RECORDATION NO. 25860-A FILED

DEC 22 '05 2-56 PM

SURFACE TRANSPORTATION BOARD

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OF COUNSEL
URBAN A. LESTER

December 22, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Re: Canadian National Railway Company

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 22, 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 previously filed with the Board under Recordation Number 25860.

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

Seller: Babcock & Brown Rail Funding LLC
1 Dag Hammarskjold Plaza
885 Second Avenue, 49th Floor
New York, New York 10017

Buyer: BBRX One LLC
1 Dag Hammarskjold Plaza
885 Second Avenue, 49th Floor
New York, New York 10017

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

230 Coal Porter railcars: CNA 193000 - CNA 193229.

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 $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,

Robert W. Alvord

RWA/anm
Enclosures

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SURFACE TRANSPORTATION BOARD

# ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement dated as of December 22, 2005 (this "Agreement"), is between Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "Seller"), and BBRX One LLC, a Delaware limited liability company (the "Buyer"). Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Purchase Agreement (defined below), which also contains rules of usage that apply to terms defined therein and herein.

## RECITALS:

A. The Seller is the owner of the railcars described on Exhibit A hereto (the "Equipment").

B. Concurrently herewith, the Seller and the Buyer have executed and delivered the Purchase Agreement dated as of the date hereof (as amended, modified or supplemented, the "Purchase Agreement") in respect of the Equipment.

C. 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 mutual promises contained herein and other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. Assignment. Effective as to each item of Equipment from and after the date hereof, the Seller assigns, transfers and conveys 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 of Equipment and assigns to the Buyer all of the Seller's rights and obligations, except to the extent constituting Existing Obligations, under each of the following agreements as they relate to the Equipment:

(a) Master Net Railcar Lease dated as of August 15, 2005 entered into by and between the Seller, as lessor, and Canadian National Railway Company (the "Lessee"), as lessee, as amended, modified or supplemented from time to time;

(b) Schedule No. 01 to Master Net Railcar Lease dated as of August 15, 2005 between the Seller and the Lessee;

(c) Warranty Bills of Sale dated as of September 28 and October 27, 2005 from FreightCar America, Inc. to the Seller; and

(d) all of the other agreements and documents listed in Schedule 1 to the Purchase Agreement under the heading "Lease No. 3" (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 date hereof, as specified in the Purchase Agreement.

2. Acceptance of Assignment; Effect of Assignment. The Buyer accepts the assignment contained in Section 1 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 date hereof, after giving effect to the transaction described herein, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the applicable Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Seller shall be deemed to mean the Buyer.

3. Amendments. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

4. 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.

5. 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.

6. 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.

7. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

8. Recordation. The Buyer and the Seller agree to record this Agreement with the Surface Transportation Board and with the Registrar General of Canada, if applicable, to evidence the assignment by the Seller to the Buyer of the Seller's rights under the Lease, if and only if the Lease has been recorded with the Surface Transportation Board and/or the Registrar General of Canada, as the case may be.

9. Further Assurances. Each of the parties hereto covenants and agrees that, at any time and from time to time after the date hereof, at the request and expense of the other party hereto, it will promptly and duly execute and deliver, or cause to be executed and delivered, to the requesting party all such further instruments and take all such further action as may be reasonably requested by such party to more effectively sell, transfer, assign, and convey each item of Equipment.

10. Binding Agreement. This Agreement shall be binding upon the Seller and the Buyer, their respective successors and permitted assigns, for the use and purposes set forth and referred to herein, effective as of the date hereof.

[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: Karen R. Fagerstrom
Title: Vice President

BBRX ONE LLC, as Buyer

By: _____
Name: Karen R. Fagerstrom
Title: Vice President

State of New York )
)
County of New York )

On this, the 19th day of December, 2005, before me, a Notary Public in and for said County and State, personally appeared Karen R. Fagerstrom, the Vice President of Babcock & Browr Rail Funding LLC, who acknowledged himself/herself to be a duly authorized officer of Babcock & Brown Rail Funding LLC, 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.

Name: Clementina Capasso
Notary Public

My Commission Expires: CLEMENTINA CAPASSO
NOTARY PUBLIC, STATE OF NEW YORK
No. 01CA6120806
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES DEC. 27, 2008

Residing in: _____

State of New York )
)
County of New York )

On this, the 19th day of December, 2005, before me, a Notary Public in and for said County and State, personally appeared Karen R. Fagerstrom, the Vice President of BBRX One LLC, who acknowledged himself/herself to be a duly authorized officer of BBRX One LLC, 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.

Name: Clementina Capasso
Notary Public

My Commission Expires: CLEMENTINA CAPASSO
NOTARY PUBLIC, STATE OF NEW YORK
No. 01CA6120806
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES DEC. 27, 2008

Residing in: _____

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

## EQUIPMENT

| Lessee | # Cars | Year Built | Manufacturer | AAR Code | Description | Reporting Marks | Casualty Marks |
|---|---|---|---|---|---|---|---|
| Canadian National Railway Company | 230 | 2005 | FreightCar America, Inc. | AAR Car Type Code J311 | 4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL | CNA 193000-193229, inclusive | None |

**Exhibit B**
**(to Purchase Agreement)**

## BILL OF SALE

On this ____ day of December, 2005, 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 BBRX One LLC ("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 the date hereof (the "Purchase Agreement") and the Assignment and Assumption Agreement dated as of the date hereof, each between Seller and Buyer.

Seller hereby warrants to Buyer and its successors and assigns that, on the date hereof, Seller has good and valid title to the Equipment and good and lawful right to sell the 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. Seller hereby covenants to defend such title to the Equipment against demands of all persons whomever (other than Buyer or anyone claiming by, through or under Buyer) based on claims originating prior to the date hereof. Nothing contained in this Bill of Sale shall be construed to expand, limit or otherwise modify or terminate the representations, warranties and covenants set forth in the Purchase Agreement.

BABCOCK & BROWN RAIL FUNDING LLC

By:_____
Name:
Title:

# 3473795_v1

## 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: 12/22/05

Robert W. Alvord