

*Counterparts - 9/1/98*

RECORDATION NO 6690-AAAAAA FILED

ALVORD AND ALVORD  
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SEP 1 '98

1-15 PM

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

OF COUNSEL  
URBAN A. LESTER

RECEIVED  
SURFACE TRANSPORTATION BOARD  
SEP 1 1 13 PM '98

August 28, 1998

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 four (4) copies of a Subordination Agreement and Consent to Superior Obligation and Lien, dated as of August 28, 1998, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Security Agreement which was previously filed with the Commission under Recordation Number 6690-MMMM.

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

Federal Railroad Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

National Railroad Passenger Corporation  
60 Massachusetts Avenue, NE  
Washington, D.C. 20002

Export Development Corporation  
151 O'Connor Street  
Ottawa, Canada K1A 1K3

Mr. Vernon A. Williams  
August 28, 1998  
Page 2

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

two additional high-speed transits to be acquired by Amtrak under  
Commercial Contract A (as defined in the Subordination Agreement).

Also enclosed is a check in the amount of \$26.00 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/bg  
Enclosures

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

OFFICE OF THE SECRETARY

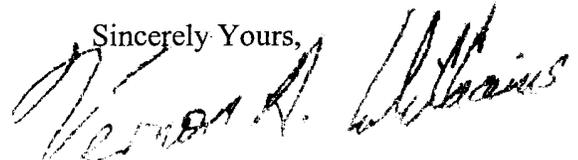
DATE: 9/1/98

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 49 U.S.C. 11301  
and 49 CFR 1177.3(c), on 9/1/98 at 1:15PM, and  
assigned recordation number(s). 6690-HHHHHH.

Sincerely Yours,



Vernon A. Williams

Enclosure(s)  
26.00

\$ \_\_\_\_\_ 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. In the event of an error or any questions concerning this fee, you will receive a notification after the Surface Transportation Board has an opportunity to examine your document.

Signature \_\_\_\_\_



SEP '98

1-15 PM

**SUBORDINATION AGREEMENT AND CONSENT  
TO SUPERIOR OBLIGATION AND LIEN**

SUBORDINATION AGREEMENT AND CONSENT TO SUPERIOR OBLIGATION AND LIEN dated as of August 28, 1998, among the Administrator of the Federal Railroad Administration of the United States Department of Transportation (the "Administrator"), acting (unless otherwise specified herein) on behalf of and as the delegate of the Secretary of the Department of Transportation (the "Secretary"), the National Railroad Passenger Corporation ("Amtrak") and Export Development Corporation ("EDC").

WHEREAS, pursuant to a Security Agreement (the "FRA Security Agreement") between the Administrator and Amtrak dated October 5, 1983, Amtrak assigned to the Administrator all of its right, title and interest to certain rolling stock, including rolling stock acquired after the date of the FRA Security Agreement, subject to the terms and provisions of the FRA Security Agreement (the "FRA Lien");

WHEREAS, Amtrak and the consortium of Bombardier Corporation and GEC Alstom Transportation Inc. (collectively, the "Manufacturer") entered into (i) an Agreement for Purchase and Sale of High Speed Rail Equipment and Design and Construction of Supporting Maintenance Facilities dated May 1, 1996 ("Commercial Contract A") which provides for, among other things, the acquisition by Amtrak of up to eighteen high speed trainsets, one trainset simulator, one inspection car and four instrumented wheel sets (collectively, the "Trainsets") and (ii) an Agreement for Purchase and Sale of High Speed Electric Locomotives dated May 1, 1996 ("Commercial Contract B") which provides for, among other things, the acquisition by Amtrak of up to fifteen electric locomotives and five locomotive simulators (collectively, the "Units");

WHEREAS, Amtrak has exercised an option to acquire two additional high speed trainsets under Commercial Contract A (collectively, the "Option Order Trainsets");

WHEREAS, Amtrak desires to obtain a loan from EDC (the "Option Order Loan") to finance the acquisition of the Option Order Trainsets pursuant to that certain Loan Agreement, dated as of August 28, 1998, (the "Option Order Loan Agreement") between Amtrak and EDC, the Security Agreement (Mortgage), the Note, the Assignment, and the DPA (as such terms are defined in the Option Order Loan Agreement) and such other financing agreements, documents and notes executed by Amtrak and/or EDC (the Option Order Loan Agreement, the Security Agreement (Mortgage), the Note, the Assignment, the DPA and other financing agreements, documents and notes referred to in this paragraph are herein referenced as the "Option Order Agreements"); and

