

RECORDATION NO. 22177-B FILED

MAY 20 03 8-37 AM

SURFACE TRANSPORTATION BOARD

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

May 15, 2003

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 Agreement, dated as of May 13, 2003, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Railroad Lease Agreement which was previously filed with the Board under Recordation Number 22177.

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

Assignor:	Citizens Leasing Corporation One Citizens Plaza Providence, Rhode Island 02903
Assignee:	Emigrant Business Credit Corporation 101 Executive Blvd. Elmsford, New York 10523

Mr. Vernon A. Williams  
May 15, 2003  
Page 2

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

50 Covered Hopper cars: SDWX 10234 - SDWX 10277; and SDWX  
10284 - SDWX 10289.

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

Assignment 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,



Robert W. Alvord

RWA/anm  
Enclosures



REGISTRATION NO. 22177-B  
MAY 20 '03 8-37 AM  
STATE TRANSPORTATION BOARD

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT ("Agreement") is made as of the 13<sup>th</sup> day of May, 2003, by and between CITIZENS LEASING CORPORATION ("Assignor") and EMIGRANT BUSINESS CREDIT CORPORATION ("Assignee").

Fleet Capital Corporation f/k/a BancBoston Leasing ("Lessor") and CEMEX, Inc. f/k/a Southdown, Inc. ("Lessee") have entered into Equipment Schedule 23, dated June 1, 1999 (the "Schedule") which incorporates by reference the terms and conditions of that certain Master Lease Agreement dated as of June 13, 1995 (the "Master Lease"), between Lessor and Lessee.

Lessor and Assignor entered into a Purchase, Assignment, Assumption & Indemnity Agreement for Equipment Schedule 23 on June 4, 1999, pursuant to which, among other things, Lessor assigned its interest in the Equipment specified on Schedule A attached hereto (the "Assigned Equipment") and in, to and under the Schedule and all related documents to the extent relating to the Assigned Equipment.

Assignor desires to sell and assign to Assignee, and Assignee desires to purchase from Assignor, Assignor's right, title and interest (collectively, the "Interest") in and to the Assigned Equipment and in, to and under the Schedule and all related documents to the extent relating to the Assigned Equipment. The Assigned Equipment had an original aggregate Capitalized Lessor's Cost of [REDACTED]

Assignor is willing to sell and assign to Assignee and Assignee is willing to purchase from Assignor said Interest on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, the mutual promises made herein, and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

- 1. Conveyance: Purchase Price. (a) Conveyance. In exchange for Assignee's full and final payment to Assignor of the Consideration (as defined in part (b) of this Section), and all of Assignee's other agreements hereunder, Assignor hereby sells, assigns, transfers and sets over to Assignee the Interest. The assignment and conveyance hereunder expressly

includes all of Assignor's rights, obligations, title and interest; (A) in, under and to the Assigned Equipment; (B) in, under and to the Schedule to the extent relating to the Assigned Equipment and the Master Lease solely to the extent relating to the Assigned Equipment (the "Lease Documents"), including the right to receive any and all rent and other sums due and to become due under, or recoverable in connection with, the Assigned Equipment and the Schedule to the extent relating to the Assigned Equipment; and (C) in, under and to those certain agreements with the suppliers (if any) solely as they relate to the Assigned Equipment (such agreements being collectively referred to as the "Supplier Agreements"; and together with the Lease Documents being collectively referred to as the "Transaction Documents") more specifically described on Schedule B attached hereto, including (without limitation) all manufacturers' and/or suppliers' warranties with respect to the Assigned Equipment.

(b) Consideration. In exchange for the conveyance by Assignor pursuant hereto, Assignee shall pay to Assignor, in cash, [REDACTED] (the "Consideration"); and both parties agree that none of the rights, obligations, title or interest so conveyed hereby shall pass to Assignee unless and until Assignor has received the full and final payment of the Consideration therefor.

