RECORDATION NO. 32398
FILED NOVEMBER 21, 2016 10:27 AM
SURFACE TRANSPORTATION BOARD

November 21, 2016

Via Electronic Filing
Chief Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

Dear Section Chief:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) is a copy of the Memorandum of Assignment of Lease, Rents, and Profits, dated as of November 9, 2016, between MVB Bank, Inc. and MWN Marketing, LLC 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:

Assignee:	MVB Bank, Inc. 400 Washington St. E. Charleston, WV 25301	**Assignor:**	MWN Marketing, LLC 655 Wyndwatch Dr. Cincinnati, OH 45230

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

Up to 9 65 foot (65') Gondola railcars bearing reporting marks:

GDJX 9500, GDJX 9501, GDJX 9502, GDJX 9503, GDJX 9504, GDJX 9505, GDJX 9506, GDJX 9507, GDJX 9508

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

Memorandum of Assignment of Lease, Rents, and Profits

In addition, the Surface Transportation Board Recording fee of $45 is being mailed separately.

Very truly,

S. Ryan White

Enclosure

RECORDATION NO. 32398
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SURFACE TRANSPORTATION BOARD

MEMORANDUM OF ASSIGNMENT OF LEASE, RENTS, AND PROFITS

This **MEMORANDUM OF ASSIGNMENT OF LEASE, RENTS, AND PROFITS** dated as of the 9th day of November 2016, (the "Memorandum") is made by and between MWN Marketing, LLC, an Ohio Limited Liability Company, with an address at 6655 Wyndwatch Dr. Cincinnati, OH 45230 (the "Assignor"), and MVB BANK, INC., a West Virginia corporation, with an address at 406 West Main Street, Clarksburg, West Virginia 26301 (the "Assignee" and, together with the Assignor, the "Parties").

WHEREAS, Assignor, as lessor, and Browner Turnout Co., as Lessee, entered into that certain Railcar Lease Agreement dated as of July 13, 2012 (the "Lease") providing for the Lessee's lease of nine (9) sixty-five foot (65') Gondola Railcars described on Exhibit A hereto (the "Cars") from the Lessor. Evidence of the Lease has been recorded with the Surface Transportation Board pursuant to 49 U.S.C. § 11301 simultaneously with this Memorandum under Exhibit B to this Memorandum.

WHEREAS, the Assignee has provided a Loan to the Assignor, and in connection therewith the Assignor has agreed to grant the Assignee a security interest in the Cars and assign the Lease, together with the rents and profits relating thereto, to the Assignee as further collateral to secure the Loan.

WHEREAS, the Parties have entered into that certain Assignment of Lease, Rents, and Profits of even date herewith (the "Assignment"), evidencing the assignment of the Lease, together with the rents and profits relating thereto attached hereto as Exhibit B.

WHEREAS, the Parties wish to show for the public record the existence of the Assignment, and the respective interests therein of the Parties in and to the Cars and the Lease, and accordingly the Parties have caused this Memorandum to be executed by their respective duly authorized officers, as of the date first above written and filed with the Surface Transportation Board pursuant to 49 U.S.C. § 11301(a).

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties hereto, by this instrument the Assignor hereby assigns to the Assignee all of the Assignor's right, title and interest in, to, and under the Lease in accordance with the terms and conditions of the Assignment, and the Assignee confirms and accepts assignment upon such terms and conditions.

I certify that I hold the title set forth below, that this instrument was signed on behalf of the Assignor by authority of its Members and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the Assignor. I further declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2016

MWN MARKETING, LLC, as Assignor

By: _____

Name: _____

Title: Member

I certify that I hold the title set forth below, that this instrument was signed on behalf of the Assignee by authority of its Board of Directors and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the Assignee. I further declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2016

MVB BANK, INC., as Assignee

By: _____

Name: W. Jarrod Furgason

Title: Vice President / South

EXHIBIT A

DESCRIPTION OF RAILCARS

(9) Nine 65 foot (65') Gondola Railcars:

GDJX	9500
GDJX	9501
GDJX	9502
GDJX	9503
GDJX	9504
GDJX	9505
GDJX	9506
GDJX	9507
GDJX	9508

EXHIBIT B

ASSIGNMENT OF LEASE RENTS AND PROFITS

See Attached

ASSIGNMENT OF LEASE, RENTS, AND PROFITS

This ASSIGNMENT OF LEASE, RENTS, AND PROFITS ("Assignment") is made and entered into as of November 9, 2016, by and among **MWN MARKETING, LLC,** an Ohio limited liability company ("Assignor") and **MVB BANK, INC.**, a West Virginia banking corporation ("Assignee").

