

RECORDATION NO. 26734 FILED

DEC 22 06 -11 30 AM

SURFACE TRANSPORTATION BOARD

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

December 22, 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 December 22, 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:

Borrower:           BBRX Three LLC  
885 Second Avenue 49th Floor  
New York, NY 10017

Secured Party:      Wells Fargo Bank Northwest, N.A.  
299 South Main Street  
Salt Lake City, UT 84111

Mr. Vernon A. Williams  
December 22, 2006  
Page 2

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

1,205 railcars as follows:

125 railcars: CCTX 7001 – CCTX 7125

15 railcars: EDEX 99424 – EDEX 99438

125 hopper railcars within the series TVAX 25377 – TVAX 25624 as more particularly set forth in the attachment to the document

237 railcars: NS 472000 – NS 472239 (not including casualties NS 472030, NS 472033 and NS 472201)

100 railcars: AOK 34200 – AOK 34299

303 railcars: PSTX 2001 – PSTX 2307 (not including casualties PSTX 2290, PSTX 2292, PSTX 2293 and PSTX 2294)

20 covered hopper railcars: LAFX 60141 – LAFX 60160

20 covered hopper railcars: LAFX 60161 – LAFX 60180

10 covered hopper railcars: SWSX 60601 – SWSX 60610

125 hopper railcars: OUCX 26001 – OUCX 26125

125 hopper railcars: AZPX 90001 – AZPX 90125

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

Memorandum of Mortgage.

Also enclosed is a check in the amount of \$34.00 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/sem  
Enclosures

DEC 22 '06 -11 30 AM

EXECUTION VERSION

SURFACE TRANSPORTATION BOARD

## MEMORANDUM OF MORTGAGE

This Memorandum of Mortgage made and entered into as of December 22, 2006 (this "Memorandum"), is between BBRX Three LLC, (the "Borrower") and Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Security Trustee under the Security Agreement referred to below (together with its successors and permitted assigns, the "Security Trustee"). Terms used in this Memorandum have the meanings assigned thereto in the Security Agreement dated as of December 22, 2006 (as amended, modified or supplemented, the "Security Agreement") among the Security Trustee, the Borrower, the Senior Lender and the Senior Agent as described therein.

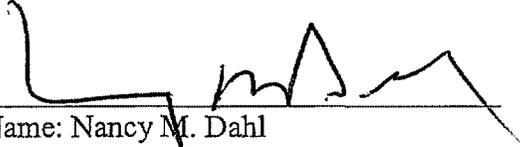
W I T N E S S E T H:

The undersigned are parties to the Security Agreement, by which the Borrower 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 as also set forth on Exhibit A attached hereto to the Security Trustee in order to secure the Borrower's performance of its obligations as described in the Security Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have each caused this Memorandum of Mortgage to be duly executed by their respective officers duly authorized as of the date and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its individual  
capacity but solely as Security Trustee

By:   
Name: Nancy M. Dahl  
Title: Vice President

BBRX THREE LLC,  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have each caused this Memorandum of Mortgage to be duly executed by their respective officers duly authorized as of the date and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its individual  
capacity but solely as Security Trustee

By: \_\_\_\_\_  
Name:  
Title:

BBRX THREE LLC,  
as Borrower

By:  \_\_\_\_\_  
Name: Bruce J. Carusi  
Title: Vice President

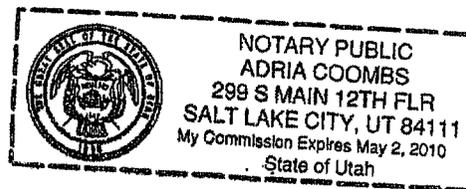
STATE OF Utah )  
 ) ss.:  
COUNTY OF Salt Lake )

On this, the 19<sup>th</sup> day of December, 2006, before me, a Notary Public in and for said County and State, personally appeared Nancy M. Dahl, the Vice President of Wells Fargo Bank Northwest, National Association, who acknowledged himself/herself to be a duly authorized officer of Wells Fargo Bank Northwest, National Association, 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.

Adria Coombs  
Notary Public

[Notarial Seal]



STATE OF New York )  
 ) ss.:  
COUNTY OF New York )

On this, the 19th day of December, 2006, before me, a Notary Public in and for said County and State, personally appeared Bruce J. Carusi, the Vice President of BBRX Three LLC, who acknowledged himself to be a duly authorized officer of BBRX Three LLC, and that, as such officer, being authorized to do so, he 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.

  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

**LISA GEOGHEGAN**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01GE6155530  
Qualified in New York County  
Commission Expires Nov. 13, 2010

**EXHIBIT A**

**EQUIPMENT AND LEASES**

Lease #	Lessee	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
1	Coletto Creek Power, LP	125	2005 by FreightCar America, Inc.	4520 CF Aluminum body rotary dump BethGon II coal porter railcars, 286,000 GRL, AAR car type code J311	CCTX 7001-7125, inclusive	None
2	The Empire District Electric Company	15	2005 by FreightCar America, Inc.	4520 CF Aluminum body rotary dump BethGon II coal porter railcars, 286,000 GRL, AAR car type code J311	EDEX 99424-99438, inclusive	None
3	Tennessee Valley Authority	125	2005 by FreightCar America, Inc.	4200 CF Aluminum body Rotary AutoFlood III open top coal hopper railcars, 286,000 GRL; AAR car type code K341	TVAX 25377, 25390, 25477, 25478, 25491, 25492, 25503, and 25507-25624, inclusive	None

