



# BANK OF BOSTON

March 31, 1989

4/10/89  
13.00

CC Washington, D. C.

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

Attention: Ms. Mildred Lee

9-100A064 1628

RECORDATION NO

APR 10 3 29 PM '89  
MOTOR OPERATING UNIT

RE: Tennessee Southern Railroad Company, Inc.

APR 10 1989 -3 35 PM

Ladies and Gentlemen:

INTERSTATE COMMERCE COMMISSION

Enclosed for filing with the Interstate Commerce Commission (the "ICC") pursuant to Section 11303 of Title 49 of the U.S.C. are two executed and notarized originals of the document described below.

This document is a Security Agreement (the "Security Agreement"), a primary document dated as of January 31, 1989 among The First National Bank of Boston, as agent and bank, (the "Bank"), SouthTrust Bank of Alabama, National Association ("SouthTrust") and Tennessee Southern Railroad Company, Inc. (the "Company"). The Security Agreement includes the grant of a security interest by the Company, as debtor, in favor of the Bank for the benefit of the Bank and SouthTrust, as secured party, in certain of the Company's rolling stock, equipment, and other properties and rights. A description of the rolling stock and equipment covered by the security interest grant is attached as Schedules A and B to the Security Agreement.

The names and addresses of the parties to the Security Agreement (including the security provisions contained therein) are as follows: The Company (and the debtor under the security interest grant) is Tennessee Southern Railroad Company, Inc. whose chief executive office is located at P.O. Box 387, 821 West College Street, Pulaski, Tennessee 38478. The Bank (and the secured party under the security interest grant) is The First National Bank of Boston, whose head office is located at 100 Federal Street, Boston, Massachusetts 02110, and SouthTrust is SouthTrust Bank of Alabama, National Association with an address at P.O. Box 2554, 420 North 20th Street, Birmingham, Alabama 35290.

The property covered by the aforesaid security interest grant includes railroad cars, locomotives and other rolling stock intended for use, or which may be used, in interstate commerce, or interests therein, owned by the Company as of the date of the Security Agreement or thereafter acquired by it or its successors. The specific items covered by the security interest grant at the time of execution of the Security Agreement are listed on Schedules A and B thereto. Included in the property covered by such grant are railroad cars, rolling stock, equipment, locomotives, railroad cars and other property intended for use related in interstate commerce, or interests therein, owned by the Company at the date of the Security Agreement or thereafter acquired by it or its successors as owners of railway lines.



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A short summary of the Security Agreement to appear in the index is as follows:

"A Security Agreement (the "Security Agreement") dated as of January 31, 1989 between The First National Bank of Boston, as agent and bank (the "Bank"), SouthTrust Bank of Alabama, National Association ("SouthTrust") and Tennessee Southern Railroad Company, Inc. (the "Company"), containing the grant of a security interest by the Company in favor of the Bank on behalf of the Bank and SouthTrust in certain of the Company's rolling stock, equipment and other properties and rights of the Company. A description of the rolling stock and equipment covered by the security interest grant is attached as Schedule A and B to the Security Agreement."

Also enclosed is a check in the amount of \$10.00, payable to the ICC, to cover the recording fee for the Security Agreement.

Please acknowledge receipt of the enclosed documents by stamping and returning to the undersigned one of the Loan Agreements, together with a duplicate copy of this letter, in the enclosed stamped, self-addressed envelope.

If you have any questions, please do not hesitate to contact me at (617) 434-8638.

Very truly yours,

R. Scott Sawyer

Received: \_\_\_\_\_

Date: \_\_\_\_\_

Enclosures

RSS:1636

SECURITY AGREEMENT

dated as of January 31, 1989

Among

TENNESSEE SOUTHERN RAILROAD COMPANY, INC.

