

RECORDATION NO. 17157-B FILED

ALVORD AND ALVORD
ATTORNEYS AT LAW
1600 K STREET, NW
SUITE 200
WASHINGTON, D.C.

JAN - 9 '01 19-19 AM

SURFACE TRANSPORTATION BOARD

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

20006-2973

OF COUNSEL
URBAN A. LESTER

(202) 393-2266
FAX (202) 393-2156

December 29, 2000

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 five (5) copies of an Assignment and Assumption Agreement, dated as of December 28 2000, 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 which was previously filed with the Commission under Recordation Number 17157.

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

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

Buyer: Fleet Capital Corporation
One Financial Plaza
5th Floor
Providence, Rhode Island 02903

Mr. Vernon A. Williams
December 29, 2000
Page 2

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

Two hundred and twenty nine (229) open top hopper cars within the series HPJX and TNM 20000 – 20104 (formerly all TNM); and within the series HPJX 40500 – 40624 (formerly all DRGW).

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

Assignment and Assumption Agreement, dated as of December 28 2000, between The CIT Group/Equipment Financing, Inc., Seller, and Fleet Capital Corporation, Buyer, covering two hundred and twenty nine (229) open top hopper cars within the series HPJX and TNM 20000 – 20104 (formerly all TNM); and within the series HPJX 40500 – 40624 (formerly all DRGW).

Also enclosed is a check in the amount of \$26.00 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/bjg
Enclosures

RECORDATION NO. 17157-B FILED

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ASSIGNMENT AND ASSUMPTION AGREEMENT SURFACE TRANSPORTATION BOARD

This Assignment and Assumption Agreement, dated December 28, 2000 (this "Agreement"), is between The CIT Group/Equipment Financing, Inc., a Delaware corporation (the "Seller"), and Fleet Capital Corporation, a Rhode Island corporation (the "Buyer").

WITNESSETH:

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement, dated as of December 28, 2000 (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 on the date hereof.

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.

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

2. *Assignment.* Effective as to each item of Equipment on the Closing Date, the Seller sells to the Buyer all of the Seller's rights, title and interest in and to such item and assigns to the Buyer all of the Seller's rights and obligations, except to the extent constituting Existing Obligations, under each of the following as they relate to such item: (a) the Lease; and (b) the documents identified on Exhibit A hereto (collectively, the "Assigned Operative Agreements").

Notwithstanding the foregoing, the Seller shall continue to be entitled to the benefit of any rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

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 Assigned Operative Agreements. Effective on and after the Closing Date, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Seller 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 Assigned Operative Agreements, except to the extent constituting Existing 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: as to an item of Equipment, a bill of sale in the form of Exhibit B hereto.

Closing Date: as to an item of Equipment and related Ownership Interest the date of the Bill of Sale with respect thereto.

Equipment: the items of equipment listed on Exhibit C hereto, together with each and every part, accessory, component and any equipment installed therein or attached thereto owned by the Seller (individually such railcars shall be referred to as an "item" or "items of Equipment").

Existing Obligations: any and all liabilities and obligations of Seller under the Ownership Interest, including the Assigned Operative Agreements, or otherwise relating to the Equipment in each such case, to the extent arising or occurring prior to the Closing Date (whether or not asserted or assessed), and, with respect to the obligations, to have been performed by Seller prior to the Closing Date.

Lease: that certain Railcar Lease Agreement, dated as of December 28, 1990, entered into by and between the Seller ("Lessor"), and American National Bank and Trust Company of Chicago, a national banking association ("Trustee"), not personally, but as trustee under a Trust Agreement, dated December 28, 1990, and known as Trust No. 3411007 ("Lessee"), and Helm-Pacific Leasing, a Nebraska general partnership ("Beneficiary");

Lessee: American National Bank and Trust Company of Chicago, a national banking association, not personally, but as trustee under a Trust Agreement, dated December 28, 1990, and known as Trust No. 3411007

Ownership Interest: the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Assigned Operative Agreements.

