

12-17-2002

12-17-02

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

102313724

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Transit Group Transportation, LLC 12-7-02

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other Delaware Limited Liability Company

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies):

Name: Congress Financial Corporation (Southern)

Internal Address:

Street Address: 200 Galleria Parkway, Suite 1500

City: Atlanta State: GA Zip: 30339

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Georgia Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: December 10, 2002

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,559,279 1,490,542

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: J. Barrett Carter, Paralegal

Internal Address: Parker, Hudson, Rainer and Dobbs LLP

Street Address: 285 Peachtree Center Avenue Suite 1500

City: Atlanta State: GA Zip: 30303

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 3.41) \$ 65.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

J. Barrett Carter Name of Person Signing

Signature

December 16, 2002 Date

Total number of pages including cover sheet, attachments, and document: 7

12/17/2002 LNWELLER 00000213 1559279

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

01 FC:8521 02 FC:8522

40.00 DP 25.00 DP

**SERVICE MARK COLLATERAL ASSIGNMENT
AND SECURITY AGREEMENT**

THIS AGREEMENT is made the 10th day of December, 2002, between **CONGRESS FINANCIAL CORPORATION (SOUTHERN)**, a Georgia corporation having an office at 200 Galleria Parkway, Suite 1500, Atlanta, Georgia 30339 ("Lender"), and **TRANSIT GROUP TRANSPORTATION, LLC**, a Delaware limited liability company (herein referred to as "Assignor").

WHEREAS, Assignor and Transit Group, Inc., (hereinafter collectively referred to as "Borrowers") desire to obtain loans from Lender pursuant to a certain Post-Confirmation Loan and Security Agreement between Lender and Borrowers dated the date hereof ("Loan Agreement"); and

WHEREAS, Lender is willing to make loans to Borrowers from time to time, in Lender's discretion, provided Assignor executes this Agreement.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other valuable consideration, and in consideration of the premises, Assignor hereby agrees with Lender as follows:

1. To secure the complete and timely payment and performance of all Obligations (as defined in the Loan Agreement), Assignor hereby assigns and conveys to Lender, and grants to Lender a security interest in, Assignor's entire right, title and interest in and to the service mark applications and service marks listed in Schedule A hereto, together with the goodwill of the business symbolized by the marks, including, without limitation, all proceeds thereof (such as, by way of example only, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all renewals thereof (collectively called the "Service Marks").

2. Assignor covenants and warrants that:

(a) Each of the Service Marks is subsisting and has not been adjudged invalid or unenforceable;

(b) Each of the Service Marks is valid and enforceable in its field of use;

(c) Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Service Marks in its field of use;

(d) Assignor has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Service Marks.

3. Assignor hereby grants to Lender and its employees and agents the right to visit Assignor's facilities which utilize the Service Marks and to inspect the quality control records relating thereto at reasonable times during regular business hours. Assignor shall do any and all acts required by Lender to ensure Assignor's compliance with paragraph 2 of this Agreement.

4. Assignor agrees that, until all of the Obligations have been satisfied in full, it will not enter into any agreement, including any license agreement, which is inconsistent with Assignor's duties under this Agreement.

5. If, before the Obligations have been satisfied in full, Assignor shall obtain rights to any new service marks, or become entitled to the benefit of any service mark application or service mark for any renewal of any Service Mark, the provisions of paragraph 1 hereof shall automatically apply thereto and Assignor shall give to Lender prompt notice thereof in writing.

6. Assignor authorizes Lender to modify this Agreement by amending Schedule A to include any future service marks and service mark applications which are Service Marks under paragraph 1 or paragraph 5 hereof.

7. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Loan Agreement), Lender hereby grants to Assignor the exclusive, nontransferable right and license to use the Service Marks and the goodwill of the business symbolized by the marks for Assignor's own benefit and account and for none other.

8. If an Event of Default shall have occurred and be continuing, Assignor's license under the Service Marks as set forth in paragraph 7 hereof, shall terminate forthwith, and Lender shall have, in addition to all other rights and remedies given it by this Agreement, those allowed by law and those of a secured party under the Uniform Commercial Code as enacted in Georgia. Notice of any sale or other disposition of the Service Marks shall be deemed reasonable and sufficient if given the Assignor at least ten (10) days before the time of any intended public or private sale or other disposition of any of the Service Marks is to be made. Assignor hereby makes, constitutes and appoints Lender and any officer or agent of Lender as Lender may select as Assignor's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default shall occur and be continuing: to endorse Assignor's name on all applications, documents, papers and instruments necessary for Lender to use the Service Marks, or to grant or issue any exclusive or nonexclusive license under the Service Marks to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Service Marks to anyone else. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until all of the Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated.