THE FIRST NATIONAL BANK OF BOSTON, as Agent and Bank

and

SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION

AGREEMENT (the "Agreement") made as of this 31st day of January, 1989 by TENNESSEE SOUTHERN RAILROAD COMPANY, INC. (the "Debtor"), a corporation duly organized and validly existing under the laws of the State of Tennessee, with its chief executive office at P.O. Box 387, 821 West College Street, Pulaski, Tennessee 38478 in favor of The First National Bank of Boston as Agent (the "Agent") for The First National Bank of Boston and SouthTrust Bank of Alabama, National Association (individually, a "Bank" and collectively, the "Banks"). All terms not otherwise defined herein shall be as defined in the Loan Agreement, as hereinafter defined.

For value received, the receipt of which is hereby acknowledged, including, without limitation, the enabling of the Debtor to obtain credit and other financial accommodations from the Banks under a certain Term Loan Agreement of even date herewith among the Debtor, the Agent and the Banks (the "Loan Agreement"), and the other Loan Documents referred to therein, the Debtor hereby agrees for the benefit of the Agent and the Banks as follows:

Section 1. Grant. To secure the payment and performance of all obligations of the Debtor and Georgia Northeastern Railroad Company, Inc. to the Banks of every kind and description, direct and indirect, absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising regardless of how they arise or by what agreement or instrument including, without limitation, any of the Loan Documents, and including obligations to perform acts and refrain from taking action as well as obligations to pay money (collectively, the "Obligations"), the Debtor hereby pledges and assigns to the Agent for the benefit of the Banks all of its right, title, and interest in, and grants to the Agent for the benefit of the Banks a continuing security interest in, the property described below, together with all goods, instruments, documents of title, policies and certificates of insurance, securities, chattel paper, deposits,

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cash or other property of the Debtor which are now or may at any time hereafter be in the possession of the Agent or either Bank or their respective assigns for any purpose, and any proceeds thereof, whether now owned or existing or hereafter acquired or arising, and including any and all additions, substitutions, replacements, accessions, proceeds and products of such property (collectively, the "Collateral"):

- (a) Equipment. All of the Debtor's presently owned, and hereafter acquired, machinery, equipment and fixtures wherever located, including without limitation office furniture, furnishings and trade fixtures, specialty tools and parts, motor vehicles, Rolling Stock as herein defined, rail, ties and capital improvements thereon, maintenance of way equipment (certain of which is listed on Schedule A attached hereto), and materials handling equipment, together with the Debtor's interest in, and right to, any and all manuals and other materials that contain technical data relating to the use, operation, or structure of such equipment, and at least one set of copies of those materials on which is recorded then-current information ("Equipment");
- (b) Inventory. All of the Debtor's presently owned and hereafter acquired inventory, wherever located, including without limitation goods, merchandise and other personal property which are held for sale or lease or are furnished or to be furnished under a contract of service or are raw materials, work-in-process or materials used or consumed or to be used or consumed in the Debtor's business ("Inventory");
- (c) Accounts. All of the Debtor's accounts, including without limitation all rights to payment for goods sold or leased or for services rendered, all sums of money or other proceeds due or becoming due thereon, all instruments pertaining thereto, all guaranties and security therefor, all goods giving rise thereto and the Debtor's rights pertaining to and interest in such goods including the right of stoppage in transit, and all rights of the Debtor under contracts, whether to receive money from, or enjoy performance by, others or to be entitled to enjoy rights granted by others, including, without limitation all rights of the Debtor as lessee under leases of real and/or personal property and other agreements with other operating railroads pursuant to which the Debtor leases property or obtains rights for operation of the Company's railroad operations (the "Leases"), all rights of the Debtor under the Debtor's operating certificate from the

Interstate Commerce Commission and all other rights and claims to the payment of money, including without limitation chattel paper, amounts due from affiliates, and insurance proceeds with respect to any of the foregoing (all of the foregoing, "Accounts"); and

- (d) General Intangibles. All of the Debtor's general intangibles, including without limitation tax refunds, rights with respect to trademarks, service marks, trade names, patents, copyright rights, trade-secrets information, rights of way and interests in and rights in, on or over real property including railbeds, yards and maintenance areas, and rights to prevent others from doing acts that constitute unfair competition with the Debtor or misappropriation of its property ("General Intangibles").

