

RECORDATION NO. 26247 FILED

APR 12 '06 2-25 PM

SURFACE TRANSPORTATION BOARD

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ELIAS C. ALVORD (1942)  
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OF COUNSEL  
URBAN A. LESTER

April 12, 2006

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 April 12, 2006, a primary document as defined in the Board's Rules for the Recordation of Documents.

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

Debtor: Babcock & Brown Rail Funding LLC  
885 Second Avenue  
49<sup>th</sup> Floor  
New York, NY 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  
April 12, 2006  
Page Two

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

307 Railcars: PSTX 2001 – PSTX 2307

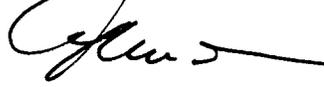
A short summary of the document to appear in the index is:

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

APR 12 '06 2-25 PM

**MEMORANDUM OF MORTGAGE** SURFACE TRANSPORTATION BOARD

Memorandum of Mortgage, made and entered into as of April 12, 2006 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. 32 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



**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	307	2006	4520 CF Aluminum Outside Stake BethGon® II coal porter railcars, AAR Unit Type Code J311, 286,000 lbs. GRL, built by FreightCar America, Inc.	PSTX 2001-2307, inclusive.	None

**LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS**

Lease # 1

Railroad Equipment Lease entered into as of March 30, 2006, by and between Babcock & Brown Rail Funding LLC and Consumers Energy Company.

Memorandum of Railroad Equipment lease entered into as of March 30, 2006, by and between Babcock & Brown Rail Funding LLC and Consumers Energy Company.

Certificate of Acceptance dated April 5, 2006, from Consumers Energy Company to Babcock & Brown Rail Funding LLC in relation to the railcars identified in the Certificate of Acceptance.

Each Certificate of Acceptance from Consumers Energy 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 in Exhibit A hereto.

Assignment and Assumption Agreement, dated as of March 30, 2006, between Consumers Energy Company and Babcock & Brown Rail Funding LLC.

Purchase Order No. C0051160 dated October 19, 2005, which purchase order includes various attachments thereto as referenced therein, including (among others) the FreightCar America, Inc. "Terms and Conditions of Sale" which are incorporated into and made a part thereof, to the extent the same relates to the Equipment described in Exhibit A hereto.

Warranty Bill of Sale dated as of April 12, 2006, 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 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.

**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: 4/12/06



Robert W. Alvord