W I T N E S S E T H:

WHEREAS, Assignor is party to a Loan Agreement by and among Assignor and Assignee of even date herewith (the "Loan Agreement"), pursuant to which Assignee agreed to make a term loan to Assignor under a Promissory Note in the amount of $340,000 (the "Note"); and

WHEREAS, pursuant to a Security Agreement of even date herewith, Assignor has granted Assignee a first priority lien and security interest in and to 9 certain railcars (the "Railcars") which have been leased to Browner Turnout Co. (the "Lessee") pursuant to a Railcar Lease Agreement (the "Lease") dated July 13, 2012 between Assignee and Lessee; and

WHEREAS, Assignee is unwilling to extend credit to the Assignor without Assignor's assignment of certain rights of the lease with the Lessee, and Assignor has agreed to assign such rights of the Lease pursuant to this Assignment;

NOW, THEREFORE, for value received and to induce Assignee to make the Loan to the Assignors pursuant to the Loan Agreement and other loans or financial accommodations extended by Assignee to Assignor or any of its affiliates, the undersigned Assignor, with the intent of being legally bound hereby, agrees as follows:

1. **DEFINITIONS**. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed thereto in the Loan Agreement of even date herewith. Terms not otherwise defined in this Assignment or the Loan Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

2. **ASSIGNMENT OF LEASES, RENTS, AND PROFITS.** As collateral security for (i) the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all of the obligations of the Assignors under the Note, the other Loan Documents, and any other documents related to loans or financial accommodations extended by Assignee to Assignor or any of its affiliates and (ii) the due and punctual payment and performance of Assignor's obligations and liabilities under, arising out of, or in connection with this Assignment, including, without limitation, any taxes and expenses payable pursuant hereto (all of the foregoing are collectively the "Indebtedness"), Assignor hereby conveys, transfers and assigns unto the Assignee, its successors and assigns

a. all the rights, title, interests and privileges which the Assignor has and may have in that certain Lease between the Assignor and the Lessee, as said Lease may have been, or may from time to time hereafter be modified, extended and renewed, with all rents, income and profits due therefrom; and

b. any award made hereafter to it in any court procedure involving the Lease in any bankruptcy, insolvency, or reorganization proceeding in any state or Federal court and any and all payments made by Lessee in lieu of rent.

3. **ASSIGNMENT FOR SECURITY PURPOSES.** This assignment is made as additional security for the payment of the Note and any and all other obligations of the Assignor to the Assignee under the Loan Documents or any other documents related to loans or financial accommodations extended by Assignee to Assignor or any of its affiliates, and the Assignee's acceptance of this Assignment and the collection of rents or the payments under the Lease hereby assigned shall not constitute a waiver of rights to the Assignee under the terms of said Note, any Loan Document, or any other documents related to loans or financial accommodations extended by Assignee to Assignor or any of its affiliates.

4. **COLLECTION OF RENTS.** Prior to the occurrence of an Event of Default under this Assignment, Assignor shall have the right to collect said rents, income and profits from the Lease and to retain and use the same; provided, however, that even before default occurs no rent more than two months in advance shall be collected or accepted without the prior written consent of the Assignee.

5. **REPRESENTATIONS AND WARRANTIES OF BORROWER.** Assignor warrants and covenants to Assignee as follows:

a. A true and correct copy of the Lease is attached hereto as **Exhibit A.**

b. The Assignor has full right and title to assign the Lease and the rents, income and profits due or to become due thereunder;

c. the terms of the Lease have not been changed from the terms in the copy of the Lease attached hereto as Exhibit A;

d. no other assignment of any interest in the Lease or the rents, income and profits due or to become due thereunder has been made;

e. there are no existing defaults under the provisions thereof; and

f. Assignor will not hereafter cancel, surrender or terminate the Lease, or exercise any option which might lead to such termination of the Lease, or change, alter or modify the Lease or consent to the release of any party liable under the Lease or to the assignment of the Lessee's interest in the Lease without the prior written consent of the Assignee.

6. **EVENTS OF DEFAULT.** The following shall constitute an Event of Default under this Assignment:

a. Failure of Assignor to keep any written promise Assignor has made to Assignee;

b. Failure of Assignor to comply with or to perform when due any other term, obligation, covenant or condition contained in this Assignment or in any of the Loan Documents;

c. Failure of Assignor to comply with or to perform any other material term, obligation, covenant or condition contained in any other agreement between Assignee and Assignor;

d. The occurrence of any Event of Default under the Loan Documents or any other documents related to loans or financial accommodations extended by Assignee to Assignor or any of its affiliates; and

e. The default by the Assignor under the terms of the Lease.

7. **RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Assignment, Assignor hereby authorizes the Assignee, at its option, to enter and take possession of the Railcars and to manage and operate the same, to collect all or any rents accruing therefrom, to lease or re-lease said Railcars or any part thereof, to cancel and to modify the Leases, to bring or defend any suits in connection with the possession of the Railcars in its own name or Assignor's name, to make repairs as Assignee deems appropriate, and to perform such other acts in connection with the management and operation of said Railcars as the Assignee, in its discretion, may deem proper. The receipt by the Assignee of any rents, issues or profits pursuant to this Agreement after the institution of foreclosure or any other proceedings under the Loan Documents or otherwise shall not cure such default nor affect such proceedings or any sale pursuant thereto.

