

RECORDATION NO. 26084-A FILED

DEC 22 '06 -11 25 AM

SURFACE TRANSPORTATION BOARD

OF COUNSEL
URBAN A. LESTER

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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 an Assignment and Assumption Agreement, dated as of December 22, 2006, 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 No. 2 previously filed with the Board under Recordation No. 26084.

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

Seller/Assignor: Babcock & Brown Rail Funding LLC
885 Second Avenue, 49th Floor
New York, NY 10017

Buyer/Assignee: BBRX Three LLC
885 Second Avenue 49th Floor
New York, NY 10017

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

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

100 railcars: AOK 34200 – AOK 34299.

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 \$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 25 AM

EXECUTION VERSION

SURFACE TRANSPORTATION BOARD

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement dated as of December 22, 2006 (this "Agreement"), is between Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "Seller"), and BBRX Three 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. The Seller and the Buyer have executed and delivered the Purchase Agreement dated as of November 7, 2006 (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 agreements listed on Exhibit A hereto as they relate to the applicable Equipment and all of the other agreements and documents listed in Schedule 1 to the Purchase Agreement (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 requesting 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.

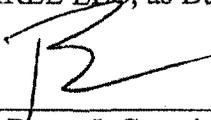
[Remainder of page intentionally left blank]

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: Bruce J. Carusi
Title: Vice President

BBRX THREE LLC, as Buyer

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

State of New York)
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 Babcock & Brown Rail Funding LLC, who acknowledged himself to be a duly authorized officer of Babcock & Brown Rail Funding 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.

Name: Lisa Geoghegan
Notary Public

My Commission Expires: _____

Residing in: _____

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

State of New York)
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.

Name: Lisa Geoghegan
Notary Public

My Commission Expires: _____

Residing in: _____

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

Exhibit A
(to Assignment
and Assumption Agreement)

EQUIPMENT AND LEASES

Lease #	Lessee	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
1	Coleto 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