

*Counterparts - Geo. C. Long*

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REA, CROSS & AUCHINCLOSS

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SEP 28 1994 12:12 PM

THOMAS M. AUCHINCLOSS, JR.  
LEO C. FRANEY  
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KEITH G. O'BRIEN  
BRYCE REA, JR.  
BRIAN L. TROLANO  
ROBERT A. WIMBISH\*  
\*MEMBER VA. BAR ONLY

DONALD E. CROSS (1923-1986)

September 28, 1994

Office of the Secretary  
Interstate Commerce Commission  
12th & Constitution Ave., N. W.  
Room 2303  
Washington, D. C. 20423

0100382005  
\$18.00

Re: Security Agreement on Locomotive Equipment  
NationsBank of Tennessee - Lender  
Idaho Northern & Pacific Railroad  
Company - Borrower

Dear Ms. Lee:

I have enclosed an original and one copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Security Agreement on locomotive equipment and is a primary document dated September 26, 1994. The names and addresses of the parties to the document are as follows:

Lender

NationsBank of Tennessee  
1616 West Market Street  
Johnson City, TN 37605-1818

Borrower

Idaho Northern & Pacific Railroad Company  
4420 W. Vickery Boulevard, Suite 110  
Forth Worth, TX 76107

A description of the equipment covered by the document follows:

Office of the Secretary  
September 28, 1994  
Page Two

LOCOMOTIVES

<u>Model</u>	<u>Previous Road Name/No.</u>	<u>IN&amp;P Road Number</u>	<u>Manufacturer's Serial Number</u>
GP 40	CSX 6663	4500	7929-7
GP 40	CSX 6668	4501	7929-12
GP 40	CSX 6700	4502	7944-1
GP 40	CSX 6727	4503	7183-7
GP 40	CSX 6735	4504	7183-15
GP 40	CSX 6767	4505	7229-18
GP 40	CSX 6808	4506	7075-2
GP 35	NS 2656	4507	7774-12
GP 35	NS 2657	4508	7774-13
GP 35	NS 2672	4509	7774-26
GP 35	NS 2675	4510	7774-29

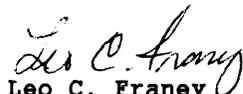
A short summary of the document to appear in the index follows:

A loan on locomotive equipment identified as seven (7) locomotives, type GP40, and four (4) locomotives, type GP35, with NationsBank of Tennessee as Lender, and Idaho Northern & Pacific Railroad Company as borrower.

Also attached is a notarized Affidavit executed by Richard D. Bertel, Chairman and Chief Executive Officer of Idaho Northern & Pacific Railroad Company declaring that the enclosed copy of the Security Agreement is identical to the original document which is also enclosed.

A fee of \$18.00 is enclosed.

Sincerely yours,

  
Leo C. Franey  
Counsel for Idaho Northern  
& Pacific Railroad Company

Enclosures

**AFFIDAVIT**

RECORDED 19000

SEP 28 1994 3 10 PM

INTERSTATE FINANCE COMMISSION

STATE OF TEXAS

COUNTY OF TARRANT

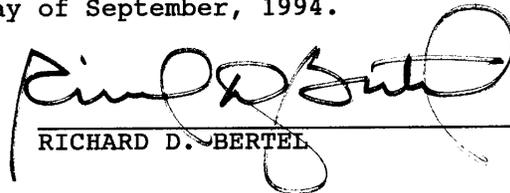
BEFORE ME, the undersigned authority, personally appeared RICHARD D. BERTEL, who, being first duly sworn, deposed and stated as follows:

"My name is RICHARD D. BERTEL and I am over the age of 18 years, and I am a resident of Tarrant County, Texas. I am competent to make this Affidavit and I have personal knowledge of all statements of fact contained herein.

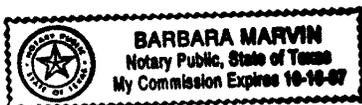
"I am the Chairman and Chief Executive Officer of the Idaho Northern & Pacific Railroad Company, a Delaware corporation. In such capacity I have executed a Security Agreement by and between that corporation and NationsBank of Tennessee, N.A., dated the 26th day of September, 1994, a true and correct copy of which is attached to this Affidavit as Exhibit "A" and made a part hereof for all intents and purposes. I have examined the attached Exhibit "A", and said exhibit and all attachments thereto and the copies of my signatures are true and correct copies of the original signed Security Agreement dated the 26th day of September.

