

SEP 28 '07 -12 1 0 PM

SURFACE TRANSPORTATION BOARD

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September 28, 2007

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 September 28, 2007, 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  
September 28, 2007  
Page 2

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

226 gondola railcars within the series CEFX 40115 – CEFX 40592; and  
26 covered hopper railcars within the series CEFX 95072 – CEFX 95716  
as more particularly set forth in the attachment to the document.

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

Memorandum of Mortgage.

Also enclosed is a check in the amount of \$35.00 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,

A handwritten signature in black ink, appearing to read "Alvord", with a long horizontal flourish extending to the right.

Robert W. Alvord

RWA/sem  
Enclosures

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SURFACE TRANSPORTATION BOARD

**MEMORANDUM OF MORTGAGE**

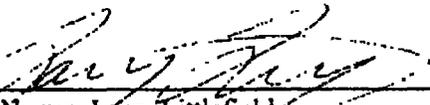
Memorandum of Mortgage, made and entered into as of September 28, 2007 between **BABCOCK & BROWN RAIL FUNDING LLC** (the "Debtor") and **BAYERISCHE HYPO-UND VEREINSBANK AG**, as Agent under the Security Agreement referred to below (together with its successors and permitted assigns, the "Secured Party"). Terms used in this instrument have the meanings assigned thereto in the Second Amended and Restated Security Agreement dated as of September 21, 2007 (as supplemented, including by Security Agreement Supplement No. 62 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 document 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: Larry Littlefield  
Title: Vice President



*Exhibit A  
to Memorandum of Mortgage*

**EQUIPMENT**

<u>Lease #</u>	<u>Lessee</u>	<u># Cars Built</u>	<u>Year</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
1	The Detroit Edison Company	226	1998	Johnstown America	J311	4,480 CF aluminum rotary dump coal gondolas, 286,000 GRL	CEFX 40115, 40122, 40126, 40127, 40132, 40138, 40141, 40143, 40146-40150, inclusive, 40153, 40155-40157, inclusive, 40164, 40165, 40167, 40178, 40181-40183, inclusive, 40186-40188, inclusive, 40190-40193, inclusive, 40196, 40199, 40201, 40204-40206, inclusive, 40208, 40219, 40223-40225, inclusive, 40228, 40229, 40234, 40236, 40238, 40239, 40243, 40245, 40246, 40248, 40249, 40253-40257, inclusive, 40259-40264, inclusive, 40266, 40268, 40273, 40276, 40278, 40279, 40282-40284, inclusive, 40286, 40287, 40293, 40295, 40298, 40299, 40302, 40306-40308, inclusive, 40311, 40317, 40318, 40320-40324, inclusive, 40326, 40327, 40329, 40331-40333, inclusive, 40335, 40337-40339, inclusive, 40341, 40342, 40347, 40348, 40352, 40353, 40355-40358, inclusive, 40360, 40361, 40364-40366, inclusive, 40368-40373, inclusive, 40375, 40376, 410378, 40380, 40381, 40386-40389, inclusive,	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars Built</u>	<u>Year</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
							40392, 40393, 40395-40397, inclusive, 40399, 40400, 40402, 40404-40407, inclusive, 40410, 40413, 40415, 40418, 40419, 40421, 40427-40429, inclusive, 40432, 40437, 40439-40441, inclusive, 40445-40447, inclusive, 40449, 40454, 40458-40460, inclusive, 40464, 40466-40468, inclusive, 40471, 40472, 40483, 40484, 40490, 40491, 40493, 40495, 40501, 40502, 40506, 40509-40511, inclusive, 40513-40515, inclusive, 40518, 40519, 40521, 40524, 40525, 40527, 40528, 40530, 40533-40535, inclusive, 40539, 40541-40543, inclusive, 40545, 40546, 40548-40550, inclusive, 40553, 40559, 40560, 40563-40565, inclusive, 40567, 40568, 40573, 40575, 40576, 40579, 40580, 40584, and 40587-40592, inclusive.	
2	Phoenix Cement Company	26	1999 - 2001	Thrall	C612	3230 CF, PD covered hopper railcars, 286,000 GRL	CEFX 95072, 95080, 95084, 95397, 95432, 95448-95450, inclusive, 95469, 95475, 95476, 95485-95495, inclusive, 95497, 95498, 95500, and 95716.	None

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.

**LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS**

**Lease No. 1**

Master Net Railcar Lease made as of September 1, 1998, by and between The CIT Group/Equipment Financing, Inc. and The Detroit Edison Company, to the extent the same relates to the Equipment described under the caption "Lease #1" in Schedule I hereto.

Schedule No. 02 to Master Net Railcar Lease dated as of September 1, 1998, by and between The CIT Group/Equipment Financing, Inc. and The Detroit Edison Company, to the extent the same relates to the Equipment described under the caption "Lease #1" in Schedule I hereto.

Extension No. 1 to Schedule No. 02 to Master Railcar Lease Agreement entered into as of August 25, 1999 and effective as of September 1, 1999, by and between The CIT Group/Equipment Financing, Inc. and The Detroit Edison Company, to the extent the same relates to the Equipment described under the caption "Lease #1" in Schedule I hereto.

Extension to Railcar Equipment Lease entered into as of April 30, 2001 and effective as of April 1, 2001, by and between The CIT Group/Equipment Financing, Inc. and The Detroit Edison Company, to the extent the same relates to the Equipment described under the caption "Lease #1" in Schedule I hereto.

