

RECORDATION NO. 25313 FILED

NOV 29 '04

4-42 PM

SURFACE TRANSPORTATION BOARD

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OF COUNSEL  
URBAN A. LESTER

November 29, 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 November 29, 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]

Mr. Vernon A. Williams  
November 29, 2004  
Page Two

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

290 covered hopper railcars CMO 10000 – CMO 10289

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

Memorandum of Mortgage.

Also enclosed is a check in the amount of \$32.00 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 Nov. 29, 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. 16 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



**Exhibit A  
to Memorandum of Mortgage**

**EQUIPMENT**

Lease #	# Cars	Year Built	Description	Reporting Marks	Casualty Marks
1	180	2004	5200 CF food grade covered hopper railcars with six (6) 30" round fiberglass hatches and three (3) stainless steel 30" x 30" gravity pneumatic outlet gates, AAR Car Type Code C314, 286,000 lbs. GRL, manufactured by American Railcar Industries	CMO 10000-10179, inclusive	None
2	110	2004 or 2005, as applicable	5200 CF food grade covered hopper railcars with six (6) 30" round fiberglass hatches and three (3) stainless steel 30" x 30" gravity pneumatic outlet gates, AAR Car Type Code C314, 286,000 lbs. GRL, manufactured by American Railcar Industries	CMO 10180-10289, inclusive	None

**Exhibit B  
to Memorandum of Mortgage**

**LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS**

Lease #

1. Railcar Manufacturing and Purchase Agreement dated as of October 26, 2004, by and between American Railcar Industries 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.

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. 03 to Master Lease Agreement dated as of November 11, 2004, by and between Babcock & Brown Rail Funding LLC and Union Pacific Railroad Company.

Memorandum of Master Lease Agreement and Rider No. 03 dated as of November 11, 2004, by and between Babcock & Brown Rail Funding LLC and Union Pacific Railroad Company.

Certificate of Acceptance dated November 24, 2004, from Union Pacific Railroad Company to Babcock & Brown Rail Funding LLC in relation to the railcars identified in the Certificate of Acceptance.

Each Certificate of Acceptance, from Union Pacific Railroad Company to Babcock & Brown Rail Funding LLC in relation to the railcars identified in each such Certificate of Acceptance, to the extent the same relates to the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Warranty Bill of Sale dated November 19, 2004, from American Railcar Industries to Babcock & Brown Rail Funding LLC and Certificate of Acceptance executed by Babcock & Brown Rail Funding LLC in relation to the railcars identified in the Warranty Bill of Sale.

Each Warranty Bill of Sale, from American Railcar Industries to Babcock & Brown Rail Funding LLC and each Certificate of Acceptance executed by Babcock & Brown Rail Funding LLC in relation to the railcars identified in each such Warranty Bill of Sale, to the extent the same relates to the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

2. Railcar Manufacturing and Purchase Agreement dated as of October 26, 2004, by and between American Railcar Industries 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.

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. 04 to Master Lease Agreement dated as of November 11, 2004, by and between Babcock & Brown Rail Funding LLC and Union Pacific Railroad Company.

Memorandum of Master Lease Agreement and Rider No. 04 dated as of November 11, 2004, by and between Babcock & Brown Rail Funding LLC and Union Pacific Railroad Company.

Each Certificate of Acceptance, from Union Pacific Railroad Company to Babcock & Brown Rail Funding LLC in relation to the railcars identified in each such Certificate of Acceptance, to the extent the same relates to the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Each Warranty Bill of Sale, from American Railcar Industries to Babcock & Brown Rail Funding LLC and each Certificate of Acceptance executed by Babcock & Brown Rail Funding LLC in relation to the railcars identified in each such Warranty Bill of Sale, to the extent the same relates to 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: \_\_\_\_\_

11/29/04



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