Section 2. Representations and Warranties. The Debtor represents and warrants that:

(a) it is a corporation (i) duly organized, existing and in good standing under the laws of the state of its incorporation and in good standing in every other state in which it is doing business, and (ii) the execution, delivery and performance hereof are within its corporate powers, have been duly authorized, and are not in contravention of the terms of its charter, by-laws or other incorporation papers;

(b) it is the legal and equitable owner of the Collateral and holds the same free and clear of all liens, charges, encumbrances, security interests and rights of others of every kind and nature whatsoever, except for any security interest granted to the Agent for the benefit of the Banks or any security interest or other lien as to which the Agent and the Banks have heretofore consented in writing;

(c) it has good right and legal authority to assign, deliver, and/or create a security interest in the Collateral in the manner hereby provided or contemplated;

(d) The Rolling Stock (as defined in this Section 2(d)) listed on Schedule B hereto constitutes all of the Rolling Stock which the Debtor owns or leases. The term "Rolling Stock" as used herein means all rolling stock, locomotives, cabooses, bulkhead flat cars, refrigerated boxcars, open top hopper cars, woodrack cars, covered hopper cars, woodchip hopper cars, and all other rail cars; and

(e) the entering into of this Agreement has been duly authorized by all necessary action, corporate or otherwise, and does not and will not violate any applicable law or rule or regulation of any governmental agency, or any agreement, undertaking, instrument or order by which the Debtor, or any of its property, is bound or affected.

Section 3. Covenants. The Debtor covenants that:

(a) other than sales of Inventory, or grants of licenses and other rights, in the ordinary course of the Debtor's business, it shall not grant, assign or transfer any interest in, or otherwise encumber, any of the Collateral other than in favor of the Banks unless the Required Banks have previously consented thereto in writing;

(b) at the time any Account constituting Collateral becomes subject to a security interest in favor of the Agent for the benefit of the Banks, such Account shall be a valid, legal and binding obligation of the account debtor named therein for goods held subject to delivery instructions or theretofore shipped or delivered pursuant to a contract of sale, or for services theretofore performed by the Debtor, enforceable in accordance with its terms, free of setoffs or counterclaims;

(c) Equipment constituting Collateral shall remain personal property irrespective of the manner of its attachment to any real estate, and upon request by the Agent or either Bank, the Debtor will deliver to the Agent such disclaimer, waiver, or other document as the Agent or either Bank may request, executed by each person having an interest in such real estate;

(d) the Debtor shall at all reasonable times allow the Agent or either Bank to examine, inspect or make extracts from, or copies of, the Debtor's books and records and to inspect the Collateral and to arrange for verification of Accounts constituting Collateral, under reasonable procedures, directly with account debtors or by other methods;

(e) the Debtor will keep Equipment and Inventory constituting Collateral insured at all times by such insurance in form and in amounts as the Required Banks may from time to time may request, but in any event not less than as required by the Loan Agreement and in any event (without specific request by the Agent) will insure such Collateral as required by the Agreement and against theft, and, in the case of any motor vehicle or Rolling Stock, against collision, such insurance to be with such insurance companies as the Agent shall approve, with loss

thereon payable to the Agent for the benefit of the Banks (as loss payee and as additional insureds) and the Debtor, as their respective interests may appear, and to provide for not less than ten days' notice of cancellation or change in form or non-renewal to the Agent, all as evidenced by a certificate of each policy of insurance delivered to the Agent (with copies for each Bank);

(f) the Debtor will keep all Equipment and Inventory constituting Collateral in good order and repair, and will not use the same in violation of law or any policy of insurance thereon, and will pay promptly when due all taxes and assessments upon such Equipment or for its use or operation;

(g) the Debtor will apply for, and pursue diligently applications for, registration of its ownership of General Intangibles constituting Collateral for which registration is appropriate and will use other appropriate measures to preserve its ownership of other such General Intangibles;

