

REGISTRATION NO. 26085 FILED

DEC 28 '05 3-31 PM

SURFACE TRANSPORTATION BOARD

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

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

20036

OF COUNSEL
URBAN A. LESTER

(202) 393-2266

FAX (202) 393-2156

E-MAIL alvordlaw@aol.com

December 28, 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 December 28, 2005, a primary document as defined in the Board's Rules for the Recordation of Documents.

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
December 28, 2005
Page 2

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

365 railcars in four series:

100 covered coil railcars: AOK 34200 – AOK 34299;
125 BethGon III open top coal hopper railcars: CCTX 7001 – CCTX 7125;
15 BethGon II Coal Porter railcars: EDEX 99424 – EDEX 99438;
and
125 BethGon III open top coal hopper railcars: TVAX 25377, TVAX 25390, TVAX 25477, TVAX 25478, TVAX 25491, TVAX 25492, TVAX 25503, and TVAX 25507 – TVAX 25624.

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,



Robert W. Alvord

RWA/anm
Enclosures

DEC 28 '05 3-31 PM

MEMORANDUM OF MORTGAGE

SURFACE TRANSPORTATION BOARD

Memorandum of Mortgage, made and entered into as of December 28, 2005 between **BABCOCK & BROWN RAIL FUNDING LLC** (the "Debtor") and **BAYERISCHE HYPO-UND VEREINSBANK A.G.**, 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. 31 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.

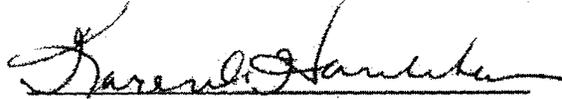
**BABCOCK & BROWN RAIL FUNDING
LLC**

By _____

Name: Bruce Carusi
Title: Vice President

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

On the 27TH day of December in the year 2005 before me personally came Bruce Carusi to me known, who, being by me duly sworn, did depose and say that he/she resides at Fire Lane 1 B, Feeks Lane, Mill Neck, NY 11765; that he/she 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/she signed his/her name thereto by authority of the officers of said limited liability company.


Notary Public

[Notarial Seal]

KAREN A. HOULIHAN
Notary Public, State of New York
No. 01HO6051904
Qualified in New York County
Commission Expires 12/31/2008

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	125	2005	4200 CF Aluminum body Rotary AutoFlood III™ open top coal hoppers, 286,000 lbs. GRL; AAR Car Type Code K341; built in 2005 by FreightCar America, Inc.	TVAX 25377, 25390, 25477, 25478, 25491, 25492, 25503, and 25507-25624, inclusive.	None
2	125	2005	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, AAR car type code J311, built in 2005 by FreightCar America, Inc.	CCTX 7001-7125, inclusive.	None
3	15	2005	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL, AAR car type code J311, built in 2005 by FreightCar America, Inc.	EDEX 99424-99438, inclusive.	None
4	100	2005	112-Ton, 42' continuous trough covered coil cars, AAR car type code E241, built in 2005 and 2006 by Trinity Rail Group, LLC	AOK 34200-34299, inclusive.	None

**Exhibit B
to Memorandum of Mortgage**

LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS

Lease # 1

Master Net Railcar Lease dated as of August 10, 2005, by and between Babcock & Brown Rail Funding LLC and Tennessee Valley Authority, to the extent the same relates to the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Schedule No. 05 to Master Net Railcar Lease, dated as of December 14, 2005, by and between Babcock & Brown Rail Funding LLC and Tennessee Valley Authority, to the extent the same relates to the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Memorandum of Net Railcar Lease, dated as of December 14, 2005, by and between Babcock & Brown Rail Funding LLC and Tennessee Valley Authority, in respect of the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Certificate of Acceptance of Railroad Cars dated December 22, 2005, from Tennessee Valley Authority to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #1" in Exhibit A hereto.

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 under the caption "Lease #1" in Exhibit A hereto.

Rider No. 11 to Master Railcar Manufacturing and Purchase Agreement between FreightCar America, Inc. and Babcock & Brown Rail Funding LLC dated as of December 8, 2005, to the extent the same relates to the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Warranty Bill of Sale dated as of December 28, 2005, 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 such Warranty Bill of Sale.