Lease #	Lessee	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
4	Norfolk Southern Railway Company	237	2003 by National Steel Car Limited	60' Plate F cushioned boxcars with 12' plug doors, 286,000 GRL, AAR car type code B635	NS 472000-472239, inclusive	NS 472030, 472033, and 472201
5	Canadian National Railway Company	100	2005 and 2006 by Trinity Rail Group, LLC	112-Ton, 42' continuous trough covered coil cars, 286,000 GRL, AAR car type code E241	AOK 34200-34299, inclusive	None
6	Consumers Energy Company	303	2006 by FreightCar America, Inc.	4520 CF Aluminum Outside Stake BethGon II coal porter railcars, 286,000 GRL, AAR car type code J311	PSTX 2001-2307, inclusive	PSTX 2290, 2292, 2293 and 2294
7	Lafarge North America, Inc. #1	20	2006 by Trinity North American Freight Car, Inc.	3230 CF Pressure Differential covered hopper railcars, 286,000 GRL, AAR car type code C612	LAFX 060141-060160, inclusive	None
8	Lafarge North America, Inc. #2	20	2006 by Trinity North American Freight Car, Inc.	3230 CF Pressure Differential covered hopper railcars, 286,000 GRL, AAR car type code C612	LAFX 060161-060180, inclusive	None

Lease #	Lessee	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
9	Superior Well Services, Inc.	10	2006 by Trinity North American Freight Car, Inc.	3230 CF Pressure Differential covered hopper railcars, 286,000 GRL, AAR car type code C612	SWSX 60601-60610, inclusive	None
10	Orlando Utilities Commission	125	2006 by FreightCar America, Inc.	4200 CF Aluminum body AutoFlood III open top hopper railcars, 286,000 GRL, AAR car type code K341	OUCX 26001-26125, inclusive	None
11	Arizona Electric Power Cooperative	125	2006 by FreightCar America, Inc.	4200 CF Aluminum body AutoFlood III open top hopper railcars, 286,000 GRL, AAR car type code K341	AZPX 90001-90125, inclusive	None

Lease No. 1 – Coletto Creek Power, LP

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

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.

Lease No. 2 – The Empire District Electric Company

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

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.

Lease No. 3 – Tennessee Valley Authority

Master Net Railcar Lease dated as of August 10, 2005, by and between Babcock & Brown Rail Funding LLC and Tennessee Valley Authority.

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.

Lease No. 4 – Norfolk Southern Railway Company

Master Net Railcar Lease, made as of October 8, 1998, by and between Babcock & Brown Rail Funding LLC (as assignee of The CIT Group/Equipment Financing, Inc.) and Norfolk Southern Railway Company.

Rider A to Master Net Railcar Lease, made as of October 8, 1998, by and between Babcock & Brown Rail Funding LLC (as assignee of The CIT Group/Equipment Financing, Inc.) and Norfolk Southern Railway Company.

Schedule No. 10 to Master Net Railcar Lease, made as of November 15, 2002, by and between Babcock & Brown Rail Funding LLC (as ultimate assignee of C.I.T. Leasing Corporation), and Norfolk Southern Railway Company.

Lease No. 5 – Canadian National Railway Company

Master Net Railcar Lease dated as of August 15, 2005, by and between Babcock & Brown Rail Funding LLC and Canadian National Railway Company.

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.

Lease No. 6 – Consumers Energy Company

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.

Lease No. 7 – Lafarge North America, Inc. #1

Master Net Railcar Lease dated as of March 29, 2006, by and between Babcock & Brown Rail Funding LLC and Lafarge North America, Inc.

Schedule No. 01 to Master Net Railcar Lease, dated as of March 29, 2006, by and between Babcock & Brown Rail Funding LLC and Lafarge North America, Inc.

Lease No. 8 – Lafarge North America, Inc. #2

Master Net Railcar Lease dated as of March 29, 2006, by and between Babcock & Brown Rail Funding LLC and Lafarge North America, Inc.

Schedule No. 02 to Master Net Railcar Lease, dated as of May 24, 2006, by and between Babcock & Brown Rail Funding LLC and Lafarge North America, Inc.

Lease No. 9 – Superior Well Services

Master Net Railcar Lease dated as of April 24, 2006, by and between Babcock & Brown Rail Funding LLC and Superior Well Services, Inc.

Schedule No. 01 to Master Net Railcar Lease, dated as of April 24, 2006, by and between Babcock & Brown Rail Funding LLC and Superior Well Services, Inc.

Lease No. 10 – Orlando Utilities Commission

Master Net Railcar Lease dated as of February 27, 2006, by and between Babcock & Brown Rail Funding LLC and Orlando Utilities Commission.

Schedule No. 01 to Master Net Railcar Lease dated as of February 27, 2006, by and between Babcock & Brown Rail Funding LLC and Orlando Utilities Commission.

Lease No. 11- Arizona Electric Power Cooperative

Master Net Railcar Lease dated as of March 15, 2006, by and between Babcock & Brown Rail Funding LLC and Arizona Electric Power Cooperative.

Schedule No. 01 to Master Net Railcar Lease dated as of March 15, 2006, by and between Babcock & Brown Rail Funding LLC and Arizona Electric Power Cooperative.

**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:

12/22/06



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