

BUTLER & BINION

A REGISTERED LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW

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1000 LOUISIANA  
HOUSTON, TEXAS 77002-5093  
(713) 237-3111  
TELECOPIER (713) 237-3202

17771

WASHINGTON, D.C.  
(202) 466-6900  
DALLAS  
(214) 220-3100  
SAN ANTONIO  
(512) 227-2200

APR 12 1992 - 10 20 AM  
April 9, 1992

INTERSTATE COMMERCE COMMISSION

2-104A002

Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue N.W.  
Washington, D. C. 20243

Dear Secretary:

Enclosed for recordation pursuant to Section 11303 of Title 49 of the U.S. Code are an original and one additional counterparts of a Commercial Security Agreement, a primary document, dated April 8, 1992, executed by RailTex, Inc. ("RailTex") in favor of First Interstate Bank of Texas, N.A., as Agent (the "Agent") and the several financial institutions that from time to time may be a party to that certain Loan Agreement dated as of April 8, 1992 by and among RailTex, the Agent and the Lenders from time to time a party thereto.

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

Debtor: RailTex, Inc.  
4040 Broadway, Suite 200  
San Antonio, Texas 78209

Secured Party: First Interstate Bank of Texas, N.A.,  
as Agent for and on behalf of the Lenders  
First Interstate Bank Plaza  
1000 Louisiana  
Houston, Texas 77002

Included in the property covered by the aforesaid Commercial Security Agreement are locomotives and rail cars intended for use related to interstate commerce, or interests therein, owned by RailTex, Inc. at the date and execution of the above-referenced primary document or thereafter acquired by it or its successors as owners of the liens of railway covered by the primary document. A description of the locomotives and rail cars is attached hereto as Exhibit A-1.

APR 13 10 24 AM '92  
MOTOR OPERATING DIVISION

*Handwritten signature/initials on the left margin.*

Also, enclosed is a check in the amount of \$16.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Please return the stamped original and any copies of the enclosed document not needed by the Commission to Nancy A. Talavera, Butler & Binion, 1000 Louisiana, First Interstate Bank Plaza, Houston, Texas 77002, in the enclosed stamped, self addressed envelope.

A short summary of the enclosed primary document to appear in the Commission's Index is:

Commercial Security Agreement dated as of April 8, 1992, executed by RailTex, Inc. ("Debtor") 4040 Broadway, Suite 200, San Antonio, Texas 78209 in favor of First Interstate Bank of Texas, N.A., as Agent ("Secured Party"), and the several financial institutions from time to time a party to that certain Loan Agreement dated as of April 8, 1992 by and among RailTex, the Agent and the Lenders that from time to time may be a party thereto, First Interstate Bank Plaza, 1000 Louisiana, Houston, Texas 77002 covering those 73 locomotives and 115 pulpwood cars.

If you have any questions concerning any of the foregoing or the enclosed, please call me collect at (713) 237-3109.

Very truly yours,



Nancy A. Talavera

NT:jj  
Enclosures

EXHIBIT A-1

RAILTEX.

INVENTORY OF LOCOMOTIVES

13-Mar-92

RR	Loco Number	Frame Number	EMD TYPE	HP
SDIV	1438	5624-14	GP-20	2000
SDIV	2151	1888-8	GP-7	1500
SDIV	3162	5054-13	GP-7	1500
SDIV	4168	5200-8	GP-7	1500
SDIV	5911	5398-9	GP-9	1750
NCVA	6244	5544-6	GP-9	1750
NCVA	6515	5519-2	GP-9	1750
NCVA	23	5377-13	GP-9	1750
VSRR	618	5490-13	GP-9	1750
VSRR	178		GP-9	1750
MRRR	24	5560-11	GP-9	1750
MRRR	5967	5413-30	GP-9	1750
MS	1077	8135-3	ALCO RS3	1600
MMRR	177		GP-9	1750
MMRR	179		GP-9	1750
MMRR	180		GP-9	1750
AUNW	8	4625	SW-1200	1200
AUNW	33	5398-5	GP-9	1750
AUNW	44	5469-8	GP-9	1750
AUNW	55	5469-2	GP-9	1750
AUNW	66	7694-1	GP-38	2000
AUNW	171	5565-3	GP-9	1750
ANUW	172	5413-8	GP-9	1750
AUNW	174	5334-5	GP-9	1750
AUNW	272	5362-10	GP-9	1750
AUNW	15	6112-43	SW-1200	1200
AUNW	11	5469-10	GP-9	1750
AUNW	22	5398-2	GP-9	1750
SCRF	5905	5379-5	GP-9	1750
SCRF	6097	5473-9	GP-9	1750
SCRF	6187	5590-21	GP-9	1750
SCRF	6439	5393-50	GP-9	1750
SCRF	6440	5393-16	GP-9	1750
SCRF	6550	5519-40	GP-9	1750
SCRF	6555	5519-45	GP-9	1750

