

RECORDATION NO. 14660-6 FILED

ALVORD AND ALVORD
ATTORNEYS AT LAW
1050 SEVENTEENTH STREET, N.W.
SUITE 301
WASHINGTON, D.C.

FEB 15 '05 2-30 PM

SURFACE TRANSPORTATION BOARD

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

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OF COUNSEL
URBAN A. LESTER

February 10, 2005

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 and Assumption Agreement, dated as of February 1, 2005, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Lease Agreement, as supplemented, previously filed with the Commission under Recordation Number 14660.

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

- Assignor: BNY Capital Funding LLC
1290 Avenue of the Americas
New York, New York 10104
- Assignee: BNY Capital Resources Corporation
Suite 240
8400 East Prentice Avenue
Greenwood Village, Colorado 80111

Mr. Vernon A. Williams
February 10, 2005
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A description of the railroad equipment covered by the enclosed document is:

88 covered hopper cars: ELTX 1000 – ELTX 1089 (excluding ELTX 1035 and ELTX 1047).

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

ASSIGNMENT AND ASSUMPTION AGREEMENT FEB 15 2005 2-34 PM

SURFACE TRANSPORTATION BOARD

ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement"), dated as of February 1, 2005, by and between BNY CAPITAL FUNDING LLC, a Delaware limited liability company (the "Assignor") and BNY CAPITAL RESOURCES CORPORATION, a New York corporation (the "Assignee").

The Assignor and the Assignee desire, among other things, to execute and deliver this Agreement in order to effect the sale, transfer and assignment to the Assignee of all right, title and interest of the Assignor in and to (a) eighty-eight (88) 100-ton 5800 cubic foot Special Covered Hoppers built to specification HC-100-58-109B 10/11/83 by Thrall Car Manufacturing Company, equipped with Dev-Mark stainless steel hatch covers and Edsco gates, car serial numbers ELTX 1000 through 1089, inclusive, but excluding 1035 and 1047, owned by the Assignor (the "Equipment"), (b) the Master Lease Agreement, dated as of May 22, 1985, between the Assignor, successor in interest to National Funding Corporation, and BP Solvay Polyethylene North America, a Delaware general partnership (the "Lessee"), successor in interest to Soltex Polymer Corporation, a Delaware corporation, (as the same has been amended and modified from time to time, the "Lease"), which was recorded with the Interstate Commerce Commission on May 30, 1985 at 3:10 p.m. under recordation number 14660 (c) the Unconditional Guaranty (the "Guaranty") of Solvay America, Inc., a Delaware corporation (the "Guarantor"), dated as of December 30, 1992, guaranteeing the payment and performance of the Obligations (as defined in the Guaranty) of the Lessee under the Lease and (d) and all other documents and instruments evidencing such right, title and interest.

In consideration of the premises and the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

- 1. Assignment. The Assignor does hereby transfer, sell, assign and convey unto the Assignee all of the Assignor's right, title and interest in, to and under the Equipment, the Lease, the Guaranty and all other documents and instruments evidencing such right, title and interest, excluding, however, any claim, cause of action or the right to payment or indemnification accruing prior to the date hereof or payable by reason of an event, action or omission occurring prior to the date hereof and the right to remain an insured party under the Lease with respect to the period prior, but not after, to the date hereof.

EXCEPT AS OTHERWISE SPECIFICALLY AGREED IN WRITING BETWEEN ASSIGNOR AND ASSIGNEE, ASSIGNOR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE TITLE, MERCHANTABILITY, COMPLIANCE AND SPECIFICATIONS, CONDITION, DESIGN, OPERATION, FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT, ABSENCE OF LATENT DEFECTS OR FITNESS FOR A PARTICULAR PURPOSE OR FOR USE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, OR ANY PART OR PORTION THEREOF.

2. Assumption. Assignee does hereby accept the foregoing assignment and does assume all of the duties, obligations and liabilities of Assignor under the Lease, the Guaranty and all other documents and instruments evidencing such right, title and interest accruing or arising from and after the date hereof. Assignee agrees to be deemed to be a party to the Lease, the Guaranty and such other documents as "Lessor", and agrees to be bound by all of the terms of the Lease, the Guaranty and such other documents, excluding, however, any duties, obligations or liabilities accruing or to be performed or discharged by the Assignor prior to the date hereof, or arising out of events or circumstances occurring prior to the date hereof pursuant to or in connection with the Lease, the Guaranty or such other documents. Assignor shall not be responsible to any person for the discharge or performance of any duties, obligations or liabilities accruing or to be performed or discharged by the Assignee after the date hereof or arising out of events or circumstances occurring after the date hereof pursuant to or in connection with the Lease, the Guaranty or such other documents.

3. Payments. The Assignor hereby covenants and agrees to pay over to the Assignee, if and when received following the date hereof, any amounts (including any sums payable as interest in respect thereof) paid to or for the benefit of the Assignor that, under Section 1 hereof, belong to the Assignee, and the Assignee hereby covenants and agrees to pay over to the Assignor, if and when received following the date hereof, any amounts (including any sums payable as interest in respect thereof) paid to or for the benefit of the Assignee that, under Section 1 hereof, belong to the Assignor.