(h) the Agent, at the request of the Required Banks, may discharge taxes and other encumbrances at any time levied or placed on the Collateral, and any Inventory constituting Collateral; make repairs thereon, or provide maintenance with respect to them, and place and pay for appropriate insurance thereon and pay any necessary filing fees; and the Debtor will reimburse the Agent, for the benefit of the Banks, on demand for any and all expenditures so made, and, until paid, the amount thereof shall be an Obligation secured by the Collateral and shall bear interest at the rate of 18% per annum until paid, provided that the Agent shall have no obligation to the Debtor to make any such expenditures nor shall the making thereof relieve the Debtor of any default;

(i) except for those locations previously or concurrently herewith disclosed to the Agent and the Banks in writing, all Collateral, and any deposit accounts constituting Collateral, will be kept at the address of the Debtor as set forth at the beginning of this Agreement or with the Agent, unless and until such time as written consent to a change of location is obtained from the Required Banks;

(j) the Debtor will pay on demand all costs of realizing upon the Collateral and attorneys' fees paid or incurred by the Agent or any Bank in connection with or in any way related to the Agent's or such Bank's relationship with the Debtor, arising hereunder and under the other Loan Documents, including without limitation those paid or incurred in connection with the preparation of this Agreement or any amendment hereof and the protection of

and enforcement of the Agent's or such Bank's rights hereunder;

(k) The Debtor shall not change any markings or serial numbers on any of the Rolling Stock listed on Schedule B until after the Debtor has given notice in writing to the Agent of its intention to make such change. The Debtor shall notify the Agent and the Banks of any other Rolling Stock which the Debtor may hereafter acquire or lease. The Debtor shall execute and deliver to the Agent for the benefit of the Banks supplemental security agreements and other instruments and file the same in the appropriate recording offices (i) with respect to the Rolling Stock listed on Schedule B hereto, (ii) at such times as any assignable right, title or interest is acquired in the future by the Debtor in any other Rolling Stock and (iii) at such times as any change is made in one or more of the markings or serial numbers on any of the Rolling Stock listed on Schedule B hereto or on any other Rolling Stock owned or leased by the Debtor. All such supplemental security agreements and other instruments shall secure all of the Obligations pro rata and shall be on terms and conditions satisfactory to the Agent as evidenced by its written consent; and

(l) the Debtor shall at all times do, make, execute and deliver all additional and further acts and instruments that the Agent or either Bank may request at any time in connection with the administration and enforcement of this Agreement or relating to the Collateral or any part thereof or in order more completely to vest in and assure to the Agent or make available to it the property and rights herewith or hereafter granted, assigned or transferred to the Agent in the Collateral and to carry into effect the provisions and intent of this Agreement.

Section 4. Rights in Collateral. With respect to any Accounts constituting Collateral hereunder, until the Agent requests that debtors on such Accounts be notified of its security interest, the Debtor shall continue to collect such Accounts. The Debtor shall, at the request of the Agent, notify account debtors of the security interest of the Agent in any Account and that payment thereof is to be made directly to the Agent, and the Agent may itself at any time, without notice to or demand upon the Debtor, so notify account debtors. The Agent may, at the request of the Required Banks, at any time, whether or not Obligations are due, without notice or demand on the Debtor:

- (a) with respect to any Accounts constituting Collateral,
  - (i) demand, collect, receipt for, settle, compromise, adjust, or give discharges and releases, all as the Agent may determine;

(ii) commence and prosecute any actions in any court for the purposes of collecting any such Accounts and enforcing any other rights in respect thereof;

(iii) defend, settle or compromise any action brought and, in connection therewith, give such discharges or releases as the Agent may deem appropriate;

(iv) receive, open and dispose of mail addressed to the Debtor and endorse checks, notes, drafts, acceptances, money orders, bills of lading, warehouse receipts or other instruments or documents evidencing payment, shipment or storage of the goods giving rise to such Accounts on behalf of and in the name of the Debtor, or securing or relating to such Accounts; and

(v) sell, assign, transfer, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any such Accounts or the goods or services which have given rise thereto, as fully and completely as though the Agent were the absolute owner thereof for all purposes;

(b) with respect to any Equipment or Inventory constituting Collateral, make, adjust and settle claims under any insurance policy related thereto;

(c) take such action, including, without limitation, the execution and delivery of any instruments, documents and agreements in the name of the Debtor, as the Agent or the Required Banks may deem necessary or desirable to protect the interests of the Banks in the Collateral and to carry out the purposes of this Agreement.

