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ALVORD AND ALVORD  
ATTORNEYS AT LAW  
918 SIXTEENTH STREET, N.W.  
SUITE 200  
WASHINGTON, D.C.  
20006-2973  
(202) 393-2266  
FAX (202) 393-2156

RECORDATION NO. 19545 FILED 1995  
AUG 2 1995 11 10 AM  
INTERSTATE COMMERCE COMMISSION  
OF COUNSEL  
URBAN A. LESTER

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

August 2, 1995

Mr. Vernon A. Williams  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

RECEIVED  
OFFICE OF THE  
SECRETARY  
AUG 2 11 06 AM '95  
LICENSING BRANCH

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) copies of a Security Agreement and Assignment of Lease, dated as of July 27, 1995, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

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

**Borrower/Assignor:** U.S. Trust Company of California, N.A.  
(as owner trustee  
f/b/o Cypress Equipment Fund II, Ltd.)  
555 South Flower Street  
Los Angeles, California 90071

**Secured Party/Assignee:** The CIT Group/Equipment Financing, inc.  
1211 Avenue of the Americas  
New York, New York 10036

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

four (4) diesel electric locomotives SP 7486, SP 9243, SP 9282, SP 9330,  
which are under lease with Southern Pacific Transportation Company,  
filed under Recordation Number 17977-B and supplemented by 17977-J.

Please cross-index the Borrower under the name of Cypress Equipment Fund II, Ltd.

*Country Club - Kim Bartman*

Mr. Vernon A. Williams  
August 2, 1995  
Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Alvord", written in a cursive style.

Robert W. Alvord

RWA/bg  
Enclosures



Interstate Commerce Commission  
Washington, D.C. 20423-0001

8/2/95

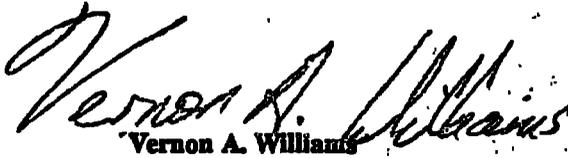
Office Of The Secretary

Robert W. Alvord  
Alvord And Alvord  
918 Sixteenth Street, NW., Ste 200  
Washington, DC., 20006-2973

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 8/2/95 at 11:10AM, and assigned recordation number(s). 19545.

Sincerely yours,

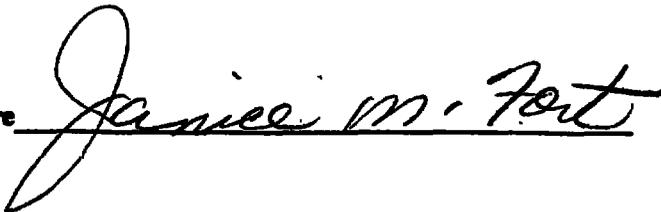
  
Vernon A. Williams  
Secretary

Enclosure(s)

(0100717036)

\$ 21.00 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 AND ASSIGNMENT OF LEASE** COMMERCE COMMISSION  
(LOCOMOTIVES)

THIS SECURITY AGREEMENT AND ASSIGNMENT OF LEASE, dated as of July 27, 1995, is by and between U.S. TRUST COMPANY OF CALIFORNIA, N.A., not in its individual capacity but solely as owner trustee under Trust Agreement (the "Trust Agreement"), dated as of March 31, 1993 ("Trustee"), between it and CYPRESS EQUIPMENT FUND II, LTD., a Florida limited partnership, as beneficiary and successor in interest to American Finance Group and AFG Investment Trust C, former beneficiaries under the Trust Agreement and the Lease (as defined below; "Borrower"); and THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York corporation, as lender ("CIT").

**W I T N E S S E T H:**

WHEREAS, CIT and the Borrower are parties to that certain Loan and Security Agreement dated as of even date herewith (as amended or otherwise modified from time to time, the "Loan Agreement") whereby CIT has agreed to make certain financial accommodations available to the Borrower (the "Loans"); and

WHEREAS, the Borrower has directed the Trustee, as a condition to CIT making advances of the Loans to the Borrower, to execute and deliver this Agreement in order to secure the Obligations with the Collateral (as both terms are hereinafter defined); and

WHEREAS, the Trustee has so agreed in accordance with the following terms.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

**ARTICLE I**

**Definitions**

1. As used in this Security Agreement the following terms shall have the following defined meanings, unless the context otherwise requires (such terms to be equally applicable to both singular and plural forms of the terms defined):

"Agreement", "hereof", "hereto", "hereunder" and words of similar import shall mean this Security Agreement and Assignment of Lease, as the same may be amended, modified or supplemented from time to time.

**"Code"** shall mean the Uniform Commercial Code as from time to time in effect in any applicable jurisdiction.

**"Collateral"** shall mean the Equipment, the Parts and Lease and all other property and rights in which a security interest is granted pursuant to Section 2 hereof by the Trustee to CIT.

