

19935

19935-A

ALVORD AND ALVORD
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ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

OF COUNSEL
URBAN A. LESTER

Accounts Payable - Kim Bartman

February 16, 1996

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), and the regulations thereunder, are three (3) copies of a Loan and Security Agreement, dated as of February 12, 1996, a primary document as defined in the Board's Rules for the Recordation of Documents, and three (3) copies of a Supplemental Security Agreement No. One, dated February 12, 1996, a secondary document related thereto.

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

Lender:	MetLife Capital Corporation 10900 NE 4th Street Bellevue, WA 98004
Borrower:	Kyle Railroad Company Third & Railroad Avenue Phillipsburg, KS 67661

A description of the railroad equipment covered by the enclosed document is:
Forty-two (42) locomotives set forth on Exhibit A attached to the Supplemental Agreement

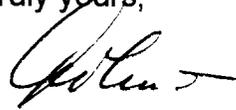
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Mr. Vernon A. Williams
February 16, 1996
Page 2

Also enclosed is a check in the amount of \$42.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return two stamped copies of the enclosed documents to the undersigned.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert W. Alvord", written in dark ink.

Robert W. Alvord

RWA/bg
Enclosures

**SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001**

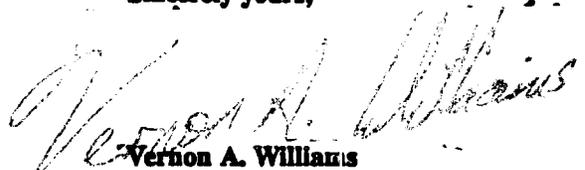
2/16/96

Robert W. Alvord
Alvord And Alvord
918 Sixteenth Street, NW., Ste. 200
Washington, DC., 20006-2973

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 2/16/96 at 11:30AM , and assigned recordation number(s). 19935 and 19935-A,

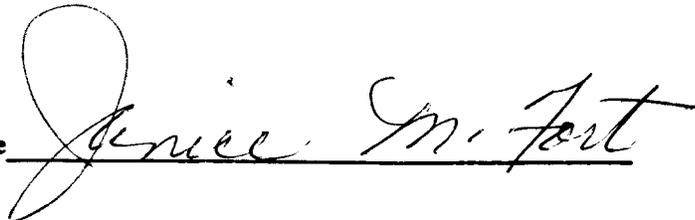
Sincerely yours,


Vernon A. Williams
Secretary

Enclosure(s)

\$ 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



THIS LOAN AND SECURITY AGREEMENT entered into as of the 12th day of February, 1996

by and between MetLife Capital Corporation, a Delaware 19935

corporation, whose address is 10900 NE 4th. Street, Suite 500, Bellevue, WA 98004

("Lender") and Kyle Railroad Company

a _____, whose address is THird & Railroad Avenue

PO Box 566, Phillipsburg, KS 67661 ("Borrower").

WHEREAS, Lender has agreed to make a commercial loan or loans to Borrower; and

WHEREAS, as a condition to making the loans, and in order to secure the repayment thereof, Lender has required Borrower to execute and deliver to Lender this Loan and Security Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower and Lender agree as follows:

1. **Creation of Security Interest.** As security for the due and punctual payment of any and all of the present and future obligations of the Borrower to Lender, whether direct or contingent or joint or several, Borrower hereby conveys, assigns and grants to Lender a continuing security interest in all of Borrower's rights, title and interests in and to the equipment described in the Supplemental Security Agreement(s) entered into pursuant to this Loan and Security Agreement from time to time ("Equipment") including all present and future additions, attachments and accessories thereto, all substitutions therefor and replacements thereof and all proceeds thereof, including all proceeds of insurance (such Equipment and property hereinafter called "Collateral").

2. **The Loans.** (a) Subject to the terms and conditions of this Loan and Security Agreement, Lender agrees to make a loan or loans to Borrower. The maximum principal amount of any loan or loans to be made by Lender to Borrower shall be within Lender's discretion, subject to the exercise of Lender's reasonable business judgment, and shall be as stated in the loan commitment letter issued by Lender to Borrower, or in the event a commitment letter is not issued by Lender, in Lender's internal credit approval (each such loan or loans shall be referred to as "the Loan Amount").

