

RECORDATION NO. 26734-A FILED

OCT 17 '08 -9 00 AM

SURFACE TRANSPORTATION BOARD

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

October 17, 2007

Anne K. Quinlan, Esquire  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

Dear Ms. Quinlan:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Amended and Restated Memorandum of Mortgage, dated as of October 14, 2008, but effective 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 Mortgage previously filed with the Board under Recordation Number 26734.

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

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

Anne K. Quinlan, Esquire  
October 17, 2008  
Page 2

The railroad equipment covered by the enclosed document is unchanged from the original filing and consists of the following:

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

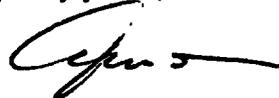
A short summary of the document to appear in the index is:

Amended and Restated Memorandum of Mortgage.

Also enclosed is a check in the amount of \$41.00 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

AMENDED AND RESTATED MEMORANDUM OF MORTGAGE SURFACE TRANSPORTATION BOARD

This Amended and Restated Memorandum of Mortgage is dated as of October 14, 2008, and effective as of December 22, 2006 (this "Restated Memorandum"), by BBRX Three LLC (the "Borrower") in favor of 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 instrument have the meanings assigned thereto (whether by reference to another document or otherwise) in that certain Security Agreement dated as of December 22, 2006 (as amended, modified or supplemented, the "Security Agreement"), among the Borrower, the Security Trustee and the other parties named therein as lenders and agents.

WITNESSETH:

Section 1. The Borrower and the Security Trustee are parties to that certain Memorandum of Mortgage dated as of December 22, 2006 (the "Existing Memorandum"), duly filed on such date with the Surface Transportation Board under Recordation No. 26734. The parties agree that this Restated Memorandum is an amendment and restatement in its entirety of the Existing Memorandum.

Section 2. The Borrower and the Security Trustee have entered into the Security Agreement, pursuant to which the Borrower has granted to the Security Trustee, in order to secure the obligations set forth in the Security Agreement, a first priority security interest in, inter alia, all of its right, title and interest in, to and under (a) certain railroad equipment bearing reporting marks and road numbers as listed on Exhibit B attached hereto and all additions and alterations thereof, replacements thereof, and substitutions therefor (collectively, the "Units") and (b) each lease referred to on Exhibit A attached hereto and any other lease entered into by the Borrower with respect to the Units (collectively, the "Leases").

Section 3. This Restated Memorandum 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.

[Signature Page Follows]

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

**BBRX THREE LLC**

By:   
Name: George Stone  
Title: Vice President

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

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

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

On this, the 14 day of October, 2008, before me, a Notary Public in and for said County and State, personally appeared George Stone, 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.

LISA FALLACE  
Notary Public - State of New York  
No. 01FA6183109  
Qualified in Nassau County - Certificate Filed in New York County  
My Commission Expires March 10, 2012

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

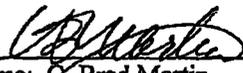
[Notarial Seal]

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

BBRX THREE LLC

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

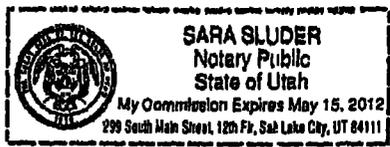
WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its individual  
capacity but solely as Security Trustee

By:  \_\_\_\_\_  
Name: G. Brad Martin  
Title: Assistant Vice President

STATE OF UTAH )  
 ):ss  
COUNTY OF SALT LAKE )

On the 14<sup>th</sup> day of October, 2008, personally appeared before me G. Brad Martin who being by me duly sworn did say, for himself, that he the said G. Brad Martin is the Assistant Vice President of Wells Fargo Bank Northwest, National Association and that the within and foregoing instrument was signed in behalf of said association by authority of a resolution of its Board of Directors, and said G. Brad Martin duly acknowledged to me that said association executed the same.

Sara Sluder  
Notary Public



**LEASES**

**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.**

Exhibit B to Amended and Restated  
Memorandum of Mortgage

EQUIPMENT

| Lease # | Lessee                               | # of Units | Year Built/<br>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/<br>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                           |

| Lease # | Lessee                             | # of Units | Year Built/<br>Manufacturer                      | Description   | Reporting Marks               | Casualty Marks |
|---------|------------------------------------|------------|--|---|-------------------------------|----------------|
| 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           |
| 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           |

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: 10/17/08



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