**"Equipment"** shall mean the locomotives described on Schedule I attached hereto, collectively.

**"Event of Default"** shall have the meaning set forth in Article IV.

**"Excepted Payments"** shall mean any payments paid or payable to the Trustee or the Borrower with respect to (i) indemnities, and interest in respect thereof, including, without limitation, any tax indemnities; (ii) proceeds of public liability insurance in respect of the Collateral or any part thereof (excepting any portion paid to CIT as an additional insured); (iii) any right to enforce the payment of any amount described in clauses (i) and (ii) above and to recover damages for the breach of any indemnity described in clause (i) above, and (iv) all proceeds of the foregoing.

**"ICC"** means the United States Interstate Commerce Commission.

**"Lease"** shall mean that certain Equipment Lease dated as of March 31, 1993 between Trustee as the lessor, and the Lessee, filed with the ICC under Recordation No. 17977-B, as supplemented by lease supplements from time to time, including without limitation Lease Supplement No. A-5 dated as of May 19, 1993 between Trustee, as lessor, and the Lessee, which was filed with the ICC under Recordation No. 17977-J, as the same may be further amended, supplemented or modified from time to time.

**"Lessee"** shall mean Southern Pacific Transportation Company, a Delaware corporation.

**"Obligations"** shall mean:

(i) the aggregate unpaid principal amount of, and accrued interest on, the Loans as evidenced by the Notes; and

(ii) all other obligations of the Trustee or Borrower now existing or hereafter incurred, under, arising out of or in connection with this Agreement or any Note.

**"Parts"** means all appliances, parts, instruments, appurtenances, accessories, engines, motors, furnishings and other equipment of whatever nature, and any replacements of the foregoing, which may from time to time be incorporated or installed in or attached to any item of Equipment, excluding, however, any of the foregoing to which the Lessee may be

entitled, or in which the Lessee has rights, pursuant to the Lease.

**"Proceeds"** shall have the meaning assigned to it in the Code, and in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Trustee or Borrower from time to time with respect to any of the Collateral; (ii) any and all payments (in any form whatsoever) made or due and payable to Trustee or Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental body, authority, bureau or agency or any other Person (whether or not acting under color of governmental authority); (iii) any and all accounts arising out of, any chattel paper evidencing, any lease of, and any and all other rents or profits or other amounts from time to time paid or payable in connection with, any of the Collateral; and (iv) any and all proceeds of any sale, transfer or other disposition and any and all other rents or profits or other amounts from time to time paid or payable in connection with any of the Collateral, provided, however, that for purposes of this Agreement the term "Proceeds" shall specifically exclude Excepted Payments.

Capitalized terms not otherwise defined herein, unless the context requires otherwise, shall have the meanings given in the Loan Agreement, the terms of which are incorporated herein by reference.

## ARTICLE II

### Security Interest

2. As security for the payment and performance of the Obligations (whether as scheduled or upon acceleration) and of all costs of collection and enforcement of the Obligations, the Trustee hereby mortgages, pledges and assigns to CIT, and hereby creates in and grants to CIT, a continuing security interest in and to all of its right, title and interest in and to the following, and all replacements, proceeds and products of the following, whether now owned or hereafter acquired, subject, however, to the Lease and the rights of the Lessee thereunder:

2.1 all of the Equipment and Parts, and all claims, rights, estates, interests, powers, remedies and privileges on the part of the Trustee with respect to the Equipment and Parts, whether arising under purchase agreements, assignments of purchase agreements, bills of sale, or by statute, at law, in equity or otherwise;

2.2 the Lease, including, without limitation, all amounts payable thereunder other than Excepted Payments, all security deposits and all other claims, rights, estates, interests, powers, remedies and privileges of the Trustee under the Lease;

2.3 any sublease permitted under the Lease or other sublease of the Equipment, including, without limitation, all amounts payable thereunder other than Excepted Payments, all security deposits thereunder and all other claims, rights, estates, interests, powers, remedies and privileges of the Trustee thereunder;

2.4 all books, logs and other records and other materials and documentation pertaining to the Equipment;

2.5 all claims, rights, estates, interests, powers, indemnities, warranties, remedies and privileges of the Trustee under any purchase agreements, assignments of purchase agreements or bills of sale or any other agreements whatsoever respecting the Equipment, any Part, or any item of the foregoing, including, without limitation, any and all payments thereunder or in respect thereof other than Excepted Payments to which the Trustee is or may become entitled; and

2.6 to the extent related to any of the foregoing, all records and all rights in, to and under all policies of insurance other than Excepted Payments, including, without limitation, claims or rights to payments thereunder and proceeds therefrom (excluding, however, any rights, claims, payments or proceeds of any liability policy payable to the Trustee or the Borrower).

2.7 all Proceeds of the Collateral.