8. **INDEMNIFICATIONS.** Assignee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Assignor under the Lease or any future leases, and the Assignor hereby agrees to indemnify the Assignee for, and to save it harmless from, any kind and all liability arising from any of said leases or from this assignment, and this assignment shall not place responsibility for the control, care, management or repair of the Railcars upon the Assignee nor make the Assignee responsible or liable for any negligence in the management, operation, upkeep, repair or control of said Railcars resulting in loss or injury or death to any tenant, licensee, employee or stranger.

9. **ADDITIONAL OBLIGATIONS.** Any expenditures made by the Assignee in curing any default on the Assignor's behalf, with interest thereon at the highest rate for which it is now lawful to contract, shall become part of the debt secured by this Assignment and the other Security Documents.

10. **MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Assignment:

a. **Additional Assurances.** The Assignor will, on request of the Assignee, execute any other documents or instruments that Assignee deems necessary or appropriate to evidence the assignment granted hereby and assignments of any future leases affecting any part of the property leased pursuant to the Lease.

b. **Termination of Assignment.** The full performance of said mortgage and the duly recorded release or satisfaction of said mortgage shall render this assignment void.

c. **Absolute Assignment.** Notwithstanding any provisions herein to the contrary, this Assignment is intended to be an absolute assignment from Assignor to Assignee and not merely the passing of a security interest. The rents and leases are hereby assigned absolutely by Assignor to Assignee, contingent only upon the occurrence of a default.

d. **Amendments.** This Assignment, together with any other Loan Documents and any other documents related to loans or financial accommodations extended by Assignee to Assignor or any of its affiliates, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

e. **Applicable Law.** This Assignment has been delivered to Assignee and accepted by Assignee in the State of West Virginia.

f. **SUBMISSION TO JURISDICTION AND VENUE.** IF THERE IS A LAWSUIT, ASSIGNOR AGREES UPON ASSIGNEE'S REQUEST TO SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF WEST VIRGINIA AND THE LAYING OF VENUE IN THE COURTS OF KANAWHA COUNTY, WEST VIRGINIA.

g. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of West Virginia without regard to conflict of laws principles.

h. **Attorneys' Fees; Expenses.** Assignor agrees to pay upon demand all of Assignee's reasonable costs and expenses, including reasonable attorneys' fees and Assignee's legal expenses, incurred in connection with the enforcement of this Assignment. Assignee may pay someone else to help enforce this Assignment, and Assignor shall pay the reasonable costs and expenses of such enforcement. Costs and expenses include Assignee's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy

proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Assignor also shall pay all court costs and such additional fees as may be directed by the court.

i. **Caption Headings**. Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

j. **Notices.** Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier service or United States mail certified or registered and shall be deemed to have been given: (i) if delivered in person, when delivered; (ii) if delivered by telecopy, on the date of transmission if transmitted on a Business Day before 4:00 p.m. (West Virginia time) or, if not, on the next succeeding Business Day; (iii) if delivered by overnight courier, two Business Days after delivery to such courier properly addressed; or (iv) if by United States mail, four Business Days after deposit in the United States mail, postage prepaid and properly addressed. Notices shall be addressed as follows:

(i) in the case of the Assignor, to:

MWN Marketing, LLC
6655 Wyndwatch Dr.
Cincinnati, OH 45230

(ii) in the case of the Assignee, to:

MVB Bank, Inc.
400 Washington Street, E
Charleston, WV 25301

with a copy not constituting notice to:

Ryan White, Esq.
700 Chappell Rd.
Charleston, WV 25304

or in any case, to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section. A notice not given as provided above shall, if it is in writing, be deemed given if and when actually received by the party to whom given.

k. **Power of Attorney**. Assignor hereby appoints Assignee as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following upon the occurrence of an Event of Default: (i) to demand, collect, receive,

receipt for, sue and recover all sums of money or other property which may now or hereafter becomes due, owing or payable from the Lease; (ii) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Lease; (iii) to settle or compromise any and all claims arising under the Lease, and, in the place and stead of Assignor, to execute and deliver its release and settlement for the claim; and (iv) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Assignor, or otherwise, which in the discretion of Assignee may seem to be necessary or advisable. This power is given as security for the Indebtedness of Assignor to Assignee, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Assignee.

l. **Notice to Lessee.** Assignor hereby authorizes the Assignee to give notice in writing of this assignment at any time to the Lessee under the Lease.

m. **Severability**. If a court of competent jurisdiction finds any provision of this Assignment to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Assignment in all other respects shall remain valid and enforceable.