"Further, Affiant sayeth naught."

SIGNED this the 27<sup>th</sup> day of September, 1994.

  
RICHARD D. BERTEL

SUBSCRIBED AND SWORN TO BEFORE ME by RICHARD D. BERTEL on September 27<sup>th</sup>, 1994, to certify which witness my hand and seal of office.



  
NOTARY PUBLIC in and for  
The State of Texas

Interstate Commerce Commission  
Washington, D.C. 20423

9/28/94

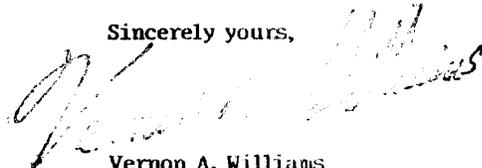
OFFICE OF THE SECRETARY

Leo. C. Franey  
Rea., Cross & Auchincloss  
1920 N Street, N.W., Ste. 420  
Washington, DC. 20036

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 9/28/94 at 3:10PM, and assigned recordation number(s). 19000.

Sincerely yours,

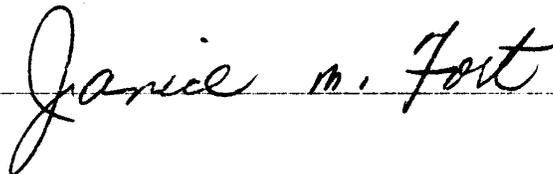


Vernon A. Williams  
Acting Secretary

Enclosure(s)

\$ 18.00 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



SECURITY AGREEMENT

SEP 28 1994 -3 10 PM

THIS SECURITY AGREEMENT, is made and entered into this 26th day of September, 1994, by and between IDAHO NORTHERN & PACIFIC RAILROAD COMPANY, a Delaware corporation ("Borrower"), with offices at 4420 West Vickery Boulevard, Suite 110, Fort Worth, Texas, and NATIONS BANK OF TENNESSEE, a national bank ("Lender") with offices at 1616 West Market Street, Johnson City, Tennessee.

W I T N E S S E T H:

WHEREAS, Lender, Borrower and others are parties to that certain Loan Agreement dated July 5, 1994 (the "Loan Agreement") pursuant to which Lender has agreed to loan funds to Borrower (the "Loan"); and

WHEREAS, pursuant to the Loan Agreement, Borrower and others have executed and/or delivered certain documents (the "Loan Documents"), including, but not limited to, the Loan Agreement, this Security Agreement and a Promissory Note dated July 5, 1994, in the maximum principal amount of \$2,200,000, payable to Lender (the "Note");

WHEREAS, Borrower desires to secure the performance of its obligations to pay, duly and punctually, the principal of and interest on the Note and to perform, duly and punctually, all other obligations of every kind whatsoever owing to Lender including, but not limited to, the Secured Obligations (as hereinafter defined).

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid by Lender to Borrower and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrower, intending to be legally bound, hereby agree as follows:

1. Secured Obligations. This Security Agreement is given to secure the due and punctual payment of the principal of and interest on the Note, the due and punctual performance of all other obligations under the Note and this Security Agreement and the other Loan Documents, and the due and punctual payment and performance of all other indebtedness and obligations of Borrower to Lender whether now existing or hereafter arising, however evidenced,

whether direct or indirect, absolute or contingent, individually or jointly with any other person or entity, together with any extensions and renewals of the foregoing obligations and reasonable attorneys' fees if collected by or through an attorney-at-law (collectively the "Secured Obligations").

2. Security Interest. As security for the due and punctual payment and performance by Borrower of the Secured Obligations, Borrower hereby pledges, assigns, transfers, sets over, conveys and delivers to Lender, and grants to Lender a security interest in, all right, title and interest of Borrower in and to the following property of Borrower described on Exhibit A attached hereto and made a part hereof and all products and proceeds thereof, including, without limitation, proceeds of insurance policies insuring the foregoing, together with all additions and accessions to any of the foregoing and all substitutions and replacements for any of the foregoing (the "Collateral").

