

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.  
SUITE 301  
WASHINGTON, D.C.  
20036  
—  
(202) 393-2266  
FAX (202) 393-2156  
E-MAIL alvordlaw@aol.com

RECORDATION NO. 21548-F FILED

DEC 29 '05 11:30 AM

SURFACE TRANSPORTATION BOARD  
OF COUNSEL  
URBAN A. LESTER

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

December 28, 2005

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of December 28, 2005, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Railcar Lease previously filed with the Board under Recordation Number 21548-B.

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

Assignor: The CIT Group/Equipment Financing, Inc.  
1211 Avenue of the Americas  
New York, New York 10036

Assignee: First Union Rail Corporation  
One O'Hare Center  
6250 River Road, Suite 5000  
Rosemont, Illinois 60018

Mr. Vernon A. Williams  
December 28, 2005  
Page 2

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

250 coal gondola cars within the series CEFX 44606 - CEFX 44860 as more particularly set forth in the equipment schedule attached to the document.

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

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$33.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm  
Enclosures

DEC 29 '05 11:30 AM

ASSIGNMENT AND ASSUMPTION AGREEMENT SURFACE TRANSPORTATION BOARD

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of December 28 2005 (this "Agreement"), is between The CIT Group/Equipment Financing, Inc., a Delaware corporation (the "Seller"), and First Union Rail Corporation, a North Carolina corporation (the "Buyer").

RECITALS

WHEREAS, the Buyer and the Seller have entered into that certain Purchase and Sale Agreement, dated as of December 28, 2005 (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller and the Buyer.

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

AGREEMENT

1. **Definitions.** Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.

2. **Assignment.** As of the date hereof, the Seller hereby assigns and transfers to the Buyer all of the Seller's rights, title and interest in, and all obligations under, the Lease, except to the extent constituting Excluded Rights and Obligations.

3. **Acceptance of Assignment; Assumption of Obligations; Effect of Assignment.** The Buyer accepts the assignment contained in Section 2 hereof and, in respect of the period on and after the Closing Date, assumes all obligations of the Seller under, and agrees to be bound to the same extent as the Seller by, all the terms of, the Lease. Effective on and after the Closing Date, the Buyer shall be deemed to stand as the Lessor in the place of the Seller for all purposes under the Lease, except with respect to Excluded Rights and Obligations, and each such reference in the Lease to the Lessor shall be deemed to mean the Buyer. The Seller, in respect of the period on and after the Closing Date, is released of all obligations of the Lessor under the Lease, except to the extent of Excluded Rights and Obligations.

4. **Definitions.** Except as otherwise specified or as the context may otherwise require, the following terms have the respective meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

**Bill of Sale:** a bill of sale granted by the Seller in favor of the Buyer with respect to the Equipment.

**Bill of Sale:** a bill of sale granted by the Seller in favor of the Buyer with respect to the Equipment.

**Casualty Occurrence:** the total destruction or other total loss of any unit of Equipment.

**Closing Date:** the date of the closing of the transactions contemplated by the Purchase Agreement.

**Equipment:** the units of Equipment listed on Schedule A-1 hereto.

**Excluded Rights and Obligations:** (i) all rights to payments of indemnity that are due and payable to, or otherwise accrued in favor of, the Seller prior to the Closing Date under the Lease and any rights of the Seller to be indemnified, held harmless and defended by any indemnitor (including, without limitation, by the Lessee) under the Lease with respect to losses, damages, injuries, claims, demands, expenses and Taxes incurred or suffered by or imposed against the Seller prior to the Closing Date or in respect of any period prior to the Closing Date; (ii) all rights to payment of liability insurance proceeds that are due and payable to, or otherwise accrued in favor of, the Seller prior to the Closing Date under any insurance maintained by the Lessee pursuant to the Lease and any rights to any proceeds payable under any such liability insurance as a result of claims made against the Seller with respect to any event occurring or circumstance existing prior to the Closing Date; (iii) all rights to payments of rent, and all other periodic and non-periodic payments (not already included in clauses (i) and (ii) above), in respect of all periods prior to the Closing Date; (iv) all rights to payment in respect of Casualty Occurrences prior to the Closing Date; (v) all obligations of the Seller under the Lease to be performed prior to the Closing Date; and (vi) all liabilities of the Seller under the Lease or in respect of the Equipment arising from any event occurring or circumstance existing prior to the Closing Date.

