

RECORDATION NO. 25871-E  
FILED

DEC 22 '08 -4 15 PM

SURFACE TRANSPORTATION BOARD

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

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

OF COUNSEL  
URBAN A. LESTER

December 22, 2008

Anne K. Quinlan, Esquire  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

Dear Ms. Quinlan:

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 22, 2008, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the documents previously filed with the Board under Recordation Number 25871.

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

Seller/Assignor: The CIT Group/Equipment Financing, Inc.  
11 West 42<sup>nd</sup> Street  
New York, NY 10017

Buyer/Assignee: Wachovia Financial Services, Inc.  
One O'Hare Center  
6250 River Road, Suite 5000  
Rosemont, IL 60018

Anne K. Quinlan, Esquire  
December 22, 2008  
Page 2

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

88 gondola railcars within the series NCUX 10983 - NCUX 12272 as more particularly set forth in the attachment 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 \$41.00 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,

A handwritten signature in black ink, appearing to read "Alvord", with a long horizontal flourish extending to the right.

Robert W. Alvord

RWA/sem  
Enclosures

DEC 22 '08 -4 15 PM

SURFACE TRANSPORTATION BOARD

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of December 22, 2008 (this "Agreement"), is between The CIT Group/Equipment Financing, Inc., a Delaware corporation (the "Seller"), and Wachovia Financial Services, Inc., 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 22, 2008 (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.

**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 Annex I 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]

[Assignment and Assumption Agreement – Dial 2008]

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

**WACHOVIA FINANCIAL SERVICES,  
INC.**

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

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

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

[Assignment and Assumption Agreement – Dial 2008]

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

On this, the 17<sup>th</sup> day of December, 2008, before me, a Notary Public in and for said County and State, personally appeared Nancy A. Nardella, a Vice President of The CIT Group/Equipment Financing, Inc., who acknowledged herself to be a duly authorized officer of The CIT Group/Equipment Financing, Inc., and that, as such officer, being authorized to do so, she 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.

  
\_\_\_\_\_  
Notary Public

**BENJAMIN A. BOMRIND**  
Notary Public, State of New York  
No. 02806175718  
Qualified in Kings County  
Commission Expires Oct. 15, 2011

[Assignment and Assumption Agreement – Dial 2008]

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

**WACHOVIA FINANCIAL SERVICES,  
INC.**

By: Richard F. Seymour

Name: Richard F. Seymour

Title: Managing Director

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

By: \_\_\_\_\_

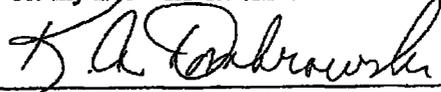
Name: Nancy A. Nardella

Title: Vice President

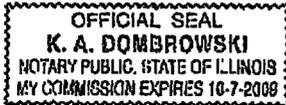
STATE OF ILLINOIS     )  
                                  ) ss.:  
COUNTY OF COOK     )

On this, the 18<sup>th</sup> day of December, 2008, before me, a Notary Public in and for said County and State, personally appeared Richard F. Seymour, Managing Director of Wachovia Financial Services, Inc., who acknowledged himself to be a duly authorized officer of Wachovia Financial Services, 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.



Name: K. A. Dombrowski  
Notary Public



**Annex I**  
**to**  
**Assignment and Assumption Agreement**

Lease with Dial & Companies, Inc.

Schedule No. 01 to Master Railcar Lease, made as of July 16, 2008 ("Schedule No. 01"), by and between The CIT Group/Equipment Financing, Inc. (the "Lessor") and Dial & Companies, Inc. (the "Lessee") incorporating the terms of that certain Master Railcar Lease, made as of January 1, 2008, by and between the Lessee and the Seller (the "Master Lease Agreement") as it relates only to the units of Equipment, as amended by that certain Amendment No. 01 to Schedule No. 01 dated as of December 18, 2008 by and between the Lessee and the Seller ("the "Amendment" and together with Schedule No. 01 and the Master Lease Agreement to the extent incorporated therein, the "Lease") and Rider No. 1 to Master Lease Agreement, dated November 22, 2004 (as amended, modified and extended, the "Sublease Rider"), by and between the Lessee, as lessor, and DTE Coal Services (the "Sublessee"), incorporating the terms of that certain Master Lease Agreement, dated November 22, 2004 (the "Sublease Agreement"), as it relates only to the Equipment (the Sublease Rider, together with the Sublease Agreement to the extent incorporated therein, the "Sublease")

Number of Railcars:	89 in Schedule, 1 casualty, 88 being sold
Description:	4,520 c.f. aluminum coal gondola cars
Reporting Marks:	See Schedule A attached
Rental Payments:	[information removed from filing copy]
Lease Expiration Date:	December 31, 2010

**SCHEDULE A**

**Number of Cars**

**Equipment Description**

88

4,520 c.f. aluminum coal gondola cars

1.	NCUX	10983
2.	NCUX	10986
3.	NCUX	10989
4.	NCUX	10990
5.	NCUX	11000
6.	NCUX	11007
7.	NCUX	11016
8.	NCUX	11018
9.	NCUX	11021
10.	NCUX	11029
11.	NCUX	11034
12.	NCUX	11036
13.	NCUX	11037
14.	NCUX	11042
15.	NCUX	11045
16.	NCUX	11054
17.	NCUX	11057
18.	NCUX	11059
19.	NCUX	11061
20.	NCUX	11062
21.	NCUX	11065
22.	NCUX	11073
23.	NCUX	11080
24.	NCUX	11082
25.	NCUX	11084
26.	NCUX	11085
27.	NCUX	11089
28.	NCUX	11096
29.	NCUX	11101
30.	NCUX	11102
31.	NCUX	11103
32.	NCUX	11104
33.	NCUX	11106
34.	NCUX	11107
35.	NCUX	11108
36.	NCUX	11110
37.	NCUX	11113
38.	NCUX	11121
39.	NCUX	11125
40.	NCUX	11128
41.	NCUX	11129
42.	NCUX	11132
43.	NCUX	11133

44.	NCUX	11134
45.	NCUX	11138
46.	NCUX	11140
47.	NCUX	11142
48.	NCUX	11143
49.	NCUX	11147
50.	NCUX	11152
51.	NCUX	11155
52.	NCUX	11158
53.	NCUX	11159
54.	NCUX	11161
55.	NCUX	11167
56.	NCUX	11169
57.	NCUX	11170
58.	NCUX	11174
59.	NCUX	11179
60.	NCUX	11180
61.	NCUX	11181
62.	NCUX	11182
63.	NCUX	11184
64.	NCUX	11187
65.	NCUX	11188
66.	NCUX	11191
67.	NCUX	11197
68.	NCUX	11201
69.	NCUX	11203
70.	NCUX	11204
71.	NCUX	11205
72.	NCUX	11206
73.	NCUX	11210
74.	NCUX	11214
75.	NCUX	11217
76.	NCUX	11218
77.	NCUX	11220
78.	NCUX	11478
79.	NCUX	11525
80.	NCUX	12071
81.	NCUX	12092
82.	NCUX	12107
83.	NCUX	12113
84.	NCUX	12119
85.	NCUX	12141
86.	NCUX	12160
87.	NCUX	12173
88.	NCUX	12272

**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: 12/22/08



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