(b) The Loan Amount shall be repaid by Borrower as a term loan or term loans ("Term Loan"). The Term Loan shall be evidenced by a promissory note or notes in the form attached hereto as Exhibit "A" ("Term Note"). The payment provisions of each Term Note shall be stated therein.

(c) If requested by Borrower, and in accordance with the terms and conditions of Section 3 hereof, Lender shall make interim fundings to Borrower of a Term Loan as partial advances of the Loan Amount ("Interim Loans"). The Interim Loans shall either be for the payment of the acquisition cost of any items of Equipment delivered and accepted by Borrower prior to the expiration date of Lender's loan commitment to Borrower ("Commitment Expiration Date") or to fund progress payments to the vendor or manufacturer of the Equipment, if the making of progress payments was agreed to by Lender in its commitment or approval to make the loan or loans to Borrower. The Interim Loans shall be evidenced by promissory notes in the form attached hereto as Exhibit "B" ("Interim Note"). Interest on all Interim Loans shall be payable as provided therein. The principal amount due under the Interim Loans shall be due as provided in the Interim Notes, at which time, provided no Event of Default hereunder has occurred and is continuing or event which with the passing of time or giving of notice or both would become an Event of Default hereunder has occurred and is continuing, Lender shall consolidate all Interim Loans and convert them to a Term Loan evidenced by a Term Note or Notes. Whether or not a Term Loan is evidenced by one or more Term Notes shall be as agreed between Lender and Borrower, or in the absence of such an agreement, as decided by Lender, in the exercise of its reasonable business judgment.

(d) In the event that the amount loaned pursuant to the Interim Loans is less than the Loan Amount, subject to Borrower's compliance with the terms and conditions of this Loan and Security Agreement (including the satisfaction of the conditions of Borrowing set forth in

Section 7 of this Loan and Security Agreement, including but not limited to providing Lender with a description of the items of Equipment), Lender shall disburse to Borrower the balance of the Loan Amount on the same date that the Interim Loans are converted into a term loan.

3. **Method For Borrowing On Interim Loan.** Borrower shall give Lender at least five (5) business days written notice of a request for the disbursement of an Interim Loan ("Request"), specifying the date on which the Interim Loan is to be disbursed. Such Request shall be in the form attached hereto as Exhibit "C". Such Request shall be accompanied by an original copy of the invoice or invoices to be paid from the Interim Loan. Such Request shall constitute a representation and warranty by the Borrower that (i) as of the date of the Request no Event of Default or event which with the passing of time or the giving of notice or both would constitute an Event of Default hereunder has occurred and is continuing and (ii) in the event items of Equipment have been delivered to the Borrower, Borrower has unconditionally accepted the Equipment from the vendor thereof. Subject to the conditions of this Loan and Security Agreement, Lender shall disburse the Interim Loan to the invoicing party, or if Borrower shall have paid the amount of such invoice, Lender shall reimburse Borrower, upon receipt of proof of payment from Borrower.

4. **Cross Collateral/Cross Default.** All Collateral shall secure the payment and performance of all of Borrower's liabilities and obligations to Lender hereunder and under any of the loan documents relating hereto including, but not limited to, all Interim Notes and all Term Notes (the Loan and Security Agreement, the Interim Notes, the Term Notes, the Supplemental Security Agreement(s) and all other loan documents may be referred to herein collectively as the "Loan Documents"). Lender's security interest in the Collateral shall not be terminated until and unless all of Borrower's obligations to Lender under any of the Loan Documents are fully paid and performed. The occurrence of an event of default under any other of the Loan Documents shall be deemed to be an Event of Default hereunder and an Event of Default hereunder shall be deemed to be an event of default under any other of the Loan Documents.

5. **Representations And Warranties.** Borrower hereby represents and warrants as follows:

(a) **Power and Authorization.** Borrower has the full power and (corporate) authority to execute, deliver and perform Borrower's obligations under the Loan Documents. The execution and delivery of the Loan Documents have been authorized by all requisite corporate (or partnership) action on the part of Borrower. The execution, delivery and performance of the Loan Documents have not constituted and will not constitute a breach, default, or violation of or under Borrower's articles of incorporation, by-laws (partnership agreement), or any other agreement, indenture, contract, lease, law, order, decree, judgment, or injunction to which Borrower is a party or may be bound and have not resulted and will not result in the creation of any lien upon the Equipment pursuant to any agreement, indenture, lease, contract or other instrument to which Borrower is a party, except the lien created by this Loan and Security Agreement.