n. **Successor Interests**. Subject to the limitations set forth above on transfer of the Lease, this Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns.

o. **Waiver**. Assignee shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Assignee. No delay or omission on the part of Assignee in exercising any right shall operate as a waiver of such right or any other right. A waiver by Assignee of a provision of this Assignment shall not prejudice or constitute a waiver of Assignee's right otherwise to demand strict compliance with that provision or any other provision of this Assignment. No prior waiver by Assignee, nor any course of dealing between Assignee and Assignor, shall constitute a waiver of any of Assignee's rights or of any of Assignor's obligations as to any future transactions. Whenever the consent of Assignee is required under this Assignment, the granting of such consent by Assignee in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Assignee.

p. **Applicability.** Each agreement, representation, warranty, and provision hereof shall be binding on Assignor.

q. **Inconsistency.** To the extent that this Assignment is inconsistent or in conflict with any other agreement or assignment between the parties, the terms of this instrument shall govern.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this **Assignment** to be duly executed and delivered by their proper and duly authorized officers as of this 9th day of November 2016.

MWN MARKETING, LLC,
An Ohio Limited Liability Company

By: _____
Name: Mark Mackey
Title: Member

MVB BANK, INC., a West Virginia banking corporation

By: _____
Name: W. Jarrod Ferguson
Its: MKT. President / South

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this 9th day of November, 2016, by Mark Mackey Member of MWN Marketing, LLC., an Ohio Limited Liability Company, on behalf of MWN Marketing, LLC.

My commission expires Feb 28, 2021.

NOTARY PUBLIC OFFICIAL SEAL
STACIE R GARCIA
State of West Virginia
My Commission Expires Feb 28, 2021
187 Olympia Hill Drive, Winfield, WV 25213

[SEAL]

Stacie R Garcia
Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this 9th day of November, 2016, by W. Jarrod Ferguson Market President of MVB Bank, Inc., a West Virginia Banking Corporation, on behalf of MVB Bank, Inc.

My commission expires Feb 28, 2021.

Stacie R Garcia
Notary Public

[SEAL]

NOTARY PUBLIC OFFICIAL SEAL
STACIE R GARCIA
State of West Virginia
My Commission Expires Feb 28, 2021
187 Olympia Hill Drive, Winfield, WV 25213

EXHIBIT A

RAILROAD EQUIPMENT LEASE AND AMENDMENTS

See attached

RAILCAR LEASE AGREEMENT

This Railcar Lease Agreement is dated as of this 13th day of July, 2012, by and between Browner Turnout Co, a Nebraska Corporation, with its principal place of business at 7160 S 29th, Suite 3, Lincoln, Nebraska 68516 ("Lessee") and MWN Marketing, LLC, a Limited Liability Company incorporated in the State of Ohio, with its principal place of business at 6655 Wyndwatch Drive, Cincinnati, Ohio 45230 ("Lessor").

1. **LEASE.** Lessor herby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, Nine (9) Sixty-Five Foot (65') Gondola Railcars currently bearing the GDJX Mark, to wit:

   GDJX 9500-9508

   It is agreed that Lessee or Sub-Lessee can re-mark the railcars as set forth in paragraph 6.

2. **TERM.** This lease will be for a term of 84 months beginning with the commencement date listed above and ending the 84th month following the signing of this lease agreement.

3. **DELIVERY.** Railcars will be delivered to Lessee at the Interchange selected by the Lessee by separate instruction to the Lessor.

4. **ACCEPTANCE OF RAILCARS.** Lessee will cause its authorized inspectors or representatives to inspect the Units, and if such Units are found to be in good operating order and repair, to accept delivery of such Units (or so many of such Units as are acceptable to Lessee) and to execute and deliver to the Lessor a Certificate of Acceptance, signed by an authorized representative of the Lessee acknowledging the delivery of the accepted Units by Lessor, the conformance of such Units to the requirements of the Interchange Rules of the Association of American Railroads and the acceptance of the Units by Lessee; whereupon such Units shall be deemed to have been delivered to and accepted by the Lessee under this Lease and shall be subject thereafter to all of the terms and conditions of this Second Addendum, the Addendum and Agreement, and such Lessee's certificate shall be absolutely binding upon Lessee.

   If any Unit is not deemed by Lessee to be in good operating order and repair, Lessee shall so notify Lessor in a writing that specifies the nature of the defect in the Unit, and Lessor, at its option, may either (i) repair such Unit and immediately upon completion of such repairs the Unit shall be subject to all of the terms and provisions of this Lease; or (ii) delete the defective Unit, in which case the Unit so deleted shall not be subject to the terms and provisions of this Lease.

   If Lessee uses any Unit prior to delivering a Lessee's certificate of acceptance with respect thereto, such Unit or Units shall be conclusively deemed to be accepted by Lessee.