3. Representations, Warranties and Agreements. Borrower hereby represents, warrants and agrees to and with Lender as follows:

(a) Borrower has full power and authority to assign and convey the Collateral to Lender and Borrower has full title to the Collateral. The security interest in the Collateral granted to Lender herein is a first-priority security interest in and encumbrance on all rights, title and interest of Borrower in and to the Collateral;

(b) No financing statement, security interest, mortgage, deed of trust, deed to secure debt, statutory or common law lien, or other lien or encumbrance covering the Collateral or its proceeds is outstanding or on file in any public office;

(c) The Collateral will be used solely for business use and will remain in the possession or control of Borrower at all times at Borrower's risk of loss.

(d) Borrower will take or cause to be taken all necessary and appropriate action to protect and preserve the value of and its rights, title and interest in and to the Collateral and its proceeds, including without limitation, payment of all taxes, fees, assessments, insurance premiums and other charges that may be imposed on or relate to the Collateral.

Borrower will maintain all Collateral in good condition and will not waste, misuse, abuse or otherwise permit the Collateral to deteriorate in value, except for the ordinary wear and tear in connection with its intended use;

(e) Borrower will not sell, lease, assign, or create or permit to exist any subsequent lien on or security interest in any Collateral to or in favor of anyone other than Lender, without the prior written approval of Lender.

(f) In the event that there shall be filed, perfected, or sought to be enforced in the future any statutory or common law lien in favor of materialmen, mechanics, laborers, warehousemen or other storers of property, Borrower shall promptly bond or discharge such lien;

(g) Borrower shall at all times maintain insurance on the Collateral at a level acceptable to Lender and shall cause Lender to be named as an additional insured on each such policy.

4. Events of Default. The occurrence of (i) any default in the timely payment of principal or interest on the Note or (ii) the breach by the Borrower of any representation, warranty or covenant contained herein or in any other Loan Document, that is not cured within the applicable grace period contained therein, shall constitute an Event of Default by Borrower hereunder.

5. Lender's Rights Exclusive of Default. Borrower agrees that during the term of this Security Agreement Lender shall be entitled to exercise any or all of the following rights:

(a) This Security Agreement, the rights of Lender hereunder, or the indebtedness secured hereby may be assigned from time to time, and in any such case the assignee shall be entitled to all of the rights, privileges and remedies granted in this Security Agreement to Lender;

(b) Lender may, upon prior notice to Borrower, enter upon Borrower's premises, or wherever the Collateral may be at any reasonable time to inspect the Collateral and to inspect the books and records pertaining to the Collateral, and Borrower shall assist Lender in making any such inspection;

(c) At its option, Lender may (but shall not be obligated to) from time to time (i) discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Collateral, (ii) pay for insurance on the Collateral that Borrower fails to maintain as required by this Security Agreement, or (iii) perform any other agreement of Borrower hereunder or under the Agreement that Borrower shall fail to perform and take any other reasonable action that Lender deems necessary for the maintenance or preservation of any of the Collateral or its interest therein. Borrower agrees to reimburse Lender on demand for any payment made or reasonable expenses incurred by Lender pursuant to the foregoing authorization and agrees that all such payments or expenses shall be secured hereby.

6. Remedies on Default. Upon the occurrence of an Event of Default as described in Paragraph 4 hereof, Lender may, in its sole discretion and without further notice or demand (i) declare all of the Secured Obligations to be immediately due and payable, (ii) proceed immediately to exercise any and all of the Lender's rights, powers and privileges with respect to the Collateral, including, without limitation, the right to repossess or sell or otherwise dispose of the Collateral or any part thereof in such manner as Lender in its sole discretion may choose, or (iii) exercise any other right or remedy available to Lender under the applicable Uniform Commercial Code or otherwise available by agreement, at law or in equity. All rights and remedies specified herein are cumulative and are in addition to such other rights and remedies as are available to the Lender. Upon and after an Event of Default, Borrower agrees, upon request by Lender, to assemble the Collateral at a location reasonably convenient to Lender and to make such Collateral available to Lender. Borrower authorizes Lender upon the occurrence of an Event of Default to enter the premises where the Collateral is located and to take possession of and remove any such Collateral without further notice or demand and without institution of legal proceedings. Any requirement imposed by law for reasonable notification of any intended disposition of the Collateral shall be deemed reasonably and properly made if given in accordance with the provisions of this Security Agreement at least ten (10) days prior to any public sale of the Collateral or the time at which any private or other intended disposition of the Collateral is to be made; provided, however, no notice shall be required with respect to any Collateral which is perishable, threatens to decline