### ARTICLE III

#### Representations, Warranties and Agreements

3. The Trustee represents, warrants and agrees as follows.

3.1 Principal Place of Business. The Trustee's principal place of business is located at 555 South Flower Street, Los Angeles, California 90071. The Trustee will notify CIT in writing prior to any change in location of its principal place of business.

3.2 Liens; Authority of Trustee. The Trustee has good and marketable legal title under the terms of the Trust Agreement to the Collateral and will at all times keep the Collateral free of all liens and encumbrances, except the liens and encumbrances permitted or created by the Lease and this Agreement, and has full power and authority to execute this Agreement, to perform the Trustee's obligations hereunder and to subject the Collateral to the security interest created hereby. There is no lien or encumbrance with respect to all or any part of the Collateral, except as permitted or created by the Lease and this Agreement, which is superior to CIT's security interest created hereunder. Without the prior written consent of CIT, the Trustee shall not further encumber the Collateral.

### 3.3 Performance of Lease; Filing of Financing Statements.

The Trustee will perform and comply with each and every term of (a) the Lease, (b) each other item of Collateral which is an agreement, (c) this Agreement, and (d) the Trust, which is to be performed or complied with by the Trustee. The Trustee has filed financing statements, as lessor, against Lessee, as lessee, covering the Equipment, in the appropriate jurisdictions to perfect a security interest therein and shall maintain such filings so long as the Lease is in effect.

3.4 Attorney-in-Fact. The Trustee irrevocably constitutes and appoints CIT, and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Trustee and in the name of Trustee or in its own name, from time to time in CIT's discretion for the purpose of carrying out this Agreement, including without limitation: (i) enforcing the Trustee's rights as the lessor or otherwise under the Lease or any other item of Collateral which is an agreement or document, (ii) effectuating any sale, assignment, transfer or delivery of any item of Collateral for the enforcement of this Agreement, whether pursuant to foreclosure or power of sale or otherwise, (iii) executing and delivering all bills of sale, assignments and other instruments as CIT may consider necessary or appropriate and (iv) to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, including without limitation, the execution and filing with the ICC of any and all instruments or conveyances pertaining to the Equipment. Trustee hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable. If so requested by CIT or any purchaser, the Trustee shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to CIT or such purchaser all bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request. This power of attorney is a power coupled with an interest and shall be irrevocable. CIT shall not exercise any of the powers granted pursuant to this Section 3.4 unless an Event of Default has occurred and is continuing.

3.5 No Assumption by CIT. Anything contained herein or in any item of Collateral which is an agreement or document to the contrary notwithstanding: (a) the Trustee shall at all times remain liable to the Lessee under the Lease, or to any other obligee under any other item of Collateral which is an agreement or document, to perform all its duties and obligations thereunder to the same extent as if this Agreement had not been executed; (b) the exercise by CIT of any of the rights assigned to it hereunder shall not release the Trustee from any of its duties or obligations under the Lease or under any other item of Collateral which is an agreement or document; (c) CIT shall not have any

obligation or liability under the Lease or under any other item of Collateral which is an agreement or document by reason of, or arising out of, this Agreement, or be obligated to perform any of the obligations or duties of the Trustee under the Lease or under any other item of Collateral which is an agreement or document or to make any payment; and (d) any exercise by CIT of any right or remedy under the Lease or under this Agreement shall be subject to the Lessee's rights under the Lease.

**3.6 Dealings with Lessee.** Unless the prior written consent of CIT is obtained (which consent shall not be unreasonably withheld), the Trustee shall not waive, amend, cancel, terminate, modify, or in any way alter any of the terms of the Lease or any other item of Collateral which is an agreement or document, or consent to or accept any cancellation, termination or surrender thereof, or waive any default under or breach of the Lease or any other item of Collateral which is an agreement or document, or consent to or accept any prepayment of any amount under the Lease or any other item of Collateral which is an agreement or document.

**3.7 Maintenance of Security Interest.** The Trustee will at any time or times hereafter execute and deliver such financing statements and other documents and instruments and perform such acts as CIT may from time to time reasonably request to establish, perfect, maintain and continue the perfection and priority of and enforce a valid first priority security interest in the Collateral.

**3.8 Notice of Damage to Collateral.** The Trustee will promptly notify CIT of any loss of or material damage to any Collateral or of any adverse change, known to the Trustee, in the prospect of payment of any sums due under the Lease or under any other item of Collateral which is an agreement or document.

**3.9 Disposition of Collateral.** Except as may be expressly permitted by the terms and provisions of the Loan Agreement, the Trustee will not sell, transfer, convey, lease or otherwise dispose of the Collateral or any interest therein, or attempt or offer to do any of the foregoing, without the prior written consent of CIT and unless the proceeds of any such sale, transfer, conveyance, lease or other disposition, are paid directly to CIT in a manner reasonably acceptable to CIT and are applied to the Obligations. No provision contained in this Agreement shall be construed to authorize any sale, transfer, lease or other disposition of the Collateral except under the conditions contained in this paragraph, or as expressly permitted by the Loan Agreement.

