courier, in each case addresses for each party set forth herein, or to such address as a party may specify by written notice to the other.
9. **Interpretation; Execution.** This Agreement constitutes the entire agreement between the parties with respect to the sale of the Equipment, and supersedes all prior agreements and understandings, both written and oral. Such agreement shall be binding upon to inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original of equal force and effect. No changes, modifications, or amendment to this Agreement shall be accepted or made a part hereof unless expressly agreed to by both parties in writing.

10. **Governing Law; Venue.** This Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of Indiana and the federal laws of the United States of America, without giving effect to any principles of conflict of laws. In the event of any litigation to (i) interpret or construe this Agreement, (ii) enforce this Agreement or the rights of the parties there under, or (iii) arising out of the subject matter of this Agreement, such suit or action shall be instituted only in the state or federal courts located in or for Indianapolis, Indiana, which shall have exclusive jurisdiction over the matter. The parties irrevocably consent to the jurisdiction of such courts over their person and the subject matter of any such proceeding and waive all objections to the venue of such courts based on the doctrine of *forum non-conveniens* or similar doctrines.
11. **Severability.** If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction, the invalidity shall not affect the remaining provisions of this Agreement which shall be fully severable, and this Agreement shall be construed and enforced without the invalid provision.
12. **Waiver/Remedies.** The waiver by any party of a breach or default by the other party in the performance of any term, provision, or covenant of this Agreement, shall not operate or be construed as a waiver of any subsequent breach by such party, and all remedies to which any party may be entitled hereunder, or otherwise, shall be deemed to be cumulative and not exclusive.
13. **Attorneys' Fees and Costs.** In any action arising out of this Agreement or to enforce a party's rights hereunder, the prevailing party shall be entitled to recover from the non-prevailing party, all reasonable costs and attorneys' fees incurred in enforcing its rights hereunder.
14. **Telefacsimile.** This Agreement may be executed by any party by means of Telefacsimile transmission or other electronic transmission, and any party or other person may rely on any such Telefacsimile transmission or other electronic transmission signature as constituting an original signature.
15. **No Third Party Benefits.** The provisions of this Agreement are intended to be for the sole benefit of the parties hereto and their respective successors and assigns (to the extent permitted hereunder), and none of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party.
16. **Headings.** The headings in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation hereof.
17. **Due Authorization.** The parties signing this Agreement represent they have all necessary power and authority to act on behalf of their respective entities.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date set forth above.

SELLER

BUYER

564109 B.C. LTD d/b/a J&L Consulting

MIPM, LLC

By: [Signature]

By: _____

Name: JASON TARASOW

Name: Phillip D. Mervis

Title: PRESIDENT

Title: Authorized Member

Province
State of BC
County of District of Langley

On this 22 day of June, 2009 before me personally appeared Jason Tarasow to me personally known, who being by me duly sworn, says that he is the President of 564109 B.C. LTD, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature: D. Van Beek]

My Commission expires NA

DONNA VAN BEEK Notary Public
- NOTARY PUBLIC -
201 - 20171 92A AVENUE
LANGLEY, B.C. V1M 3A5
TEL. (604) 888-6605

My County of residence: Canada

State of _____
County of _____, SS: _____

On this _____ day of _____, 2009 before me personally appeared Phillip D. Mervis, to me personally known, who being by me duly sworn, says that he is the Authorized Member of MIPM, LLC, that said instrument was signed on behalf of said limited liability company by authority of its Members, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said limited liability company.

_____, Notary Public

My Commission expires _____
My County of residence: _____

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date set forth above.

SELLER

BUYER

564109 B.C. LTD d/b/a J&L Consulting

MIPM, LLC

By: _____

By: Phillip D. Mervis

Name: _____

Name: Phillip D. Mervis

Title: _____

Title: Authorized Member

State of _____

County of _____, SS: _____

On this _____ day of _____, 2009 before me personally appeared _____ to me personally known, who being by me duly sworn, says that he is the _____ of 564109 B.C. LTD, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____, Notary Public

My Commission expires _____
My County of residence: _____

State of Indiana

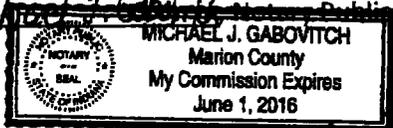
County of Marion, SS: _____

On this 24th day of May, 2009 before me personally appeared Phillip D. Mervis, to me personally known, who being by me duly sworn, says that he is the Authorized Member of MIPM, LLC, that said instrument was signed on behalf of said limited liability company by authority of its Members, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said limited liability company.

Michael J. Gabovitch
Michael J. Gabovitch, Notary Public

My Commission expires June 1, 2016

My County of residence: Marion



UCC FINANCING STATEMENT

NAME OF CONTACT AT FILER

MICHAEL GABOVITCH

Indiana Secretary of State

20090004829559

Jun 10 2009 10:24AM

EMAIL ADDRESS

MGABOVITCH@KATZKORIN.COM

DEBTOR'S EXACT FULL LEGAL NAME

ORGANIZATION'S NAME

LSM LOCOMOTIVES, LLC

MAILING ADDRESS

334 N SENATE AVENUE

CITY

INDIANAPOLIS,

STATE

IN

POSTAL CODE

46204

COUNTRY

UNITED STATES

TYPE OF ORGANIZATION

LIMITED LIABILITY COMPANY

JURISDICTION OF ORGANIZATION

INDIANA

ORGANIZATION ID

2009052200208

SECURED PARTY'S NAME

ORGANIZATION'S NAME

MIPM, LLC

MAILING ADDRESS

4265 N PENNSYLVANIA
STREET

CITY

INDIANAPOLIS

STATE

IN

POSTAL CODE

46205

COUNTRY

UNITED STATES

SECURED PARTY'S NAME

ORGANIZATION'S NAME

MIPM, LLC

MAILING ADDRESS

4265 N PENNSYLVANIA
STREET

CITY

INDIANAPOLIS

STATE

IN

POSTAL CODE

46205

COUNTRY

UNITED STATES

THIS FINANCING STATEMENT covers the following collateral:

1. ALL OF DEBTOR'S ACCOUNTS, ACCOUNTS RECEIVABLE, DEPOSIT ACCOUNTS, GENERAL INTANGIBLES, PAYMENT INTANGIBLES, GOODS, INSTRUMENTS, INVESTMENT PROPERTY, CASH, EQUIPMENT, INVENTORY, CHATTEL PAPER, AND ALL OTHER PROPERTY AND RIGHTS OF THE DEBTOR
- 2 ALL LOCOMOTIVE CARS AND PARTS AND SCRAPS THEREFROM AS AS MORE SPECIFICALLY DESCRIBED BELOW, AS WELL AS ALL PROCEEDS GENERATED FROM THE SALE, LEASE, TRANSFER. OR OTHER CONVEYANCE OF THE COLLATERAL
- 3 ALL PROCEEDS AND PRODUCTS FROM THE FOREGOING.

LOCOMOTIVES

JLCX 630

JLCX 617

JLCX 604

JLCX 762

JLCX 754
JLCX 5294
JLCX 5401
JLCX 1813
JLCX 1814
JLCX 1816
JLCX 1818
JLCX 1834
JLCX 1840
JLCX 1851
JLCX 1854