speedily in value or is sold in or on a recognized market. Borrower hereby authorizes Lender pursuant to the Power-of-Attorney granted in Paragraph 7 hereof to sign and execute in the name of Borrower any intended transfer, conveyance or instrument in writing that may be necessary or desirable to effect any disposition of the Collateral. No disposition of any Collateral shall extinguish any Secured Obligation of Borrower except to the extent that the net proceeds are applied thereto.

7. Power-of-Attorney. While any Event of Default occurs and is continuing, Borrower does hereby irrevocably make, constitute and appoint Lender and any of its officers or designees its true and lawful attorney-in-fact, with full power and authority to do any and all acts necessary or proper to carry out the intent of this Security Agreement including, without limitation, the right, power and authority (i) to enforce all rights of Borrower under and pursuant to any agreements with respect to the Collateral, all for the sole benefit of Lender; (ii) to enter into and perform such arrangements as may be necessary in order to carry out the terms, covenants and conditions of this Security Agreement that are required to be observed or performed by Borrower; (iii) to execute such other and further mortgages, pledges and assignments of the Collateral as Lender may reasonably require for the purpose of perfecting, protecting or maintaining the security interest granted to Lender by this Security Agreement; and (iv) to do any and all other things necessary or proper to carry out the intent of this Security Agreement, and Borrower hereby ratifies and confirms all that Lender as such attorney-in-fact or its substitutes do by virtue of this Power-of-Attorney, which power is coupled with an interest and is irrevocable, until Borrower has paid in full the Secured Obligations and this Security Agreement is terminated.

8. Borrower to Hold in Trust. Subsequent to the occurrence of any Event of Default and regardless of whether Lender makes any demand to or request of Borrower, Borrower agrees, subject to the rights of holders of security interests in the Collateral having priority over the security interest of Lender, to hold in trust for Lender any and all cash, checks, drafts, items, chattel paper and other instruments or writings for the payment of money that may be received by Borrower in full or partial payment or otherwise as proceeds of any of the Collateral, in precisely the form received. Borrower will immediately upon request by Lender endorse, transfer and deliver any and all such payments to Lender for application against the Secured Obligations.

9. Application of Proceeds. The proceeds from the sale of or other realization on the Collateral pursuant to Paragraph 6 hereof shall be applied as follows:

(a) First, to the payment of all reasonable costs and expenses incurred by Lender in connection with such sale or other realization including, without limitation, attorneys' fees as specified in Paragraph 1 hereof and all court costs, and to the repayment of all advances by Lender hereunder for the account of Borrower and the payment of all reasonable costs and expenses paid or incurred by Lender in connection with or in the exercise of any right or remedy under this Security Agreement, to the extent that such advances, costs and expenses shall not have been previously paid to Lender upon its demand to Borrower therefor;

(b) Second, to the payment in full of the principal and interest on the Note;

(c) Third, to Lender in payment in full of all of the remaining Secured Obligations of Borrower; and

(d) Fourth, to Borrower or as a court of competent jurisdiction may direct.

10. Financing Statements. Borrower will execute financing statements or other documents deemed necessary by Lender to perfect or preserve its security interest in the Collateral and the proceeds thereof, and will pay the costs of fees of filing or recording such statements or documents in all jurisdictions deemed necessary by Lender. Borrower hereby authorizes Lender to file continuations to financing statements without the signature of Borrower so long as they shall be consistent with the intent of this Security Agreement. Upon payment in full of the Secured Obligations and the termination of this Security Agreement, Lender shall execute and deliver to Borrower such termination statements as Borrower shall reasonably request.