**3.10 Inspection of Records and Collateral.** The Trustee will keep accurate books, records and accounts with respect to the Collateral and will make the same available to CIT at its reasonable request for examination and inspection; and will deliver to CIT Trustee's customary reports, accounting and

statements as CIT from time to time may request with respect to the Lease or any other item of Collateral; and subject to the terms of the Lease, will permit, or cause the Lessee to permit, any authorized representative of CIT to examine and inspect, during normal business hours, the Collateral and any and all premises where the Collateral is or may be kept or located.

3.11 Further Information. The Trustee will also furnish CIT such additional information concerning the Collateral as CIT may from time to time reasonably request.

3.12 Further Assurances. The Trustee at its expense will promptly and duly execute and deliver such documents and assurances and take such action as may be necessary or desirable, or as CIT may from time to time reasonably request, in order to more effectively carry out the intent and purpose of this Agreement and to establish, protect and perfect the rights, remedies and security interests created or intended to be created in favor of CIT hereunder, including, without limitation, the execution, delivery and filing of Financing Statements and continuation statements with respect to the security interests created hereby, in form and substance satisfactory to CIT, in such jurisdictions as CIT may reasonably request. The Trustee hereby authorizes CIT to file any such statements without the signature of the Trustee to the extent permitted by applicable law.

3.13 Lockbox. Upon receipt of written notice from CIT so instructing Trustee, Trustee shall remit to such lockbox under CIT's sole control as may be designated in such notice or at such other address as CIT may from time to time designate in writing (a) all rents and other amounts payable under the Lease (other than Excepted Payments), and (b) all other cash receipts relating to the Collateral other than Excepted Payments.

#### ARTICLE IV

4. Events of Default. The following events shall each constitute an event of default (herein called "Event of Default") under this Agreement:

(a) Any Event of Default under the Loan Agreement;

(b) Any representation or warranty made by Trustee in this Agreement or any supplement, modification or amendment hereof or in connection with any document, certificate or financial or other statement now or hereafter furnished by Trustee in connection with this Agreement or any supplement, modification or amendment hereof shall at any time prove to be untrue or misleading in any material respect as of the time when made; or

(c) Trustee shall fail to observe or perform any covenant, condition or agreement contained in this Agreement, and such

failure shall continue unremedied for a period of 30 days after the earlier of (i) the date on which Trustee obtains knowledge of such failure; or (ii) the date on which notice thereof shall be given by CIT to Trustee; or

(d) The institution by Trustee of a case or proceeding in bankruptcy or insolvency, or the consent by Trustee to the institution of a bankruptcy or insolvency case or proceeding against it, or the commencement by Trustee of a voluntary proceeding or case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, or consent by Trustee to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of Trustee or of any substantial part of its respective property, or the making by Trustee of any assignment for the benefit of creditors, or the admission by or failure of Trustee of its inability to pay its debts generally as they become due, or the taking of action by Trustee in furtherance of any of the foregoing; or

(e) The entry of a decree or order for relief by a court having jurisdiction in respect of Trustee, adjudging it as bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition of or in respect of Trustee in an involuntary proceeding or case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of Trustee or of any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 days.

## ARTICLE V

### Remedies

5.1 Termination; Acceleration. If an Event of Default shall occur, then, CIT shall have all rights and remedies set forth under the Loan Agreement with respect to the Collateral and the Obligations, including, without limitation, the right to terminate any Commitment and to accelerate all outstanding Obligations, in addition to any and all rights and remedies hereunder.

5.2 Additional Remedies. Subject to the provisions of Subsection 5.7, if an Event of Default shall occur and be continuing, CIT may exercise in addition to all other rights and remedies granted to it in this Agreement and the other Loan Documents, all rights and remedies of secured parties under the Code or under any other applicable law. Without limiting the

generality of the foregoing, Trustee agrees that in any such event, CIT, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon Trustee or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase or otherwise dispose of and deliver the Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange or broker's board or at any of CIT's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. CIT shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Trustee, which right or equity is hereby expressly released. Trustee further agrees, at CIT's request, to assemble the Collateral, make it available to CIT at places which CIT shall reasonably select. CIT also shall have the right to collect all rentals and other amounts payable under the Leases and to exercise all other rights, powers and remedies of Trustee thereunder, including without limitation, the right to enforce the provisions thereof and to compromise any claim thereunder. CIT shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale (after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any way relating to the rights of CIT hereunder, including reasonable attorneys' fees and legal expenses) to the payment in whole or in part of the Obligations, in such order as CIT may elect and only after so applying such net proceeds and after the payment by CIT of any other amount required by any provision of law (including Section 9-504(1)(c) of the Code), need CIT account for the surplus, if any, to Trustee. To the extent permitted by applicable law, Trustee waives all claims, damages, and demands against CIT arising out of the repossession, retention or sale of the Collateral. Trustee agrees that CIT need not give more than 10 days' notice (which notification shall be deemed given when mailed, postage prepaid, addressed to Trustee at its address set forth in Subsection 6.2 hereof) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters.