5. **LEASE FEE.** Lessor and Lessee agree that the Lessee shall pay the Lessor a lease fee of $385.00 per month for each railcar leased. The lease fee shall be paid to the Lessor on or before the 15th day of each month.

6. **MAINTENANCE and REPAIRS.**
   a. *Routine Maintenance*. Regular routine maintenance expenses, due to the normal wear and tear of the railcars, shall be the responsibility of the Lessee. Routine maintenance will be normal wear and tear of railcars. No major rebuilds will be covered by this agreement only those repairs required by the AAR Interchange Rules, applicable laws, regulations, and requirements.
   b. *Non-Routine Repairs – Casualty, Loss*. In the event that any of the railcars, or the fittings, appliances, removable parts or appurtenances thereto, shall be damaged, lost, removed, stolen or destroyed (i) as a result of the acts, omissions, or negligence of Lessee, its employees, agents, sublessees or customers, (ii) by any commodity or other material loaded therein or there on, (iii) while on any private siding or track of any private or industrial railroad, (iv) while in the custody of any individual or entity not subject to the AAR Rules for Interchange, or (v) where the responsible party or the cause cannot be identified, as between Lessor and Lessee, Lessee, at its own expense, shall pay directly for all costs associated with repairs or replacements arising from such damage, loss, removal, theft or destruction. Nothing herein shall prevent Lessee from requiring any responsible third pary to repair, or pay for repair, of the railcars.
   c. *Non-Routine Repairs – Other than Casualty, Loss*. In the event that any of the railcars, or the fittings, appliances, removable parts or appurtenances thereto, shall require non-routine repairs, including without limitation, alterations, additions, replacements, changes or other modifications to address rehabilitation of the railcars or to comply with laws, regulations, directives or rules. Lessor shall be responsible for arranging and paying for such repairs. If the repairs keep the cars out of service for more than [seven days], then lease fees for such out-of-service railcars shall be suspended until the railcars are returned to service.
   d. *Stenciling and Tagging of Railcars*. Lessee may, at Lessee's initial expense, restencil and tag the railcars subject to this lease with GNBC marks. Lessee shall responsible for all payments due to GNBC for accounting and related car repair services incurred by GNBC as a result of such marks.

7. **CASUALTY OF RAILCARS.** Should any car, delivered pursuant to this Agreement, be destroyed beyond repair in accordance with the AAR Interchange Rules, said car shall be removed from the rental calculations of this agreement pro rated to the date of damage.

8. **STORAGE.** In the event that any railcar is not in use while subject to this Agreement, Lessee shall be responsible for storing any such railcar in its lines, at its expense, or for paying all costs associated with storing such railcar at another location. Any storage location provided by Lessee which is off Lessee's lines, shall be as secure as if the railcars were stored on Lessee's lines. If Lessor pays any such storage related costs, Lessee shall reimburse Lessor for such costs within (10) days after receiving an invoice from Lessor for such costs. Storage of any railcars shall not abate any lease fees due and payable for any railcars.

9. **NO WARRANTIES.** Lessee agrees that it has selected each item of railcar based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor.

   Lessee acknowledges that Lessor is not the manufacturer of the railcar nor the manufacturer's agent nor a dealer therein, the railcar is of a size, design, capacity, description and manufacture selected by Lessee, Lessee is satisfied that the railcar is suitable and fir for its purposes, and Lessor has not made and does not make any warranty with respect to the railcar, express or implied, and Lessor specifically disclaims any warranty

of merchantability or of fitness for a particular purpose, the quality, condition or capacity of the railcar or the materials in the railcar or workmanship of the railcar, nor any other representation or warranty whatsoever. Lessor shall not be liable to Lessee for any loss, damage, or expense of any kind or nature caused, directly or indirectly, by and railcar or the use or maintenance thereof or the failure or operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused. Lessor shall not be liable for damages of any kind including, but not limited to: any liability for consequential damages arising out of the use of or the inability to use the railcar.

No defect or unfitness of the railcar, or any failure on the part of the manufacturer or the shipper of the railcar to deliver the railcar or any part thereof to Lessee shall relieve Lessee of the obligation to pay rent or any other obligation hereunder. Lessor shall have no obligation in respect of the railcar and shall have no obligation to install, erect, test, adjust, or service the railcar. Lessee shall look only to persons other than Lessor such as the manufacturer, vendor, or carrier thereof should any item of railcar for any reason be defective.

10. **TITLE, IDENTIFICATION, RECORDING.** Lessor warrants that it is the lawful owner of the railcars subject to this lease, that it has the right and authority to enter into this lease, and that no other parties have any interests in the railcars that would interfere with Lessee's lease and use of the railcars. This Lease is a lease and not a security agreement and Lessee has no right, title, or interest in the railcars except as Lessee.

