RECORDATION NO. 25137 FILED

AUG 1 1 '04 2-48 PM

SURFACE TRANSPORTATION BOARD

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

OF COUNSEL
URBAN A. LESTER

August 10, 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 Memorandum of Mortgage, dated as of August 11, 2004, a primary document as defined in the Board's Rules for the Recordation of Documents.

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]

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

86 railcars CHTT 503481 – CHTT 503566

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

Memorandum of Mortgage.

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

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SURFACE TRANSPORTATION BOARD

EXECUTION COPY

**MEMORANDUM OF MORTGAGE**

Memorandum of Mortgage, made and entered into as of August 11, 2004 between BABCOCK & BROWN RAIL FUNDING LLC (the "**Debtor**") and BAYERISCHE HYPO- UND VEREINSBANK AG, as Agent under the Security Agreement referred to below (together with its successors and permitted assigns, the "**Secured Party**"). Terms used in this instrument have the meanings assigned thereto in the Amended and Restated Security Agreement dated as of October 18, 2002 (as supplemented, including by Security Agreement Supplement No. 12 dated the date hereof, the "**Security Agreement**") between the Secured Party and the Debtor.

**WITNESSETH:**

The undersigned and the Secured Party have entered into the Security Agreement, by which the Debtor has granted a security interest in certain railroad equipment bearing reporting marks and road numbers as listed on Exhibit A attached hereto and in each lease referred to on Exhibit B attached hereto to the Secured Party in order to secure the Debtor's performance of its obligations as described in the Security Agreement.

IN WITNESS WHEREOF, the party hereto has caused this memorandum to be duly executed by its officer duly authorized as of the date and year first above written.

BABCOCK & BROWN RAIL FUNDING LLC

By _____
Name: Ross Sullivan
Title: Vice President

NEWYORK/#137657.1

STATE OF CALIFORNIA )
) ss.:
COUNTY OF SAN FRANCISCO )

On the 9th day of August in the year 2004 before me personally came Ross Sullivan to me known, who, being by me duly sworn, did depose and say that he resides at 1090 Butterfield Road, San Anselmo, CA 94960; that he is the Vice President (duly appointed) of Babcock & Brown Rail Funding LLC, the limited liability company described in and which executed the above instrument; and that he signed his name thereto by authority of the officers of said limited liability company.

HEIDI WAGNER
Commission # 1359667
Notary Public - California
San Francisco County
My Comm. Expires Jun 4, 2006

Notary Public

[Notarial Seal]

NEWYORK/#137657.1

**Exhibit A**
**to Memorandum of Mortgage**

**EQUIPMENT**

| Lease # | # Cars | Year Built | Description | Reporting Marks | Casualty Marks |
|---|---|---|---|---|---|
| 1 | 13 | 2004 | Rotary aluminum Autoflood III™ 4200 CF coal hopper railcars, 286,000 GRL, AAR car type code K341, manufactured by Johnstown America Corporation | CHTT 503554-503566, inclusive | None |
| 2 | 73 | 2004 | Aluminum Outside Stake BethGon® II coal gondola railcars, 4520 CF, AAR car type code J311, 286,000 GRL, manufactured by Johnstwon America Corporation | CHTT 503481-503553, inclusive | None |

**Exhibit B**
**to Memorandum of Mortgage**

## LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS

Lease #

1. Master Lease Agreement dated as of August 6, 2004, by and between Babcock & Brown Rail Funding LLC and Union Pacific Railroad Company, to the extent the same relates to the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

   Rider No. 01 to Master Lease Agreement dated as of August 6, 2004, by and between Babcock & Brown Rail Funding LLC and Union Pacific Railroad Company.

   Memorandum of Master Lease Agreement for Rider No. 01 dated as of August 6, 2004, by and between Babcock & Brown Rail Funding LLC and Union Pacific Railroad Company.

   Warranty Bill of Sale dated August 11, 2004 from Johnstown America Corporation to Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

   Confirmation Letter dated May 14, 2004 by and between Johnstown America Corporation and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

   Terms and Conditions of Sale dated May 14, 2004 by and between Johnstown America Corporation and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

2. Master Lease Agreement dated as of August 6, 2004, by and between Babcock & Brown Rail Funding LLC and Union Pacific Railroad Company, to the extent the same relates to the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

   Rider No. 02 to Master Lease Agreement dated as of August 6, 2004, by and between Babcock & Brown Rail Funding LLC and Union Pacific Railroad Company.

   Memorandum of Master Lease Agreement for Rider No. 02 dated as of August 6, 2004, by and between Babcock & Brown Rail Funding LLC and Union Pacific Railroad Company.

Warranty Bill of Sale dated August 11, 2004 from Johnstown America Corporation to Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Confirmation Letter dated May 14, 2004 by and between Johnstown America Corporation and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Terms and Conditions of Sale dated May 14, 2004 by and between Johnstown America Corporation and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 2" in Exhibit A 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 above described, whether the Debtor now has rights therein or such rights shall hereafter be acquired by it.

## 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: 8/18/04

Robert W. Alvord