WHEREAS, in order to provide the Option Order Loan, EDC requires that Amtrak grant a security interest in the Collateral (as that term is defined in the Option Order Loan Agreement) superior to the FRA Lien;

NOW, THEREFORE, in order to induce, and in consideration of, the extension of the Option Order Loan from EDC to Amtrak, the parties hereto agree as follows:

1. The interest and rights of the Administrator under the FRA Security Agreement in the Collateral shall be subordinate and junior (absolutely, and without regard to arguments of circularity or otherwise) in priority of interest and right of payment to the lien granted to EDC pursuant to the Security Agreement (Mortgage) with respect to the Collateral, providing for the prior payment and performance in full of the Option Order Loan, accrued interest thereon, and any costs, expenses and fees of Amtrak, all as provided in the Option Order Agreements (the "Superior Obligation"). The Administrator hereby confirms for the benefit of EDC and Amtrak that the interest and rights of the Administrator under the FRA Security Agreement in the Collateral will attach only to that interest which Amtrak acquires in the Collateral in accordance with Commercial Contract A.

2. The Administrator hereby consents to Amtrak's securing by a lien on the Collateral, superior to the FRA Lien up to the amount of the Superior Obligation, including interest thereon, as applicable, and any costs, expenses and fees all as provided in the Option Order Agreements.

3. The Administrator agrees that in the event the Administrator exercises any possessory remedies or rights of sale under the FRA Security Agreement with respect to the Option Order Trainsets, the Administrator will assume the responsibility for discharging any outstanding obligations of Amtrak under the Option Order Agreements to the extent of such exercise of its possessory remedies or rights of sale with respect to the Option Order Trainsets. Further, the Administrator agrees that EDC may exercise its remedies under the Option Order Agreements, or as otherwise may be prescribed by law, without obtaining any further consent of the Administrator or the Secretary so long as the proceeds are applied upon sale or other disposition of the Option Order Trainsets toward satisfaction of any outstanding obligations of Amtrak under the Option Order Agreements.

4. EDC agrees to the following:

(a) to provide notice to the Administrator promptly after the issuance by it of any notice of default or declaration of default or acceleration under the Option Order Agreements;

(b) to provide the Administrator, prior to exercise of the possessory remedies by it or its agents, an opportunity to cure any defaults of Amtrak under the Option Order Agreements until the earlier of 30 days from receipt of notice under Section 4(a) hereof, the date on which the Administrator evidences in the good faith judgment of EDC that it will not or cannot cure the default, or the time at which a third party is legally empowered in the good faith opinion of EDC to take action against or take possession of the Option Order Trainsets, to the extent that a default is capable of cure or the initiation of cure within 30 days, and, further, to the extent that the Option Order Agreements provide for a 30 day cure period; and provided further that in the event the Option Order Agreements provide for a period of cure of less than 30 days, the Administrator shall be provided an opportunity to cure for such lesser period (subject, in any event, to the other limitations contained in this clause (b)); and

(c) to pay (to the extent consistent with law) to the Administrator any surplus proceeds from sale the or other disposition of the Option Order Trainsets following repayment of obligations of Amtrak under the Option Order Agreements.

5. In the event that the Administrator receives any payment in respect of the FRA Security Agreement which EDC is entitled to receive under the provisions of this Subordination Agreement and Consent to Superior Obligation and Lien, any amount so received will be held in trust for EDC and to the extent permitted by law will forthwith be turned over to be applied on the Superior Obligations.

6. Except after the Superior Obligations shall have been paid in full, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or arrangement with creditors, whether or not pursuant to bankruptcy laws, sale of all or substantially all of the assets, dissolution, liquidation or any other marshaling of the assets and liabilities of Amtrak, the Administrator will, at the reasonable request of EDC and reasonable expense thereof, provide information, writings, and cooperation directed towards effectuating the agreements herein and the obligations hereof.

7. The Administrator hereby expressly acknowledges, consents and agrees, at any time and from time to time, without the consent of or notice to the Administrator, without incurring responsibility to the Administrator and without impairing or releasing any of rights of EDC, or any of the obligations of the Administrator hereunder and to the extent permitted by law:

(a) to changes in the Option Order Agreements which do not alter the amounts, interest rate or terms of repayment of the Option Order Loan or which do not affect the rights and obligations of the Administrator as described herein or in the FRA Security Agreement;

(b) that, to the extent permitted herein, EDC may sell, exchange, release or otherwise deal with all or part of the Collateral;

(c) that, except as set forth herein, EDC, pursuant to the Option Order Agreements, may exercise or not exercise any rights against Amtrak; and

(d) that any sums, by whomsoever paid or however realized, pursuant to subsections (a), (b) and (c) of this section will be applied to the Superior Obligation to the extent permitted herein or in the Option Order Agreements.