11. Term of Agreement. Borrower may terminate this Security Agreement and Lender shall release its security interest in the Collateral upon the payment in full by or on behalf of Borrower of all of the Secured Obligations, provided however that if such payment of any of the Secured Obligations is set aside, voided or recovered, this Security Agreement and Lender's rights in the Collateral shall continue in full force and effect and shall not be deemed to have terminated or lapsed due to such prior payment.

12. Indemnity. Borrower hereby agrees to indemnify Lender and its agents, servants and employees against and agrees to protect, save and hold harmless each thereof from any and all liabilities, obligations, losses, damages, penalties, actions, suits, costs, expenses (including reasonable attorneys fees) and disbursements of whatever kind and description imposed on, incurred by or asserted against any such person in any way arising out of or related to the Collateral, the Secured Obligations, the Note, this Security Agreement, the transactions contemplated thereby and hereby, or the use, possession, maintenance, operation, condition, sale, registration, ownership, lease or other disposition of the Collateral.

13. Survival of Representations and Warranties. All representations and warranties contained herein or made by or furnished on behalf of Borrower in connection herewith shall survive the execution and delivery of this Security Agreement.

14. Modification. No modification, amendment or alteration of any provision of this Security Agreement shall be effective unless contained in a written agreement signed by the parties hereto, and then such modification, amendment or alteration shall be effective only in the specific instances and for the specific purposes for which given.

15. Successors and Assigns. This Security Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns; provided, however, Borrower shall have no right to assign its rights or obligations hereunder to any person or entity.

16. Further Assurances. Upon the request of Lender, Borrower shall duly execute and deliver, at the cost and expense of Borrower, such further instruments as may be necessary or proper, in the judgment of Lender to carry out the provisions and purposes of this Security Agreement or to perfect, protect and preserve the security interest of Lender in the Collateral or in any portion thereof.

17. Time of Essence. Time is of the essence in interpreting and performing this Security Agreement.

18. Expenses. Borrower will pay to Lender all reasonable costs and expenses of, or incidental to, the enforcement of any of the provisions of this Security Agreement.

19. No Waiver. No delay or failure on the part of Lender in the exercise of any right, power or privilege under this Security Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of such right, power or privilege shall preclude the further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver shall be valid against Lender unless made in writing and signed by Lender, and then only to the extent expressly specified therein. Borrower hereby waives presentment and notice of dishonor and protest of all instruments included in or evidencing the liability of Borrower in respect to the Secured Obligations or the Collateral and any and all notices and demands whatsoever, whether or not relating to such instruments, except as otherwise provided in such instruments.

20. Severability. If any part of any provision contained in this Security Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provisions or the remaining provisions.

21. Choice of Law. This Security Agreement shall be governed by and interpreted in accordance with the laws of the State of Tennessee.

22. Descriptive Headings. The descriptive headings of the several paragraphs of this Security Agreement are inserted for convenience only and do not constitute a part of this Security Agreement.

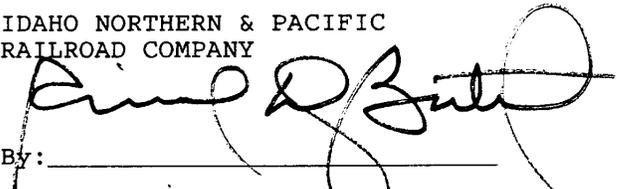
23. Counterparts. This Security Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument.

24. Entire Agreement. This Security Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereof, are expressly superseded hereby.

WITNESS the hand and seal of the parties hereto through their duly authorized officers.

BORROWER

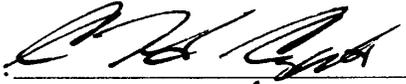
IDAHO NORTHERN & PACIFIC  
RAILROAD COMPANY

By:  \_\_\_\_\_

Title: Chairman & CEO

LENDER

NATIONSBANK OF TENNESSEE, N.A.

By:  \_\_\_\_\_

Title: Vice President

Exhibit "A"

DESCRIPTION OF LOCOMOTIVES

<u>Model</u>	<u>Previous Road Name</u>	<u>Present Road Name</u>	<u>Manufacturer's Serial #</u>
GP 40	CSX 6663	4500	7929-7
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