

RECORDATION NO. 24936-A FILED

MAY 20 '04 3-44 PM

SURFACE TRANSPORTATION BOARD

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

May 20, 2004

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 a Termination of Security Interest, dated as of May 20, 2004, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Mortgage previously filed with the Board under Recordation Number 24936.

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

Debtor: Babcock & Brown Rail Funding LLC
230 Park Avenue
New York, NY 10169

Secured Party: Bayerische Hypo-Und Vereinsbank AG, Agent
FPA 4 Lease/Asset Finance
Am Tucherpark 1 (FPA)
80538 Munich
Germany

Mr. Vernon A. Williams
May 20, 2004
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A description of the railroad equipment covered by the enclosed document
is:

451 gondola cars PSTX 1001 – PSTX 1451

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

Termination of Security Interest

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

EXECUTION COPY

TERMINATION OF SECURITY INTEREST

THIS TERMINATION OF SECURITY INTEREST (this "**Termination**") is made this 20th day of May, 2004 between **BABCOCK & BROWN RAIL FUNDING LLC** (the "**Borrower**") and **BAYERISCHE HYPO- UND VEREINSBANK AG**, as agent (the "**Agent**") for the banks under the Amended and Restated Security Agreement dated as of October 18, 2002 (as amended, supplemented or otherwise modified through the date hereof, including, without limitation, as supplemented by Security Agreement Supplement No. 9 dated April 30, 2004 ("**Security Agreement Supplement No. 9**"), the "**Security Agreement**"). Capitalized terms used in this Termination and not otherwise defined herein shall have the meanings (by cross-reference or otherwise) in the Security Agreement.

WHEREAS, the Security Agreement created a lien and security interest in favor of the Agent in and to the Units and the Qualifying Leases (each as defined in the Security Agreement);

WHEREAS, the Borrower and the Agent are parties to that certain Memorandum of Mortgage, dated as of April 30, 2004, a copy of which was duly filed with the Surface Transportation Board (the "**STB**") on April 30, 2004 at 2:58 p.m. EDT under Recordation Number 24936 (the "**Memorandum of Mortgage**"); and

WHEREAS, the Borrower and the Agent now desire to terminate and cancel the Agent's security interest in and mortgage lien upon all right, title and interest of the Borrower in, to and under the property described in Schedule I to Security Agreement Supplement No. 9, and Exhibits A and B to the Memorandum of Mortgage, as specified in Exhibit I hereto, and to record such termination and cancellation with the STB.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Agent, intending to be legally bound, agree as follows:

1. The Borrower and the Agent hereby terminate and cancel the Agent's security interest in and mortgage lien upon all right, title and interest of the Borrower in, to and under the property described in Schedule I to Security Agreement Supplement No. 9 and Exhibits A and B to the Memorandum of Mortgage, as specified in Exhibit I hereto, effective as of the date this Termination is filed with the STB (the "**Effective Date**"), and the Borrower and the Agent hereby agree that no rights, duties or liabilities under the Security Agreement in relation to the property described in Schedule I to Security Agreement Supplement No. 9 and Exhibits A and B to the Memorandum of Mortgage, as specified in Exhibit I hereto, shall survive such termination and cancellation of the Agent's security interest in and mortgage lien upon all right, title and interest of the Borrower in, to and under the property described in Schedule I to Security Agreement Supplement No. 9 and Exhibits A and B to the Memorandum of Mortgage, as specified in Exhibit I hereto, except with respect to acts, events, or omissions under the Security Agreement occurring on or prior to the Effective Date and indemnities with respect to such acts, events or omissions.
2. The Borrower and the Agent agree to record this Termination with the STB so as to release any security interest in and mortgage lien upon the property described in Schedule I to

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Security Agreement Supplement No. 9 and Exhibits A and B to the Memorandum of Mortgage, as specified in Exhibit I hereto, created by or arising out of the Security Agreement.

3. This Termination may be executed in any number of counterparts, each executed counterpart constituting an original but all together constituting only one and the same agreement.

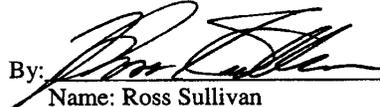
4. This Termination shall be governed by and construed in accordance with the laws of the State of New York and is being delivered in the State of New York.

* * *

[Termination of Security Interest]

IN WITNESS WHEREOF, the Borrower and the Agent have each caused this Termination of Security Interest to be duly executed and delivered as of the date first above written.