11. **RIGHT TO INSPECTION.** Lessor shall have the right, but not the obligation, by its authorized representative upon reasonable proper notice to Lessee, and in such a manner as not to disrupt or interfere with the safe operation of Lessee's business, to inspect at its sole risk and expense, the railcars and the records of Lessee with respect thereto.

12. **REPORTS.** If reasonably requested by Lessor from time to time, Lessee agrees to provide to Lessor in a timely manner reports and information concerning the use of the railcars pursuant to this lease.

13. **COMPLIANCE WITH LAWS.** Lessee agrees to comply with all applicable laws of the jurisdictions in which its operations involving the railcars may extend, with the rules of the Association of American Railroads, the United States Department of Transportation, the Surface Transportation Board and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the railcars, to the extent that such laws and rules affect title, operation, maintenance or the use of the railcars, and in the event that such laws or rules require any alteration, replacement or addition of or to any railcars, Lessee will conform therewith at its own expense, except as provided in paragraph 6.

14. **POSSESSION AND USE.** So long as no Event of Default shall have occurred and be continuing hereunder, Lessee shall be entitled to the possession and quiet use and enjoyment of the railcars in accordance with the terms of this Lease. Lessee shall not use the railcars, or permit it to be used, for the transportation or storage of any substance which is categorized as, or required to be labeled as, "poison" or "poisonous", "explosive", or "radioactive" (or any categories or labels substituted for such categories or labels as in effect on the day hereof) under 49 CFR 171 or other applicable Federal rules in effect from time to time regulating the transportation of hazardous materials.

15. **INDEMNITY.** Lessee hereby agrees to indemnify and hold Lessor harmless from and against any and all claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, suits, and all legal proceedings, and any and all costs and expenses in connection therewith (including attorneys' fees) arising out of or in any manner connected with the possession, use, storage, operation, condition, maintenance, repair (other than non-routine repairs which are the responsibility of the Lessor), return or other disposition of the railcars during the term of this lease or with this Lease, including without limitation, claims for injury to or death of persons and for damage to property, and give Lessor prompt notice of any such claim or liability.

16. **ASSIGNMENT.** Lessee shall not assign or sublease its leasehold interest under this Lease in the Railcars other than to **Finger Lakes Railway Corp.**, a Delaware corporation. Lessee shall not voluntarily or involuntarily create, incur, assume, or suffer to exist any mortgage, lien, security interest, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the railcars or this Lease or any of Lessee's interest therein.

17. **NOTICE OF LOSS.** Whenever any railcar shall be or become worn out, lost, stolen, destroyed or damaged, from ordinary use, neglect, abuse, fire, the elements or any other cause whatsoever, or shall be taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the Term of this Lease, Lessee shall, promptly after Lessee has been notified that such railcar has suffered a Casualty Occurrence, but in any event within thirty (30) days after such Casualty Occurrence or within such shorter times as may be required by any applicable rules or regulations of the AAR, notify Lessor, in writing, of such Casualty Occurrence.

18. **INSURANCE.** Lessee shall obtain and maintain on or with respect to the railcars at its own expense (a) liability insurance insuring against liability for bodily injury and property damage with a minimum limit of $5,000,000 combined single limit (or such greater amount as may be required by the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation or any other governmental body or agency having jurisdiction over the railcars) and (b) physical damage insurance insuring against loss or damage to the railcars in an amount not less than the Stipulated Loss Value of the railcar determined in accordance with the applicable Supplement. Lessee shall furnish Lessor with a certificate of insurance evidencing the issuance of a policy or policies to Lessee in at least the minimum amounts required herein naming Lessor as an additional insured thereunder with respect to this Lease for the liability coverage and as loss payee as its interests may appear for the property damage coverage. Each such policy shall be in such form and with such insurers as may be satisfactory to Lessor, and each certificate shall contain a clause requiring the insurer to give to Lessor at least 10 days prior written notice of any material alteration in the terms of such policy or the cancellation thereof, and a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirements hereof. Lessee shall comply with all restrictions (including any geographical limitations) contained in any insurance policies.

    Lessee shall notify Lessor immediately in writing of any accident involving the railcars resulting in damage in excess of $2000, and shall cooperate fully with Lessor and all insurance companies in the investigation, prosecution, and defense of claims. The proceeds of any insurance that is not a Causalty Occurrence shall be applied toward the replacement,

restoration, or repair of the railcars or toward the payment of Lessee's obligations under this Lease.