(b) **Existence.** If Borrower is a corporation, Borrower (i) is duly incorporated, validly existing and in good standing under the laws of its state of incorporation, (ii) has all corporate powers and all governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted, and (iii) is duly qualified to transact business as a foreign corporation in each jurisdiction where the Equipment will be located and in the jurisdiction where its principal place of business is located. If Borrower is a partnership, Borrower (i) has been duly formed as a (limited or general) partnership under the laws of the state of its organization, (ii) is comprised of the general partner(s) listed on the Schedule of Partners attached to this Loan and Security Agreement, and (iii) is in good standing under the laws of the state of its formation.

Collateral. In the event that Borrower fails to perform any of its agreements contained herein, Borrower will, on demand, reimburse Lender for all such expenditures, together with interest thereon from the date of such expenditure until fully reimbursed at the rate of two percent (2%) per month on the outstanding balance of such expenditures or the highest rate permitted by law, whichever is less.

(k) **Power of Attorney.** Borrower hereby irrevocably appoints Lender Borrower's attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise, from time to time in the Lender's discretion, to take any action and to execute any instrument which Lender may deem necessary or advisable to accomplish the purposes of this Loan and Security Agreement, including, without limitation: (i) to obtain, compromise and adjust insurance required to be paid to Lender; (ii) to ask, demand, collect, sue for, recover, receive, and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; (iii) to receive, endorse, and collect any drafts or other instruments, documents, and chattel paper in connection with clause (i) or (ii) above; and (iv) to file any claims or take any action or institute any proceedings which Lender may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of Lender with respect to any of the Collateral.

(l) **No Duties.** The powers conferred on Lender hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Lender shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

(m) **Financial Data.** Borrower will furnish to Lender and will cause any guarantor of Borrower's obligations to furnish to Lender on request (i) annual balance sheet and profit and loss statements prepared in accordance with generally accepted accounting principles and practices consistently applied and, if Lender so requires, accompanied by the annual audit report of an independent certified public accountant reasonably acceptable to Lender, and (ii) all other financial information and reports that Lender may from time to time reasonably request, including, if Lender so requires, income tax returns of Borrower and any guarantor of Borrower's obligations hereunder.

7. **Conditions of Borrowing.** Lender shall not be obligated to make any loan hereunder unless:

(a) The Interim Notes or Term Notes evidencing such loan shall have been duly executed and delivered to Lender;

(b) Borrower shall have executed and delivered to Lender the Supplemental Security Agreement describing the Collateral and stating, except with respect to progress payment fundings, the location thereof;

(c) Except with respect to progress payment fundings, Lender shall have received evidence (as described in Section 6d hereof) that insurance has been obtained in accordance with the provisions of this Loan and Security Agreement;

(d) Lender shall have received any and all third party consents, waivers or releases deemed necessary or desirable by it in connection with the loan and the Collateral being financed, including, without limitation, Uniform Commercial Code lien releases and the consent and waiver, in form and substance satisfactory to Lender, of each and every realty owner, landlord and mortgagee holding an interest in or encumbrance on the real property where any of the Collateral is to be located;

(e) All filings, recordings and other actions deemed necessary or desirable by Lender in order to establish, protect, preserve and perfect its security interest in the Collateral being financed by such loan as a valid perfected first priority security interest shall have been duly effected, including, without limitation, the filing of financing statements and the recordation of landlord (owners) and/or mortgagee waivers or disclaimers, all in form and substance satisfactory to Lender, and all fees, taxes and other charges relating to such filings and recordings shall have been paid by Borrower;

(f) The representations and warranties contained in this Loan and Security Agreement shall be true and correct in all respects on and as of the date of the making of any loan hereunder with the same effect as if made on and as of such date;

(g) In the sole judgment of Lender, there shall have been no material adverse change in the financial condition, business or operations of Borrower from the earliest date of any financial statement, credit report, business report or similar document submitted to Lender for its review;

(h) All Loan Documents shall be satisfactory to Lender's attorneys; and

(i) Lender shall have received, in form and substance satisfactory to Lender, such other documents as Lender shall require including, but not limited to a Request, proof of payment, vendor invoices and certificates of authority and incumbency.