Except as otherwise provided herein, the Agent and the Banks shall have no duty as to the collection or protection of the Collateral nor as to the preservation of any rights pertaining thereto.

Section 5. Set-off Rights. The Agent or either Bank may at any time, whether or not any Obligations are due, apply any and all deposits or other sums at any time credited by, or due from, the Agent or either Bank to the Debtor and any other property and securities at any time in the possession or control of the Agent or either Bank to the payment of, or set-off the same against, any Obligations regardless of the adequacy of any Collateral or any other security or sources of reimbursement for any Obligations.

Section 6. Defaults. An event of default ("Event of Default") shall exist hereunder if any of the following events or conditions occur:

(a) the occurrence of an "Event of Default" under the Loan Agreement following any notice or periods of grace provided in the Loan Agreement;

(b) default in the payment or performance of any of the Obligations or under any agreement, instrument or other document evidencing the Obligations, including Obligations of the Debtor hereunder and under any of the other Loan Documents;

(c) failure of any representation or warranty herein, or of any representation or warranty, statement or information in any documents or financial statements delivered or disclosed to the Agent or either Bank for the purpose of inducing it to enter into this Agreement or to extend or maintain credit to the Debtor to be true and correct;

(d) failure of the Debtor to furnish the Agent or either Bank promptly on request with financial information about the condition or affairs of the Debtor or to permit the Agent or either Bank to examine or inspect or make abstracts from the Debtor's books, records and properties;

(e) loss, theft, substantial damage, sale or encumbrance of or to the Collateral (other than sales of Inventory, or grants of licenses, in the ordinary course of the Debtor's business) or the making of any levy thereon or seizure or attachment thereof, or the issuance of an injunction against the Debtor affecting any of its property, or the failure to pay when due any tax thereon which is not being contested in good faith, or with respect to any insurance policy (including any life insurance policy assigned to the Agent as collateral for the Obligations), the failure to pay any premium therefor; or

(f) default by the Debtor under any instrument constituting, or under any agreement, including without limitation any insurance policy, relating to any Collateral or default, breach or violation by the Debtor under the Leases or termination of any of the Leases.

Section 7. Remedies. In any jurisdiction where enforcement of its rights hereunder is sought, the Agent shall have, in addition to all other rights and remedies, the rights and remedies of a secured party (i) under the Uniform Commercial Code of Massachusetts, (ii) under the State of Georgia with respect to Collateral described in the Mortgages, and (iii) holding a security interest in collateral pursuant to

the Interstate Commerce Act of 1887, as amended. Upon the occurrence of an Event of Default or at any time thereafter (such defaults not having been previously cured to the satisfaction of the Agent or either of the Banks) and so long as any part of the Obligations remain unpaid or unperformed, the Agent may, at the request of the Required Banks, without notice or demand, declare all of the Obligations to be immediately due and payable and take immediate possession of the Collateral, and for that purpose enter upon any premises on which any of the Collateral is situated and remove the same therefrom or remain on such premises and in possession of such Collateral for purposes of conducting a sale or enforcing its rights under this Agreement. The Debtor will, upon demand, make the Collateral available to the Agent at a place and time designated by the Agent which is reasonably convenient. After the occurrence of an Event of Default the Agent, at the request of the Required Banks, may collect and receive all income and proceeds in respect of the Collateral, exercise all rights of the Debtor with respect thereto, including without limitation, upon written notice to the Debtor, rights of the Debtor under the Leases, and apply the Collateral and any and all income and proceeds received by it hereunder to the payment of all Obligations to the Agent and the Required Banks as hereinafter provided. Unless the Collateral threatens to decline speedily in value or is of the type customarily sold on a recognized market, the Agent shall give to the Debtor at least five days' prior written notice of the time and place of any public sale of the Collateral or of the time after which any private sales or any other intended disposition thereof is to be made. From the proceeds of such sale, the Agent shall be entitled to retain and to apply such proceeds first to payment of all expenses incurred by the Agent in connection with the exercise of the remedies contemplated herein, including attorneys' fees, second to the payment of all Obligations arising under the Loan Documents, to be distributed to each Bank in proportion to such Bank's Commitment, and third to the payment of all other Obligations owed to any Bank, to be distributed among the Banks based on the ratio of all Obligations owed to each Bank due and payable on the date of computation to the aggregate of all Obligations due and payable to the Banks as of the date of computation.