19. **RETURN OF THE RAILCARS.** Upon the expiration of this Lease or any prior termination of this Lease by Lessor for any reason, Lessee shall return the railcars then subject to this Lease to Lessor in the condition hereinafter provided by causing all such railcars to be moved to an interchange point on the lines of Lessee, or, at Lessor's expense, to a location within the continental United States as Lessor may direct. Each railcar returned to Lessor shall be (i) in good operating condition, order and repair, suitable for use in its intended service, with all components, systems and parts of a type, size, and quality standard as the original manufacturer's specifications, given the age and type of railcar and reasonable wear and tear excepted, (ii) in interchange condition, in accordance with the standards set by the American Association of Railroads Interchange Rules and by any other applicable rules and regulations and any other governmental body having jurisdiction in the matter, (iii) free of any special advertising, lettering or other marking which indicate Lessee has an interest in the railcar (except markings which are required), (iv) cleaned (both interior and exterior) of any silt, sludge or other debris and otherwise commercially suitable to perform the service for which such railcar is intended and to carry the commodities which are normal and customary for such type of railcar; and (v) free of corrosion or any other commodity- related damage which cause the railcar not to be capable of being used for its intended purpose (including accumulations or deposits of commodities, whether from commodities transported in or on the railcar while in the service of Lessee or otherwise).

    Lessor or its representative together with a representative of the Lessee shall inspect the railcars to verify that each item has been returned in compliance with the terms and conditions of this Lease. In the event any item of a railcar does not conform to all of the foregoing requirements, Lessee, at its expense, shall be responsible to either promptly make such repairs as are required to permit each railcar to conform to the foregoing requirements or to forward the railcar to a repair facility (acceptable to Lessor) for such repairs and Lessee shall pay the costs of such repairs. Until such railcar is returned to Lessor in the condition required by the terms of this Lease, Lessee shall continue to pay rent at the daily rent equivalent for such railcar under this Lease until such railcar is in the condition required by the terms of this Lease.

    Lessee shall hold the railcars on its rail lines for Lessor without charge for a period of up to sixty (60) days. Thereafter, Lessor shall pay Lessee its customary and usual charge for car storage. All such payments must be made before the railcars are released from the rail lines of Lessee.

20. **ADDITIONAL ACTION.** Lessee will promptly execute and deliver to Lessor such further documents and take such further action as Lessor may reasonably request in order to carry out more effectively the intent and purpose of this Lease, including the execution and delivery of appropriate financing statements to protect fully Lessor's interest hereunder in accordance with the Uniform Commercial Code or other applicable law. Lessor and any assignee of Lessor is authorized to file one or more Uniform Commercial Code financing statements with respect to the railcars subject to this lease without the signature of Lessee or signed by Lessor or any assignee of Lessor as attorney-in-fact for Lessee.

21. **DEFAULT.** Lessee shall be in default under this Lease upon the happening of any of the following events or conditions (hereinafter referred to as "Events of Default") during the term of this Lease:

a. If Lessee fails to pay any sum required to be paid under this Lease on or before the due date and such failure continues for a period of ten (10) days;
b. If Lessee fails at any time to procure or maintain any insurance coverage required by this Lease;
c. If Lessee fails to observe or perform any of the covenants, conditions and agreements on the part of Lessee to be observed or performed and contained herein and such default shall continue for thirty (30) days after receipt by Lessee of written notice of such default, or if the default cannot be cured within thirty (30) days, Lessee has not commenced the cure within the thirty (30) day period or does not diligently pursue the cure thereafter ;
d. If a petition in bankruptcy or for reorganization or for a trustee or receiver is filed by or against Lessee, and not dismissed within sixty (60) days, or all of the obligations of Lessee under this Lease shall not have been duly assumed by the Trustee or receiver appointed, if any, in such proceeding or otherwise given the same status as obligations assumed by the Trustee or receiver within thirty (30) days after the appointment, if any, or sixty (60) days after such proceedings shall have been commenced;
e. If Lessee shall make or permit any unauthorized assignment or transfer of this Lease, the railcars or any interest therein; or
f. If any representation or warranty of Lessee contained in this Lease shall prove to be untrue or incorrect and the interests of Lessor are adversely and materially affected thereby.

22. **REMEDIES**. Upon the occurrence of any one or more of the Events of Default specified in or any other default of this agreement, and at any time thereafter (unless such Event of Default shall have been waived in writing by Lessor), Lessor may without any further notice exercise any one or more of the following remedies:
a. Declare all unpaid Lease Fees through the Event of Default under this Lease to be immediately due and payable;
b. Terminate this Lease as to any or all railcars without relieving Lessee of any of its obligations hereunder with respect to the remainder of the railcars;
c. Cause Lessee, at its sole expense, to promptly return the railcars to Lessor in accordance with the terms and provisions of paragraph 21 hereof, provided, however, that Lessee's obligation to store the railcars for a period of up to [sixty (60) days] at its expense and risk shall continue until such railcars have been sold, re-leased or otherwise disposed of by Lessor;
d. Use, hold, sell, lease or otherwise dispose of the railcars or any railcar on the premises of Lessee or any other location without affecting the obligations of Lessee with respect to the remaining railcars, if any, as provided in this Lease;
e. Sell or lease the railcars or any railcar at public auction or by private sale or lease at such time or times and upon such terms as Lessor may determine, free and clear of any rights of Lessee and, if notice thereof is required by law, any notice in writing of any such sale or lease by Lessor to Lessee not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Lessee;
f. Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or
g. Exercise any other right accruing to Lessor under any applicable law or in equity.
h. If any railcar is sold, leased or otherwise disposed of pursuant to this paragraph 24, Lessee shall be liable to Lessor for and Lessor may recover from Lessee, as damages for the breach of this Lease, and not as a penalty, the amount by which the proceeds of such lease, sale, or other disposition is less than the sum of: (i) all due, unpaid and