**5.3 Possession of Equipment and Other Collateral.** Subject to the provisions of Subsection 5.7, upon and after an Event of Default, CIT may, without notice, take possession of all or any part of any of or all of the Equipment or other Collateral and may exclude the Trustee, and all persons claiming under the Trustee, wholly or partly therefrom. If the Trustee shall for

any reason fail to deliver such Equipment or any part thereof and all records, logs and other material relating thereto after demand by CIT, CIT may, without being liable for loss or damage, (i) obtain a judgment conferring on CIT the right to immediate possession or requiring the Trustee to deliver immediate possession of all such property to CIT, to the entry of which judgment the Trustee hereby specifically consents, or (ii) with or, to the fullest extent provided by law, without such judgment, pursue all or part of such Equipment wherever it may be found and may enter any of the premises of the Trustee where such Equipment or any part thereof may be and search for such Equipment or any part thereof and take possession of and remove the same. Upon every such taking of possession of the Equipment or any part thereof, CIT may, from time to time, make all such reasonable expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Equipment, as it may deem proper.

**5.4 Waiver of Certain Rights.** The Trustee agrees, to the fullest extent that it lawfully may, that it will not (and hereby irrevocably waives its right to) at any time plead, or claim the benefit or advantage of, any stay, extension, moratorium, or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Agreement or the absolute sale of the Equipment or any part thereof. The Trustee, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have all or any portion of the Equipment marshalled upon any foreclosure hereof.

**5.5 Delay or Omission; Possession of Documents.** (a) No delay or omission of CIT to exercise any right or remedy arising upon the happening of any Default or Event of Default shall impair any right or remedy or shall be construed to be a waiver of any such Default or Event of Default or an acquiescence therein; and every right and remedy given to CIT by this Article V or by applicable law may be exercised from time to time and as often as may be deemed expedient by CIT.

(b) All rights of action under this Agreement may be enforced by CIT without the possession of the Loan Documents, other notes or agreements which create, or evidence, any part of the Obligations or the production thereof in any proceeding.

**5.6 Conveyance Events; Reconveyance Conditions.** If (i) any of the Collateral is returned by a Lessee for any reason whatsoever and not sold or released pursuant to Subsection 5.7 of the Loan Agreement within 30 days of such return, and if the CIT Loan Amount exceeds the Maximum Permitted CIT Loan Amount, (ii) there shall have occurred an Event of Default or (iii) the Loans shall not have been repaid on the Maturity Date (each of the foregoing being a "Conveyance Event"), then, subject to the rights of the Lessees under the respective Leases, Trustee shall immediately convey to CIT all right, title and interest of Trustee in and to the Collateral by bill of sale and assignment

satisfactory in all respects to CIT, to be held by CIT subject to the provisions of paragraphs (a) through (d), inclusive, below.

(a) If the Conveyance Event described in clause (i) above has occurred, CIT will reconvey the Collateral to Trustee, subject in all respects to the security interests of CIT hereunder (unless the Obligations have been paid in full and no Commitment remains outstanding), if any of the following conditions (each a "Reconveyance Condition") are satisfied within 90 days of the date of conveyance to CIT, so long as no Event of Default is in existence: (A) the Collateral is again leased and is subject to an Eligible Lease approved by CIT pursuant to a Supplement and after giving effect thereto, the CIT Loan Amount does not exceed the Maximum Permitted CIT Loan Amount; (B) the Obligations are paid in full; (C) Borrower (and Trustee, if necessary in order to pass legal title thereto) provide CIT with substitute Eligible Equipment which is subject to a substitute Eligible Lease approved by CIT pursuant to CIT's acceptance of a Supplement and after giving effect thereto, the CIT Loan Amount does not exceed the Maximum Permitted CIT Loan Amount; or (D) Borrower repays a portion of the Loans in an amount sufficient so that, after giving effect to such payment, the CIT Loan Amount does not exceed the Maximum Permitted CIT Loan Amount.

(b) If the Conveyance Event described in clause (ii) occurred, CIT will reconvey the Collateral to Trustee, subject in all respects to the security interests of CIT hereunder (unless the Obligations have been paid in full and no Commitment remains outstanding), only if such Event of Default is cured in all respects, and any one of the Reconveyance Conditions is satisfied, within 90 days of the date of conveyance to CIT, so long as no Event of Default is in existence.

(c) If the Conveyance Event described in clause (iii) occurred, CIT will reconvey the Collateral to Trustee only if the Obligations are paid in full.

