

RECORDATION NO. 25033 FILED

JUL 02 '04 9:33 AM

SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD
ATTORNEYS AT LAW
1050 SEVENTEENTH STREET, N.W.
SUITE 301
WASHINGTON, D.C.
20036
—
(202) 393-2266
FAX (202) 393-2156
E-MAIL alvordlaw@aol.com

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

OF COUNSEL
URBAN A. LESTER

July 2, 2004

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 two (2) copies of a Memorandum of Guarantee and Collateral and Intercreditor Agreement, dated as of July 2, 2004, a primary document as defined in the Board's Rules for the Recordation of Documents.

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

Collateral Agent

For Secured Parties: Bank of America, N.A.
100 Federal Street
Boston, Massachusetts 02110

Loan Party: Helm Holding Corporation
One Embarcadero Center
San Francisco, California 94111

Loan Party: Helm Financial Corporation
337 - 22nd Avenue South
San Francisco, California 94111

Loan Party: Helm Locomotive Leasing Corporation
337 - 22nd Avenue South
San Francisco, California 94111

Mr. Vernon A. Williams
July 2, 2004
Page 2

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

All rolling stock **NOW OWNED AND HEREAFTER ACQUIRED** by the
Loan Parties.

A short summary of the document to appear in the index is:

Memorandum of Guarantee and Collateral and Intercreditor Agreement.

Also enclosed is a check in the amount of \$30.00 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/anm
Enclosures

JUL 02 '04 9-33 AM

SURFACE TRANSPORTATION BOARD

MEMORANDUM OF GUARANTEE AND COLLATERAL AND INTERCREDITOR AGREEMENT

This Memorandum of Guarantee and Collateral and Intercreditor Agreement (this "*Memorandum*") is made and entered into as of July 2, 2004 among HELM HOLDING CORPORATION, a California corporation (" *Holding*"); the SUBSIDIARY LOAN PARTIES listed on the signature pages hereof (collectively, and together with Holding, the " *Loan Parties*"); and BANK OF AMERICA, N.A., as collateral agent for the Secured Parties (as defined in the Agreement) (in such capacity, the " *Collateral Agent*"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Guarantee and Collateral and Intercreditor Agreement (the " *Agreement*") dated as of July 2, 2004, among the Loan Parties thereto, the Collateral Agent, Bank of America, N.A., as TLB/RC Agent, and Bank of America, N.A., as TLC Agent.

WITNESSETH

The TLB/RC Lenders and the Issuing Banks have agreed to extend credit to the Borrowers subject to the terms and conditions set forth in the TLB/RC Credit Agreement, and the TLC Lenders have agreed to make loans to the Borrowers subject to the terms and conditions set forth in the TLC Credit Agreement.

As security for the payment or performance, as the case may be, in full of the Obligations, each undersigned Loan Party hereby assigns and pledges to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in, all right, title or interest in or to all Rolling Stock and all other Article 9 Collateral, in each case now owned or at any time hereafter acquired by such Loan Party or in which such Loan Party now has or at any time in the future may acquire any right, title or interest. The term Article 9 Collateral, as used herein, has the meaning set forth in the Agreement and includes, among other things, all of Loan Parties' Documents, Equipment, General Intangibles, Inventory, all books and records pertaining to the foregoing, and all Proceeds and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing, now owned or at any time hereafter acquired by such Loan Party or in which such Loan Party now has or at any time in the future may acquire any right, title or interest. The term "Rolling Stock", as used herein, has the meaning set forth in the Agreement and includes auto racks, locomotives, box-cars, covered hopper cars, tank cars, flat cars, chip cars, gondola cars, railroad intermodal equipment, other railroad rolling stock, chassis, trailers, shipping containers and all other equipment and inventory that is used or intended for use in connection with railroad or related transportation, together with (a) any and all parts, mechanisms, devices and replacements from time to time incorporated in or installed on or attached to any of the foregoing, (b) any and all additions and improvements from time to time incorporated in or installed on or attached to any of such transportation equipment pursuant to any law, rule or regulation and (c) any and all non-removable improvements.

As contemplated by the Agreement, the Collateral Agent and the Loan Parties hereby make this Memorandum to confirm and perfect the Collateral Agent's security interest in the Collateral for the benefit of the Secured Parties, to the extent such security interest is perfectible

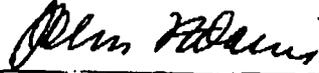
by a filing with the Surface Transportation Board. The Collateral Agent and the Loan Parties further acknowledge and confirm that this Memorandum is not a summary of the Agreement nor a complete recitation of the terms and provisions thereof. The Collateral Agent and the Loan Parties agree that in the event of a conflict between this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, the parties hereto wish to show for the public record the security interest in the aforesaid property in favor of the Collateral Agent, and accordingly, have each caused this Memorandum to be duly executed by their respective officers duly authorized as of the date and year first above written. This Memorandum may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum as of the day and year first above written.

HELM HOLDING CORPORATION,

by



Name: John F. Dains
Title: President

HELM FINANCIAL CORPORATION,

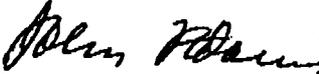
by



Name: John F. Dains
Title: President

HELM LOCOMOTIVE LEASING CORPORATION,

by



Name: John F. Dains
Title: President

BANK OF AMERICA, N.A., as
Collateral Agent,

by

Name:
Title:

IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum as of the day and year first above written.

HELM HOLDING CORPORATION,

by

Name:

Title:

HELM FINANCIAL CORPORATION,

by

Name:

Title:

HELM LOCOMOTIVE LEASING CORPORATION,

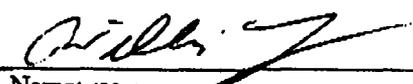
by

Name:

Title:

BANK OF AMERICA, N.A., as
Collateral Agent,

by



Name:

Title:

WILLIAM LATHAM
Director

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN FRANCISCO)

On this 1st day of July, 2004, before me personally appeared John F. Dains, to me personally known, who being by me duly sworn, say that he is President of HELM HOLDING CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.

Matthew M. Ogburn
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:



STATE OF CALIFORNIA)
) SS
COUNTY OF SAN FRANCISCO)

On this 1st day of July, 2004, before me personally appeared John F. Dains, to me personally known, who being by me duly sworn, say that he is President of HELM FINANCIAL CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.

Matthew M. Ogburn
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:



STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) SS

On this 1st day of July, 2004, before me personally appeared John F. Dains, to me personally known, who being by me duly sworn, say that he is President of HELM LOCOMOTIVE LEASING CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.

Matthew M. Ogburn
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:



STATE OF Massachusetts

COUNTY OF Suffolk

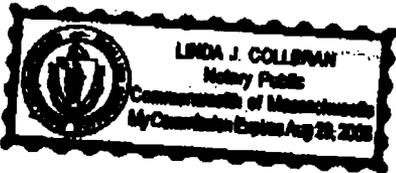
SS

On this 2nd day of July, 2004, before me personally appeared William Latham to me personally known, who being by me duly sworn, say that he is Director of BANK OF AMERICA, N.A., that said Memorandum was signed on such date on behalf of said association, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said association.

Linda J. Calleran
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires: 8/29/08



CERTIFICATION

I, Edward M. Luria, an attorney licensed to practice in the District of Columbia, the State of Delaware and the Commonwealth of Pennsylvania, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: July 2, 2004

Edward M. Luria
Edward M. Luria