**BABCOCK & BROWN RAIL FUNDING
LLC**

By: 
Name: Ross Sullivan
Title: Vice President

**BAYERISCHE HYPO- UND
VEREINSBANK AG**, not in its individual
capacity except as expressly provided herein,
but solely as Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

[Termination of Security Interest]

STATE OF NEW YORK)

) SS:

COUNTY OF NEW YORK)

On this 18th day of May, 2004, before me personally appeared Ross Sullivan, to me personally known, who, being by me duly sworn, says that he is Vice President of Babcock & Brown Rail Funding LLC and that the foregoing Termination of Security Interest was signed on behalf of said corporation. Further, he acknowledged that the execution of the foregoing Termination of Security Interest was the free act and deed of said corporation.

Sophia Bryan
Notary Public

(NOTARIAL SEAL)

My Commission Expires:

May 5 2006

SOPHIA BRYAN
Notary Public, State of New York
No. 01BR6042226
Qualified in Queens County
Certificate Filed in New York
Commission Expires May 5, 2006

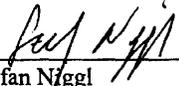
[Termination of Security Interest]

IN WITNESS WHEREOF, the Borrower and the Agent have each caused this Termination of Security Interest to be duly executed and delivered as of the date first above written.

**BABCOCK & BROWN RAIL FUNDING
LLC**

By: _____
Name:
Title:

**BAYERISCHE HYPO- UND
VEREINSBANK AG**, not in its individual
capacity except as expressly provided herein,
but solely as Agent

By: 
Name: Stefan Niggel
Title: Managing Director

By: 
Name: Martin Tobies
Title: Vice President

[Termination of Security Interest]

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

Subscribed to me on this 20th day of May, 2004 by Stefan Niggli, Managing Director of Bayerische Hypo- und Vereinsbank AG and Martin Tobies, Vice President of Bayerische Hypo- und Vereinsbank AG.

Annette Bunzel
Notary Public

(NOTARIAL SEAL)

My Commission Expires:

April 30, 2007

ANNETTE BUNZEL
Notary Public, State of New York
No. 24-4800660
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires April 30, 20 07

[Termination of Security Interest]

**Exhibit I to
Termination of Security Interest**

EQUIPMENT

Lease #	# Cars	Year Built	Description	Reporting Marks	Casualty Marks
1	451	2004	AAR Code J311, 4520 CF Aluminum Coal Gondola railcars, 286,000 GRL, built by Johnstown America Corporation	PSTX 1001-1451, inclusive	None

Exhibit I
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LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS

1. Railroad Equipment Lease entered into as of March 23, 2004, by and between The David J. Joseph Company and Consumers Energy Company.
2. Memorandum of Railroad Equipment Lease entered into March 23, 2004, by and between The David J. Joseph Company and Consumers Energy Company, as amended by Notice of Change in Company Name executed April 15, 2004.
3. Warranty Bills of Sale dated March 26, 2004, April 7, 2004, April 22, 2004 and April 29, 2004 from Johnstown America Corporation to The David J. Joseph Company.
4. Bill of Sale dated April 30, 2004 from The David J. Joseph Company to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit I hereto.
5. Purchase Agreement [DJJ] dated as of April 30, 2004, between The David J. Joseph Company and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease # 1" in Exhibit I hereto.
6. Assignment and Assumption Agreement, dated as of April 30, 2004, between The David J. Joseph Company and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit I hereto.
7. Notice and Acknowledgment dated April 21, 2004, made by The David J. Joseph Company and Babcock & Brown Rail Funding LLC to Consumers Energy Company, in respect of the Equipment described under the caption "Lease # 1" in Exhibit I hereto.
8. Notice Pursuant to Notice and Acknowledgment dated April 30, 2004, made by Babcock & Brown Rail Funding LLC and The David J. Joseph Company to Consumers Energy Company, in respect of the Equipment described under the caption "Lease # 1" in Exhibit I hereto.
9. Warranty Assignment [DJJ] dated as of April 30, 2004, between The David J. Joseph Company, as assignor thereunder, and Babcock & Brown Rail Funding LLC, as assignee thereunder, in respect of the Equipment described under the caption "Lease # 1" in Exhibit I hereto.
10. Manufacturer's Consent dated April 28, 2004, made by Johnstown America Corporation to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit I hereto.
11. Railcar Service Agreement dated as of April 30, 2004, between The David J. Joseph Company and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit I hereto.

Together with all substitutions, replacements and renewals of the property above described, and all property which shall hereafter become physically attached to or incorporated in the property

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[Termination of Security Interest]

above described, whether the Borrower now has rights therein or such rights shall hereafter be acquired by it.

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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: May 20, 2004



Robert W. Alvord