**Lease:** the lease of equipment identified on Annex I hereto.

**Lessee:** the lessee identified on Annex I hereto.

**Lessor:** the lessor under the Lease.

**Master Lease:** the Master Railcar Lease identified on Annex I hereto.

**Ownership Interest:** the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Lease, except the Excluded Rights and Obligations.

5. **Amendments.** No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

6. **Notices.** All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

7. **Headings.** The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

8. **Counterparts.** This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of New York, without giving effect to its conflict of law rules (other than Section 5-1401 of the New York General Obligations Law).

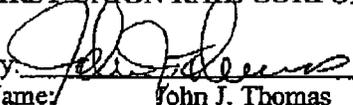
10. **Entire Agreement.** This Agreement, the Purchase Agreement, and the Bill of Sale (together with their exhibits and schedules) represent the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede and cancel any prior oral or written agreement, letter of intent or understanding with respect to such subject matter.

11. **Recordation.** The Seller and the Buyer agree to record this Agreement with the Surface Transportation Board or the Registrar General of Canada or both, as applicable, to evidence the assignment by the Seller to the Buyer of the Seller's rights and obligations under the Lease.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

**FIRST UNION RAIL CORPORATION**

By:   
Name: John J. Thomas  
Title: President

**THE CIT GROUP/EQUIPMENT  
FINANCING, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

**FIRST UNION RAIL CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE CIT GROUP/EQUIPMENT  
FINANCING, INC.**

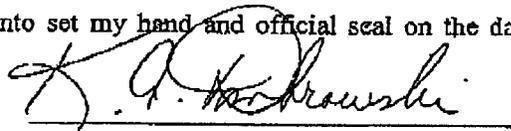
By: *Roy Gosse*  
Name: Roy Gosse

Title: Vice President

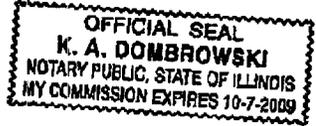
STATE OF ILLINOIS            )  
  ) ss.:  
COUNTY OF COOK            )

On this, the \_\_ day of December, 2005, before me, a Notary Public in and for said County and State, personally appeared John J. Thomas, the President of First Union Rail Corporation, who acknowledged himself to be a duly authorized officer of First Union Rail Corporation, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.



Name: K. A. Dombrowski  
Notary Public



STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF NEW YORK        )

On this, the \_\_ day December, 2005, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, a \_\_\_\_\_ of The CIT Group/Equipment Financing, Inc., who acknowledged himself to be a duly authorized officer of The CIT Group/Equipment Financing, Inc., and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

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STATE OF PENNSYLVANIA     )  
  ) ss.:  
COUNTY OF ALLEGHENY     )

On this, the \_\_\_ day of December, 2005, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, a \_\_\_\_\_ of First Union Rail Corporation, who acknowledged himself to be a duly authorized officer of First Union Rail Corporation, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

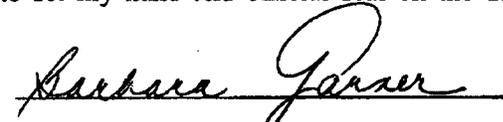
IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK     )

On this, the \_\_\_ day December, 2005, before me, a Notary Public in and for said County and State, personally appeared Roy Gosse, a Vice President of The CIT Group/Equipment Financing, Inc., who acknowledged himself to be a duly authorized officer of The CIT Group/Equipment Financing, Inc., and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

  
\_\_\_\_\_  
BARBARA GARNER  
Notary Public, State of New York  
No. 010A6085133  
Qualified in Nassau County  
Certificate filed in New York County  
Commission Expires Sept. 3, 2006

**SCHEDULE A-1**  
**Car Marks and Numbers**

1.	CEFX	44606
2.	CEFX	44607
3.	CEFX	44608
4.	CEFX	44609
5.	CEFX	44610
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248.	CEFX	44858
249.	CEFX	44859
250.	CEFX	44860

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: 12/29/05



\_\_\_\_\_  
Robert W. Alvord