## RAILTEX

## INVENTORY OF LOCOMOTIVES

RR	Loco Number	Frame Number	EMD Type	
GAAB	2077	1698-8	GP-7	1500
GAAB	2078	1698-3	GP-7 MOD	1850
GGG	2130	5219-13	GP-7	1500
GSWR	20	5474-11	GP-9	1750
GSWR	21	5474-2	GP-9	1750
GSWR	6541	5519-37	GP-9	1750
GSWR	2027	5145-6	GP-7	1500
GSWR	2127	1637-7	GP-7	1500
GSWR	2160	5145-7	GP-7	1500
GSWR	2176	1637-4	GP-7	1500
GSWR	2185	5145-17	GP-7	1500
CPDR	25	7561-4	GP-9	1750
CPDR	8379	5591-10	GP-10	1850
CPDK	8383	5591-18	GP-10	1850
CPDK	8387	5184-4	GP-10	1850
INMR	2053	1889-9	GP-7	1500
INMK	2234	5145-22	GP-7	1500
NEKM	2022	5200-12	GP-7	1500
NEKM	2210	5110-1	GP-7	1500
NEKM	2167	5470-12	GP-7	1500
C & A	2190	1762-8	GP-7 MOD	1750
C & A	2158	1697-8	GP-7	1500
INER	92	6074-2	GP-7 M	1750
INER	107	5019-8	GP-7 M	1750
INER	115	6323-6	GP-7	1500
INER	1229	4219-10	SW-1200	1200
INER	1237		SW-1200	1200
INER	2153	1221-0	GP-7 MOD	1750
INER	2166	5200-15	GP-7 MOD	1850
INER	2219	5288-1	GP-7	1500
NOLR	8375	5591-5	GP-10	1850
NOLK	8377	5591-8	GP-10	1850
ITW	173	5595-6	GP-9	1750

INVENTORY OF LOCOMOTIVES

RR	Value	Loco Number	Legend	EMD type	
KCS	4161	N/A		SLUG	
ATSF	2013	6525-1		GP-7	1500
ATSF	2207	5054-10		GP-7	1500
ATSF	1120	N/A			
ATSF	1326	5200-1		GP-7	1500

RECAP 73 LOCOMOTIVES

- 1 - GP-38 2000 HP
- 1 - GP-20 2000 HP
- 5 - GP-10 1850 HP
- 32 - GP-9 1750 HP
- 2 - GP-7 MOD 1850 HP
- 4 - GP-7 MOD 1750 HP
- 21 - GP-7 1500 HP
- 4 - SW-1200 1200 HP
- 2 - SLUG
- 1 - ALCO RS-3 1600 HP

**Interstate Commerce Commission**  
Washington, D.C. 20423

4/12/92

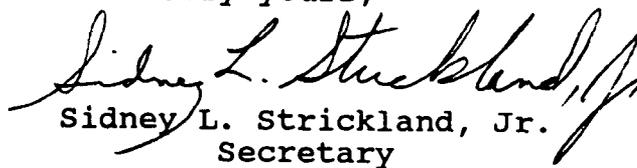
OFFICE OF THE SECRETARY

Nancy A. Talavera  
Butler & Binion  
1000 Louisiana Suite 1600  
Houston, Texas 77002-5093

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 4/12/92 at 10:20am, and assigned recordation number(s). 17771

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

17771

RECORDED BY \_\_\_\_\_ FILED 1992

APR 12 1992 -10 20 AM

INTERSTATE COMMERCE COMMISSION

COMMERCIAL SECURITY AGREEMENT

This Commercial Security Agreement (the "Agreement") is executed as of the 8th day of April, 1992, by RAILTEX, INC., a Texas corporation, whose address is 4040 Broadway, Suite 200, San Antonio, Bexar County, Texas 78209 (the "Debtor") in favor of FIRST INTERSTATE BANK OF TEXAS, N.A., as Agent (together with its successors and assigns in such capacity, the "Secured Party") for the benefit of and as the representative of the Lenders from time to time a party to the Loan Agreement (as hereinafter defined). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain Loan Agreement dated as of April 8, 1992, by and among Debtor, Secured Party and the Lenders from time to time a party thereto (as it may be amended, modified, renewed, extended, increased or restated from time to time, the "Loan Agreement").

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, Debtor grants to Secured Party for the benefit of and as the representative of the Lenders, the security interests (and the pledges and assignments as applicable) hereinafter set forth and agrees with Secured Party as follows:

A. OBLIGATIONS SECURED. The security interests, pledges and assignments, as applicable, granted hereby are to secure punctual payment and performance of the following: (i) the Notes, and any and all extensions, renewals, modifications, increases, restatements and rearrangements thereof, (ii) the obligations of Debtor to Secured Party and the Lenders, or any of them, under this Agreement and the Loan Agreement and the obligations of Debtor, Guarantors and their respective Subsidiaries under any of the other Loan Documents and otherwise relating to any Loans, and (iii) any and all other indebtedness, liabilities and obligations whatsoever of Debtor, Guarantors and their respective Subsidiaries to Secured Party and the Lenders, or any of them, whether direct or indirect, absolute or contingent, primary or secondary, due or to become due and whether now existing or hereafter arising pursuant to or under this Agreement, the Loan Agreement or any of the Loan Documents, whether joint or several, or joint and several (all of which are herein separately and collectively referred to as the "Obligations"). Debtor acknowledges that the security interests hereby granted shall secure all future advances pursuant to or under this Agreement, the Loan Agreement or any of the Loan Documents.

B. USE OF COLLATERAL. Debtor represents, warrants and covenants to Secured Party that the Collateral will be used by the Debtor primarily for business purposes.

C. DESCRIPTION OF COLLATERAL. Debtor hereby grants to Secured Party, for the benefit of and as the representative of the Lenders, a security interest in (and hereby pledges and assigns as applicable) and agrees that Secured Party, as representative of and for the benefit of the Lenders, shall continue to have a security interest in (and a pledge and assignment of, as applicable), the following property, to wit:

All Accounts. All accounts, contract rights, rights to the payment of money including, but not limited to, tax refund claims, insurance proceeds, proceeds from tort claims and any rent payable due or to become due under any rent or lease contracts, now owned or existing as well as any and all that may hereafter arise or be acquired by Debtor, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts, or other proceeds or products of any sale, lease, rental or other disposition of Debtor's inventory.

General Intangibles. All general intangibles including, but not limited to, goodwill, engineering drawings and customer lists, and other personal property now owned or hereafter acquired by Debtor other than goods, accounts, chattel paper, documents and instruments.