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 the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

10. *Recordation.* The Seller and the Buyer agree to record this Agreement with the Surface Transportation Board to evidence the assignment by the Seller to the Buyer of the Seller's rights and obligations under the Lease, if and only if the Lease has been recorded with the Surface Transportation Board.

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

THE CIT GROUP/EQUIPMENT FINANCING, INC.

By: Nancy A. Nardella
Name: Nancy A. Nardella
Title: Vice President

FLEET CAPITAL CORPORATION

By: _____
Name: _____
Title: _____

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.

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

THE CIT GROUP/EQUIPMENT FINANCING, INC.

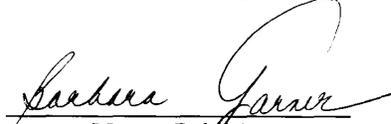
By: _____
Name: Nancy A. Nardella
Title: Vice President

FLEET CAPITAL CORPORATION

By: Sandra Buonaiuti
Name: _____
Title: _____
SANDRA BUONAIUTI
Assistant Vice President

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

On the 18th day of December, 2000, before me personally appeared Nancy A. Nardella, to me personally known, who being by me duly sworn, says that she is a Vice President of THE CIT GROUP/EQUIPMENT FINANCING, INC., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


(Notary Public)

BARBARA GARNER
Notary Public, State of New York
No. 019A5065133
Qualified in Nassau County
Certificate filed in New York County
Commission Expires Sept. 3, 2002

STATE OF RHODE ISLAND)

) ss.:)

COUNTY OF PROVIDENCE)

On the 28th day of December, 2000, before me personally appeared Sandra Buonanuto, to me personally known, who being by me duly sworn, says that s/he is a Q.V.P. of FLEET CAPITAL CORPORATION, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and s/he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Wendy J. Proston
(Notary Public)

ASSIGNED DOCUMENTS

LEASE DOCUMENTS.

1. Acceptance Certificate dated December 31, 1990.
2. Purchase order for the Equipment dated as of December 20, 1990 between Manufacturer and Beneficiary.
3. Assignment of Purchase Order from Beneficiary to Lessor.
4. Bill of Sale from Manufacturer to Lessor dated December 31, 1990.
5. Guaranty Agreement from Beneficiary to Lessor.
6. Guaranty Agreement from Guarantor to Lessor.

SUBLEASES.

1. Lease of Railroad Equipment dated as of December 20, 1990, between Beneficiary and Arch Mineral Corporation ("Arch Mineral").
2. Lease of Railroad Equipment dated as of October 30, 1990, between Beneficiary and The Denver and Rio Grande Western Railroad Company ("D&RGW").
3. Lease of Railroad Equipment dated as of December 18, 1990, between Beneficiary and Union Pacific Railroad Company ("UPRR").
4. Assignment of Lease from Beneficiary to Lessee (D&RGW) filed with the Interstate Commerce Commission under Recordation No. 17159-A..
5. Assignment of Lease from Beneficiary to Lessee (UPRR) filed with the Interstate Commerce Commission under Recordation No. 17160-A..
6. Any and all other subleases with respect to the Equipment which have or have not been filed with the Interstate Commerce Commission or Surface Transportation Board.

SECURITY FOR LEASE OBLIGATIONS.

1. Security Assignment of Beneficial Interest in Trust from Beneficiary to Lessor.
2. Assignment and Security Agreement from Lessee and Beneficiary to Lessor.

3. ICC Lien Letter from Allen H. Harrison, Jr. (Wilmer, Cutler & Pickering) dated December 31, 1990.

ORGANIZATION DOCUMENTS.

