

RECORDATION NO. 26619 FILED

OCT 13 '06 12:08 PM

SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.  
SUITE 301  
WASHINGTON, D.C.  
20036  
\_\_\_\_\_  
(202) 393-2266  
FAX (202) 393-2156  
E-MAIL alvordlaw@aol.com

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

OF COUNSEL  
URBAN A. LESTER

October 13, 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 July 7, 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:

Seller: GE Railcar Services  
421 - 7th Avenue S.W., Suite 2401  
Calgary, Alberta  
Canada T2P 4K0

Buyer: NuRail Canada ULC  
480 West Dussell Drive, Suite R  
Maumee, Ohio 43537

Mr. Vernon A. Williams  
October 13, 2006  
Page 2

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

50 railcars within the following series NCHX 45990 – NCHX 46089 and NAHX 455044 – NAHX 456089 as more particularly set forth in the equipment schedule attached to the document.

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,

A handwritten signature in cursive script that reads "Robert W. Alvord" followed by a small "RWA" monogram.

Robert W. Alvord

RWA/sem  
Enclosures

OCT 13 '06 12-08 PM  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**SURFACE TRANSPORTATION BOARD**

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of July 7, 2006 (this "Agreement"), is between GE Railcar Services, a general partnership established under the laws of the Province of Ontario (the "Seller"), and NuRail Canada ULC, an unlimited liability company organized under the laws of the Province of Nova Scotia (the "Buyer").

**RECITALS**

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement, dated as of July 7, 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 Operative Agreements, in each case 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, in respect of the period on and after the Closing Date, assumes all obligations of the Seller 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, 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, in respect of the period on and after the Closing Date, is released of all obligations of the Seller under the Operative Agreements.

4. **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 railcars described in Schedule 1 to this Agreement together with every part, accessory, component and any equipment installed therein or attached thereto owned by the Seller on the Closing Date (individually each railcar is referred to as a "unit" or "unit of Equipment").

**Lease:** (i) Rider No. 15 to Car Leasing Agreement 4190-95-00 dated August 13, 1999 between Lessee and Seller, as successor in interest to GE Capital Railcar Services Canada Inc., (ii) Rider No. 16 to Car Leasing Agreement No. 4190-95-00 dated October 3, 2001 between Lessee and Seller as successor in interest to GE Railcar Services Inc. and (iii) Rider No. 15, Renewal No. 1 to Car Leasing Agreement 4190-95 between Seller and Lessee, signed by Lessee on December 5, 2005 and by Seller December 12, 2005, which incorporate by reference the terms of the Master Lease.

**Lessee:** Unimin Canada Limited.

**Master Lease:** that certain Car Leasing Agreement 4190-95 dated as of October 1, 1987 between Seller, as successor in interest to General Electric Railcar Services Canada Ltd., and Lessee, as successor in interest to Indusmin, a division of Falconbridge Limited.

**Operative Agreements:** together, the Lease and, to the extent incorporated by reference into the Lease, the Master Lease.

**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.

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

6. **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 10.5 of the Purchase Agreement.

7. **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.

8. **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.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

10. **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 sale and assignment of the Ownership Interest and thereof and supersede and cancel any prior oral or written agreement, letter of intent or understanding with respect to such subject matter.

*[Signature Page Follows]*



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

**GE RAILCAR SERVICES**

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

**NURAIL CANADA ULC**

By: Gary Smith  
Name: Gary Smith  
Title: Vice President

State of Ohio )  
 )  
County of Lucas )

On this, the 7th day of July, 2006, before me, a Notary Public in and for said County and State, personally appeared Gary Smith, a Vice President of NuRail Canada ULC, who acknowledged himself to be a duly authorized officer of NuRail Canada ULC, 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: Judy A. Baldwin  
Notary Public

My Commission Expires: 02/01/02010  
Residing in: Wood County

**EXHIBIT I**

**FORM OF BILL OF SALE**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GE Railcar Services ("Seller"), does hereby sell, transfer and assign to NuRail Canada ULC ("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 July 7, 2006, between Seller and Buyer, and the Assignment and Assumption Agreement, dated July 7, 2006, between Seller and Buyer.

**GE RAILCAR SERVICES**

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

## Schedule 1

### (List of Equipment)

<u>Unit Count</u>	<u>Lessee</u>	<u>AAR</u>	
		<u>Reporting Mark</u>	
1	Unimin Canada Limited	NCHX	45990
2	Unimin Canada Limited	NCHX	46033
3	Unimin Canada Limited	NCHX	46047
4	Unimin Canada Limited	NCHX	46064
5	Unimin Canada Limited	NCHX	46077
6	Unimin Canada Limited	NCHX	46084
7	Unimin Canada Limited	NCHX	46087
8	Unimin Canada Limited	NCHX	46089
9	Unimin Canada Limited	NAHX	455044
10	Unimin Canada Limited	NAHX	455045
11	Unimin Canada Limited	NAHX	455082
12	Unimin Canada Limited	NAHX	455112
13	Unimin Canada Limited	NAHX	455311
14	Unimin Canada Limited	NAHX	455323
15	Unimin Canada Limited	NAHX	455343
16	Unimin Canada Limited	NAHX	455417
17	Unimin Canada Limited	NAHX	455419
18	Unimin Canada Limited	NAHX	455431
19	Unimin Canada Limited	NAHX	455444
20	Unimin Canada Limited	NAHX	455470
21	Unimin Canada Limited	NAHX	455493
22	Unimin Canada Limited	NAHX	455506
23	Unimin Canada Limited	NAHX	455510
24	Unimin Canada Limited	NAHX	455562
25	Unimin Canada Limited	NAHX	455592
26	Unimin Canada Limited	NAHX	455600
27	Unimin Canada Limited	NAHX	455609
28	Unimin Canada Limited	NAHX	455624
29	Unimin Canada Limited	NAHX	455630
30	Unimin Canada Limited	NAHX	455677
31	Unimin Canada Limited	NAHX	455686
32	Unimin Canada Limited	NAHX	455727
33	Unimin Canada Limited	NAHX	455748
34	Unimin Canada Limited	NAHX	455770
35	Unimin Canada Limited	NAHX	455778
36	Unimin Canada Limited	NAHX	455841
37	Unimin Canada Limited	NAHX	455895
38	Unimin Canada Limited	NAHX	455926
39	Unimin Canada Limited	NAHX	455928
40	Unimin Canada Limited	NAHX	455962
41	Unimin Canada Limited	NAHX	455984
42	Unimin Canada Limited	NAHX	455997
43	Unimin Canada Limited	NAHX	456002
44	Unimin Canada Limited	NAHX	456004

45	Unimin Canada Limited	NAHX	456006
46	Unimin Canada Limited	NAHX	456033
47	Unimin Canada Limited	NAHX	456059
48	Unimin Canada Limited	NAHX	456068
49	Unimin Canada Limited	NAHX	456083
50	Unimin Canada Limited	NAHX	456089

**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: 10/13/06



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