Chattel Paper. All of Debtor's interest under chattel paper, lease agreements and other instruments or documents, whether now existing or owned by Debtor or hereafter arising or acquired by Debtor, evidencing both a debt and security interest in or lease of specific goods.

Instruments and Documents. All of Debtor's now owned or existing as well as hereafter acquired or arising instruments and documents.

Locomotives and Railcars. All locomotives described on Exhibit "A", hereto.

The term "Collateral" as used in this Agreement shall mean and include, and the security interest (and pledge and assignment as applicable) shall cover, all of the property described in this Section C, as well as any accessions, additions and attachments

thereto and the proceeds and products thereof, including without limitation, all cash, general intangibles, accounts, inventory, equipment, fixtures, notes, drafts, acceptances, securities, instruments, chattel paper, insurance proceeds payable because of loss or damage, or other property, benefits or rights arising therefrom, and in and to all returned or repossessed goods arising from or relating to any of the property described herein or other proceeds of any sale, rental, lease or other disposition of such property.

As additional security for the punctual payment and performance of the Obligations, and as part of the Collateral, Debtor hereby grants to Secured Party, for the benefit of and as the representative of the Lenders, a security interest in, and a pledge and assignment of, any and all money, property, deposit accounts, accounts, securities, documents, chattel paper, claims, demands, instruments, items or deposits of the Debtor, or to which it is a party, now held or hereafter coming within Secured Party's custody or control, including without limitation, all certificates of deposit and other depository accounts, whether such have matured or the exercise of Secured Party's rights results in loss of interest or principal or other penalty on such deposits, but excluding deposits subject to tax penalties if assigned. Without prior notice to or demand upon the Debtor (except as otherwise provided in the Loan Agreement), Secured Party may exercise its rights granted above at any time when a default or event of default has occurred. Secured Party's rights and remedies under this paragraph shall be in addition to and cumulative of any other rights or remedies of Secured Party provided in the Loan Agreement or any of the other Loan Documents or otherwise afforded at law and equity including, without limitation, any rights of setoff to which Secured Party may be entitled.

All terms not otherwise defined herein or defined in the Loan Agreement and which are defined in the Uniform Commercial Code adopted in the State of Texas in effect on the date of execution hereof, shall have the meaning ascribed to them in the Uniform Commercial Code adopted in the State of Texas in effect as of the date of execution hereof and set forth in any amendment to the Uniform Commercial Code adopted in the State of Texas to become effective after the date of execution hereof.

D. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEBTOR.  
Debtor represents, warrants and agrees as follows:

1. Ownership; No Encumbrances. The Debtor is, and as to any property acquired after the date hereof which is included within

the Collateral the Debtor will be, the owner of good and marketable title to all such Collateral free and clear of all security interests, Liens or rights except for (a) the security interests (and pledges and assignments, as applicable) granted hereby, (b) the Permitted Liens, and (c) such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect.

2. No Financing Statements. Except as otherwise permitted in this subparagraph 2, there is no financing statement or similar filing now on file in any public office covering all or any part of the Collateral, and Debtor will not execute and there will not be on file in any public office any such financing statement or similar filing except (a) the financing statements filed or to be filed in favor of Secured Party, and (b) those financing statements relating to Permitted Liens that are listed and described on Exhibit "B" attached hereto and made a part hereof for all purposes.

3. Addresses. The address of Debtor designated on the signature page of the Loan Agreement is Debtor's chief executive office, its principal place of business and the location where Debtor keeps all of its books and records with respect to any accounts. Debtor agrees not to change its chief executive office and principal place of business to another address without advance written notice to Secured Party.

4. Accuracy of Information. All information furnished to Secured Party concerning Debtor, the Collateral and the Obligations, or otherwise for the purpose of obtaining or maintaining credit, is or will be at the time the same is furnished, accurate and complete in all material respects.

5. Authority. Debtor has full right and authority to execute and perform this Agreement and to create the security interest (and pledges and assignment as applicable) created by this Agreement. The making and performance by Debtor of this Agreement will not violate any articles of incorporation, by-laws or similar document respecting Debtor, any provision of law, any order of any court or governmental agency, or any indenture or other agreement to which Debtor is a party, or by which Debtor or any of Debtor's property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture or other agreement, or result in the creation or imposition of any charge, Lien, security interest, claim or encumbrance of any and every nature whatsoever upon the Collateral, except as contemplated by this Agreement or permitted under the Loan Agreement.

6. Labor Standards Compliance. The Debtor and each of its Subsidiaries has produced all goods in compliance with the terms and requirements of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.), as amended.

E. GENERAL COVENANTS. Debtor covenants and agrees as follows:

1. Operation of the Collateral. Debtor agrees to maintain and use the Collateral solely in the conduct of its own business, in a careful and proper manner, and in conformity with all applicable permits or licenses. Debtor shall comply in all respects with all applicable statutes, laws, ordinances and regulations. Debtor shall not use the Collateral in any unlawful manner or for any unlawful purposes, or in any manner or for any purpose that would expose the Collateral to unusual risk, or to penalty, forfeiture or capture, or that would render void, inoperative or unenforceable any insurance in connection with the Collateral.

2. Condition. Debtor shall maintain, service and repair the portion of the Collateral which constitutes tangible personal property so as to keep it in good working order and condition, ordinary wear and tear excepted. Debtor shall replace within a reasonable time all parts that may be worn out, lost, destroyed or otherwise rendered unfit for use, with appropriate replacement parts, except where the failure to do so would not have a Material Adverse Effect. Debtor shall obtain and maintain in good standing at all times all applicable permits, licenses, registrations and certificates relating to the Collateral.