accrued lease charges for such railcar as of the date of the Event of Default; (ii) the Casualty Value of such Car; (iii) an amount equal to accrued assessments and other amounts payable hereunder by Lessee with respect to such railcar; and (iv) all costs, expenses, losses and damages incurred or sustained by Lessor by reason of such default including, without limitation, reasonable attorneys' fees and appraisal fees.

If, on the date of termination or repossession pursuant to this paragraph 24, any railcar is damaged, lost, stolen or destroyed, or subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency, Lessee shall remain liable for the damages set forth in this paragraph 24, less the amount of the recovery, if any, actually received by Lessor from Lessee's insurance or otherwise from or through Lessee in connection therewith.

No right or remedy conferred on or reserved to Lessor by this Lease shall be exclusive of any other right or remedy herein or by law provided. All rights and remedies of Lessor conferred on Lessor by this Lease or by law shall be cumulative and in addition to every other right and remedy available to Lessor. No failure on the part of Lessor to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof unless specifically waived by Lessor in writing; nor shall any single or partial exercise by Lessor of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

In the event that Lessor shall bring any action, proceeding, or suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such action, proceeding or suit Lessor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment. In the event that Lessor has incurred any expenses and attorney's fees in the enforcement of any of its rights hereunder without having brought any action, proceeding or suit to so enforce any such right, then Lessor may recover from Lessee any reasonable expenses and attorney's fees so incurred.

Promptly after Lessee has notice of any event that has occurred and is continuing which would constitute an Event of Default but for the requirement that notice be given or a time elapsed or both, Lessee shall give written notice thereof to Lessor.

23. **NOTICES.** Any written notice hereunder to Lessee or Lessor shall be deemed to have been given when delivered personally, or deposited with a recognized overnight courier service for next day delivery or deposited in the United States mails, postage prepaid, certified or registered and addressed to recipient at its address set forth above or at such other address as either party may direct.

24. **ENVIRONMENTAL COMPLIANCE.** Lessee has obtained all permits, licenses and other authorizations pertaining to the railcar, if any, which are required under federal, state and local laws relating to pollution or protection of the environment, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, hazardous or toxic materials or wastes ("Environmental Laws"). With respect to the railcar, Lessee is in compliance with all terms and conditions of such required permits, licenses and authorizations and also in full compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables contained in the Environmental Laws or contained in any plan, order, decree, judgment or notice. Lessee is further not aware of, nor has Lessee received, any notice of any events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or

prevent continued compliance or which may give rise to any liability under any Environmental Laws with respect to the railcar.

25. **OWNERSHIP.** Title and ownership of all railcars will remain in Lessor.

26. **TAXES.** Lessee shall be responsible for all taxes, including, but not limited to all ad valorem taxes, property taxes or usage tax related to the ownership of the railcars during the term of this lease.

27. **MISCELLANEOUS.** This Lease constitutes the entire agreement between Lessor and Lessee and may be modified only by a written instrument signed by Lessor and Lessee. Any provision of this Lease which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Lease, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. Paragraph headings are for convenience only, are not part of this Lease and shall not be deemed to effect the meaning or construction of any of the provisions hereof. This Lease may be executed in any number of counterparts but only one such counterpart shall be marked "Original" and all other counterparts shall be marked "Duplicate". To the extent that this Lease constitutes chattel paper under the Uniform Commercial Code, the original of a lease shall mean a copy of the Lease marked "Original". In the event there is more than one Lessee named in this, the obligations of each shall be joint and several. This Lease shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Nebraska.

LESSEE AND LESSOR HEREBY WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY MATTER ARISING UNDER OR IN CONNECTION WITH THIS LEASE. TIME IS OF THE ESSENCE WITH RESPECT TO THE OBLIGATIONS OF LESSEE UNDER THIS LEASE.

IN WITNESS WHEREOF, Lessee and Lessor have caused this Railcar Lease Agreement to be executed as of the date first written above.

LESSEE:

MWN Marketing, LL,
A Limited Liability Company,
Incorporated in the State of Ohio

Mark Mackey, Principal

LESSOR:

Browner Turnout, Co.,
A Nebraska Corporation

Martin Ramsey, CFO

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