

# OSTER

## Researching Services

12897 Colonial Drive • Mt. Airy, MD 21771  
Phone: 301-253-6040  
Fax: 301-253-6040  
maryannoster@adelphia.net

FEB 22 '06 11-30 AM

SURFACE TRANSPORTATION BOARD

February 22, 2006

Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

Dear Sir:

Enclosed for recording with the Surface Transportation Board is an Assignment and Assumption Agreement dated 1/9/06 including the following parties and railroad equipment:

Seller: Midwest Railcar Corporation  
4949 Autumn Oaks Drive  
Maryville, IL 62062

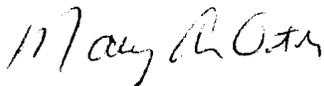
Buyer: Wells Fargo Equipment Finance, Inc.  
d/b/a Midwest Railcar Capital Equipment Company  
733 Marquette Avenue  
Minneapolis, MN 55402

Equipment: 50, 3281 cf Twin Covered Hoppers  
MCEX 330100-330149

Please record this agreement as a secondary document to STB Recordation # 26211-A. The filing fee of \$33 is enclosed.

Summary: Assignment and Assumption Agreement dated 1/9/06 between Midwest Railcar Corporation as Seller and Wells Fargo Equipment Finance, Inc. d/b/a Midwest Railcar Capital Equipment Company as Buyer including 50, 3281 cf Twin Covered Hoppers, MCEX 330100-330149.

Sincerely,



Mary Ann Oster  
Research Consultant

Enclosures

FEB 22 '06 11:30 AM

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

SURFACE TRANSPORTATION BOARD

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of January 9, 2006 (this "Agreement"), is between Midwest Railcar Corporation, an Illinois corporation (the "Seller"), and Wells Fargo Equipment Finance, Inc. d/b/a Midwest Railcar Capital Equipment Company, a Minnesota corporation (the "Buyer").

**RECITALS**

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement, dated as of January 9, 2006 (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller and the Buyer.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

**AGREEMENT**

1. **Definitions.** Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.

2. **Assignment.** Effective as to each unit of Equipment on the Closing Date, the Seller sells to the Buyer all of the Seller's rights, title and interest in and to such unit and assigns to the Buyer all of the Seller's rights and obligations under the Lease and, solely as it pertains to the Lease, the Master Lease (collectively, the "Operative Agreements") as they relate to each unit. Notwithstanding the foregoing, the Seller shall continue to be entitled to the benefit of any right to indemnification for tax or other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

3. **Acceptance of Assignment; Assumption of Obligations; Effect of Assignment.** The Buyer accepts the assignment contained in Section 2 hereof and assumes all obligations of the Seller accruing on or after the Closing Date under, and agrees to be bound to the same extent as the Seller by all the terms of, the Operative Agreements. Effective on and after the Closing Date (except with respect to obligations not assumed pursuant to the preceding sentence), the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Operative Agreements and each reference in the Operative Agreements to the Seller shall be deemed to mean the Buyer. The Seller is released of all obligations accruing under the Operative Agreements on or after the Closing Date.

4. **Administration of Lease; Servicing.** The Operative Documents shall be subject to the terms of that certain Railcar Lease Origination Program Agreement dated as of June 15, 2005 by and among Seller, Buyer and MRMX Leasing & Management, LLC.

5. **Definitions.** Except as otherwise specified or as the context may otherwise require, the following terms have the meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

**Bill of Sale:** the bill of sale in the form of Exhibit I hereto.

**Closing Date:** the date of the Bill of Sale.

**Equipment:** the units of equipment listed on Schedule I hereto.

**Lease:** that certain Schedule #12 (Lease Contract # BMI 3-12) to Full Service Master Lease Agreement made as of December 11, 2003 between Midwest Railcar Corporation as Lessor and Badger Mining Corporation as Lessee.

**Lessee:** Badger Mining Corporation

**Master Lease:** that certain Full Service Master Lease Agreement made as of December 11, 2003.

**Ownership Interest:** the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Operative Agreements.

6. **Amendments.** No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

7. **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.

8. **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.

9. **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.

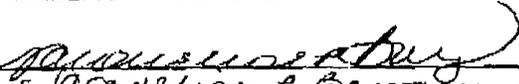
10. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of Minnesota, without giving effect to its conflict of law rules.

11. **Entire Agreement.** This Agreement, the Purchase Agreement, and the Bill of Sale (together with their exhibits and schedules) represent the entire agreement of the parties

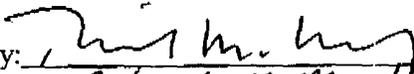
with respect to the subject matter hereof and thereof and supersede and cancel any prior oral or written agreement, letter of intent or understanding with respect to such subject matter.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto on the date first above written.

**WELLS FARGO EQUIPMENT FINANCE,  
INC. D/B/A MIDWEST RAILCAR CAPITAL  
EQUIPMENT COMPANY**

By:   
Name: Jacqueline P. Barragan  
Title: AVP

**MIDWEST RAILCAR CORPORATION**

By:   
Name: Richard M. Murphy  
Title: President & CEO

State of Minnesota )

County of Hennepin )

On this, the 16<sup>th</sup> day of ~~January~~ February, 2006, before me, a Notary Public in and for said County and State, personally appeared Jacqueline P. Eruragan a M AVP of Wells Fargo Equipment Finance, Inc., who acknowledged ~~himself~~ her to be a duly authorized officer of Wells Fargo Equipment Finance, Inc., 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.



Patti H. DeYoung  
Name: Patti H. DeYoung  
Notary Public

My Commission Expires: 1/31/2010  
Residing in: Mpls, MN

State of Illinois )  
County of Madison )

On this, the 17th day January, 2006, before me, a Notary Public in and for said County and State, personally appeared Richard M. Murphy, III a President & CEO of Midwest Railcar Corporation, who acknowledged himself to be a duly authorized officer of Midwest Railcar Corporation, 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: [Signature]  
Notary Public

My Commission Expires: 10-1-08  
Residing in: Highland, IL



**EXHIBIT I**

**FORM OF BILL OF SALE**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Midwest Railcar Corporation ("Seller"), does hereby sell, transfer and assign to Wells Fargo Equipment Finance, Inc. ("Buyer") all of Seller's rights, title and interest in and to the equipment described in Schedule 1 hereto, subject to the terms and conditions of the Purchase Agreement, dated as of January 9, 2006, between Seller and Buyer, and the Assignment and Assumption Agreement, dated January 9, 2006 between Seller and Buyer.

Midwest Railcar Corporation

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

**Schedule 1**

Fifty (50) 3281 c.f, 286,000 GWR, Twin Covered Hoppers newly manufactured by Trinity Industries with the following reporting marks: MCEX 330100 through MCEX 330149, inclusive.