RECORDATION NO. 18468-S FILED

MAY 29 '01 4-25 PM

SURFACE TRANSPORTATION BOARD

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

OF COUNSEL
URBAN A. LESTER

May 29, 2001

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 three (3) copies of an Assignment and Assumption Agreement, dated as of May 29, 2001, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Amended and Restated Equipment Lease Agreement which was previously filed with the Commission under Recordation Number 18468.

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

Seller/Assignor: Babcock & Brown Rail Funding LLC
599 Lexington Avenue
New York, NY 10022

Buyer/Assignee: The Emerson Partnership, LLP
c/o Stills Limited
Queensgate House
P.O. Box 1093 GT
George Town
Grand Cayman
Cayman Islands

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

89 coal hopper railcars within the series CTRN 600002 - CTRN 600204.

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

Assignment and Assumption Agreement, dated as of May 29, 2001, between Babcock & Brown Rail Funding LLC, Seller, and The Emerson Partnership, LLP, Buyer.

Also enclosed is a check in the amount of $28.00 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

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SURFACE TRANSPORTATION BOARD

EXECUTION VERSION

ASSIGNMENT AND ASSUMPTION AGREEMENT [UPRR #3]

This Assignment and Assumption Agreement [UPRR #3] dated May 29, 2001 (this "Agreement"), is between Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "Seller"), and The Emerson Partnership, LLP, a Delaware limited liability partnership (the "Buyer").

WITNESSETH:

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement dated as of May 29, 2001 (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, except as reserved under Section 2.1 of the Purchase Agreement, 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;

(b) the Purchase Agreement dated as of December 19, 2000 between the Seller and the Prior Seller, as amended, modified or supplemented from time to time, to the extent the same relates to the Equipment;

(c) each assignment and assumption agreement executed and delivered by the Prior Seller and the Seller in respect of the Equipment;

(d) each bill of sale executed and delivered by the Prior Seller in respect of the Equipment; and

(e) the Lease Supplement No. 1 to Amended and Restated Equipment Lease Agreement dated as of December 22, 1993 between the Seller and the Lessee (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 any one or more items of Equipment, a bill of sale in the form of Exhibit I hereto.

Closing Date: as to any one or more items of Equipment and related Ownership Interest, the date of the Bill of Sale with respect thereto.

Equipment: the items of equipment listed on Exhibit A 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: the Amended and Restated Equipment Lease Agreement dated as of December 22, 1993, entered into by and between the Seller, as lessor and the Lessee, as lessee, as amended, modified or supplemented from time to time.

Lessee: Union Pacific Railroad Company (formerly known as Southern Pacific Transportation Company).

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, except the Existing Obligations.

Prior Seller: The CIT Group/Equipment Financing, Inc.

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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BABCOCK & BROWN RAIL FUNDING LLC,
as Seller

By: _____
Name: Larry Littlefield
Title: Vice President

THE EMERSON PARTNERSHIP, LLP,
as Buyer

By: Stills Limited, its General Partner

By: _____
Name:
Title:

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

BABCOCK & BROWN RAIL FUNDING LLC,
as Seller

By: _____
Name:
Title:

THE EMERSON PARTNERSHIP, LLP,
as Buyer

By: Stills Limited, its General Partner

By: _____
Name:
Title:

State of New York)
)
County of New York)

On this, the 24th day of May, 2001, before me, a Notary Public in and for said County and State, personally appeared Larry Littlefield, who acknowledged himself to be a duly authorized officer of Babcock & Brown Rail Funding LLC, 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: Jeniffer Moreno
Notary Public

My Commission Expires: 01/24/2002

Residing in: Queens County

Jeniffer Moreno
Notary Public, State of New York
No. 01MO6036946
Qualified in Queens County
Commission Expires January 24, 2002

State of New York
County of Queens

On this, the 25 day of May, 2001, before me, a Notary Public in and for said County and State, personally appeared Michael Lypka, an authorized person of The Emerson Partnership, LLP, who acknowledged himself to be a duly authorized officer of Emerson Partnership, LLP, 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: Jeniffer Moreno
Notary Public

My Commission Expires: January 24, 2002

Residing in: _____

Jeniffer Moreno
Notary Public, State of New York
No. 01MO6036946
Qualified in Queens County
Commission Expires January 24, 2002

Exhibit A
(to Assignment
and Assumption
Agreement)

EQUIPMENT

# Cars	Year Built	Description	Reporting Marks	Casualty Marks
89	1993	4,000 cubic foot, 100 ton aluminum quadruple coal hopper cars, manufactured by Johnstown America.	CTRN 600002, 600015, 600022 – 600026, inclusive; 600028, 600030 – 600033, inclusive; 600036 – 600070, inclusive; 600125, 600140, 600142, 600143, 600157, 600168 – 600204, inclusive.	

Exhibit 1
(to Assignment and
Assumption Agreement)

BILL OF SALE

On this _____ day of _____, 2001, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Babcock & Brown Rail Funding LLC ("Seller"), does hereby sell, transfer and assign to The Emerson Partnership, LLP ("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 _____, 2001, (the "Purchase Agreement") and the Assignment and Assumption Agreement [UPRR #3] dated _____, 2001, each 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.

BABCOCK & BROWN RAIL FUNDING LLC

By:_____
Name:
Title:

Exhibit A
(to Bill of Sale)

EQUIPMENT