2. Assignor's Warranties and Representations; Disclaimer. (a) Warranties and Representations.

(1) Assignor hereby warrants and represents that, effective as of the date hereof: (i) each of the Transaction Documents has been executed; is in full force and effect with respect to Assignor; and Assignor has no reason to believe that it is not in full force and effect with respect to the Lessor and Lessee; (ii) to Assignor's knowledge, no default or event which, with the giving of notice or lapse of time or both, would become a default, has occurred under the Transaction Documents, and the Transactions Documents are not subject to any defense, setoff, recoupment, deduction or counter-claim; (iii) the information set forth herein is true and correct; (iv) Assignor has not heretofore assigned or pledged the Interest assigned hereunder, (v) there is only one copy of each Schedule marked "Counterpart No. 1 of 2" and the original Acceptance Certificate as chattel paper for purposes of transferring a security interest in the leased Equipment and any other copies of the Schedule and Acceptance Certificates are not the "Original" for such purposes, (vi) all of the documents relating to the Transaction Documents are the documents set forth on Schedule B, and (vii) there have been no casualties under the Schedule.

(2) Assignor hereby further warrants and represents that: (i) the execution of this Agreement and any applicable Transaction Documents to which it is a party on its behalf and its participation in the transaction specified herein is in its ordinary course of business and within the scope of its existing corporate authority; and (ii) this Agreement constitutes the legal, valid and binding obligation of Assignor, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization,

moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein.

(3) Assignor hereby further warrants and represents that as of May 7, 2003 there are 73 monthly payments in the amount of \$20,889.82, which the next such payment of rent due on June 1, 2003, remaining to be paid under the Schedule. Assignor makes no representation or warranty as to the collectibility of any of the foregoing payments which is dependent upon the creditworthiness of the Lessee.

**Disclaimer.** Except as set forth in this Section 2, Assignor has not heretofore made, nor does it make by this Agreement, any representations or warranties, and Assignor assumes no liabilities or responsibilities, with respect to the collectibility under any of the Transaction Documents or any document related thereto.

(4) Assignor hereby further warrants and represents that Assignor will provide Assignee with a liability and property insurance certificate naming Assignee as additional insured, loss payee and certificate holder. Prior to providing the above mentioned insurance certificate in a form satisfactory to Assignee or in the event the above referenced insurance certificate is not obtained, Assignor shall act as agent for Assignee with regards to any insurance matter (claim or otherwise) with respect to the Schedule.

3. Assignee's Warranties and Representations. Assignee hereby warrants and represents that: (a) the execution of this Agreement on its behalf and its participation in the transaction specified herein is in its ordinary course of business and within the scope of its existing corporate authority; (b) it understands that the conveyance of the Interest, to the extent it may involve the sale of a security, is being offered and sold without registration under the Securities Act of 1933, as amended (the "Act") and applicable state securities laws in reliance upon an exemption from the registration requirements of the Act and applicable state securities laws; (c) it understands that the conveyance of the Interest, to the extent it may involve the sale of a security, is subject to restrictions on transferability and resale except as permitted under the Act and applicable state securities laws and it is acquiring the Interest solely for its own account, for investment, and not with a view to resale; (d) it has independently and without reliance upon Assignor conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate and made its own analysis of the Schedule; (e) it has not relied upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, Assignor or any agent or employee of Assignor, expressed or implied, concerning the financial condition of the Obligor or any collateral provided pursuant to the Schedule, or the tax or economic benefits of an investment in the Schedule; (f) it has had access to all financial and other information that it deems necessary to evaluate the merits and risks of an investment in the Schedule including the opportunity to ask questions, receive answers and obtain additional information from Assignor necessary to verify the accuracy of information provided

(Assignee acknowledges that Assignor takes no responsibility for any financial information regarding the Obligor furnished to Assignee by Assignor); (g) it or its authorized representatives acting on its behalf have such knowledge and experience in business and financial matters necessary to evaluate the merits and risks of an investment in the Schedule; (h) it is experienced in making investments in lease transactions similar to the Schedule and that it is financially able to undertake the risks involved in such an investment; (i) from and after the date hereof, all sales, use, property or other taxes (to the extent attributable to or assessed with respect to the period from and after the date hereof), licenses, or permits which are required to be paid or obtained in connection with the acquisition by Assignee and/or the leasing by Assignee of the Assigned Equipment leased pursuant to the Schedule will be, or when due will be, paid in full or obtained; and (j) this Agreement constitutes the legal, valid and binding obligation of Assignee, enforceable against Assignee in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein.