(d) Notwithstanding the foregoing, if 90 days after the conveyance to CIT, Trustee is not entitled to a reconveyance of the Collateral pursuant to paragraph (a), (b) or (c) above, as applicable, CIT shall be entitled to remarket the Collateral by sale or lease in its sole discretion and apply all remarketing proceeds, (x) first, to costs and expenses of assembling the Collateral, preparing it for sale or lease and remarketing and selling expenses, (y) then to such portions of the CIT Loan Amount as CIT shall select in its sole and absolute discretion, after such application, and (z) lastly to any other unpaid Obligations as CIT shall select in its sole and absolute discretion. If all such costs and expenses and all Obligations have been paid in full, CIT will reconvey to Trustee any remaining Collateral and any remaining proceeds of remarketing, free and clear of any liens created or permitted by CIT thereon.

Provided, however, in no event shall CIT's rights and remedies under this Subsection 5.6 limit or otherwise affect CIT's rights and remedies against the other Collateral with respect to pursuing any deficiency in the amount of the unpaid Obligations.

5.7 Rights of the Lessee. The rights and remedies of CIT hereunder are subject in all respects to the rights of the Lessee under the Lease.

## ARTICLE V

### 6. Miscellaneous

6.1 No Waiver; Cumulative Remedies. No failure or delay on the part of CIT in exercising any right, remedy, power or privilege hereunder or under any Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No right or remedy in this Agreement is intended to be exclusive but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to CIT at law or in equity; and the exercise by CIT of any one or more of such remedies shall not preclude the simultaneous or later exercise by CIT of any or all such other remedies. The acceptance by CIT of any regular installment payment or any other sum owing hereunder shall not (a) constitute a waiver of any Event of Default in existence at the time, regardless of CIT's knowledge or lack of knowledge thereof at the time of such acceptance, and (b) constitute a waiver of any Event of Default unless CIT shall have agreed in writing to waive the Event of Default. To the extent permitted by law, Trustee waives any rights now or hereafter conferred by statute or otherwise which limit or modify any of CIT's rights or remedies under this Agreement.

6.2 Notices. All notices, requests and demands to or upon any party hereto shall be deemed to have been duly given or made when deposited in the United States mail, first class postage prepaid, when sent by facsimile transmission with telephonic confirmation of receipt thereof, or when sent by a nationally recognized overnight courier service, addressed to such party as follows, or to such other address as may be hereafter designated in writing by such party to the other party hereto:

TRUSTEE: U.S. Trust Company of California, N.A., not  
in its individual capacity but solely as  
Owner Trustee under Trust Agreement dated as  
of March 13, 1993  
555 South Flower Street  
Los Angeles, California 90071  
Fax No.: (213) 489-3371

with a  
copy to: U.S. Trust Company of New York  
114 West 47 Street  
New York, New York 10036  
Attention: Louis Young  
Corporate Trusts

and to: Cypress Equipment Fund II, Ltd.  
One Sansome Street  
Suite 1900  
San Francisco, California 94104  
Attention: Stephen R. Harwood  
Fax No.: (415) 951-4605

CIT: The CIT Group/Equipment Financing, Inc.  
1211 Avenue of the Americas  
New York, New York 10036  
Attention: Senior Vice President-Credit  
Fax No. (212) 536-1385

**6.3 Waiver of Trial by Jury. THE PARTIES TO THIS AGREEMENT ACKNOWLEDGE THAT JURY TRIALS OFTEN ENTAIL ADDITIONAL EXPENSES AND DELAYS NOT OCCASIONED BY NONJURY TRIALS. THE PARTIES TO THIS AGREEMENT AGREE AND STIPULATE THAT A FAIR TRIAL MAY BE HAD BEFORE A STATE OR FEDERAL JUDGE BY MEANS OF A BENCH TRIAL WITHOUT A JURY. IN VIEW OF THE FOREGOING, AND AS A SPECIFICALLY NEGOTIATED PROVISION OF THIS AGREEMENT, EACH PARTY TO THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SUBSECTION WITH ANY COURT AS WRITTEN EVIDENCE OF TO CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.**

**6.4 Consent to Forum. THE TRUSTEE HEREBY IRREVOCABLY CONSENTS AND AGREES THAT ANY LEGAL ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR IN ANY WAY IN CONNECTION WITH THIS AGREEMENT MAY BE INSTITUTED OR BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK, IN THE COURTS OF THE STATE OF CALIFORNIA IN THE COUNTY OF SAN FRANCISCO, OR IN THE UNITED STATES DISTRICT COURTS FOR THE SOUTHERN DISTRICT OF NEW YORK OR THE NORTHERN DISTRICT OF CALIFORNIA, AS CIT MAY ELECT, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE TRUSTEE HEREBY IRREVOCABLY ACCEPTS AND SUBMITS TO, FOR ITSELF AND IN RESPECT OF THE COLLATERAL, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF ANY SUCH COURT, AND TO ALL PROCEEDINGS IN SUCH COURTS. NOTHING IN THIS AGREEMENT SHALL AFFECT THE RIGHT OF CIT**

TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR LIMIT THE RIGHT OF CIT TO BRING ACTIONS, SUITS OR PROCEEDINGS WHETHER IN REM, IN PERSONAM, IN LAW, EQUITY, ADMIRALTY OR OTHERWISE IN THE COURTS OF ANY OTHER JURISDICTION. THE TRUSTEE FURTHER AGREES THAT FINAL JUDGMENT AGAINST IT IN ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION, WITHIN OR OUTSIDE THE UNITED STATES OF AMERICA, BY SUIT ON THE JUDGMENT, A CERTIFIED OR EXEMPLIFIED COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE FACT AND THE AMOUNT OF THE LIABILITY.

**6.5 Survival of Representations, Warranties and Covenants.** All representations, warranties and covenants made by the Trustee to CIT in connection with this Agreement shall survive the execution and delivery of this Agreement. All statements contained in any certificate or other instrument signed by an officer of the Trustee and delivered to CIT pursuant to this Agreement shall be deemed representations, warranties and covenants hereunder of the Trustee.

**6.7 Counterparts; Amendments; Waivers.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto were upon the same instrument. No provision of this Agreement or any related agreements may be amended or modified in any way, nor may noncompliance therewith be waived, except pursuant to a written instrument executed by CIT and Trustee. In the case of any waiver, CIT and Trustee shall be restored to their former position and rights hereunder and under any related agreements, and any Default or Event of Default waived shall be deemed to be cured and not continuing, but no such waiver shall in any way be, or be construed to be, a waiver of any other or subsequent Default or Event of Default, or impair any right consequent thereon.

**6.9 Merger Clause; Successors or Assigns.** This Agreement, the Loan Agreement, the Notes and any Supplements contain the complete, final and exclusive statement of the terms of the agreement between CIT and Trustee relating to the transactions hereby contemplated: THIS AGREEMENT SHALL BE BINDING UPON AND INURE TO THE BENEFIT OF TRUSTEE AND CIT AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, EXCEPT THAT THE TRUSTEE MAY NOT ASSIGN OR TRANSFER ITS RIGHTS HEREUNDER OR ANY INTEREST HEREIN WITHOUT THE PRIOR WRITTEN CONSENT OF CIT.

**6.10 Headings; Construction.** Section headings in this Agreement are for convenience in reference only, and shall not govern the interpretation of any of the provisions of this Agreement. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law, Trustee hereby

waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

**6.11 Service of Process.** TRUSTEE AND CIT IRREVOCABLY CONSENT TO SERVICE OF ANY SUMMONS AND/OR LEGAL PROCESS BY REGISTERED OR CERTIFIED UNITED STATES MAIL, POSTAGE PREPAID, TO DEBTOR AT THE ADDRESS SET FORTH IN SUBSECTION 6.2 HEREOF, SUCH METHOD OF SERVICE TO CONSTITUTE IN EVERY RESPECT, SUFFICIENT AND EFFECTIVE SERVICE OF PROCESS IN ANY SUCH LEGAL ACTION OR PROCEEDING. NOTHING IN THIS AGREEMENT SHALL AFFECT THE RIGHT TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

**6.12 Termination.** If no breach, default or Event of Default exists under any document evidencing any of the Obligations (as "Event of Default" may be defined in any such document), this Agreement shall terminate when the Obligations shall have been paid in full at which time CIT shall reassign, release and/or deliver to the Trustee the Collateral and proceeds thereof in which CIT shall have an interest hereunder and, upon request of the Trustee, shall execute and deliver termination statements to the Trustee for filing in each office in which a financing statement has been filed by CIT, all without recourse to or warranty by CIT and at the cost and expense of the Trustee.

**6.13 Exculpation.** Any other provision of this Agreement to the contrary notwithstanding, CIT by acceptance hereof, expressly agrees as follows:

(a) As to the Trustee, that (i) there shall be no personal monetary liability on the part of the Trustee to pay the Loans or any other indebtedness of the Borrower to CIT, or for any failure to comply with the provisions of this Agreement unless such failure is the result of the Trustee's gross negligence or wilful misconduct; (ii) if an Event of Default occurs under this Agreement, any proceedings, judicial or otherwise, brought by CIT against the Trustee shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, security titles, estates, assignments, property rights and security interests now or at any time hereafter securing the payment of the Loans and all other obligations of the Borrower contained in the Loan Agreement, and no attachment, execution, judgment or other writ of process shall be sought, issued, or levied upon any personal assets, properties or funds of the Trustee, other than the properties, property rights, estates and property interests described in this Agreement; (iii) CIT will not seek any judgment for a deficiency against the Trustee, its successors or assigns, in any action to foreclose on any of the Collateral or the liens, security titles, estates, assignments, property rights and security interests conveyed by this Agreement; provided, however, that notwithstanding the foregoing provisions of this Section 6.13, the Trustee shall be fully liable (A) for fraud or misrepresentation, and (B) for the

misapplication by the Trustee of (1) proceeds paid prior to any such foreclosure under any insurance policies by reason of damage, loss or destruction to any of the Collateral, to the full extent of such proceeds so misapplied, and (2) rents, issues, profits and revenues received or applicable to a period subsequent to the occurrence of an event of default but prior to such foreclosure.