3. Assessments. Debtor shall promptly pay when due all taxes, assessments, license fees, registration fees, and governmental charges levied or assess against Debtor or with respect to the Collateral or any part thereof, except as permitted under the Loan Agreement and such as are being contested in good faith by proper proceedings timely instituted and for which adequate reserves have been provided in accordance with generally accepted accounting principles.

4. No Encumbrances. Debtor agrees not to suffer or permit any charge, Lien, security interest, adverse claim or encumbrance of any and every nature whatsoever against the Collateral or any part thereof, except as permitted under Section D(1) of this Agreement.

5. Notices and Reports. In addition to those notices required by Debtor to Secured Party under the terms of the Loan Agreement, Debtor shall promptly notify Secured Party and each other Lender in writing of any charge, Lien, security interest, claim or encumbrance asserted against the Collateral, any litigation or claim asserted against the Collateral, any theft, loss, injury or similar incident involving the Collateral, and any matter materially and adversely affecting the Collateral or Debtor's interest therein. Debtor shall furnish such other reports, information and data regarding the Collateral as Secured Party or any Lender may request from time to time.

6. No Transfer. Except as permitted in the Loan Agreement, Debtor shall not, without the prior written consent of Secured Party, sell, assign, transfer, lease, charter, encumber, hypothecate or dispose of the Collateral, or any part thereof, or interest therein, or offer to do any of the foregoing.

7. Landlord's Waivers. Debtor shall furnish, at Debtor's sole cost and expense, to Secured Party, if requested, landlord's waivers of all liens with respect to any Collateral covered by this Agreement that is or may be located upon leased premises, such landlord's waivers to be in such form and upon such terms as are acceptable to Secured Party.

8. Additional Filings. Debtor agrees to execute and deliver such financing statement or statements, or amendments thereof or supplements thereto, or other documents as Secured Party may from time to time require in order to comply with the Texas Uniform Commercial Code (or other applicable state law of the jurisdiction where any of the Collateral is located) and to preserve, protect and, if necessary, perfect the Secured Party's rights to the Collateral.

9. Protection of Collateral. Secured Party, at its option, after the occurrence of a default or an event of default, but without any obligation whatsoever to do so, may (a) discharge taxes, claims, charges, liens, security interests, assessments or other encumbrances of any and every nature whatsoever at any time levied, placed upon or asserted against the Collateral, or any portion thereof, (b) place and pay for insurance on the Collateral, or any portion thereof, including insurance that only protects Secured Party's interest, (c) pay for the repair, improvement, testing, maintenance and preservation of the Collateral, or any portion thereof, (d) pay any filing, recording, registration, licensing or certification fees or other fees and charges related to the Collateral, or any portion thereof, or (e) take any other

action to preserve and protect the Collateral, or any portion thereof, and Secured Party's rights and remedies under this Agreement as Secured Party may deem necessary or appropriate. Debtor agrees that Secured Party shall have no duty or obligation whatsoever to take any of the foregoing action. Debtor agrees to promptly reimburse Secured Party upon demand for any payment made or any expense incurred by the Secured Party pursuant to this authorization. These payments and expenditures, together with interest thereon from date incurred until paid by Debtor accruing at the Default Rate, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

10. Inspection. Debtor shall permit Secured Party or any Lender by or through any of its officers, agents, attorneys or accountants, to visit any properties of Debtor for the purpose of inspecting and examining the Collateral, or any portion thereof, wherever located, and to examine and make copies and abstracts from Debtor's books and records.

11. Further Assurances. Debtor shall do, make, procure, execute and deliver all such additional and further acts, things, deeds, interests and assurances as Secured Party may require from time to time to protect, assure and enforce Secured Party's rights and remedies.

12. Insurance. Debtor shall have and maintain insurance with responsible companies as required pursuant to the Loan Agreement.

F. ADDITIONAL PROVISIONS REGARDING ACCOUNTS. The following provisions shall apply to all accounts included within the Collateral:

1. Definitions. The term "account," as used in this Agreement, shall include, but shall not be limited to, all present and future notes, instruments, documents, general intangibles, drafts, acceptances and chattel paper of Debtor, and the proceeds thereof.

2. Additional Warranties. As of the time any account becomes subject to the security interest (or pledge or assignment as applicable) granted hereby, Debtor shall be deemed further to have warranted as to each and all of such accounts as follows: (a) each account and all papers and documents relating thereto are genuine and in all respects what they purport to be; (b) each account is valid and subsisting and arises out of a bona fide sale of goods sold and delivered to, or out of and for services

theretofore actually rendered by the Debtor to, the account debtor named in the account; and (c) the amount of the account represented as owing is the correct amount actually and unconditionally owing except for normal cash discounts and to the best of Debtor's knowledge none of the accounts, other than customary interline accounts, are subject to any setoffs, credits, defenses, deductions or countercharges.

3. Collection of Accounts. Secured Party shall have the right at any time upon the occurrence of a default or an event of default in its own name or in the name of the Debtor to require Debtor forthwith to transmit all proceeds of collection of accounts to Secured Party, to notify any and all account debtors to make payments of the accounts directly to Secured Party, to demand, collect, receive, receipt for, sue for, compound and give acquittal for, any and all amounts due or to become due on the accounts and to endorse the name of the Debtor on all commercial paper given in payment or part payment hereof, and in Secured Party's discretion to file any claim or take any other action or proceeding that Secured Party may deem necessary or appropriate to protect and preserve and realize upon the accounts and related Collateral. Unless and until Secured Party elects to collect accounts, and the privilege of Debtor to collect accounts is revoked by Secured Party in writing, Debtor shall continue to collect accounts, account for same to Secured Party, and, upon the occurrence of an event of default, shall not commingle the proceeds of collection of accounts with any funds of the Debtor. In order to assure collection of accounts in which Secured Party has a security interest (or pledge or assignment of as applicable) hereunder, Secured Party may notify the post office authorities to change the address for delivery of mail addressed to Debtor to such address as Secured Party may designate, and to open and dispose of such mail and receive the collections of accounts included herewith. Secured Party shall have no duty or obligation whatsoever to collect any account, or to take any other action to preserve or protect the Collateral; however, should Secured Party elect to collect any account or take possession of any Collateral, Debtor releases Secured Party from any claim or claims for loss or damage arising from any act or omission in connection therewith.