9. At such time as Assignor shall satisfy finally and in full all of the Obligations, Lender shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Service Marks, subject to any disposition thereof which may have been made properly by Lender pursuant hereto.

10. Any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or

otherwise protecting, maintaining, or preserving the Service Marks, or in defending or prosecuting any actions or proceedings arising out of or related to the Service Marks, shall be borne and paid by Assignor on demand by Lender and until so paid shall be added to the amount of the Obligations and shall bear interest at the rate prescribed in the Loan Agreement.

11. Assignor shall have the right, but not the obligation, through counsel acceptable to Lender, to prosecute diligently any service mark application of the Service Marks pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full and to preserve and maintain all rights in service mark applications and service marks of the Service Marks. Any expenses incurred in connection with such an application shall be borne by Assignor. Assignor shall not abandon any right to file a service mark application, or any pending service mark application or service mark without the consent of Lender, which consent shall not be unreasonably withheld.

12. Lender shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Service Marks and any license thereunder, in which event Assignor shall at the request of Lender do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Lender in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify the Lenders for all costs and expenses incurred in the exercise of its rights under this paragraph 12. Nothing herein shall be deemed to prohibit Assignor from bringing any such suit in its own name at any time that an Event of Default does not exist, if Lender declines to institute such suit.

13. If Assignor fails to comply with any of its obligations hereunder, Lender may do so in Assignor's name or in Lender's name, but at Assignor's expense, and Assignor agrees to reimburse Lender in full for all expenses, including reasonable attorney's fees, incurred by Lender in prosecuting, defending or maintaining the Service Marks or Lender's interest therein pursuant to this Agreement.

14. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

15. This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 6 hereof.

16. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

17. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Georgia.

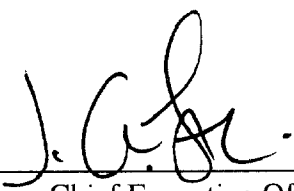
WITNESS the execution hereof under seal on the day and year first above written.

ATTEST:

**TRANSIT GROUP TRANSPORTATION,
LLC**
("Assignor")

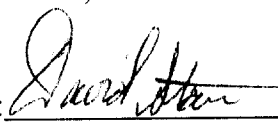


William Cox, Secretary
[COMPANY SEAL]

By:  _____
James G. Salmon, Chief Executive Officer

Accepted in Atlanta, Georgia:

**CONGRESS FINANCIAL
CORPORATION (SOUTHERN)**
("Lender")

By:  _____

Title: First Vice President

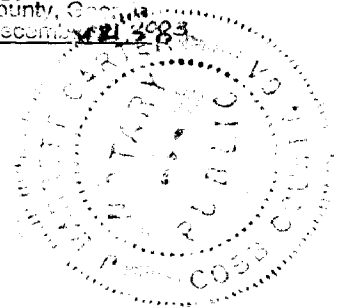
STATE OF GEORGIA)

COUNTY OF Cobb)

BEFORE ME, the undersigned authority, on this day personally appeared James G. Salmon, Chief Executive Officer of Transit Group Transportation, LLC, a Delaware limited liability company to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 10th day of December, 2002.

J. Barrett Carter
Notary Public
My Commission Expires:
~~Notary Public, Cobb County, Georgia~~
~~My Commission Expires December 21, 2003~~
[NOTARIAL SEAL]



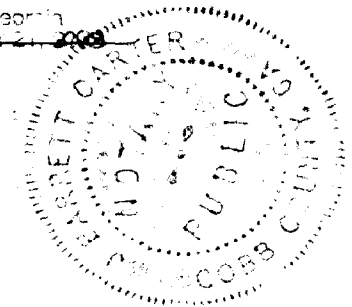
STATE OF GEORGIA)

COUNTY OF Cobb)

BEFORE ME, the undersigned authority, on this day personally appeared David P. Slavi of Congress Financial Corporation (Southern), a Georgia corporation, to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 10th day of December, 2002.

J. Barrett Carter
Notary Public
My Commission Expires:
~~Notary Public, Cobb County, Georgia~~
~~My Commission Expires December 21, 2003~~
[NOTARIAL SEAL]



SCHEDULE A

<u>Service Mark</u>	<u>Registration No.</u>	<u>Date</u>
(Drawing of Leaping Cat)	1559279	October 3, 1989
KAT	1490542	May 31, 1988