1. Trust Agreement between Beneficiary and Trustee.
2. Officers' Certificate, including statement of incumbency and signatures and extracts from bylaws of Trustee.
3. Officers' Certificate from Beneficiary dated December 31, 1990, including statement of incumbency and signatures and copy of Joint Venture Agreement for Beneficiary dated February 21, 1990.
4. Officers' Certificate from Helm Pacific Corporation dated December 31, 1990, including statement of incumbency and signatures and copies of Articles and bylaws and authorizing resolution.
5. Helm Pacific Corporation Certificate of Good Standing dated December 18, 1990.
6. Officers' Certificate from Union Pacific Venture Leasing, Incorporated dated December 27, 1990 including statement of incumbency and signatures and copies of Articles and Bylaws and authorizing resolution.
7. Officer's Certificate dated December 26, 1990, from Union Pacific Railroad Company including statement of incumbency and signatures and copy of authorizing resolution.
8. Certified Restated Articles of Association and Bylaws of Union Pacific Railroad Company.

SUPPORT AND MISCELLANEOUS.

1. Management Agreement between Manager and Lessee and letter from Manager to Lessor regarding notice and opportunity to cure.
2. Letter dated December 26, 1990, from Richard R. Forrest Associates, Inc. with appraisal report regarding residual value and useful economic life of Equipment.
3. ICC Transmittal Letters dated December 31, 1990:
 - a. Lease & Assignment and Security Agreement;
 - b. Arch Mineral Sublease, Assignment of Lease & Assignment and Security Agreement;
 - c. D&RGW Sublease, Assignment of Lease & Assignment and Security Agreement;
 - d. UPRR Sublease, Assignment of Lease & Assignment and Security Agreement.

4. Letter of Direction from Beneficiary to Trustee.

OPINIONS OF COUNSEL (DATED DECEMBER 31, 1990).

1. Opinion from counsel for Beneficiary regarding matters covered in the Lease.
2. Opinion from counsel for Union Pacific Venture Leasing, Incorporated regarding matters covered in lease.
3. Opinion from counsel for Guarantor regarding matters covered in the Guaranty from Guarantor.
4. Opinion from Seyfarth, Shaw, Fairweather & Geraidson regarding tax matters of Lessor.

BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, The CIT Group/Equipment Financing, Inc. ("*Seller*"), does hereby sell, transfer and assign to Fleet Capital Corporation ("*Buyer*") all of Seller's rights, title and interest in and to the equipment described in Exhibit A hereto (the "*Equipment*"), subject to the terms and conditions of the Purchase Agreement, dated as of December 28, 2000, between Seller and Buyer (the "*Purchase Agreement*"), and the Assignment and Assumption Agreement, dated December 28, 2000, between Seller and Buyer.

Seller represents and warrants to Buyer and its successors and assigns that at the time of delivery of the Equipment, Seller had legal title thereto and good and lawful right to sell the Equipment, and the Equipment was free and clear of all Liens (as defined in the Purchase Agreement), other than as described in Section 3.3 of the Purchase Agreement.

THE CIT GROUP/EQUIPMENT FINANCING,
INC.

By: _____

Name: Nancy A. Nardella

Title: Vice President

Date: December 28, 2000

EXHIBIT C

EQUIPMENT

| <u>Equipment Description</u> | <u>Serial Nos.</u> | <u>Casualty Marks</u> |
|---|--------------------|-----------------------|
| 229 100-ton 3600 cubic foot capacity 4-pocket open top hopper railroad cars, built by Trinity Industries, Inc., in 1990 | HPJX 020002 | |
| | HPJX 020005 | |
| | HPJX 020006 | |
| | HPJX 020007 | |
| | HPJX 020014 | |
| | HPJX 020019 | |
| | HPJX 020020 | |
| | HPJX 020028 | |
| | HPJX 020041 | |
| | HPJX 020042 | |
| | HPJX 020044 | |
| | HPJX 020052 | |
| | HPJX 020066 | |
| | HPJX 020070 | |
| | HPJX 020073 | |
| | HPJX 020081 | |
| | HPJX 020086 | |
| | HPJX 020087 | |
| | HPJX 020089 | |
| | HPJX 020090 | |
| | HPJX 020091 | |
| | HPJX 020092 | |

**Equipment
Description**

Serial Nos.

