

RECORDATION NO. 24023-B FILED

JUN 28 '02 4:13 PM

SURFACE TRANSPORTATION BOARD

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

June 28, 2002

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 June 28, 2002, a primary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Mortgage which is being filed with the Board under Recordation Number _____.

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

Seller: Flex Leasing Corporation
Suite 300
234 Front Street
San Francisco, California 94111

Buyer: Babcock & Brown Rail Funding LLC
599 Lexington Avenue
New York, New York 10022

Mr. Vernon A. Williams
June 28, 2002
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A description of the railroad equipment covered by the enclosed document is:

One hundred (100) open top hopper cars: FLCX 200200 – FLCX 200299.

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 \$30.00 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 cursive script that reads "Robert W. Alvord". The signature is written in black ink and is positioned above the printed name.

Robert W. Alvord

RWA/anm
Enclosures

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Execution Version

SURFACE TRANSPORTATION BOARD

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement, dated as of June 28, 2002 (this "Agreement"), is between Flex Leasing Corporation, a Delaware corporation (the "Seller"), and Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "Buyer").

Witnesseth:

WHEREAS, the Buyer and the Seller have entered into that certain Agreement Concerning Purchase of Railcars [FLC/BBRF] dated as of June 28, 2002 (the "Purchase Agreement"), providing for the purchase of the Seller's 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 on the Closing Date, the Seller sells, transfers, conveys and assigns to the Buyer, except as reserved under Section 2.1 of the Purchase Agreement, 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) Schedule No. 01 to Master Car Lease Agreement dated as of June 26, 2002; and
 - (c) Schedule No. 02 to Master Car Lease Agreement dated as of June 26, 2002 (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).

Closing Date: the date hereof.

Existing Obligations: any and all liabilities and obligations of Seller under the Seller's Interest, including the Assigned Operative Agreements, 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: Master Car Lease Agreement dated as of June ____, 2002, entered into by and between Seller, as lessor, and Lessee, as lessee, as amended, modified or supplemented from time to time, relating to the Equipment described on Exhibit A hereto.

Lessee: Firstenergy Generation Corp., an Ohio corporation.

Seller's Interest: the Seller's rights and obligations under the Assigned Operative Agreements, except the Existing 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.

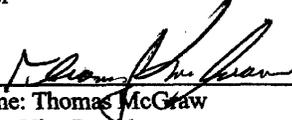
9. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

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 Buyer

By: 
Name: Thomas McGraw
Title: Vice President

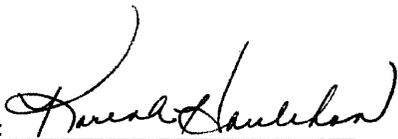
FLEX LEASING CORPORATION,
as Seller

By: _____
Name:
Title:

State of New York)
)
County of New York)

On this, the 28th day of June, 2002, before me, a Notary Public in and for said County and State, personally appeared Thomas McGraw, the Vice President of Babcock & Brown Rail Funding LLC, 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: 
Notary Public

My Commission Expires:

KAREN A. HOULIHAN
Notary Public, State of New York
No. 01HO8051904
Qualified in New York County
Commission Expires December 4, 2002

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 Buyer

By: _____
Name:
Title:

FLEX LEASING CORPORATION,
as Seller

By: Robert E. Pickel Jr.
Name: Robert E. Pickel Jr.
Title: Vice President - Operations

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Francisco } ss.

On June 27, 2002 before me, Joan M. Juster, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Robert E. Pickel, Jr.
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Joan M. Juster
Signature of Notary Public

Please Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Assignment and Assumption

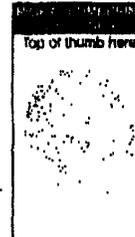
Document Date: June 2002 Number of Pages: 7

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: Robert E. Pickel, Jr.

- Individual
- Corporate Officer — Title(s): Vice President - Operations
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing: Flex Leasing Corporation

EXHIBIT A

<u>Quantity</u>	<u>Equipment Description</u>	<u>Reporting Marks and Numbers</u>
100	4300 cu. ft. aluminum rapid discharge open top hopper cars with rotary couplers (Johnstown America Autoflood II)	FLCX 200200 – 200299, inclusive

CERTIFICATION

I, Edward M. Luria, an attorney licensed to practice in the District of Columbia, the State of Delaware and the Commonwealth of Pennsylvania, do hereby certify under penalty of perjury that I have compared the attached copy of an Assignment and Assumption Agreement with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: June 28, 2002

Edward M. Luria

Edward M. Luria