4. Investment Purpose. The Assignee hereby represents that it is acquiring the interests hereby assigned to it for its own account for the purpose of investment and not with a view to the distribution or resale of either thereof.

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

6. Representations and Warranties. The Assignee hereby represents and warrants to the Assignor, and to the Lessee and Guarantor signing at the foot hereof, that the Assignee is not a "Competitor of Lessee" as such term is defined in Amendment No. 2 to Master Lease Agreement, dated as of December 30, 1992, between Provident Group, Inc., an Ohio corporation, and Solvay Polymers, Inc., a Delaware corporation, which are predecessors in interest to the Assignor and the Lessee. The Assignee further represents that it has all requisite power and authority and legal right to enter into and carry out the transactions contemplated hereby and to carry out and perform the obligations of the Lessor under the Lease, the transfer to it of all of the Assignor's right, title and interest as aforesaid will not violate any provision of applicable law, or any rules or regulations promulgated thereunder, or create a relationship that would be in violation thereof, or violate any provisions of the Securities Act of 1933, as amended, or any other applicable Federal or state law, and no part of the funds used by it to acquire the right, title or interest of the Assignor as aforesaid directly or indirectly constitutes, or may be deemed under the assets of any plan covered by ERISA.

7. Further Assurances. The parties hereto agree to execute such further documents, and to do such further things, as may be reasonably requested in order to more fully effect this Assignment and Assumption.

8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instruments.

9. Notices. All notices and requests in connection with this Agreement shall be given in writing in English and may be personally delivered or given by overnight courier, telecopy, telex or any other customary means of communication addressed as follows (or to any other address which either party may designate in writing to the other party);

Assignor: BNY Capital Funding LLC
1290 Avenue of the Americas
New York, New York 10104
Attention: Chief Financial Officer
Telecopy Number: (212) 246-1803
Confirmation Number: (212) 408-4925

Assignee: BNY Capital Resources Corporation
Suite 240
8400 East Prentice Avenue
Greenwood Village, CO 80111
Telecopy Number: (303) 793-3299
Confirmation Number: (303) 793-3636

Wire instructions:
ABA #0-210-00018
The Bank of New York
One Wall Street
New York, New York 10286
Account # 890-0168-749
Reference: BP Solvay Lease

Federal Tax Identification No. 13-3654072

Any notice given pursuant to this Section 9 shall be effective when received and, in the case of notice by telecopy, confirmed.

10. Governing Law. This Agreement shall be governed by the laws of the State of New York.

11. Entire Agreement. Except for the Bill of Sale to be executed and delivered in connection herewith, this Agreement constitutes, the entire agreement of the parties hereto with respect to the subject matter hereof, and all prior contemporaneous understandings or agreements, whether written or oral, between the parties hereto with respect to the subject matter hereof are hereby superseded in their entirety.

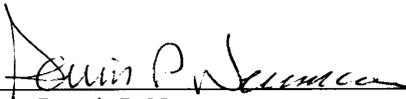
12. UCC Financing Statement. By its execution at the foot hereof, the Lessee consents to the filing by the Assignee of a protective filing of a Uniform Commercial Code

Financing Statement in the State of Delaware pursuant to Section 9-505 of the Delaware Uniform Commercial Code.

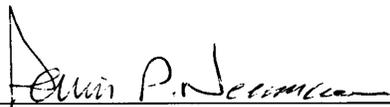
(Remainder of this page intentionally left blank. Signature page follows.)

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

BNY CAPITAL FUNDING LLC

By: 
Name: Dennis P. Neumann
Title: President

BNY CAPITAL RESOURCES CORPORATION

By: 
Name: Dennis P. Neumann
Title: President

The undersigned acknowledge receipt of notice of the foregoing Agreement:

BP Solvay Polyethylene North America

By: _____
Name: _____
Title: _____

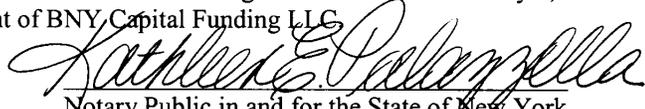
Solvay America, Inc.

By: _____
Name: _____
Title: _____

[SURFACE TRANSPORTATION BOARD ACKNOWLEDGMENT]

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

This instrument was acknowledged before me on February 2,
2005, by Dennis P. Neumann, President of BNY Capital Funding LLC



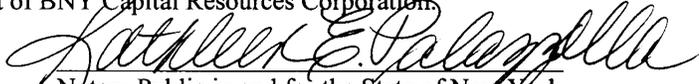
Notary Public in and for the State of New York

KATHLEEN E. PALAZZO
Notary Public, State of New York
No. 43-4503546 Qual. in Mich. Co.
Certificate Filed in n. New York County
Commission Expires Jan. 31, 2016

[SURFACE TRANSPORTATION BOARD ACKNOWLEDGMENT]

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

This instrument was acknowledged before me on February 2,
2005, by Dennis P. Neumann, President of BNY Capital Resources Corporation


Notary Public in and for the State of New York

KATHLEEN PALAZZELLA
NOTARY PUBLIC, State of New York
No. 43-4503546 Qual. in High. Co.
Certificate Filed in New York County
Commission Expires Jan. 31, 2006