8. **Default.** The occurrence of any of the following events, following the giving of any required notice and/or the expiration of any applicable period of grace, shall constitute an event of default ("Event of Default") hereunder:

(a) Borrower's default in payment of any installment of the principal or interest on any Interim Note or Term Note when and after the same shall become due and payable, whether at the due date thereof or by acceleration or otherwise, which default shall continue unremedied for ten (10) days; or

(b) The failure by Borrower to make payment of any other amount payable hereunder or under any Interim Note or Term Note, and the continuance of such failure for more than ten (10) days after written notice thereof by Lender to Borrower; or

(c) The failure by Borrower to perform or observe any covenant, condition, obligation or agreement to be performed or observed by it hereunder, which failure shall continue unremedied for thirty (30) days after written notice thereof by Lender to Borrower; or 4

(d) The occurrence of a default described in Section 5 hereof; or

(e) Any warranty, representation or statement made or furnished with respect to the Borrower or the Collateral to Lender by or on behalf of Borrower, in connection with this Loan and Security Agreement, or the indebtedness secured hereby, shall prove to have been false in any adverse, material respect when made or furnished; or

(f) Borrower shall become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or a trustee or a receiver shall be appointed for Borrower or for a substantial part of its property without its consent and shall not be dismissed for a period of sixty (60) days; or bankruptcy, reorganization, liquidation, insolvency or dissolution proceedings shall be instituted by or against Borrower and, if instituted against Borrower, shall be consented to or be pending and not dismissed for a period of sixty (60) days; or any execution or writ of process shall be issued under any action or proceeding against Borrower in such capacity whereby any of the Collateral may be taken or restrained; Borrower shall cease doing business as a going concern; or, without the prior written consent of Lender, Borrower shall sell, transfer or dispose of all or substantially all of its assets or property; or

(g) The liquidation, merger, consolidation, reorganization, conversion to an "S" status or dissolution, if Borrower is a corporation or partnership, of Borrower, if in Lender's reasonable opinion, such act shall materially and adversely affect Borrower's ability to perform under any of the Loan Documents; or

(h) Any item of Collateral is seized or levied on under legal or governmental process or for any reason Lender deems itself insecure. Lender shall be entitled to deem itself insecure when some event occurs, fails to occur or is threatened or some objective condition exists or is threatened which significantly impairs the prospects that any of Borrower's obligations to Lender will be paid when due, which significantly impairs the value of the Collateral to Lender or which significantly affects the financial or business condition of Borrower.

The occurrence of an Event of Default shall terminate any commitment or obligation by Lender to make any of the loans contemplated by this Loan and Security Agreement.

9. **Remedies Upon Default.** Upon the occurrence of an Event of Default hereunder, Lender may, at its option, do any one or more of the following:

(a) Declare all obligations of Borrower to Lender to be immediately due and payable, whereupon all unpaid principal of and interest on said indebtedness and other amounts declared due and payable shall be and become immediately due and payable;

(b) Take possession of all or any of the Collateral and exclude therefrom Borrower and all others claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect to the Collateral or any part thereof. In the event Lender demands, or attempts to take possession of the Collateral in the exercise of any rights under this Loan and Security Agreement, Borrower promises and agrees to promptly turn over and deliver complete possession thereof to Lender;

(c) Require Borrower to assemble the Collateral, or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and promptly to deliver such Collateral to Lender, or an agent or representative designated by it;

(d) Sell, lease or otherwise dispose of the Collateral at public or private sale, without having the Collateral at the place of sale, and upon terms and in such manner as Lender may determine (and Lender may be a purchaser at any sale); and

(e) Exercise any remedies of a secured party under the Uniform Commercial Code as adopted in the state where the Collateral is located or any other applicable law.