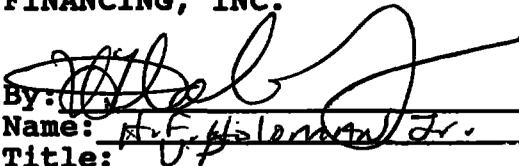
(b) As to the Borrower, that as more expressly set forth in Section 2.5 of the Loan Agreement, (i) there shall be no personal monetary liability on the part of the partners of the Borrower to pay any of the Obligations (as defined in the Loan Agreement); and (ii) CIT will not seek any judgment for a deficiency against the partners of the Borrower, their personal representatives or assigns, in any action to foreclose on any of the Collateral or the liens, security titles, estates, assignments, property rights and security interests conveyed by this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

U.S. TRUST COMPANY OF  
CALIFORNIA, N.A., not in its  
individual capacity but solely  
as Owner Trustee under Trust  
Agreement dated as of March 31,  
1993

By:   
Name: LOUIS P. YOUNG  
Title: AUTHORIZED SIGNATORY

THE CIT GROUP/EQUIPMENT  
FINANCING, INC.

By:   
Name: H. F. Holman Jr.  
Title: \_\_\_\_\_

STATE OF New York )  
COUNTY OF New York ) ss:

On this 27 day of July in the year 1995, before me Christine C. Collins, a Notary Public of said State, duly commissioned and sworn, personally appeared Louis P. Young, personally known to me to be the person who executed the within instrument as Authorized Signatory on behalf of U.S. Trust Company of California, N.A., a national banking association, and acknowledged to me that U.S. Trust Company of California, N.A., executed the within instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Christine C. Collins  
Notary Public (Notary Seal)

CHRISTINE C COLLINS  
Notary Public, State of New York  
No. 03-4624735  
Qualified in Bronx County  
Commission Expires March 30, 1996

STATE OF GEORGIA )  
 )  
COUNTY OF DEKALB ) ss:

On this 1st day of August in the year 1995, before me BRENDA H. ROBERTS, a Notary Public of said State, duly commissioned and sworn, personally appeared H.F. LIXOMAN, JR., personally known to me to be the person who executed the within instrument as VICE PRES. on behalf of The CIT Group/Equipment Financing, Inc., a New York corporation, and acknowledged to me that The CIT Group/Equipment Financing, Inc. executed the within instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Brenda H. Roberts  
Notary Public (Notary Seal)

Notary Public, Gwinnett County, Georgia  
My Commission Expires January 30, 1997

## SCHEDULE I

That certain railroad rolling stock consisting of one (1) General Motors Model SD-45-2 Diesel Electric Locomotive bearing Southern Pacific reporting marks and road unit number 7486, and three (3) General Motors Model SD-45-T2 Diesel Electric Locomotives bearing Southern Pacific reporting marks and road unit numbers 9243, 9282 and 9330, which railroad rolling stock is further described as follows:

- (a) Owner: U.S. Trust Company of California, N.A., not in its individual capacity but solely as owner trustee for the benefit of Cypress Equipment Fund II, Ltd., a Florida limited partnership, as owner participant, successor in interest to American Finance Group, a Massachusetts general partnership, and AFO Investment Trust C, a Delaware business trust, as original owner participants, pursuant to Trust Agreement dated as of March 31, 1993 [SPTC Trust 93-1], certain beneficial interests of said original owner participants having been assigned to Cypress Equipment Fund II, Ltd. pursuant to (i) Purchase and Sale Agreement dated December 31, 1993, and (ii) Bill of Sale dated January 4, 1994.
  
- (b) Lessee: Southern Pacific Transportation Company ("Southern Pacific") pursuant to Equipment Lease dated as of March 31, 1993, between U.S. Trust Company of California, N.A. ("U.S. Trust"), not in its individual capacity but solely as owner trustee for the benefit of Cypress Equipment Fund II, Ltd., beneficiary, as lessor, and Southern Pacific, as lessee, filed with the Interstate Commerce Commission under Recordation Number 17977-B, as supplemented by Lease Supplement No. A-5, dated as of May 19, 1993, filed with the Interstate Commerce Commission under Recordation Number 17977-J.