4. Delivery of Documents. On or before the date hereof, Assignor shall deliver or cause to be delivered to Assignee: (a) certified true and correct photocopies of, the Master Lease and all other Transaction Documents which relate to the Schedule and the Assigned Equipment as set forth on Schedule B; (b) the copy of the only Schedule 23 marked "Original" and the original Acceptance Certificates as chattel paper for purposes of transferring a security interest in the leased equipment and any other copies of the Schedule and Acceptance Certificates are not the "Original" for such purposes; (c) a Notice of Assignment substantially in the form attached hereto as Exhibit No. 1 duly executed by Assignor and Lessee; (d) a Bill of Sale in the form attached hereto as Exhibit No. 2 duly executed by Assignor; (e) such documents and instruments as reasonably may be required by Assignee to effect the assignment and novation of the Supplier Agreements applicable to the Assigned Equipment; and (f) such documents and instruments as reasonably may be required to effect the assignment to Assignee of any and all Uniform Commercial Code filings made by Assignor with respect to the Assigned Equipment.

5. Fiscal and Titling Agency: (a) Extent of Agency: It is the intent and purpose of the parties that the Assignee shall assume all fiscal, titling, and other responsibilities with respect to the Schedule.

6. Miscellaneous.

(a) Assignment. The rights and obligations of the Assignee hereunder may be assigned with or without prior written notice to the other party. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the successors and assigns of the parties hereto.

(b) Notices. All notices and other communications hereunder shall be in

writing, personally delivered or sent by facsimile or certified mail, return receipt requested, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party; and shall be effective from the date of receipt.

(c) **Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the internal laws of the State of New York (without regard to the conflict of laws principles of such State), including all matters of construction, validity and performance.

(d) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.

(e) **Titles.** Section titles are for convenience of reference only and shall not be of any legal effect.

(f) **Further Assurances.** The parties further covenant and agree to do, execute and deliver, or cause to be done, executed and delivered, and covenant and agree to use their best efforts to cause their successors and assigns to do, execute and deliver, or cause to be done, executed and delivered, all such further acts, transfers and assurances, for the better assuring, conveying and confirming unto Assignee and its successors and assigns, all and singular, the Transaction Documents hereby assigned, and otherwise implementing the intention of the parties under this Agreement, as the parties and their successors and assigns reasonably shall request.

(g) **Not an Extension of Credit; No Cross-Collateralization.** This Agreement constitutes a sale of 100% ownership of the Interest and shall in no way be construed as an extension of credit by Assignee to Assignor. Subject to its rights and obligations as agent pursuant to Section 5 hereof, Assignor waives and releases any right, title or interest that it may have (whether pursuant to a "cross-collateralization" provision or otherwise) in and to any of the Assigned Equipment and the Schedule and the other Transaction Documents solely to the extent relating to the Assigned Equipment.

(h) **Waiver of Jury Trial.** ASSIGNOR AND ASSIGNEE HEREBY UNCONDITIONALLY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE TRANSACTION DOCUMENTS, AND/OR ANY DEALINGS BETWEEN ASSIGNOR AND ASSIGNEE RELATING TO THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS

IRREVOCABLE MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR THE TRANSACTION DOCUMENTS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITIZENS LEASING CORPORATION  
Assignor

By: *Caren Josephson*  
Name: Caren Josephson  
Title: Vice President

189 Canal Street  
Providence, Rhode Island 02903-1339

State of Rhode Island  
County of Providence

Sworn and Subscribed to me by Caren Josephson this 13th day of May, 2003.