Lease # 2

Master Net Railcar Lease dated as of December 14, 2005, by and between Babcock & Brown Rail Funding LLC and Coletto Creek Power, LP, to the extent

the same relates to the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Schedule No. 01 to Master Net Railcar Lease, dated as of December 14, 2005, by and between Babcock & Brown Rail Funding LLC and Coletto Creek Power, LP, to the extent the same relates to the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Memorandum of Net Railcar Lease, dated as of December 14, 2005, by and between Babcock & Brown Rail Funding LLC and Coletto Creek Power, LP, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Certificate of Acceptance of Railroad Cars dated December 19, 2005, from Coletto Creek Power, LP to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

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 under the caption "Lease #2" in Exhibit A hereto.

Rider No. 12 to Master Railcar Manufacturing and Purchase Agreement between FreightCar America, Inc. and Babcock & Brown Rail Funding LLC dated as of December 16, 2005, to the extent the same relates to the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Warranty Bill of Sale dated as of December 28, 2005, 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 such Warranty Bill of Sale.

Lease # 3

Master Net Railcar Lease dated as of December 19, 2005, by and between Babcock & Brown Rail Funding LLC and The Empire District Electric Company, to the extent the same relates to the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Schedule No. 01 to Master Net Railcar Lease, dated as of December 19, 2005, by and between Babcock & Brown Rail Funding LLC and The Empire District Electric Company, to the extent the same relates to the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Memorandum of Net Railcar Lease, dated as of December 19, 2005, by and between Babcock & Brown Rail Funding LLC and The Empire District Electric

Company, in respect of the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Certificate of Acceptance of Railroad Cars dated December 28, 2005, from The Empire District Electric Company to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #3" in Exhibit A hereto.

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 under the caption "Lease #3" in Exhibit A hereto.

Rider No. 12 to Master Railcar Manufacturing and Purchase Agreement between FreightCar America, Inc. and Babcock & Brown Rail Funding LLC dated as of December 16, 2005, to the extent the same relates to the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Warranty Bill of Sale dated as of December 28, 2005, 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 such Warranty Bill of Sale.

Lease # 4

Master Net Railcar Lease dated as of August 15, 2005, by and between Babcock & Brown Rail Funding LLC and Canadian National Railway Company, to the extent the same relates to the Equipment described under the caption "Lease #4" in Exhibit A hereto.

Schedule No. 02 to Master Net Railcar Lease, dated as of December 8, 2005, by and between Babcock & Brown Rail Funding LLC and Canadian National Railway Company, to the extent the same relates to the Equipment described under the caption "Lease #4" in Exhibit A hereto.

Memorandum of Net Railcar Lease, dated as of December 8, 2005, by and between Babcock & Brown Rail Funding LLC and Canadian National Railway Company, in respect of the Equipment described under the caption "Lease #4" in Exhibit A hereto.

Certificates of Acceptance of Railroad Cars dated December 16, 2005 and December 20, 2005, from Canadian National Railway Company to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #4" in Exhibit A hereto.

Each Certificate of Acceptance of Railroad Cars, from Canadian National Railway 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 #4" in Exhibit A hereto.

Letter Agreement for 42' Continuous Trough Coil Rail Car dated March 8, 2005 by and between Trinity Rail Group, LLC and Babcock & Brown Rail Funding LLC in relation to the Equipment described under the caption "Lease #4" in Exhibit A hereto.

Warranty Bill of Sale dated as of December 28, 2005, from Trinity Rail Group, LLC to Babcock & Brown Rail Funding LLC and each Certificate of Acceptance an/or Certificate of Inspection and Acceptance executed by Babcock & Brown Rail Funding LLC in relation to the railcars identified in such Warranty Bill of Sale.

Each Warranty Bill of Sale, from Trinity Rail Group, LLC to Babcock & Brown Rail Funding LLC and each Certificate of Acceptance and/or Certificate of Inspection and 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 #4" 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.

Surface Transportation Board

Office of Proceedings
1925 K Street, NW
Washington, DC 20423-0001

December 28, 2005

Robert W. Alvord
Alvord and Alvord
1050 Seventeenth Street, N.W.
Suite 301
Washington, DC 20036

Dear Sir or Madam:

The enclosed document was recorded pursuant to the provisions of 49 U.S.C. 11301 and 49 CFR 1177, on December 28, 2005 , at 03:31 PM and assigned recordation number 26085.

Sincerely yours,

Regena Smith-Bernard
Section of Administration