8. The Administrator represents and warrants that (a) neither the execution nor delivery of this Subordination Agreement and Consent to Superior Obligation and Lien nor fulfillment nor compliance with the terms and provisions hereof will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which it is now subject, (b) this Subordination Agreement and Consent to Superior Obligation and Lien constitutes the legal and valid obligation and contract of the Administrator and the Secretary, enforceable against the Administrator and the Secretary in accordance with its

terms, and (c) it has full authority (1) to subordinate its interest and rights under the FRA Security Agreement in the Collateral to the interests and rights of EDC in the Security Agreement (Mortgage), and (2) to consent to Amtrak securing by a lien on the Collateral its rights under the Commercial Contract A.

9. This Subordination Agreement and Consent to Superior Obligation and Lien may be amended only by an agreement in writing signed by the parties hereto and shall specifically refer to itself as an amendment thereto. In the event of any conflict between the terms of this Subordination Agreement and Consent to Superior Obligation and Lien and the Option Order Agreements, the terms of this Subordination Agreement and Consent to Superior Obligation and Lien shall prevail with respect to the rights and obligations of the Administrator.

10. Nothing in this Subordination Agreement and Consent to Superior Obligation and Lien affects any priority which may be claimed by EDC by operation of law including, but not limited to, title 49 U.S.C. § 11301, the Uniform Commercial Code, and other applicable state and federal law.

11. Amtrak hereby consents and agrees (a) to the terms of the foregoing and (b) that a failure of EDC to perform any obligation to the Administrator will create no right or claim by Amtrak against EDC.

12. EDC represents and warrants that the entering into and the performance of the terms of this Subordination Agreement and Consent to Superior Obligation and Lien are within its corporate powers and have been duly authorized by all necessary corporate actions, and are not in violation of any law, statute, regulation or decree of the laws of applicable to it.

IN WITNESS WHEREOF, the undersigned duly authorized officers of the parties hereto have executed this Subordination Agreement and Consent to Superior Obligation and Lien.

FEDERAL RAILROAD ADMINISTRATION

By: James M. Molitor  
Name:  
Title: Administrator

NATIONAL RAILROAD PASSENGER CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

EXPORT DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

STATE OF District )  
 ) ss:  
COUNTY OF Columbia )

Jolene M. Holstein On this 31<sup>st</sup> day of August 1998, before me personally appeared to me personally known, who being by me duly sworn, says that he/she is a Administrator of the Federal Railroad Administration, that said instrument was signed and sealed on August 31, 1998, on behalf of said corporation by authority of its Board of Directors; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

By [Signature]  
Notary Public

(SEAL)

My Commission Expires: April 14, 2001

IN WITNESS WHEREOF, the undersigned duly authorized officers of the parties hereto have executed this Subordination Agreement and Consent to Superior Obligation and Lien.

FEDERAL RAILROAD ADMINISTRATION

By:

Name:

Title:

NATIONAL RAILROAD PASSENGER CORPORATION

By:

Name:

Title:

*Alfred S. Altschul*  
*Alfred S. Altschul*  
*V-P FINANCE & Chief Financial Officer*

EXPORT DEVELOPMENT CORPORATION

By:

Name:

Title:

By:

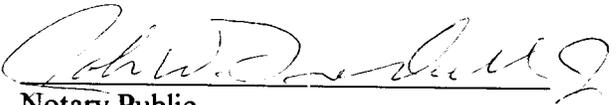
Name:

Title:

District of Columbia ) ss

On this 27<sup>th</sup> day of August, 1998 before me personally appeared Alfred S. Altschul to me personally known, who being by me duly sworn, says that he is the Chief Financial Officer of the National Railroad Passenger Corporation, and he acknowledges that the execution of the foregoing instrument was the free act and deed of said Corporation.

SEAL

  
Notary Public

My Commission Expires: 1-1-2000

IN WITNESS WHEREOF, the undersigned duly authorized officers of the parties hereto have executed this Subordination Agreement and Consent to Superior Obligation and Lien.

FEDERAL RAILROAD ADMINISTRATION

By: \_\_\_\_\_  
Name:  
Title:

NATIONAL RAILROAD PASSENGER CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

EXPORT DEVELOPMENT CORPORATION

By: Allen Roberts  
Name:  
Title:

By: [Signature]  
Name:  
Title:

