RECORDATION NO. 23966-V FILED

DEC 29 '04 3-49 PM

SURFACE TRANSPORTATION BOARD

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

OF COUNSEL
URBAN A. LESTER

December 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 Assignment and Assumption Agreement, dated as of December 29, 2004, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Assignment and Assumption Agreement which was previously filed with the Board under Recordation Number 23966-T.

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

Seller: Babcock & Brown Rail Funding LLC
230 Park Avenue, 32nd Floor
New York, New York 10169

Buyer: Wilmington Trust Company
(solely as owner-trustee under the Trust Agreement (2004 UP_BC Rail)
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890-0001

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

180 centerbeam flatcars: AOK 29350 - AOK 29449 and AOK 29500 - AOK 29579.

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 $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 VERSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement dated as of December 29, 2004 (this "Agreement"), is among Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "Seller") and Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity but solely as owner trustee under the Trust Agreement (2004 UP-BC Rail) dated as of the date hereof between Wilmington Trust Company and HSH Nordbank AG, New York Branch (the "Buyer").

WITNESSETH:

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement dated as of December 29, 2004 (as amended, modified or supplemented, the "Purchase Agreement"), providing for the purchase of the Ownership 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 as to each item of Equipment on the Closing Date: (a) the Seller transfers to the Buyer all of the Seller's rights, title and interest, except as reserved under Section 2.1 of the Purchase Agreement, in and to such item and assigns to the Buyer all of the Seller's rights and obligations, except to the extent constituting Existing Obligations (as defined in the Purchase Agreement), under each of the following as they relate to such item:

(i) the Lease Agreement made as of March 1, 2002 (the "Lease"), by and between the Seller, as lessor, and BC Rail Partnership (the "Lessee"), as lessee, as amended, modified or supplemented from time to time;

(ii) Second Amended and Restated Schedule No. 7 to Lease Agreement made as of June 2, 2004, by and between the Seller and the Lessee;

(iii) Second Amended and Restated of Lease Agreement and Second Amended and Restated Schedule No. 7, made and entered into as of June 2, 2004, by and between the Seller and the Lessee;

(iv) Bill of Sale dated December 13, 2004, from American Railcar Industries, Inc. to the Prior Seller;

(v) Certificate of Acceptance dated December 16, 2004 executed by the Lessee in relation to the Equipment listed therein;

(vi) the Purchase Agreement [GLC] dated as of December 16, 2004 between the Seller and the Prior Seller, as amended, modified or supplemented from time to time, to the extent the same relates to the Equipment;

(vii) each assignment and assumption agreement executed and delivered by the Prior Seller and the Seller in respect of the Equipment;

(viii) each bill of sale executed and delivered by the Prior Seller in respect of the Equipment; and

(ix) the Railcar Service Agreement [BC Rail #2] dated as of December 16, 2004 between the Seller and Greenbrier Management Services, LLC (collectively, the Assigned Operative Agreements");

Notwithstanding the foregoing, each of the Seller and the Buyer shall continue to be entitled to the benefit of any applicable 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 assignments 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 from 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).

Bill of Sale: as to any one or more items of Equipment, a bill of sale in the form of Exhibit B hereto.

Closing Date: as to any one or more items of Equipment and related Ownership Interest, the date of the Bill of Sale with respect thereto.

Equipment: the items of equipment listed on Exhibit A hereto, together with each and every part, accessory, component and any equipment installed therein or attached thereto owned by the Seller (individually such railcars shall be referred to as an "item" or "items of Equipment").

Existing Obligations: any and all liabilities and obligations of the Seller under the Ownership Interest, including the Assigned Operative Agreements, or otherwise relating to the Equipment, in each such case 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 the Seller prior to the Closing Date.

Ownership Interest: the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Assigned Operative Agreements, except the Existing Obligations.

Prior Seller: Greenbrier Leasing Corporation.

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 Title 14 of Article 5 of the New York General Obligations Law.

10. Recordation. The parties hereto agree to record this Agreement with the Surface Transportation Board and with the Registrar General of Canada to evidence the assignment by the Seller to the Buyer of the Seller's rights and obligations under the Lease, which shall have been recorded with the Surface Transportation Board and with the Registrar General of Canada.

[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 Seller

By: _____
Name: Bruce Carusi
Title: Vice President

WILMINGTON TRUST COMPANY, not in its individual capacity but solely as Owner Trustee

By: _____
Name:
Title:

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 Seller

By: _____
Name:
Title:

WILMINGTON TRUST COMPANY, not in its individual capacity but solely as Owner Trustee

By: _____
Name: Michael McCarthy
Title: Assistant Vice President

State of New York)
)
County of New York)

On this, the 28th day of December, 2004, before me, a Notary Public in and for said County and State, personally appeared Bruce Carusi, a 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: Karen A. Houlihan
Notary Public

My Commission Expires:

Residing in:

KAREN A. HOULIHAN
Notary Public, State of New York
No. 01HO6051904
Qualified in New York County
~~Commission Expires December~~ 4, 2006

[A&A]

State of Delaware)
)
County of New Castle)

On this, the 20th day of December 2004, before me, a Notary Public in and for said County and State, personally appeared Michael McCarthy, a Assistant Vice President of Wilmington Trust Company, the national banking association described in and which executed the foregoing instrument as owner trustee for and on behalf of HSH Nordbank AG, New York Branch, who acknowledged himself/herself to be a duly authorized officer of Wilmington Trust Company, and that, as such officer, being authorized to do so, he/she 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.

MARK H. BRZOSKA
MY COMMISSION
EXPIRES
DECEMBER 2, 2005
NOTARY PUBLIC
STATE OF DELAWARE

Name: _____
Notary Public

My Commission Expires:

Residing in:

MARK H. BRZOSKA
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Dec. 2, 2005

Exhibit A
(to Assignment
and Assumption Agreement
and Bill of Sale)

EQUIPMENT

# Cars	Year Built	Description	Reporting Marks	Casualty Marks
180	2004	73' Centerbeam Flatcars with riserless deck, AAR Code F483, 286,000 GRL	AOK 29350-29449, inclusive; and 29500-29579, inclusive.	None

Exhibit 1
(to Assignment and
Assumption Agreement)

BILL OF SALE

On this _____ day of December, 2004, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Babcock & Brown Rail Funding LLC ("Seller"), does hereby sell, transfer and assign to Wilmington Trust Company, not in its individual capacity but solely as owner trustee ("Buyer") all of Seller's rights, title and interest in and to the equipment described in Exhibit A hereto (the "Equipment"), subject to the terms and conditions of the Purchase Agreement dated as of December ___, 2004 (the "Purchase Agreement") and the Assignment and Assumption Agreement dated as of December ___, 2004, each between Seller and Buyer.

Seller represents and warrants to Buyer and its successors and assigns that Seller has good and valid title to each item of Equipment and the Equipment is free and clear of all Liens (as defined in the Purchase Agreement), other than as described in Section 3.3 of the Purchase Agreement.

BABCOCK & BROWN RAIL FUNDING LLC

By:_____
Name:
Title:

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: 12/29/04

Robert W. Alvord