4. Identification and Assignment of Accounts. On or after the occurrence of a default or event of default and upon the written request of Secured Party, Debtor shall take such action and execute and deliver such documents as Secured Party may reasonably request in order to identify, confirm, mark, segregate and assign accounts and to evidence Secured Party's interest in same. Without limitation of the foregoing, on or after the occurrence of a

default or event of default and upon the written request of Secured Party, Debtor agrees to assign accounts to Secured Party, identify and mark accounts as being subject to the security interest (or pledge or assignment as applicable) granted hereby, mark Debtor's books and records to reflect such assignments, and forthwith to transmit to Secured Party in the form as received by Debtor any and all proceeds of collection of such accounts.

5. Notices. Debtor shall immediately notify Secured Party and each other Lender of the assertion by any account debtor of any setoff, defense or claim regarding an account or any other matter which, if adversely determined, could have a Material Adverse Effect.

6. Segregation of Returned Goods. Returned or repossessed goods arising from or relating to any accounts included within the Collateral shall if requested by Secured Party be held separate and apart from any other property.

G. EVENTS OF DEFAULT. For purposes of this Agreement, the terms "default" and "event of default" shall mean a "Default" and "Event of Default," respectively, as each of those terms are defined in the Loan Agreement.

H. REMEDIES. Upon the occurrence of a default or an event of default, Secured Party, at its option, shall be entitled to exercise any one or more of the remedies set forth in the Loan Agreement, any of the other Loan Documents, any afforded at law or in equity and any of the following remedies (all of which are cumulative):

1. Remedies. Secured Party shall have all of the rights and remedies provided for in this Agreement, in the Loan Agreement and in any of the other Loan Documents, the rights and remedies in the Uniform Commercial Code of Texas, or to the extent the laws of states other than Texas would apply, then any rights and remedies provided by the laws of those jurisdictions, and any and all of the rights and remedies at law and equity, all of which shall be deemed cumulative. Without limiting the generality of the foregoing, Debtor agrees that Secured Party shall have the right to (a) require Debtor to assemble the Collateral, or any portion thereof, and make it available to Secured Party at a place designated by Secured Party that is reasonably convenient to both parties, which Debtor agrees to do; (b) take possession of the Collateral, or any portion thereof, with or without process of law, and, in this connection, enter any premises where the Collateral, or any portion thereof, is located to remove same, to render it unusable, or to

dispose of same on such premises; (c) sell, lease or otherwise dispose of the Collateral, or any portion thereof, by public or private proceedings, for cash or credit, without assumption of credit risk and Secured Party may conduct one or multiple sales of such Collateral, or any portion thereof, without limiting, releasing or affecting the right of Secured Party to conduct other sales with respect to the remaining Collateral; and/or (d) whether before or after default, collect and receipt for, compound, compromise, and settle, and give releases, discharges and acquittances with respect to, any and all amounts owned by any person or entity with respect to the Collateral, or any portion thereof. If applicable law requires reasonable notice to Debtor of any sale hereunder, then any requirement of reasonable notice to Debtor shall be met if such notice is mailed, postage prepaid, to Debtor at the address of Debtor designated at the beginning of this Agreement, at least five (5) days before the day of any public sale or at least five (5) days before the time after which any private sale or other disposition will be made.

2. Appointment of Secured Party as Attorney-in-Fact. Debtor irrevocably appoints Secured Party and any officer or agent thereof, with a full power of substitution, as its true and lawful attorney-in-fact to take any and all appropriate action in Secured Party's discretion and to execute any and all documents and instruments which Secured Party may deem necessary and desirable to accomplish the purpose of this Agreement, including, without limitation, to bring suit to enforce or defend any of the General Intangibles; to demand, collect, recover and give receipts with respect to any sums due under any of the Collateral and to receive, endorse and collect any drafts, instruments or documents of title with respect to any Collateral, to remove any Collateral from the property venue owner, encumbrancer or other person having an interest in the property where any Collateral is located, and in connection therewith, Secured Party is authorized to show a copy of this Agreement to such person as evidence of Debtor's appointment of Secured Party as Debtor's agent and lawful attorney-in-fact and of Debtor's authorization to allow Secured Party to remove any collateral from such property; provided, however, that Secured Party will not exercise its rights, except upon the occurrence and during the continuation of a default or an event of default. This power of attorney is a power coupled with an interest and shall be and is irrevocable.

3. Expenses. Debtor shall be liable for and agrees to pay the reasonable expenses incurred by Secured Party and the other Lenders in enforcing their rights and remedies, in retaking, holding, testing, repairing, improving, selling, leasing or

disposing of the Collateral, or any portion thereof, or like expenses, including, without limitation, attorneys' fees and out-of-pocket legal expenses (including, but not limited to, the allocated cost of staff counsel and special counsel to Secured Party) incurred by Secured Party. These expenses, together with interest thereon from the date incurred until paid by Debtor at the Default Rate, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

4. Proceeds; Surplus; Deficiencies. Proceeds received by Secured Party from disposition of the Collateral, or any portion thereof, shall be applied toward Secured Party's expenses and other Obligations in such order or manner as Secured Party may elect. Debtor shall be entitled to any surplus if one results after lawful application of the proceeds. Debtor shall remain liable for any deficiency.

