

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.  
WASHINGTON, D. C. 20036

WILLIAM L. SLOVER  
C. MICHAEL LOFTUS  
DONALD G. AVERY  
JOHN H. LE SEUR  
KELVIN J. DOWD  
ROBERT D. ROSENBERG  
FRANK J. PERGOLIZZI

September 24, 1992

202 347-7170

Recordations Unit  
Room 2303  
Interstate Commerce Commission  
12th Street & Constitution Ave., N.W.  
Washington, DC 20423

2-2694010,7944

SEP 25 1992 10 05 AM '92

INTERSTATE COMMERCE COMMISSION

SEP 25 10 05 AM '92  
RECORDATIONS UNIT

Re: Tomahawk Railway, L.P.

Dear Ms. Lee:

Enclosed for recordation in the captioned file are an original and one copy of the "Subordination Agreement" of the Marinette, Tomahawk and Western Railroad Company ("MTW"), whereby the MTW's lien on the rolling stock and other property of the Tomahawk Railway, L.P. ("TRLP"), as set forth in the "Mortgage, Assignment of Rents and Security Agreement" from TRLP to MTW dated December 31, 1991 (which is also recorded in the captioned file), is subordinated to certain new security interests running in favor of other lenders, all as more fully set forth therein.

Also enclosed is a check for \$15.00 to cover the filing fee for this recordation.

Thank you for your attention to this matter.

Sincerely,

*Donald G. Avery*  
Donald G. Avery

Encl.

cc: Dow Huskey, Esq.  
Kathy Wellman, Esq.

*Counterparts - Thomas Sherman*

Received for Record the 1344  
day of July AD 1992  
8:15 o'clock P. M. and Recorded in  
Vol 493 of RECORDS on page 56

*Jolene Callahan*  
REGISTER OF DEEDS

THIS INSTRUMENT PREPARED BY  
AND UPON RECORDING RETURN TO:  
Albert E. Bender, Jr.  
Alston & Bird  
1201 W. Peachtree Street  
Atlanta, Georgia 30309

17944-A

RE: Mortgage, Assignment of Rents  
and Security Agreement dated  
December 31, 1991 from  
Tomahawk Railway, Limited  
Partnership to Marinette,  
Tomahawk and Western Railroad  
Company recorded in  
Volume 483, Page 687,  
Register of Deeds, Lincoln  
County, Wisconsin

SEP 25 1992  
FEDERAL COMMERCE COMMISSION

STATE OF WISCONSIN  
COUNTY OF LINCOLN

SUBORDINATION AGREEMENT  
(Priority of Title or Lien)

THIS SUBORDINATION AGREEMENT is executed by MARINETTE,  
TOMAHAWK AND WESTERN RAILROAD COMPANY ("Junior Lender") as of  
this 30th day of June, 1992.

W I T N E S S E T H:

WHEREAS, Junior Lender made a loan to Tomahawk Railway,  
Limited Partnership (the "Operator") in the original principal  
amount of \$2,862,000.00 (the "Railroad Loan");

WHEREAS, the Railroad Loan is secured by certain documents  
(collectively, the "Railroad Loan Documents"), including, but  
not limited to, the following:

1. Mortgage, Assignment of Rents and Security Agreement dated December 31, 1991 from Operator to Junior Lender recorded in Volume 483, page 687, Register of Deeds, Lincoln County, Wisconsin records (the "Railroad Mortgage"); and
2. U.C.C. Financing Statements between Operator, as Debtor, and Junior Lender, as Secured Party, filed on February 12, 1992 as Financing Statement No. 203056 Lincoln County, Wisconsin and on February 6, 1992 as Financing Statement No. 1256905 in the records of the Wisconsin Secretary of State (the "Railroad U.C.C. Financing Statements").

WHEREAS, the Railroad Loan Documents are and shall be and remain subordinate to a security interest granted to a "Primary Lender" (as defined in the Railroad Mortgage); and

WHEREAS, Operator and Operator's affiliate, Rail Partners, L.P. (the "Borrower") desire to obtain new loans from The Prudential Insurance Company of America ("Prudential") in the original principal sum of \$25,000,000.00 and from First Alabama Bank - Dothan ("FAB"; collectively, FAB and Prudential are referred to as the "Senior Lender") in the maximum principal amount of \$15,000,000.00 (collectively, the "New Loan") and desires to deliver to FAB as Collateral Agent for Senior Lender as security for the New Loan certain documents (collectively, the "New Loan Documents"), including, but not limited to, the following:

1. A Mortgage, Assignment of Rents and Security Agreement (the "Senior Mortgage") conveying to FAB as Collateral Agent for the Senior Lender the property (the "Property") described on Exhibit A attached hereto and made a part hereof; and
2. U.C.C. Financing Statements between Operator, as Debtor, and Senior Lender, as Secured Party.