Extension to Lease Schedule No. 2 entered into as of November 24, 2003 and effective as of April 1, 2003, by and between The CIT Group/Equipment Financing, Inc. and The Detroit Edison Company, to the extent the same relates to the Equipment described under the caption "Lease #1" in Schedule I hereto.

Extension to Lease Schedule No. 2 entered into as of January 15, 2004 and effective as of April 1, 2004, by and between The CIT Group/Equipment Financing, Inc. and The Detroit Edison Company, to the extent the same relates to the Equipment described under the caption "Lease #1" in Schedule I hereto.

Extension to Lease Schedule No. 2 entered into as of May 1, 2006 and effective as of April 1, 2006, by and between The CIT Group/Equipment Financing, Inc. and The Detroit Edison Company, to the extent the same relates to the Equipment described under the caption "Lease #1" in Schedule I hereto.

Memorandum of Railcar Lease dated as of September 1, 1998, by and between The CIT Group/Equipment Financing, Inc. and The Detroit Edison Company, to the extent the same relates to the Equipment described under the caption "Lease #1" in Schedule I hereto.

Purchase Agreement dated as of September 28, 2007, between The CIT Group/Equipment Financing, Inc. and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease #1" in Schedule I hereto.

Bill of Sale dated as of September 28, 2007 from The CIT Group/Equipment Financing, Inc. to Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease #1" in Schedule I 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.

### **Lease #2**

Master Railcar Lease made as of June 8, 2000, by and between The CIT Group/Equipment Financing, Inc. and Salt River Pima-Maricopa Indian Community d/b/a Phoenix Cement Company, to the extent the same relates to the Equipment described under the caption "Lease #2" in Schedule I hereto.

Amendment No. 01 to Full Service Master Railcar Lease entered into as of June 8, 2000 and effective as of September 7, 2007, by and between The CIT Group/Equipment Financing, Inc. and Phoenix Cement Company, a division of the Salt River Pima-Maricopa Indian Community, to the extent the same relates to the Equipment described under the caption "Lease #2" in Schedule I hereto.

Schedule No. 07 to Master Railcar Lease made as of May 30, 2001, by and between The CIT Group/Equipment Financing, Inc. and Salt River Pima-Maricopa Indian Community d/b/a Phoenix Cement Company, to the extent the same relates to the Equipment described under the caption "Lease #2" in Schedule I hereto.

Extension to Lease Schedule No. 07 entered into as of February 8, 2005 and effective as of July 1, 2005, by and between The CIT Group/Equipment Financing, Inc. and Salt River Pima-Maricopa Indian Community d/b/a Phoenix Cement Company, to the extent the same relates to the Equipment described under the caption "Lease #2" in Schedule I hereto.

Memorandum of Railcar Lease dated as of May 30, 2001, by and between The CIT Group/Equipment Financing, Inc. and Salt River Pima-Maricopa Indian Community d/b/a Phoenix Cement Company, to the extent the same relates to the Equipment described under the caption "Lease #2" in Schedule I hereto.

Memorandum of Lease Extension dated as of February 8, 2005, by and between The CIT Group/Equipment Financing, Inc. and Salt River Pima-Maricopa Indian Community d/b/a Phoenix Cement Company, to the extent the same relates to the Equipment described under the caption "Lease #2" in Schedule I hereto.

**Purchase Agreement dated as of September 28, 2007, between The CIT Group/Equipment Financing, Inc. and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease #2" in Schedule I hereto.**

**Bill of Sale dated as of September 28, 2007 from The CIT Group/Equipment Financing, Inc. to Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease #2" in Schedule I hereto.**

**Together with all substitutions, replacements and renewals of the property above described, whether the Debtor now has rights therein or such rights shall hereafter be acquired by it.**

Subj: **HVB-BBRF Drawdown on 9/28 (Memo of Mortgage)**  
Date: 9/27/2007 3:02:45 P.M. Eastern Daylight Time  
From: [apark@vedderprice.com](mailto:apark@vedderprice.com)  
To: [AlvordLaw@aol.com](mailto:AlvordLaw@aol.com)  
CC: [Indra.Bedasia@babcockbrown.com](mailto:Indra.Bedasia@babcockbrown.com), [Janice.Wickham@babcockbrown.com](mailto:Janice.Wickham@babcockbrown.com),  
[nancy.lucas@hklaw.com](mailto:nancy.lucas@hklaw.com), [jkim@vedderprice.com](mailto:jkim@vedderprice.com)

Dear Bob:

Attached please find a fully executed copy of Memo of Mortgage No. 62 to be held in escrow in anticipation of closing (scheduled for tomorrow the 28th at noon). Upon successful closing, I will send you another message with my instructions to file.

Please let me know if you have any questions.

Regards,

Andrew T. Park  
Vedder, Price, Kaufman & Kammholz, P.C.  
1633 Broadway, 47th Floor  
New York, NY 10019

(212) 407-7768 (telephone)  
(212) 407-7799 (fax)  
[apark@vedderprice.com](mailto:apark@vedderprice.com)

**FEDERAL TAX NOTICE:**

Treasury Regulations require us to inform you that any federal tax advice contained herein (including in any attachments and enclosures) is not intended or written to be used, and cannot be used by any person or entity, for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service. In addition, we do not impose upon any person or entity to whom this is addressed any limitation on the disclosure of the tax treatment or tax structure of any transaction discussed herein (including in any attachments and enclosures).

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: 9/28/07



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