5. Remedies Cumulative. The rights and remedies of Secured Party are cumulative and the exercise of any one or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy. Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

#### I. OTHER AGREEMENTS.

1. Savings Clause. The usury savings clause provided in Section 12.6 of the Loan Agreement is incorporated by reference into this Agreement and is made a part hereof for all purposes; it being agreed that all rights and remedies of Secured Party hereunder are subject to the terms of such usury savings clause.

2. Joint and Several Responsibility. If this Security Agreement is executed by more than one Debtor, the obligations of all such Debtors shall be joint and several.

3. Waivers. Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity respecting the Obligations hereby waive demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor and any other similar notice whatsoever.

4. Severability. Any provision hereof found to be invalid by courts having jurisdiction shall be invalid only with respect to such provision (and then only to the extent necessary to avoid such

invalidity). The offending provision shall be modified to the maximum extent possible to confer upon Secured Party the benefits intended thereby. Such provision as modified and the remaining provisions hereof shall be construed and enforced to the same effect as if such offending provision (or portion thereof) had not been contained herein, to the maximum extent possible.

5. Use of Copies. Any carbon, photographic or other reproduction of this Agreement or any financing statement signed by Debtor is sufficient as a financing statement for all purposes, including without limitation, filing in any state as may be permitted by the provisions of the Uniform Commercial Code of such state.

6. Relationship to Other Agreements. This Security Agreement and the security interests (and pledges and assignments as applicable) herein granted are in addition to (and not in substitution, novation or discharge of) any and all prior or contemporaneous security agreements, security interests, pledges, assignments, liens, rights, titles or other interests in favor of Secured Party or assigned to Secured Party by others in connection with the Obligations. All rights and remedies of Secured Party in all such agreements are cumulative, but in the event of actual conflict in terms and conditions, the terms and conditions of this Agreement shall govern and control; provided, however, in the event of any conflict between the terms and conditions of this Agreement and the Loan Agreement, the terms and conditions of the Loan Agreement shall govern and control.

7. Notices. Any notice or demand given by Secured Party to Debtor in connection with this Agreement, the Collateral or the Obligations shall be given in accordance with Section 12.7 of the Loan Agreement.

8. Headings and Gender. Paragraph headings in this Agreement are for convenience only and shall be given no meaning or significance in interpreting this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require.

9. Amendments. Neither this Agreement nor any of its provisions may be changed, amended, modified, waived or discharged orally, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

10. Continuing Agreement. The security interest (and pledges and assignments as applicable) hereby granted and all of the terms and provisions in this Agreement shall be deemed a continuing agreement. They shall continue in full force and effect and remain effective between the parties until the earliest of (a) the expiration of four (4) years after repayment in full of all Obligations, or (b) the indefeasible repayment in full of all Obligations and the giving by Debtor of ten (10) days' written notice of revocation of this Agreement.

11. Binding Effect. The provisions of this Security Agreement shall be binding upon the successors and assigns of Debtor and the rights, powers and remedies of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party; provided, however, nothing herein contained shall permit Debtor to assign, transfer or convey any or all of the Collateral in violation of the terms of this Agreement or the Loan Agreement.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, except to the extent (a) of procedural and substantive matters relating only to the creation, perfection, foreclosure of liens and enforcement of rights and remedies against the Collateral, which matters shall be governed by the laws of the respective states in which the respective portions of the Collateral are located, and (b) that the laws of the United States of America and any rules, regulations or orders issued or promulgated thereunder applicable to the affairs and transactions entered into by Secured Party and the Lenders, otherwise preempt Texas or other state law, in which event such federal law shall control.

13. Arbitration. The parties agree to be bound by the terms and provisions of the Arbitration Program (dated 5/1/90) which is incorporated by reference herein and is attached hereto as Exhibit "C", and is acknowledged as received by the parties pursuant to which any and all disputes arising hereunder or under any of the documents and instruments related or pertaining hereto, shall be resolved by mandatory binding arbitration upon the request of any party.

14. No Oral Agreements. **THIS WRITTEN AGREEMENT, THE LOAN AGREEMENT AND THE INSTRUMENTS AND DOCUMENTS EXECUTED IN CONNECTION HERewith AND THEREwith, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

EXECUTED as of the 8th day of April, 1992

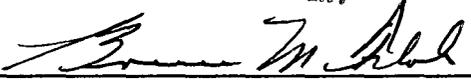
RAILTEX, INC., a Texas corporation

By 

Name:

Title:

**ROBERT R.LENDE  
VICE PRESIDENT**

By 

Name:

Title:

**BRUCE M.FLOHR  
PRESIDENT**

Exhibits:

A - List of Locomotives

B - List of Permitted Financing Statements

C - Arbitration

le:MARO-492\RAILTX#2\ComSec5.Agr

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on April 9, 1992, by Bruce M. Flohr, President of Railtex, Inc., a Texas corporation, on behalf of said corporation.

*Yvette Goree-Harris*  
NOTARY PUBLIC IN AND FOR  
THE STATE OF T E X A S



THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on April 9, 1992, by Robert R. Lende, Vice President of Railtex, Inc., a Texas corporation, on behalf of said corporation.