WHEREAS, the Junior Lender and Valdosta Southern Railroad Company have agreed in those certain Subordination Agreements of even date with Prudential and FAB, respectively (collectively, the "Master Subordination") to subordinate their respective debts to those owed to Prudential and FAB, respectively, but only to the extent set forth in the Master Subordination, which provides that such subordination shall be effective only as to such portion of the New Loan which is equal to the principal (in an aggregate amount not to exceed \$14,000,000) of and premium, if any, and interest on all liabilities of any or all of the Operator, Borrower and their affiliates to Prudential and FAB, together with such other amounts as are more particularly defined as the "Senior Debt" in said Master Subordination (herein referred to as the "Senior Debt"; any amount of the New Loan in excess of the Senior Debt shall be referred to herein as the "Third Priority Amount"); and

WHEREAS, Junior Lender desires, for the consideration hereinafter set forth, to subordinate the security title and lien of the Railroad Loan Documents to that of the Senior Mortgage, as to the Senior Debt only, and not as to the Third Priority Amount.

NOW, THEREFORE, IN CONSIDERATION of the sum of Ten (\$10.00) Dollars in hand paid by Senior Lender and Operator to the

undersigned and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Junior Lender agrees as follows:

1. Junior Lender subordinates, upon the terms and conditions contained herein, all of its right, title and interest under the Railroad Loan Documents in and to the Property as against that portion of the New Loan which constitutes the Senior Debt and not as to any of the Third Priority Amount, so that the Senior Mortgage shall convey a lien on and security interest in the Property superior to the security interest and lien of the Railroad Loan Documents, but only as to the Senior Debt and not as to any of the Third Priority Amount, as if the Senior Mortgage (to the extent it secures the Senior Debt) had been executed, delivered and recorded prior to the execution, delivery and recording of the Railroad Loan Documents. Without limiting the foregoing, Junior Lender acknowledges and agrees that foreclosure under the Railroad Loan Documents shall not terminate the Senior Mortgage, except only to the extent that the Senior Mortgage secures the Third Priority Amount. Accordingly, until the Termination Date (as defined in the Master Subordination), the proceeds of any repossession, setoff, foreclosure or other judicial sale or any other disposition of the collateral secured by the Railroad Loan Documents or the New Loan Documents shall be applied first to all amounts owing to the Senior Lender with respect to the Senior Debt, second to all amounts owing to the Junior Lender with respect to the amounts owing under the Railroad Loan Documents and third to Senior Lender with respect to the Third Priority Amount.

2. Junior Lender warrants that Junior Lender is the owner and holder of the Railroad Loan Documents and that there is no assignment to any party of any of Junior Lender's rights under the Railroad Loan Documents.

3. Except for the partial subordination herein contained in favor of Senior Lender, nothing contained herein shall in anywise impair, alter or diminish the effect, lien, security interest or encumbrance of the Railroad Loan Documents on the Property or any of the rights and remedies of Junior Lender granted therein. This Agreement is entered into to provide record notice of the partial subordination set forth in the Master Subordination, and to the extent of any conflict between the terms hereof and the Master Subordination, the Master Subordination shall govern.

4. This Agreement shall be binding upon Junior Lender and its successors and assigns and shall inure to the benefit of Senior Lender and its successors and assigns.

IN WITNESS WHEREOF, Junior Lender has executed this Subordination Agreement under seal the day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]  
Witness

[Signature]  
Witness

JUNIOR LENDER:

MARINETTE, TOMAHAWK AND WESTERN RAILROAD COMPANY.

By: [Signature]  
Name: R. E. FUGUA  
Title: VICE PRESIDENT

(CORPORATE SEAL)

STATE OF Illinois  
COUNTY OF Cook

The foregoing instrument was acknowledged before me this 29th day of June, 1992, by R. E. Fugua as the Vice President of MARINETTE, TOMAHAWK AND WESTERN RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Wisconsin, on behalf of the corporation.

[Signature]  
NOTARY PUBLIC

My Commission Expires:

OFFICIAL SEAL  
ARTEMIS G VOUGIS  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXP. JUNE 29, 1996  
(NOTARY SEAL)