Section 8. Waivers. The Debtor waives presentment, demand, notice, protest, notice of acceptance of this Agreement, notice of any loans made, credit or other extensions granted, collateral received or delivered or any other action taken in reliance hereon, all demands and notices in connection with the delivery, acceptance, performance, default or enforcement of any note or other evidence of indebtedness secured by the Collateral and all other demands and notice of any description. With respect to both the Obligations and the Collateral, the Debtor assents to any extension or postponement of the time of payment or any other forgiveness or indulgence,

to any substitution, exchange or release of Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Agent may deem advisable. The Agent, acting for the benefit and at the direction of the Banks, may exercise its rights with respect to the Collateral without resorting, or regard, to other collateral or sources of reimbursement for Obligations. The Agent shall not be deemed to have waived any of its rights upon or under the Obligations or the Collateral unless such waiver is in writing and signed by the Agent. No delay or omission on the part of the Agent or any of the Banks in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of, any right on any future occasion. All rights and remedies of the Agent or any of the Banks in the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised separately or concurrently.

Section 9. Notices. Any demand upon or notice to the Debtor that the Agent or any of the Banks may give shall be given in accordance with the provisions of Section 9.4 of the Loan Agreement.

Section 10. General. This Agreement may not be amended or modified except by a writing signed by the Debtor, the Agent and the Banks, nor may the Debtor assign any of its rights hereunder. This Agreement and the terms, covenants and conditions hereof shall be binding upon the Debtor's heirs, successors and assigns, and any executor, administrator or other legal representative of the Debtor, and shall inure to the benefit of the Agent and the Banks and their respective successors and assigns; and shall be construed in accordance with, and governed by, the laws of The Commonwealth of Massachusetts. In the event that any Collateral or any deposit or other sum due from or credited by the Agent and the Banks is held or stands in the name of the Debtor and another or others jointly, the Agent and the Banks may deal with the same for all purposes as if it belonged to or stood in the name of the Debtor alone.

Section 11. Section Headings and Definitions. Section headings are for convenience of reference only and are not a part of this Agreement. Except as otherwise defined herein, all terms shall have the meanings ascribed to them by the Uniform Commercial Code of Massachusetts.

IN WITNESS WHEREOF, the Debtor has caused this Agreement to be duly executed as an instrument under seal in three original counterparts as of the date first written above.

[Seal]

TENNESSEE SOUTHERN RAILROAD  
COMPANY, INC.

By: *A. Bailey*  
Its: *President*

SIGNED IN THE PRESENCE OF

*Glenda Glover*

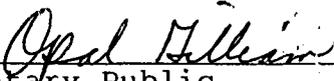
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State of TENNESSEE

County of GILES

Before me, a notary public in and for the State and County aforesaid personally appeared G. Richard Abernethy with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be the President of Tennessee Southern Railroad Company, Inc. the within named bargainer, and that he, as President of such corporation, being authorized to do so, executed the within instrument for the purposes therein contained by signing the name of the corporation by himself as such President.

Witness my hand and official seal at office  
this 28th day of March, 1989 at Pulaski, TN.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 7/18/89

SCHEDULE A

Equipment

1. 6 radio sets - Train and Track Crew
2. All other equipment including:
  - 1 - Air Compressor
  - 1 - Rail Saw
  - 1 - Track Drill
  - 1 - Tie Crane

RSS:1143

SCHEDULE B

Rolling Stock

1. 1 - GP-18 Locomotive-No. 9424
2. 4 - GP-9 Locomotives- Model L30 6418
3. 2 - SD-18 Locomotives- Model C07317, C07314
4. 1 - 1972 F250 Hy Rail Truck
5. 1 - Motor Car

RSS:1520