*Yvette Goree-Harris*  
NOTARY PUBLIC IN AND FOR  
THE STATE OF T E X A S



le:MARO-492\RAILTX#2\ComSec5.Agr

EXHIBIT A

RAILTEX

INVENTORY OF LOCOMOTIVES

13-Mar-92

RR	Loco Number	Frame Number	EMD TYPE	HP
SDIV	1438	5624-14	GP-20	2000
SDIV	2151	1888-8	GP-7	1500
SDIV	3162	5054-13	GP-7	1500
SDIV	4168	5200-8	GP-7	1500
SDIV	5911	5398-9	GP-9	1750
NCVA	6244	5544-6	GP-9	1750
NCVA	6515	5519-2	GP-9	1750
NCVA	23	5377-13	GP-9	1750
VSRR	618	5490-13	GP-9	1750
VSRR	178		GP-9	1750
MMRR	24	5560-11	GP-9	1750
MMRR	5967	5413-30	GP-9	1750
MS	1077	8135-3	ALCO RS3	1600
MMRR	177		GP-9	1750
MMRR	179		GP-9	1750
MMRR	180		GP-9	1750
AUNW	8	4625	SW-1200	1200
AUNW	33	5398-5	GP-9	1750
AUNW	44	5469-8	GP-9	1750
AUNW	55	5469-2	GP-9	1750
AUNW	66	7694-1	GP-38	2000
AUNW	171	5565-3	GP-9	1750
ANUW	172	5413-8	GP-9	1750
AUNW	174	5334-5	GP-9	1750
AUNW	272	5362-10	GP-9	1750
AUNW	15	6112-43	SW-1200	1200
AUNW	11	5469-10	GP-9	1750
AUNW	22	5398-2	GP-9	1750
SCRF	5905	5379-5	GP-9	1750
SCRF	6097	5473-9	GP-9	1750
SCRF	6187	5590-21	GP-9	1750
SCRF	6439	5393-50	GP-9	1750
SCRF	6440	5393-16	GP-9	1750
SCRF	6550	5519-40	GP-9	1750
SCRF	6555	5519-45	GP-9	1750

## RAILTEX

## INVENTORY OF LOCOMOTIVES

RR	Loco Number	Frame Number	EMD Type	
GAAB	2077	1698-8	GP-7	1500
GAAB	2078	1698-3	GP-7 MOD	1850
GGs	2130	5219-13	GP-7	1500
GSWR	20	5474-11	GP-9	1750
GSWR	21	5474-2	GP-9	1750
GSWR	6541	5519-37	GP-9	1750
GSWR	2027	5145-6	GP-7	1500
GSWR	2127	1637-7	GP-7	1500
GSWR	2160	5145-7	GP-7	1500
GSWR	2176	1637-4	GP-7	1500
GSWR	2185	5145-17	GP-7	1500
CPDR	25	7561-4	GP-9	1750
CPDR	8379	5591-10	GP-10	1850
CPDR	8383	5591-18	GP-10	1850
CPDR	8387	5184-4	GP-10	1850
INMR	2053	1889-9	GP-7	1500
INMR	2234	5145-22	GP-7	1500
NEKM	2022	5200-12	GP-7	1500
NEKM	2210	5110-1	GP-7	1500
NEKM	2167	5470-12	GP-7	1500
C & A	2190	1762-8	GP-7 MOD	1750
C & A	2158	1697-8	GP-7	1500
INER	92	6074-2	GP-7 M	1750
INER	107	5019-8	GP-7 M	1750
INER	115	6323-6	GP-7	1500
INER	1229	4219-10	SW-1200	1200
INER	1237		SW-1200	1200
INER	2153	1221-0	GP-7 MOD	1750
INER	2166	5200-15	GP-7 MOD	1850
INER	2219	5288-1	GP-7	1500
NOLR	8375	5591-5	GP-10	1850
NOLK	8377	5591-8	GP-10	1850
ITW	173	5595-6	GP-9	1750

INVENTORY OF LOCOMOTIVES

RR	Value	Loco Number	Legend	EMD type
KCS	4161	N/A		SLUG
ATSF	2013	6525-1		GP-7
ATSF	2207	5054-10		GP-7
ATSF	1120	N/A		
ATSF	1326	5200-1		GP-7

RECAP 73 LOCOMOTIVES

- 1 - GP-38 2000 HP
- 1 - GP-20 2000 HP
- 5 - GP-10 1850 HP
- 32 - GP-9 1750 HP
- 2 - GP-7 MOD 1850 HP
- 4 - GP-7 MOD 1750 HP
- 21 - GP-7 1500 HP
- 4 - SW-1200 1200 HP
- 2 - SLUG
- 1 - ALCO RS-3 1600 HP

**EXHIBIT B**

**PERMITTED FINANCING STATEMENTS**

**RAILTEX, INC.**

<u>JURISDICTION</u>	<u>SECURED PARTY</u>	<u>ORIGINAL FILING DATE</u>	<u>ORIGINAL FILING NO.</u>
Texas	Allied Bank of Texas	11/15/82	82-222480
	Allied Bank West	06/03/87	87-148631
	The First National Bank of Boston	08/31/89	89-197084
	First Interstate Bank of Texas, N.A.	12/18/90	90-251071
	The First National Bank of Maryland	12/18/90	90-261578
	Telecommunications Specialists, Inc.	05/29/91	91-104967
Alabama	The First National Bank of Boston	09/06/89	89-06182
South Carolina	The First National Bank of Boston	09/06/89	89-045828
Georgia Counties:			
Calhoun	The First National Bank of Boston	09/05/89	89-293
Chattahoochie	The First National Bank of Boston	09/05/89	89-298
Crisp	The First National Bank of Boston	09/05/89	89-825
Decatur	The First National Bank of Boston	09/05/89	89-1513
Dodge	The First National Bank of Boston	09/05/89	33950
Early	The First National Bank of Boston	09/05/89	89-820
Miller	The First National Bank of Boston	09/05/89	89-531
Muscogee	The First National Bank of Boston	09/05/89	89-04059
Randolph	The First National Bank of Boston	09/05/89	89-308
Stewart	The First National Bank of Boston	09/05/89	89-214
Sumter	The First National Bank of Boston	09/05/89	89-1346
Webster	The First National Bank of Boston	09/05/89	89-107
Wilcox	The First National Bank of Boston	09/05/89	89-424

