

RECORDATION NO. 25706-A FILED

JUL 12 '05 1-48 PM

SURFACE TRANSPORTATION BOARD

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

July 12, 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 a Memorandum of Mortgage, dated as of July 12, 2005, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Net Railcar Lease being filed with the Board under Recordation Number \_\_\_\_\_.

The name and address of the party to the enclosed document are:

Debtor: Babcock & Brown Rail Funding LLC  
885 Second Avenue  
New York, New York 10017

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

Mr. Vernon A. Williams  
July 12, 2005  
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A description of the railroad equipment covered by the enclosed document is:

250 Coal Hopper railcars: FEPX 050001 - FEPX 050250.

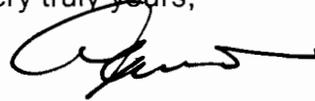
A short summary of the document to appear in the index is:

Memorandum of Mortgage.

Also enclosed is a check in the amount of \$33.00 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,

A handwritten signature in black ink, appearing to read 'R. Alvord', with a long horizontal stroke extending to the right.

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 July 12, 2005 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. 20 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.

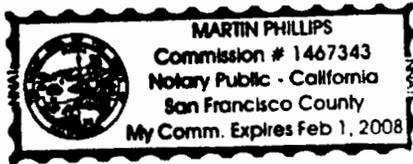
**BABCOCK & BROWN RAIL FUNDING  
LLC**

By 

Name: Ross Sullivan  
Title: Vice President

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

On the 11th day of July in the year 2005 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.



*Martin Phillips*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

Memorandum of Mortgage

**Exhibit A  
to Memorandum of Mortgage**

**EQUIPMENT**

<u>Lease #</u>	<u># Cars</u>	<u>Year Built</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
1	250	2005	4200 CF Aluminum body Rotary Autoflood III™ open top coal hoppers, 286,000 lbs. GRL, AAR Type K341, manufactured by FreightCar America, Inc.	FEPX 050001- 050250, inclusive.	None

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

**LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS**

Lease #

1. Master Railcar Manufacturing and Purchase Agreement made and entered into as of June 28, 2005, by and between FreightCar America, Inc. and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described in Schedule I hereto.

Rider No. 01 to Master Railcar Manufacturing and Purchase Agreement between FreightCar America, Inc. and Babcock & Brown Rail Funding LLC dated as of June 28, 2005, to the extent the same relates to the Equipment described in Schedule I hereto.

Master Net Railcar Lease dated as of June 20, 2005, by and between Babcock & Brown Rail Funding LLC and FirstEnergy Generation Corp., to the extent the same relates to the Equipment described in Schedule I hereto.

Schedule No. 01 to Master Net Railcar Lease dated as of July 5, 2005, by and between Babcock & Brown Rail Funding LLC and FirstEnergy Generation Corp., to the extent the same relates to the Equipment described in Schedule I hereto.

Memorandum of Net Railcar Lease dated as of July 5, 2005, by and between Babcock & Brown Rail Funding LLC and FirstEnergy Generation Corp.

Certificate of Acceptance of Railroad Cars dated July 5, 2005, from FirstEnergy Generation Corp. to Babcock & Brown Rail Funding LLC in relation to the railcars identified in the Certificate of Acceptance.

Each Certificate of Acceptance of Railroad Cars, from FirstEnergy Generation Corp. 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 in Schedule I hereto.

Warranty Bill of Sale dated as of July 12, 2005, from FreightCar America, Inc. to Babcock & Brown Rail Funding LLC and Certificates 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 FreightCar America, Inc. 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 in Schedule 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 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: \_\_\_\_\_

7/12/05



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