*Katherine Dickenson*  
Notary Public

KATHERINE DICKENSON  
Notary Public - Rhode Island  
My Commission Expires October 10, 2005

EMIGRANT BUSINESS CREDIT CORPORATION

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

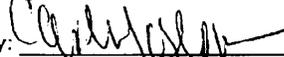
101 Executive Boulevard  
Elmsford, New York 10523

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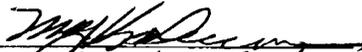
CITIZENS LEASING CORPORATION

Assignor

By:   
Name: Caren Josephson  
Title: Vice President

189 Canal Street  
Providence, Rhode Island 02903-1339

EMIGRANT BUSINESS CREDIT CORPORATION

By:   
Name: Chris Blawie  
Title: PRESIDENT

101 Executive Boulevard  
Elmsford, New York 10523

Sworn to before me on this 19<sup>th</sup> day of May, 2003.



ANISSA D. BROWN  
NOTARY PUBLIC, State Of New York  
No. 01878084761  
Qualified in Westchester County  
Commission Expires December 18, 2006

**SCHEDULE A**

**FIFTY (50) 3,260 CUBIC FOOT COVERED HOPPER CARS  
MANUFACTURED BY TRINITY IN 1999**

**REPORTING MARKS: SDWX**  
**RUNNING NUMBERS: 10234 THROUGH 10252**  
**10273 THROUGH 10277**  
**10284 THROUGH 10289**  
**10253 THROUGH 10272**

**Schedule B**

1. Master Lease Finance Agreement dated June 13, 1995, together with Amendment and Restatement to Rider No. 1 to Master Lease Finance Agreement dated June 13, 1995.
2. Consent and Agreement – Purchase Agreement Assignment from Southdown, Inc. to BancBoston Leasing, Inc., dated as of June 1, 1999
3. Bill of Sale – Trinity Industries, Inc. to BancBoston Leasing, Inc., dated as of June 1, 1999.
4. Equipment Schedule No. 23, between BancBoston Leasing Inc. as Lessor and Southdown, Inc. as Lessee dated June 1, 1999, together with Attachment A,
5. Rider No. 1 to Equipment Schedule No. 23, between BancBoston Leasing Inc. as Lessor and Southdown, Inc. as lessee dated June 1, 1999.
6. Rider No. 2 to Equipment Schedule No. 23, between BancBoston Leasing Inc. as Lessor and Southdown, Inc. as lessee dated June 1, 1999.
7. Certificate of Acceptance dated as of June 1, 1999
8. Certificate of Delivery for 20 cars, together with Annex A dated as of May 19, 1999
9. Certificate of Delivery for 15 cars, together with Annex A dated as of May 21, 1999
10. Certificate of Delivery for 15 cars, together with Annex A dated as of May 21, 1999
11. Memorandum of Railroad Equipment Lease Agreement entered into as of May 28, 1999
12. Counsel's letter issued by Allen H. Harrison, Jr. and dated as of June 2, 1999.
13. UCC-1 filed 6/7/99 by BancBoston Leasing Inc. and UCC-3 filed 7/29/99 involving BancBoston Leasing Inc. and Citizens Leasing Corp.
14. Secretary's Certificates – Southdown, Inc. dated as of July 11, 1995, August 28, 1996, and December 16, 1998.
15. Manufacturer's Invoices from Trinity Industries, Inc.



16. Bill of Sale from BancBoston Leasing, inc. to Citizens Leasing Corporation dated as of June 4, 1999.

17. Certification of Officers from BancBoston Leasing, Inc. dated as of August 20, 1996, July 24, 1997 and November 28, 1995.

18. Good Standing Certificate for Southdown Inc. dated June 9, 1999.

19. UCC -3 from BancBoston Leasing, Inc. to Citizens Leasing Corporation dated July 29, 1999.



**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: \_\_\_\_\_

*5/19/03*



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