Casualty Marks

HPJX 020097
HPJX 020101
HPJX 020102
TNM 020000
TNM 020001
TNM 020003
TNM 020004
TNM 020008
TNM 020009
TNM 020010
TNM 020011
TNM 020012
TNM 020013
TNM 020015
TNM 020016
TNM 020017
TNM 020018
TNM 020021
TNM 020022
TNM 020023
TNM 020024
TNM 020025
TNM 020026
TNM 020027
TNM 020029
TNM 020030
TNM 020031
TNM 020032
TNM 020033
TNM 020034

**Equipment
Description**

Serial Nos.

Casualty Marks

TNM 020035
TNM 020036
TNM 020037
TNM 020038
TNM 020039
TNM 020040
TNM 020043
TNM 020045
TNM 020046
TNM 020047
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TNM 020063
TNM 020064
TNM 020065
TNM 020067
TNM 020068
TNM 020069

**Equipment
Description**

Serial Nos.

Casualty Marks

TNM 020072
TNM 020074
TNM 020075
TNM 020076
TNM 020077
TNM 020078
TNM 020079
TNM 020080
TNM 020082
TNM 020083
TNM 020084
TNM 020085
TNM 020088
TNM 020093
TNM 020094
TNM 020095
TNM 020096
TNM 020098
TNM 020099
TNM 020100
TNM 020103
TNM 020104
HPJX 040500
HPJX 040501
HPJX 040502
HPJX 040503
HPJX 040504
HPJX 040505
HPJX 040506
HPJX 040507

**Equipment
Description**

Serial Nos.

Casualty Marks

HPJX 040508
HPJX 040509
HPJX 040510
HPJX 040511
HPJX 040512
HPJX 040513
HPJX 040514
HPJX 040515
HPJX 040516
HPJX 040517
HPJX 040518
HPJX 040519
HPJX 040520
HPJX 040521
HPJX 040522
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HPJX 040524
HPJX 040525
HPJX 040526
HPJX 040527
HPJX 040528
HPJX 040529
HPJX 040530
HPJX 040531
HPJX 040532
HPJX 040533
HPJX 040534
HPJX 040535
HPJX 040536
HPJX 040537

**Equipment
Description**

Serial Nos.

Casualty Marks

HPJX 040538
HPJX 040539
HPJX 040540
HPJX 040541
HPJX 040542
HPJX 040543
HPJX 040544
HPJX 040545
HPJX 040546
HPJX 040547
HPJX 040548
HPJX 040549
HPJX 040550
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HPJX 040560
HPJX 040561
HPJX 040562
HPJX 040563
HPJX 040564
HPJX 040565
HPJX 040566
HPJX 040567

**Equipment
Description**

Serial Nos.

Casualty Marks

HPJX 040568
HPJX 040569
HPJX 040570
HPJX 040571
HPJX 040572
HPJX 040573
HPJX 040574
HPJX 040575
HPJX 040576
HPJX 040577
HPJX 040578
HPJX 040579
HPJX 040580
HPJX 040581
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HPJX 040584
HPJX 040585
HPJX 040586
HPJX 040587
HPJX 040588
HPJX 040589
HPJX 040590
HPJX 040591
HPJX 040592
HPJX 040593
HPJX 040594
HPJX 040595
HPJX 040596
HPJX 040597

**Equipment
Description**

Serial Nos.

Casualty Marks

HPJX 040598
HPJX 040599
HPJX 040600
HPJX 040601
HPJX 040602
HPJX 040603
HPJX 040604
HPJX 040605
HPJX 040606
HPJX 040607
HPJX 040608
HPJX 040609
HPJX 040610
HPJX 040611
HPJX 040612
HPJX 040613
HPJX 040614
HPJX 040615
HPJX 040616
HPJX 040617
HPJX 040618
HPJX 040619
HPJX 040620
HPJX 040621
HPJX 040622
HPJX 040623
HPJX 040624