## ARBITRATION PROGRAM

(a) **Binding Arbitration.** Upon the request of any party, whether made before or after the institution of any legal proceeding, any action, dispute, claim, or controversy of any kind (e.g., whether in contract or in tort, statutory or common law, legal or equitable) now existing or hereafter arising between the parties in any way arising out of, pertaining to or in connection with (1) the agreement, document or instrument to which this Arbitration Program is attached or in which it is referred to or any related agreements, documents, or instruments (the "Documents"), (2) all past and present loans, credits, accounts, deposit accounts (whether demand deposits or time deposits), safe deposit boxes, safekeeping agreements, guarantees, letters of credit, goods or services, or other transactions, contracts or agreements, (3) any incidents, omissions, acts, practices, or occurrences causing injury to either party whereby the other party or its agents, employees or representatives may be liable, in whole or in part, or (4) any aspect of the past or present relationships of the parties, shall be resolved by binding arbitration in accordance with the terms of this Arbitration Program. The foregoing matters shall be referred to as a "Dispute." Any party to this Arbitration Program may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Disputes.

(b) **Governing Rules.** All Disputes between the parties shall be resolved by binding arbitration administered by the American Arbitration Association (the "AAA") in accordance with the terms of this Arbitration Program, the Commercial Arbitration Rules of the AAA, and, to the maximum extent applicable, the Federal Arbitration Act (Title 9 of the United States Code). In the event of any inconsistency between this Arbitration Program and such statute and rules, this Arbitration Program shall control. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction, provided, however, that nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U S C §91 or Texas Banking Code art. 342-609.

(c) **No Waiver, Preservation of Remedies.** No provision of, nor the exercise of any rights under, this Arbitration Program shall limit the right of any party, and the parties shall have the right during any Dispute, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, protecting, or foreclosing upon any property, real or personal, which is involved in a Dispute, or which is subject to, or described in, the Documents, including, without limitation, rights and remedies relating to (1) foreclosing against any real or personal property collateral or other security by the exercise of a power of sale under a deed of trust, mortgage, or other security agreement or instrument, or applicable law, (2) exercising self-help remedies (including setoff rights) or (3) obtaining provisional or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party, including the plaintiff, to submit the Dispute to arbitration nor render inapplicable the compulsory arbitration provisions hereof

In Disputes involving indebtedness or other monetary obligations, each party agrees that the other party may proceed against all liable persons, jointly and severally, or against one or more of them, less than all, without impairing rights against other liable persons. Nor shall a party be required to join the principal obligor or any other liable persons (e.g., sureties or guarantors) in any proceeding against a particular person. A party may release or settle with one or more liable persons as the party deems fit without releasing or impairing rights to proceed against any persons not so released.

(d) Statute of Limitations All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding.

(e) Scope of Award, Modification or Vacation of Award, Qualifications The arbitrators shall resolve all Disputes in accordance with the applicable substantive law. Any arbitrators shall be practicing attorneys licensed to practice law in the State of Texas and shall be knowledgeable in the subject matter of the Dispute. With respect to a Dispute in which the claim or amount in controversy does not exceed \$1,000,000, a single arbitrator (who shall have authority to render a maximum award of \$1,000,000, including all damages of any kind and costs, fees and the like) shall be chosen and shall decide the Dispute. With respect to a Dispute in which the claim or amount in controversy exceeds \$1,000,000, the Dispute shall be decided by a majority vote of three arbitrators. The arbitrators may grant any remedy or relief that the arbitrators deem just and equitable and within the scope of this Arbitration Program. The arbitrators may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings in which the amount in controversy exceeds \$1,000,000 in the aggregate, the arbitrators shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings in which the amount in controversy exceeds \$1,000,000, in the aggregate, the parties shall have in addition to the limited statutory right to seek vacation or modification of an award pursuant to applicable law, the right to seek vacation or modification of any award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any such application for vacation or modification of an award based on an incorrect ruling of law must be filed in a court having jurisdiction over the Dispute within 15 days from the date the award is rendered. The arbitrators' findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise allowed by applicable law.

(f) Other Matters and Miscellaneous. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within 180 days of the filing of the Dispute with the AAA. Arbitration proceedings hereunder shall be conducted at one of the following locations in the State of Texas agreed to in writing by the parties or, in the absence of such agreement, selected by the AAA: (1) Austin; (2) Dallas; (3) Fort Worth; (4) Houston; or (5) San Antonio. Arbitrators shall be empowered to impose sanctions and to take such other actions as the arbitrators deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. This Arbitration Program constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior discussions, arrangements, negotiations, and other communications on dispute resolution. The provisions of this Arbitration Program shall survive any termination, amendment, or expiration of the Documents, unless the parties otherwise expressly agree in writing. To the extent permitted by applicable law, the arbitrator shall have the power to award recovery of all costs and fees (including attorneys' fees, administrative fees, and arbitrators' fees) to the prevailing party. This Arbitration Program may be amended, changed, or modified only by the express provisions of a writing which specifically refers to this Arbitration Program and which is signed by all the parties hereto. If any term, covenant, condition or provision of this Arbitration Program is found to be unlawful or invalid or unenforceable, such illegality or invalidity or unenforceability shall not affect the legality, validity or enforceability of the remaining parts of this Arbitration Program, and all such remaining parts hereof shall be valid and enforceable and have full force and effect as if the illegal, invalid or unenforceable part had not been included. The captions or headings in this Arbitration Program are for convenience of reference only and are not intended to constitute any part of the body or text of this Arbitration Program. Each party agrees to keep all Disputes and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation.

Revised: 5/1/90