Except as to portions of the Collateral which are perishable or threaten to decline speedily in value or are of a type customarily sold on a recognized market, Lender shall give Borrower at least ten (10)

STATE OF WASHINGTON)
)§
COUNTY OF KING)

On this 14th day of February 1996, before me personally appeared Judith Johnston
Judith Johnston, to me known to be the Vice President of MetLife Capital
Corporation, a Delaware corporation and who executed the foregoing instrument.

SUBSCRIBED AND SWORN TO before me this 14th day of February 1996.

Joeye Lynn
Notary Public in and for the State of Washington
residing at Kirkland

My term expires: 5-5-98

STATE OF ARIZONA)
)§
COUNTY OF MARICOPA)

On this 12th day of February, 1996, before me personally appeared
LYNN T. CECIL, to me known to be the PRESIDENT of Kyle Railroad
Company and who executed the foregoing instrument.

SUBSCRIBED AND SWORN TO before me this 12th day of February 1996.

Demaris K Williams
Notary Public in and for the State of ARIZONA
residing at Phoenix, AZ

My term expires: My Commission Expires Aug. 1, 1997

ADDENDUM NO. ONE

Addendum No. One to that certain Loan and Security Agreement ("Agreement") dated February 12, 1996 by and between MetLife Capital Corporation ("Lender") and **Kyle Railroad Company**, ("Borrower").

Whereas, the parties desire to enter into the Loan provided that this Addendum No. One is executed contemporaneously therewith;

NOW THEREFORE, it is agreed as follows:

Section 6. Covenants is amended to include the following additional subsection:

In lieu of subordination of the \$4.9MM note payable to the former KRI stockholder., Lender will require financial covenants for the consolidated operations of Kyle Railways, Inc. for the full term of the transaction as follows:

(n) Debt to tangible net worth shall not exceed 4.50:1.

Cash Flow to fixed charges shall be at or above 1.30:1.

Total cash flow shall be defined as net after-tax income from annual audited financial statements plus depreciation minus stockholder dividends. Fixed charges shall be defined as the total of (i) obligations payable during any period of twelve consecutive months for principal on borrowed money repayable over a period in excess of one year and (ii) any other obligations under leases which shall have been or should be recorded as capital leases
Release of the above covenants will be upon Borrower's written request and at Lender's sole discretion.

IN WITNESS WHEREOF, parties have executed this Addendum No. One this 12th day of February 1996.

LENDER:

MetLife Capital, Limited Partnership

By: MetLife Capital Corporation
General Partner

By: [Signature]
Its: Vice President

BORROWER:

By: [Signature]
Its: PRESIDENT
Kyle Railroad Company

STATE OF WASHINGTON)
)§
COUNTY OF KING)

On this 14th day of February, 1996, before me personally appeared Judy E. Johnston, to me known to be the Vice President of MetLife Capital Corporation, a Delaware corporation and who executed the foregoing instrument.

SUBSCRIBED AND SWORN TO before me this 14th day of February 1996.

Joey Meyers
Notary Public in and for the State of Washington
residing at Portland

My term expires: 5-5-98

STATE OF ARIZONA)
)§
COUNTY OF MARICOPA)

On this 12th day of February, 1996, before me personally appeared Lynn T. Cook, to me known to be the President of Kyle Railroad Company and who executed the foregoing instrument.

SUBSCRIBED AND SWORN TO before me this 12th day of February 1996.

Dennis K. Williams
Notary Public in and for the State of Arizona
residing at Phoenix, AZ

My term expires: My Commission Expires Aug. 1, 1996

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LENDER:

MetLife Capital, Limited Partnership

By: MetLife Capital Corporation
General Partner

By: [Signature]
Its: Vice President

BORROWER:

By: [Signature]
Its: PRESIDENT
Kyle Railroad Company

STATE OF WASHINGTON)
)§
COUNTY OF KING)

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SUBSCRIBED AND SWORN TO before me this 14th day of February, 1996.

Joan Meyers
Notary Public in and for the State of Washington
residing at Portland

My term expires: 5-5-98

STATE OF ARIZONA)
)§
COUNTY OF MARICOPA)

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SUBSCRIBED AND SWORN TO before me this 12th day of February, 1996.

Demaris K Williams
Notary Public in and for the State of ARIZONA
residing at Phoenix, AZ

My term expires: My Commission Expires Aug. 1, 1996